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INCOME TAX LAW PART – I

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CHAPTER - 1

Basics Concepts

1. INTRODUCTION

1.1 What is the meaning of tax?

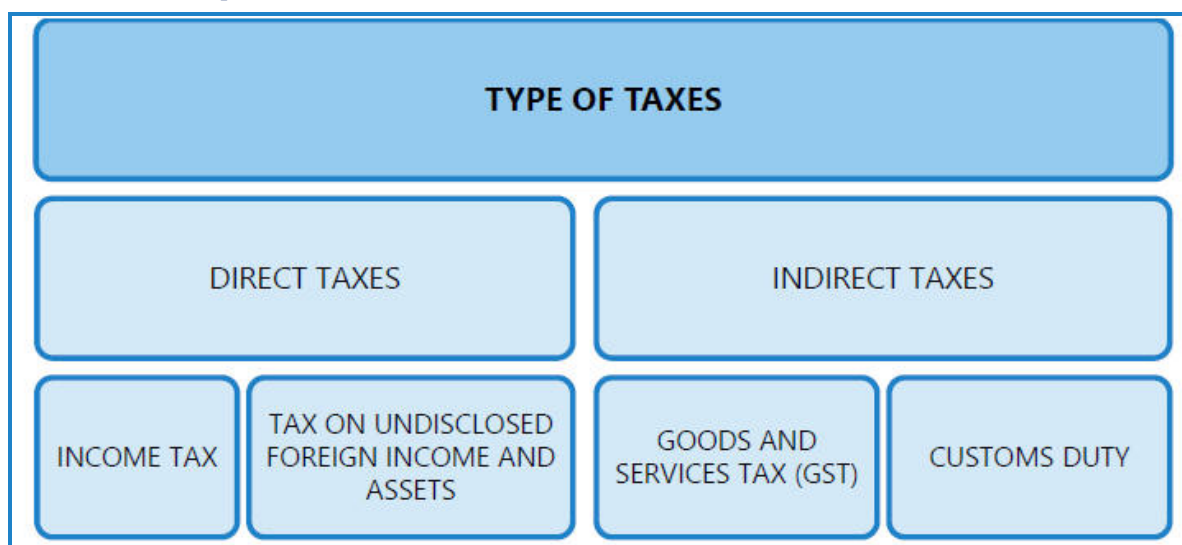
Let us begin by understanding the meaning of tax.

Article 366(28) of the Constitution of India defines the term “Taxation” as follows –

“Taxation includes the imposition of any tax or impost, whether general or local or special, and tax shall be construed accordingly.”

Taxes are considered to be the “cost of living in a society”. Taxes are levied by the Governments to meet the common welfare expenditure of the society. There are two types of taxes - direct taxes and indirect taxes.

- **Direct Taxes:** If tax is levied directly on the income or wealth of a person, then, it is a direct tax. The person who pays the tax to the Government cannot recover it from somebody else i.e. the burden of a direct tax cannot be shifted. E.g., Income tax.
- **Indirect Taxes:** If tax is levied on the price of a good or service, then, it is an indirect tax e.g. Goods and Services Tax (GST) or Custom Duty. In the case of indirect taxes, the person paying the tax passes on the incidence to another person.



1.2 Why are taxes levied?

The reason for levy of taxes is that they constitute the basic source of revenue to the Government. Revenue so raised is utilized for meeting the expenses of Government like defence, provision of education, health-care, infrastructure facilities like roads, dams etc.

1.3 Power to levy taxes

The Constitution of India, in Article 265 lays down that “No tax shall be levied or collected except by authority of law.” Accordingly for levy of any tax, a law needs to be framed by the government.

Constitution of India gives the power to levy and collect taxes, whether direct or indirect, to the Central and the State Government. The Parliament and State Legislatures are empowered to make laws on the matters enumerated in the Seventh Schedule by virtue of Article 246 of the Constitution of India.

Seventh Schedule to Article 246 contains three lists which enumerate the matters under which the Parliament and the State Legislatures have the authority to make laws for the purpose of levy of taxes.

The following are the lists:

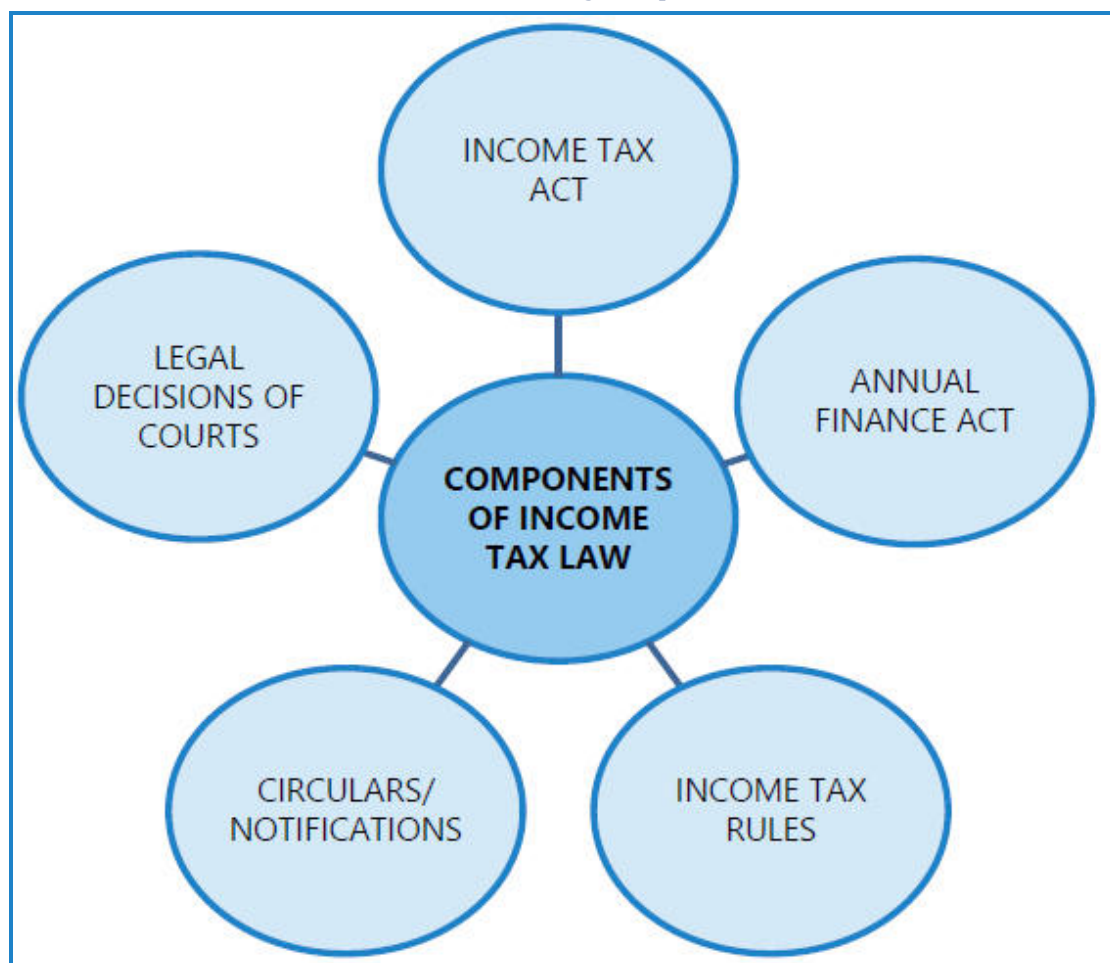
- (i) Union List: Parliament has the exclusive power to make laws on the matters contained in Union List.
- (ii) State List: The Legislatures of any State has the exclusive power to make laws on the matters contained in the State List.
- (iii) Concurrent List: Both Parliament and State Legislatures have the power to make laws on the matters contained in the Concurrent list.

Income-tax is the most significant direct tax. Entry 82 of the Union List i.e., List I in the Seventh Schedule to Article 246 of the Constitution of India has given the power to the Parliament to make laws on taxes on income other than agricultural income.

1.4 Overview of Income-tax law in India

In this material, we would be introducing the students to the Income-tax law in India.

The income-tax law in India consists of the following components –



The various instruments of law containing the law relating to income-tax are explained below.

Income-tax Act, 1961

The levy of income-tax in India is governed by the Income-tax Act, 1961. In this book, we shall briefly refer to this as the Act.

- It extends to the whole of India.
- It came into force on 1st April, 1962.
- It contains sections 1 to 298 and schedules I to XIV.
 - A section may have **sub-sections or clauses and sub-clauses**.
 - When each part of the section is independent of each other and one is not related with other, such parts are called a “Clause”. “Sub section”, on the other hand refers to such parts of a section where each part is related with other and all sub sections taken together completes the concept propounded in that section.
 - **Example**
 - The clauses of section 2 define the meaning of terms used in the Income-tax Act, 1961. Clause (1A) defines “agricultural income”, clause (1B) defines “amalgamation” and so on. Each one of them is independent of other clause of the same section.
 - Likewise, the clauses of section 10 contain the exemptions in respect of certain income, like clause (1) provides for exemption of agricultural income and clause (2) provides for exemption of share income of a member of a Hindu Undivided Family and so on.
 - Section 5 defining the scope of total income has two subsections (1) and (2). Sub-section (1) defines the scope of total income of a resident and sub-section (2) defines the scope of total income of a non-resident. Each sub section is related with the other in the sense that only when one reads them all, one gets the complete idea related with scope of total income.
 - A section may also have Provisos and Explanations.
 - The Proviso(s) to a section/sub-section/clause spells out the exception(s)/ condition(s) to the provision contained in the respective section/ sub-section/ clause, i.e., the proviso spells out the cases where the provision contained in the respective section/ sub-section/ clause would not apply or where the provision would apply with certain modification.
 - The Explanation to a section/ sub-section/ clause gives a clarification relating to the provision contained in the respective section/ sub-section/ clause.
 - **Example**
 - Sections 80GGB and 80GGC provides for deduction from gross total income in respect of contributions made by companies and other persons, respectively, to political parties or an electoral trust.
 - The proviso to sections 80GGB and 80GGC provide that no deduction shall be allowed under those sections in respect of any sum contributed by cash to political parties or an electoral trust. Thus, the provisos to these sections spell out the circumstance when deduction would not be available thereunder in respect of contributions made.
 - The Explanation below section 80GGC provides that for the purposes of sections 80GGB and 80GGC, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951. Thus, the Explanation clarifies that the political party has to be a registered political party.
- The Income-tax Act, 1961 undergoes change every year with additions and substitutions brought in by the Annual Finance Act passed by Parliament. Sometimes, the Income-tax Act, 1961 is also amended through other legislations like Taxation Laws (Amendment) Act.

The Finance Act

Every year, the Finance Minister of the Government of India introduces the Finance Bill in the Parliament's Budget Session. When the Finance Bill is passed by both the houses of the Parliament and gets the assent of the President, it becomes the Finance Act. Amendments are made every year to the Income-tax Act, 1961 and other tax laws by the Finance Act.

The First Schedule to the Finance Act contains four parts which specify the rates of tax -

- Part I of the First Schedule to the Finance Act specifies the rates of tax applicable for the current Assessment Year. Accordingly, Part I of the First Schedule to the Finance Act, 2023 specifies the rates of tax for A.Y. 2023-24.
- Part II specifies the rates at which tax is deductible at source for the current Financial Year. Accordingly, Part II of the First Schedule to the Finance Act, 2023 specifies the rates at which tax is deductible at source for F.Y. 2023-24
- Part III gives the rates for calculating income-tax for deducting tax from income chargeable under the head "Salaries" and computation of advance tax for F.Y. 2023-24 where the assessee exercises the option to shift out of the default tax regime provided under section 115BAC(1A).
- Part IV gives the rules for computing net agricultural income.

Income-tax Rules, 1962

The administration of direct taxes is looked after by the Central Board of Direct Taxes (CBDT).

- The CBDT is empowered to make rules for carrying out the purposes of the Act.
- For the proper administration of the Income-tax Act, 1961, the CBDT frames rules from time to time. These rules are collectively called **Income-tax Rules, 1962**.
- Rules also have sub-rules, provisos and Explanations. The proviso to a Rule/ Sub-rule spells out the exception to the limits, conditions, guidelines, basis of valuation, as the case may be, spelt out in the Rule/ Sub-rule. The Explanation gives clarification for the purposes of the Rule.
- It is important to keep in mind that along with the Income-tax Act, 1961, these rules should also be studied.

Circulars and Notifications

Circulars

- Circulars are issued by the CBDT from time to time to deal with certain specific problems and to clarify doubts regarding the scope and meaning of certain provisions of the Act.
- Circulars are issued for the guidance of the officers and/or assesseees.
- The department is bound by the circulars. While such circulars are not binding on the assesseees, they can take advantage of beneficial circulars.

Notifications

Notifications are issued by the Central Government to give effect to the provisions of the Act. The CBDT is also empowered to make and amend rules for the purposes of the Act by issue of notifications which are binding on both department and assesseees.

Legal decisions of Courts

Case Laws refer to decision given by courts. The study of case laws is an important and unavoidable part of the study of Income-tax law. It is not possible for Parliament to conceive and provide for all possible issues that may arise in the implementation of any Act. Hence the judiciary will hear the disputes between the assesseees and the department and give decisions on various issues.

The Supreme Court is the Apex Court of the Country and the law laid down by the Supreme Court is the law of the land. The decisions given by various High Courts will apply in the respective states in which such High Courts have jurisdiction.

Note – Case laws are dealt with at the Final level.

2. CHARGE OF INCOME TAX

Section 4 of the Income-tax Act, 1961 is the charging section which provides that:

- (i) Tax shall be charged at the **rates prescribed** for the year by the Annual Finance Act or the Income-tax Act, 1961 or both.
- (ii) The charge is on every **person** specified under section 2(31);
- (iii) Tax is chargeable on the **total income** earned during the **previous year** and not the **assessment year**. (There are certain **exceptions** provided by sections 172, 174, 174A, 175 and 176);
- (iv) Tax shall be levied in accordance with and subject to the various provisions contained in the Act.

This section is the back bone of the law of income-tax in so far as it serves as the most operative provision of the Act. The tax liability of a person springs from this section.

A person includes an individual, Hindu Undivided Family (HUF), Association of Persons (AOP), Body of Individuals (BOI), a firm, a company etc.

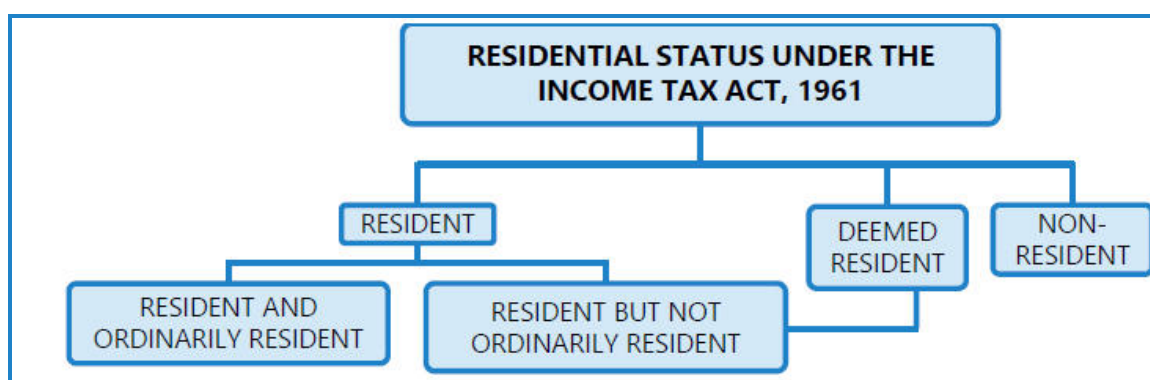
(1) Total Income and Tax Payable

Income-tax is levied on an assessee's total income. Such total income has to be computed as per the provisions contained in the Income-tax Act, 1961.

Let us go step by step to understand the procedure for computation of total income of an individual for the purpose of levy of income-tax –

Step 1 – Determination of residential status

The residential status of a person has to be determined to ascertain which income is to be included in computing the total income. The residential status as per the Income-tax Act, 1961 can be classified as under –



In the case of an individual, the duration for which he is present in India in the relevant previous year or relevant previous year and the earlier previous years determines his residential status. Based on the days spent by him in India, he may be

- (a) resident and ordinarily resident,
- (b) resident but not ordinarily resident, or
- (c) non-resident.

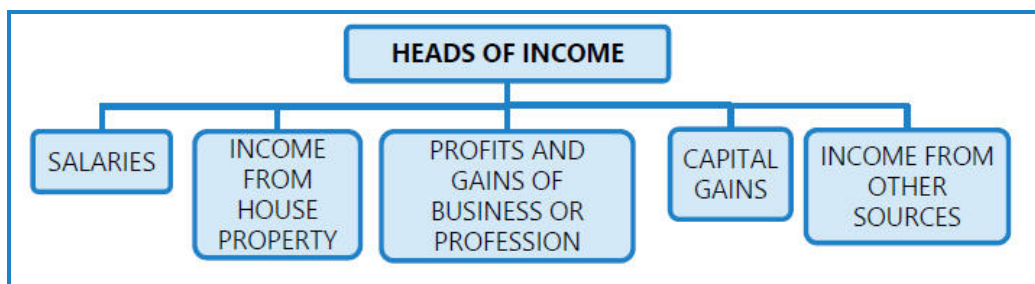
The residential status of a person determines the taxability of the income. For e.g., income earned and received outside India will not be taxable in the hands of a nonresident but will be taxable in case of a resident and ordinarily resident.

There is also a concept of deemed resident for which presence of individual in India is not required. A deemed resident is always a resident but not ordinarily resident in India. Determination of residential status has been discussed in Chapter 2.

Step 2 – Classification of income under different heads

A person may earn income from different sources. For example, a salaried person earns income by way of salary. He also gets interest from bank savings account/ fixed deposit. Apart from this, if he has invested in shares, he would be getting dividend and when he sells these shares, he may earn profit on such sale. If he owns a residential property which he has let out, he would earn rental income.

Under the Income-tax Act, 1961, for computation of total income, all income of a tax payer are classified into five different heads of income. These are shown below –



There is a charging section under each head of income which defines the scope of income chargeable under that head. These heads of income exhaust all possible types of income that can accrue to or be received by the tax payer. Accordingly, income earned is classified as follows:

1. Salary, pension etc. earned is taxable under the head **“Salaries”**.
2. Rental income is taxable under the head **“Income from house property”**.
3. Income derived from carrying on any business or profession is taxable under the head **“Profits and gains of business or profession”**.
4. Profit from sale of a capital asset (like land, building and shares) is taxable under the head **“Capital Gains”**.
5. The fifth head of income is the residuary head. Income which is chargeable to tax under the Income-tax Act, 1961 but not taxable under the first four heads will be taxed under the head **“Income from other sources”**.

The tax payer has to classify the income earned under the relevant head of income.

Step 3 – Computation of income under each head

Income is to be computed in accordance with the provisions governing a particular head of income.

Exemptions: There are certain incomes which are wholly exempt from income-tax e.g., agricultural income. These incomes have to be excluded and will not form part of total income.

Also, some incomes are partially exempt from income-tax e.g., Commuted pension. These incomes are excluded only to the extent of the limits specified in the Act. The balance income over and above the prescribed exemption limits would enter computation of total income and have to be classified under the relevant head of income.

Deductions: There are deductions and allowances prescribed under each head of income. For example, while calculating income from house property for let out property, municipal taxes and interest on loan are allowed as deduction. Similarly, deductions and allowances are prescribed under

other heads of income. These deductions etc. have to be considered before arriving at the net income chargeable under each head.

These exemptions and deductions would be available to the individual depending upon the regime in which he pays tax. Tax regime under section 115BAC is the default tax regime which provides for concessional rates of tax to individuals/HUFs/AoPs/BoIs/Artificial juridical persons. However, certain exemptions and deductions are not allowed under the default tax regime. Such assesseees have an option to opt out of the said regime and pay tax under normal provisions of the Act. These tax regimes i.e., the default tax regime under section 115BAC and optional tax regime under the normal provisions of the Act are discussed in detail later on in this Chapter.

For detailed discussion on exemptions and deductions under each head, refer to Chapter 3: Heads of Income.

Disallowance of expenditure in relation to exempt income [Section 14A]

- As per section 14A, notwithstanding anything to the contrary, expenditure incurred in relation to any exempt income is not allowed as a deduction while computing income under any of the five heads of income.
- The Assessing Officer is empowered to determine the amount of expenditure incurred in relation to such income which does not form part of total income in accordance with such method as may be prescribed.
- The method for determining expenditure in relation to exempt income for the purpose of disallowance of such expenditure under section 14A is prescribed by the CBDT.
- The provisions of section 14A regarding disallowance of expenses would apply even in a case where exempt income has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such exempt income.

Step 4 – Clubbing of income of spouse, minor child etc.

In case of individuals, income-tax is levied on a slab system on the total income. The tax system is progressive i.e., as the income increases, the applicable rate of tax increases. Some taxpayers in the higher income bracket have a tendency to divert some portion of their income to their spouse, minor child etc. to minimize their tax burden.

In order to prevent such tax avoidance, clubbing provisions have been incorporated in the Act, under which income arising to certain persons (like spouse, minor child etc.) have to be included in the income of the person who has diverted his income for the purpose of computing tax liability. For detailed discussion, refer to Chapter 4: Income of other persons included in assessee's total income.

Step 5 – Set-off or carry forward and set-off of losses

An assessee may have different sources of income under the same head of income. He may have profit from one source and loss from the other. For instance, an assessee may have profit from his textile business and loss from his printing business. This loss can be set-off against the profits of textile business to arrive at the net income chargeable under the head "Profits and gains of business or profession".

Similarly, an assessee can have loss under one head of income, say, profits and gains of business or profession and profits under another heads of income, say, income from house property. There are provisions in the Income-tax Act, 1961 for allowing inter-head adjustment in certain cases.

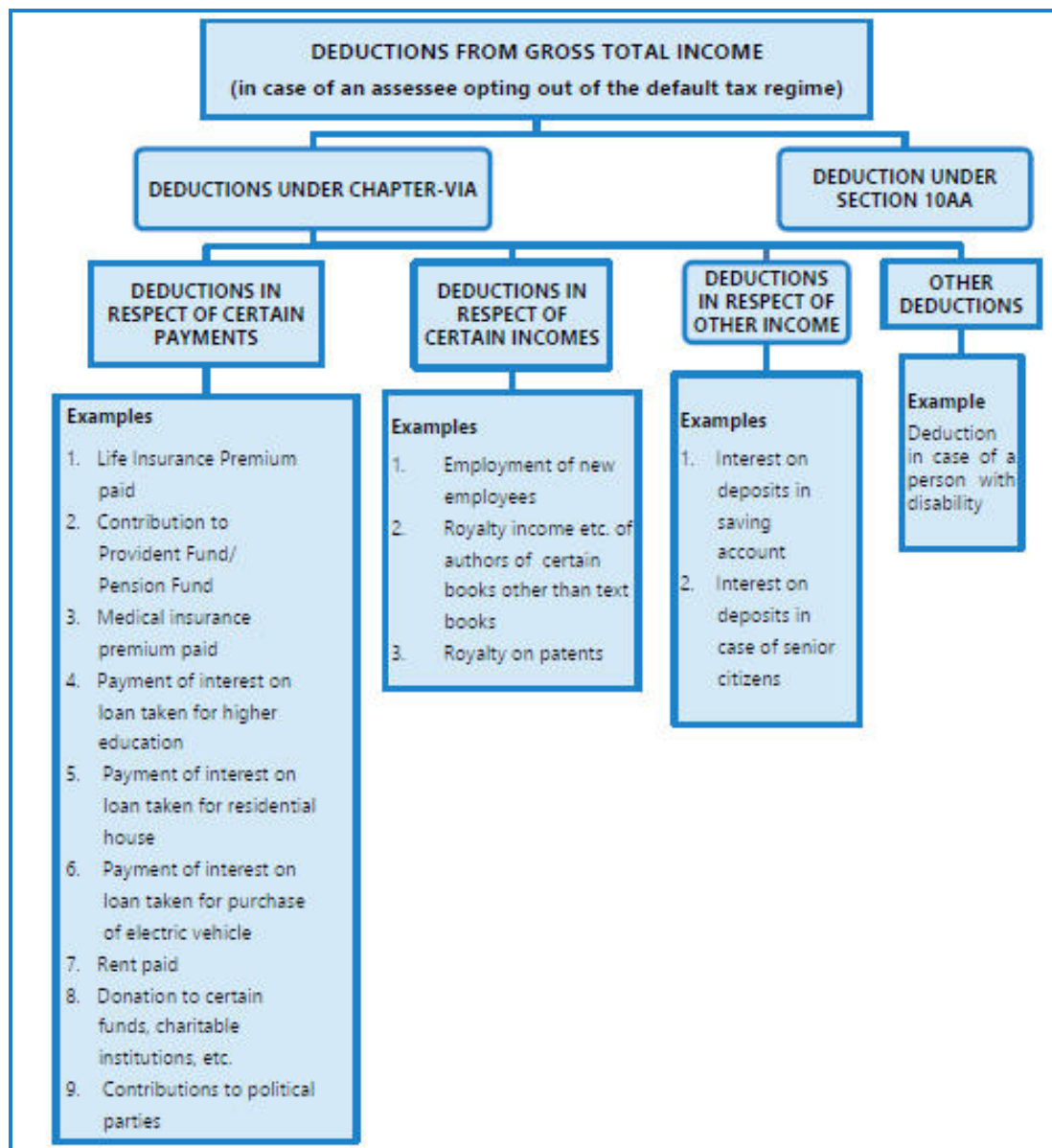
However, there are also restrictions in certain cases, like business loss is not allowed to be set-off against salary income. Default tax regime under section 115BAC puts further more restrictions like loss from house property cannot be set off from income under any other head. Further, losses which cannot be set-off in the current year due to inadequacy of eligible profits can be carried forward for set-off in the subsequent years as per the provisions contained in the Act. Generally, brought forward losses under a particular head cannot be set-off against income under another head i.e., brought forward business loss cannot be set-off against income from house property of the current year. For detailed discussion, refer to Chapter 5: Aggregation of income, set-off and carry forward of losses.

Step 6 – Computation of Gross Total Income

The final figures of income or loss under each head of income, after allowing the eligible deductions, allowances and other adjustments, are then aggregated, after giving effect to the provisions for clubbing of income and set-off and carry forward of losses, to arrive at the gross total income.

Step 7 – Deductions from Gross Total Income

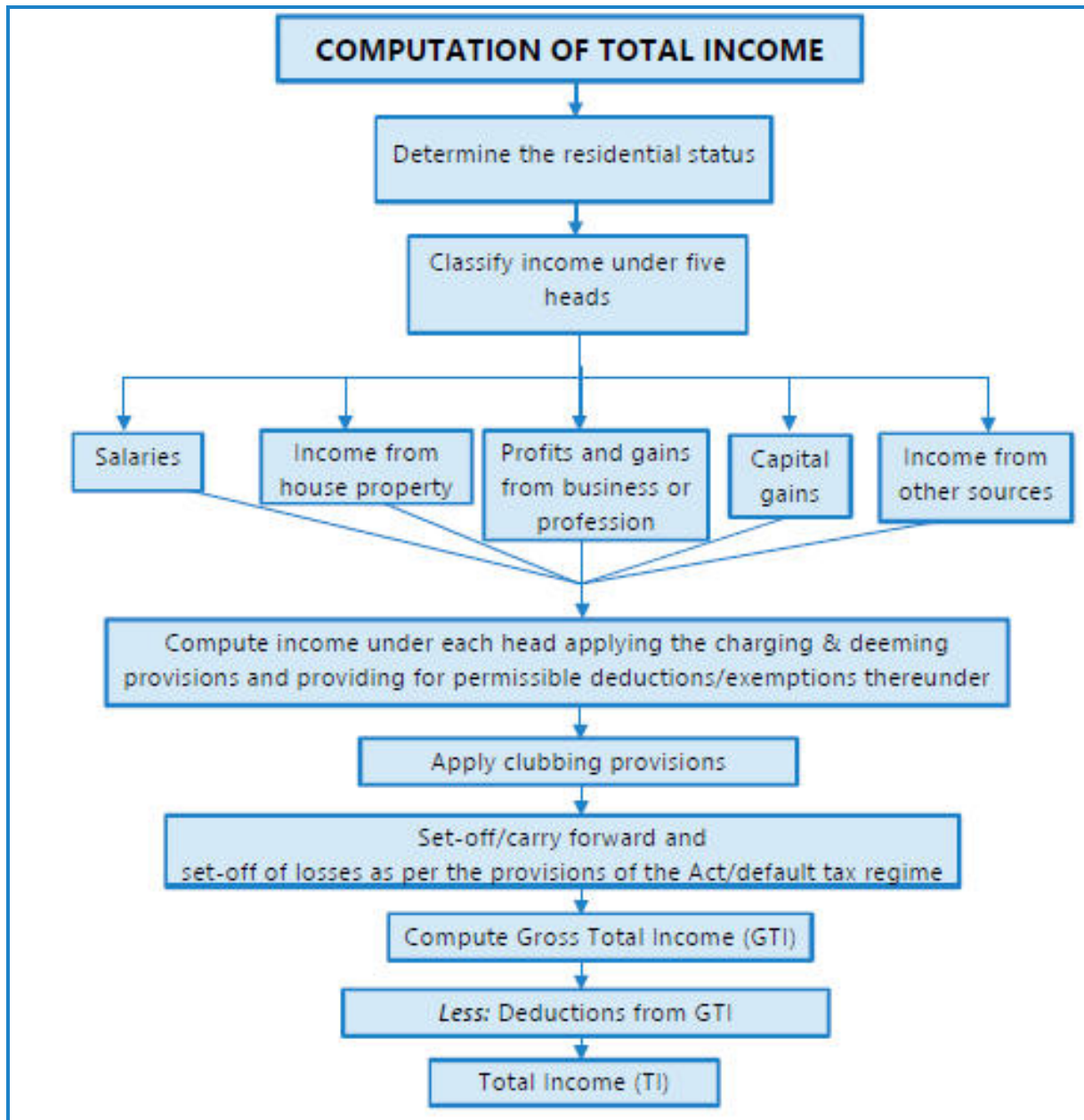
There are deductions prescribed from Gross Total Income. Two types of deductions are allowable from Gross Total Income - Deductions under Chapter VIA and deduction under section 10AA. These deductions would be allowable to the assessee who opts out of the default tax regime and pays tax under the optional tax regime as per normal provisions of the Act, subject to fulfillment of requisite conditions stipulated thereunder.



However, under the default tax regime under section 115BAC, only select deductions are permissible. For detailed discussion, refer to Chapter 6: Deductions from Gross Total Income.

Step 8 – Computation of Total income

The income arrived at, after claiming the above deductions from the Gross Total Income is known as the Total Income. It should be rounded off to the nearest multiple of ₹ 10 as per section 288A. The process of computation of total income is shown hereunder –



Step 9 – Application of the rates of tax on the total income

Rates prescribed under section 115BAC of the Income-tax Act for default tax regime

Section 115BAC of the Income-tax Act, 1961 provides for concessional rates of tax to individuals/HUF/AoPs/BoIs and artificial juridical persons. Under this regime certain exemptions/deductions are, however, not available like Leave Travel Concession, interest on housing loan on self-occupied property, deductions under Chapter VI-A [other than section 80CCD(2), 80CCH(2) or section 80JJAA] etc. The rates given under section 115BAC are the default tax rates unless the assessee exercises an option to shift out of the said regime. The basic exemption limit

under section 115BAC is ₹ 3,00,000. This means that no tax is payable by an assessee with total income of upto ₹ 3,00,000. The tax rates under section 115BAC is as follows –

S. No.	Total Income	Rate of tax
1.	Upto ₹ 3,00,000	Nil
2.	From ₹ 3,00,000 to ₹ 6,00,000	5%
3.	From ₹ 6,00,000 to ₹ 9,00,000	10%
4.	From ₹ 9,00,000 to ₹ 12,00,000	15%
5.	From ₹ 12,00,000 to ₹ 15,00,000	20%
6.	Above ₹ 15,00,000	30%

Rates prescribed by the Annual Finance Act under the optional tax regime

Individuals/HUF/AoPs/BoIs and artificial juridical persons, who exercise the option to opt out of the default tax regime under section 115BAC, have to pay tax as per normal provisions of the Act. Under the normal provisions of the Act, the rates of tax are prescribed by the Annual Finance Act of the year.

For individuals, HUF etc., the basic exemption limit is ₹ 2,50,000. This means that, as per the normal provisions of the Act, no tax is payable by individuals with total income of upto ₹ 2,50,000. Those individuals whose total income is more than ₹ 2,50,000 but less than ₹ 5,00,000 have to pay tax on their total income in excess of ₹ 2,50,000@5%. Total income between ₹ 5,00,000 and ₹ 10,00,000 attracts tax @20%. The highest rate is 30%, which is attracted in respect of income in excess of ₹ 10,00,000. The tax rates have to be applied on the total income to arrive at the income-tax liability.

However, resident individuals enjoy rebate under section 87A in both the tax regimes which are discussed later on in this chapter.

For certain income (like Long Term Capital Gains, Lottery Income, Specified Short Term Capital Gains etc.), slab rates are not applicable under both the tax regimes. These incomes are taxable at special rates of taxation under both the tax regimes. These special rates are contained in the Income-tax Act, 1961 itself.

Step 10 - Surcharge / Rebate under section 87A

Surcharge: Surcharge is an additional tax payable over and above the income-tax. Surcharge is levied as a percentage of income-tax, where total income exceeds ₹ 50 lakhs. The rates of surcharge applicable for different slabs of total income are discussed later on in this chapter.

Rebate under section 87A: In order to provide tax relief to the individual tax payers, section 87A provides a rebate from the tax payable by an assessee, being an individual resident in India, whose total income does not exceed ₹ 7,00,000 under the default tax regime under section 115BAC or ₹5,00,000 under the normal provisions of the Act if he opts out of the default tax regime. Under the default tax regime, an individual whose total income exceeds ₹ 7 lakhs marginally is also entitled to a rebate of the difference between tax on total income and the amount by which the total income exceeds ₹ 7 lakhs, when the former is greater than the latter.

Step 11 – Health and education cess on income-tax

The income-tax, as increased by the surcharge or as reduced by the rebate under section 87A, if applicable, is to be further increased by an additional surcharge called health and education cess on income-tax @4% of income-tax plus surcharge, if applicable.

Step 12 – Alternate Minimum Tax (AMT)

The Income-tax Act, 1961 contains certain profit-linked and investment linked deductions under normal provisions of the Act to promote investment in various sectors. These tax benefits help to reduce the tax liability of the taxpayers who exercise the option to opt out of the default tax regime under section 115BAC and become eligible to claim such deductions. In order to preserve the tax base vis-avis profit linked and investment linked deductions, the Income-tax Act, 1961 provides for levy of alternate minimum tax. Section 115JC provides for minimum tax to be paid by the taxpayers on their total income without providing profit linked and investment linked deductions. However, the taxpayer can claim the tax credit of the excess tax paid over the regular income-tax payable.

Individuals/HUF/AoPs/BoIs and artificial juridical persons paying tax under default tax regime under section 115BAC, are not liable to alternate minimum tax under section 115JC.

For detailed discussion, refer to Chapter 9: Income-tax liability – Computation and Optimisation.

Step 13 – Examine whether to pay tax under the default tax regime under section 115BAC or pay tax under the optional tax regime as per the regular provisions of the Act

Total income and tax liability of individuals/HUF/AoPs/BoIs and artificial juridical persons may be computed in accordance with both the default tax regime under section 115BAC and as per the regular provisions of the Act including provisions relating to AMT, if applicable. Then, such persons can determine which is more beneficial and accordingly decide whether or not to opt out of the default tax regime under section 115BAC.

Individuals/HUF/AoPs/BoIs not having income from business or profession can choose whether or not to exercise the option of shifting out of the default tax regime in each previous year. They may choose to pay tax under default tax regime under section 115BAC in one year and exercise the option to shift out of default tax regime in another year.

Step 14 – Advance tax and tax deducted/ collected at source

Although the tax liability of an assessee is determined only at the end of the year, tax is required to be paid in advance in four installments on the basis of estimated income i.e., on or before 15th June, 15th September, 15th December and 15th March. However, residents declaring profits under presumptive taxation scheme (where business income is computed as a percentage of gross receipts/turnover) can pay advance tax in one installment on or before 15th March instead of four installments. In certain cases, tax is required to be deducted at source from the income by the payer at the rates prescribed in the Income-tax Act, 1961 or the Annual Finance Act. Such deduction should be made either at the time of accrual or at the time of payment, as prescribed by the Act.

Example: In the case of salary income, the obligation of the employer to deduct tax at source arises only at the time of payment of salary to the employees. However, in respect of other payments like, fees for professional services, fees for technical services, interest payable to residents, the person responsible for paying is liable to deduct tax at source at the time of credit of such income to the account of the payee or at the time of payment, whichever is earlier. Such tax deducted at source has to be remitted to the credit of the Central Government through any branch of the RBI, SBI or any authorized bank within the statutory due dates.

For detailed discussion, refer to Chapter 7: Advance tax, tax deduction at source and tax collection at source.

Step 15: Tax Payable/Tax Refundable

After adjusting the advance tax and tax deducted/ collected at source, the assessee would arrive at the amount of net tax payable or refundable. Such amount should be rounded off to the nearest multiple of ₹ 10 as per section 288B.

The assessee has to pay the amount of tax payable (called self-assessment tax) on or before the due date of filing of the return. Similarly, if any refund is due, assessee will get the same after filing the return of income.

(2) Return of Income

The Income-tax Act, 1961 contains provisions for filing of return of income. Return of income is the format in which the assessee furnishes information as to his total income and tax payable. The format for filing of returns by different assessees is notified by the CBDT. The particulars of income earned under different heads, gross total income, deductions from gross total income, total income and tax payable by the assessee are required to be furnished in the return of income. In short, a return of income is the declaration of income by the assessee in the prescribed format.

The Act has prescribed due dates for filing return of income in case of different assessees. Companies and firms have to mandatorily file their return of income before the due date. Other assessees are required to file a return of income subject to fulfilling of certain conditions.

3. IMPORTANT DEFINITIONS

In order to understand the provisions of the Act, one must have a thorough knowledge of the meanings of certain key terms like 'person', 'assessee', 'income', etc. To understand the meanings of these terms we have to first check whether they are defined in the Act.

Terms defined in the Act: Section 2 gives definitions of the various terms and expressions used therein. If a particular definition is given in the Act itself, we have to be guided by that definition. For e.g. the term 'perquisite' has been defined under section 17(2) for the purpose of taxation of salaries.

Terms not defined under the Act: If a particular definition is not given in the Act, reference can be made to the General Clauses Act or dictionaries.

Students should note this point carefully because certain terms like "dividend", "transfer", etc. have been given a wider meaning in the Income-tax Act, 1961 than they are commonly understood. Some of the important terms defined under section 2 are given below:

3.1 Assessee [Section 2(7)]

"Assessee" means a person by whom any tax or any other sum of money is payable under this Act. In addition, it includes –

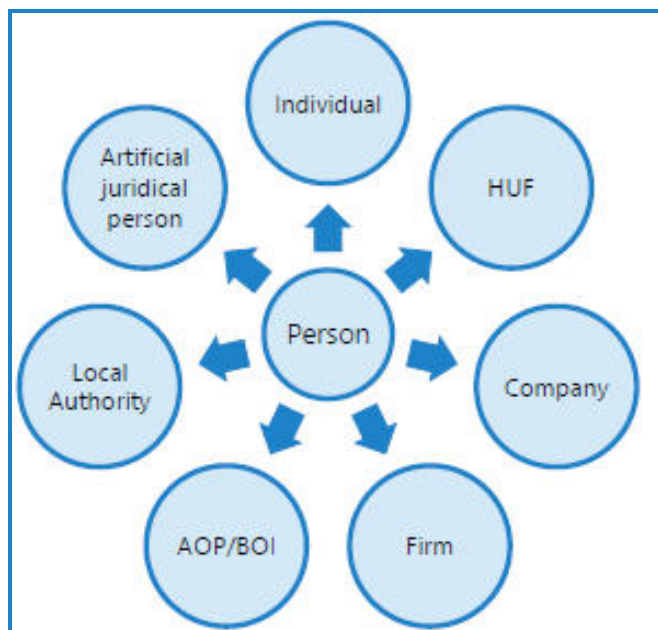
- Every person in respect of whom any proceeding under this Act has been taken for the assessment of
 - his income; or
 - the income of any other person in respect of which he is assessable; or
 - the loss sustained by him or by such other person; or
 - the amount of refund due to him or to such other person.
- Every person who is deemed to be an assessee under any provision of this Act;
- Every person who is deemed to be an assessee-in-default under any provision of this Act.
- Every assessee is a 'person', but every 'person' need not be an assessee.

3.2 Assessment [Section 2(8)]

This is the procedure by which the income of an assessee is determined. It may be by way of a normal assessment or by way of reassessment of an income previously assessed. Assessment Procedure will be dealt with in detail at the Final level.

3.3 Person [Section 2(31)]

The definition of 'assessee' leads us to the definition of 'person' as the former is closely connected with the latter. The term 'person' is important from another point of view also viz., the charge of income-tax is on every 'person'.



We may briefly consider some of the above seven categories of persons each of which constitute a separate unit of assessment or a separate tax entity.

(i) Individual

The term 'individual' means only a natural person, i.e., a human being.

- It includes both males and females.
- It also includes a minor or a person of unsound mind. But the assessment in such a case may be made on the guardian or manager of the minor or lunatic who is entitled to receive his income. In the case of deceased person, assessment would be made on the legal representative.

(ii) HUF

Under the Income-tax Act, 1961, a Hindu undivided family (HUF) is treated as a separate entity for the purpose of assessment. It is included in the definition of the term "person" under section 2(31). The levy of income-tax is on "every person". Therefore, income-tax is payable by a HUF.

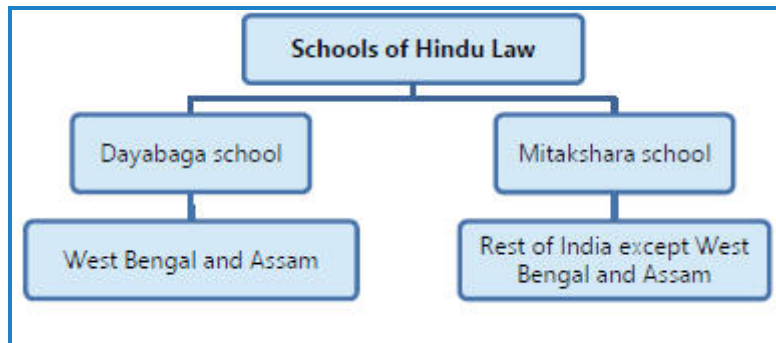
"Hindu undivided family" has not been defined under the Income-tax Act. The expression is, however, defined under the Hindu Law as a family, which consists of all males lineally descended from a common ancestor and includes their wives and daughters.

Some members of the HUF are called **co-parceners**. They are related to each other and to the head of the family. HUF may contain many members, but members within four degrees including the head of the family (Karta) are called co-parceners. A Hindu Coparcenary includes those persons who acquire an interest in joint family property by birth. Earlier, only male descendants were considered as coparceners. With effect from 6th September, 2005, daughters have also been accorded coparcenary status. It may be noted that only the coparceners have a right to partition.

A daughter of coparcener by birth shall become a coparcener in her own right in the same manner as the son. Being a coparcener, she can claim partition of assets of the family. The rights of a daughter in coparcenary property are equal to that of a son. However, other female members of the family, for example, wife or daughter-in-law of a coparcener are not eligible for such coparcenary rights.

The relation of a HUF does not arise from a contract but arises from status. There need not be more than one male member or one female coparcener w.e.f. 6th September, 2005 to form a HUF. The Income-tax Act, 1961 also does not indicate that a HUF as an assessable entity must consist of at least two male members or two coparceners.

Under the Income-tax Act, 1961, Jain undivided families and Sikh undivided families would also be assessed as a HUF.



The basic difference between the two schools of Hindu law with regard to succession is as follows:

Dayabaga school of Hindu law	Mitakshara school of Hindu law
Prevalent in West Bengal and Assam	Prevalent in rest of India
Nobody acquires the right, share in the property by birth as long as the head of family is living. Thus, the children do not acquire any right, share in the family property, as long as his father is alive and only on death of the father, the children will acquire right/share in the property. Hence, the father and his brothers would be the coparceners of the HUF	One acquires the right to the family property by his birth and not by succession irrespective of the fact that his elders are living. Thus, every child born in the family acquires a right/share in the family property.

(iii) Company [Section 2(17)]

For all purposes of the Act, the term 'Company', has a much wider connotation than that under the Companies Act. Under the Act, the expression 'Company' means:

- (1) any Indian company as defined in section 2(26); or
- (2) any body corporate incorporated by or under the laws of a country outside India, i.e., any foreign company; or
- (3) any institution, association or body which is assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922 or for any assessment year commencing on or before 1.4.1970 under the present Act; or
- (4) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by a general or special order of the CBDT to be a company for such assessment years as may be specified in the CBDT's order.

Classes of Companies

(1) Domestic company [Section 2(22A)] - It means an Indian company or any other company which, in respect of its income liable to income-tax, has made the prescribed arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, payable out of such income.

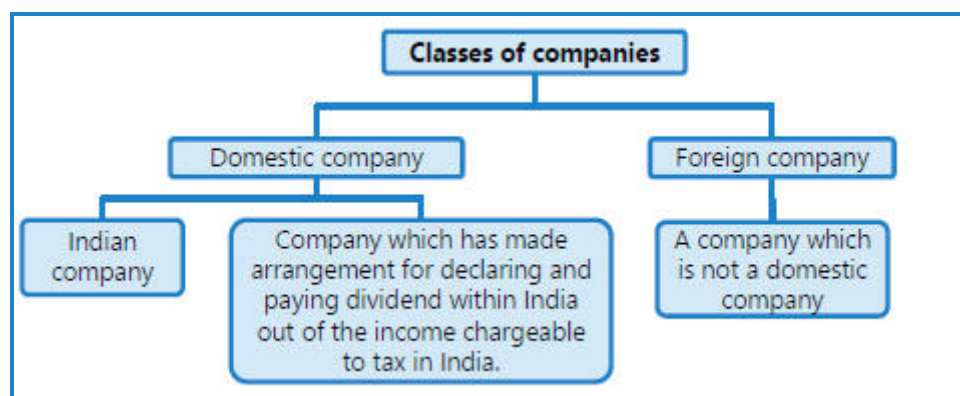
Indian company [Section 2(26)] - Two conditions should be satisfied so that a company can be regarded as an Indian company -

- (a) the company should have been formed and registered under the Companies Act, 1956 and
- (b) the registered office or the principal office of the company should be in India.

The expression 'Indian Company' also includes the following provided their registered or principal office is in India:

- (i) a corporation established by or under a Central, State or Provincial Act (like Financial Corporation or a State Road Transport Corporation);
- (ii) an institution or association or body which is declared by the Board to be a company under section 2(17)(iv);
- (iii) a company formed and registered under any law relating to companies which was or is in force in any part of India [other than Jammu and Kashmir and Union territories mentioned in sub-clause (v) below];
- (iv) in the case of Jammu and Kashmir, a company formed and registered under any law for the time being in force in Jammu and Kashmir;
- (v) in the case of any of the Union territories of Dadra and Nagar Haveli, Daman and Diu, and Pondicherry or State of Goa, a company formed and registered under any law for the time being in force in that Union territory or State, respectively.

(2) Foreign company [Section 2(23A)] - Foreign company means a company which is not a domestic company

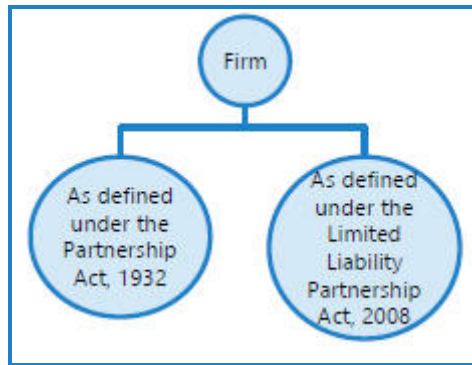


(iv) Firm [Section 2(23)]

The terms 'firm', 'partner' and 'partnership' have the same meanings as assigned to them in the Indian Partnership Act, 1932. In addition, the definitions also include the terms limited liability partnership and a partner of limited liability partnership as they have been defined in the Limited Liability Partnership Act, 2008.

In an LLP, since liability of the partners is limited to their agreed contribution therein, it contains elements of both a corporate structure as well as a partnership firm structure.

However, for income-tax purposes a minor admitted to the benefits of an existing partnership would also be treated as partner.



A partnership is the relation between persons who have agreed to share the profits of business carried on by all or any of them acting for all. The persons who have entered into partnership with one another are called individually 'partners' and collectively a 'firm'.

(v) Association of Persons (AOP)

When persons combine together for promotion of joint enterprise they are assessable as an AOP, if they do not in law constitute a partnership. In order to constitute an association, persons must join for a common purpose or action and their object must be to produce income; it is not enough that the persons receive the income jointly. Co-heirs, co-legatees or co-donees joining together for a common purpose or action would be chargeable as an AOP. For e.g., Mr. Yash, AB & Co. (Firm) and X (P) Ltd. join together to carry on construction activity otherwise than as a partnership firm, such an association will be recognized as an association of persons.

(vi) Body of Individuals (BOI)

It denotes the status of persons like executors or trustees who merely receive the income jointly and who may be assessable in like manner and to the same extent as the beneficiaries individually. Thus, co-executors or co-trustees are assessable as a BOI as their title and interest are indivisible. Income-tax shall not be payable by an assessee in respect of the receipt of share of income by him from BOI and on which the tax has already been paid by such BOI. For e.g., mutual trade associations, members club, etc.

Section 2(31) further explains that an association of persons or a body of individuals shall be treated as a person, whether or not it was formed with the object of deriving income, profits or gains. Accordingly, even if such entities have been formed not for earning any income/ profit still they are "person" for the purpose of the Act and are covered by the provisions of the Act.

Difference between AOP and BOI:

In case of a BOI, only individuals can be the members, whereas in case of AOP, any person can be its member i.e. entities like company, firm etc. can be the member of AOP but not of BOI.

In case of an AOP, members voluntarily come together with a common will for a common intention or purpose, whereas in case of BOI, such common will may or may not be present.

(vii) Local Authority

The term "Local Authority" means a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund.

Note: A local authority is taxable in respect of that part of its income which arises from any business carried on by it in so far as that income does not arise from the supply of a commodity or service within its own jurisdictional area. However, income arising from the supply of water and electricity even outside the local authority's own jurisdictional area is exempt from tax.

(viii) Artificial Juridical Persons

Artificial Juridical Persons are the entities which are not natural persons but are separate entities in the eyes of law. This is a residual category could cover all artificial persons with a juristic personality not falling under any other category of persons. Deities, Bar Council, Universities are some important examples of Artificial Juridical Persons.

3.4 Income [Section 2(24)]**(1) Definition of Income**

The definition of income as per the Income-tax Act, 1961 begins with the words "Income includes". Therefore, it is an inclusive definition and not an exhaustive one. Such a definition does not confine the scope of income but leaves room for more inclusions within the ambit of the term.

Section 2(24) of the Act gives a statutory definition of income. The following items of receipts are specifically included in the said definition:—

- (1) Profits and gains;
- (2) Dividends;
- (3) Voluntary contributions received by a trust/institution created wholly or partly for charitable or religious purposes or by certain research association or universities and other educational institutions or hospitals and other medical institutions or an electoral trust;
- (4) The value of any perquisite or profit in lieu of salary taxable under section 17(2)/(3);
- (5) Any special allowance or benefit, other than the perquisite included above, specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;
- (6) Any allowance granted to the assessee to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living;
- (7) The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company or by a relative of the director or such person and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;
- (8) The value of any benefit or perquisite, whether convertible into money or not, which is obtained by any representative assessee³ or by any beneficiary and any amount paid by the representative assessee for the benefit of the beneficiary which the beneficiary would have ordinarily been required to pay.
- (9) Profits and gains of business or profession chargeable to tax under section 28(ii)/(iii)/(iiia)/(iiib) / (iiic)/(v)/(va);
- (10) Deemed profits chargeable to tax under section 41 or section 59;
- (11) The value of any benefit or perquisite taxable under section 28(iv);
- (12) Any capital gains chargeable under section 45;
- (13) Any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling, or betting of any form or nature whatsoever. For this purpose,
 - (i) "Lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;
 - (ii) "Card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;

- (14) Any sum received by the assessee from his employees as contributions to any provident fund (PF) or superannuation fund or Employees State Insurance Fund (ESI) or any other fund for the welfare of such employees;
- (15) Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy will constitute income;
- “Keyman insurance policy” means a life insurance policy taken by a person on the life of another person where the latter is or was an employee of former or is or was connected in any manner whatsoever with the former’s business.
- It also includes such policy which has been assigned to a person with or without any consideration, at any time during the term of the policy.
- (16) Fair market value of inventory as on the date of its conversion into or treatment as a capital asset under section 28(va);
- (17) Any consideration received for issue of shares as exceeds the fair market value of the shares [Section 56(2)(viib)];
- (18) Any sum of money received as advance, if such sum is forfeited consequent to failure of negotiation for transfer of a capital asset [Section 56(2)(ix)];
- (19) Any sum of money or value of property received without consideration or for inadequate consideration by any person [Section 56(2)(x)];
- (20) Any compensation or other payment, due to or received by any person, in connection with termination of his employment or the modification of the term and conditions relating thereto [Section 56(2)(xi)];
- (21) Sum received, including the amount allocated by way of bonus, under a LIP other than under a ULIP and keyman insurance policy, which is not exempt u/s 10(10D), to the extent the same exceeds the aggregate of the premium paid during the term of the policy, and not claimed as deduction under any other provision of the Act [Section 56(2)(xiii)];
- [For details, refer to Unit 5 of Chapter 3: Income from Other Sources]
- (22) Assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement, by whatever name called, by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee is included in the definition of income.

However, subsidy or grant or reimbursement which has been taken into account for determination of the actual cost of the depreciable asset in accordance with Explanation 10 to section 43(1) shall not be included in the definition of income.

(2) Concept of Income under the Income-tax Act, 1961

- **Regular receipt vis-a-vis casual receipt:** Income, in general, means a periodic monetary return which accrues or is expected to accrue regularly from definite sources. However, under the Income-tax Act, 1961, even certain casual receipts which do not arise regularly are treated as income for tax purposes e.g. Winnings from lotteries, crossword puzzles.
- **Revenue receipt vis-a-vis Capital receipt:** Income normally refers to revenue receipts. Capital receipts are generally not included within the scope of income in general parlance. However, the Income-tax Act, 1961 has specifically included certain capital receipts within the definition of income e.g., Capital gains i.e., gains on sale of a capital assets like land, jewellery.
- **Net receipt vis-a-vis Gross receipt:** Income means net receipts and not gross receipts. Net receipts are arrived at after deducting the expenditure incurred in connection with earning such receipts. The expenditure which can be deducted while computing income under each head is prescribed under the Income-tax Act, 1961. Income from certain eligible businesses/ professions is also determined on

presumptive basis i.e., as a certain percentage of gross receipts. [We will discuss in detail in Unit 3 of Chapter 3: Profits and gains of business or profession].

- **Due basis vis-a-vis receipt basis:** Income is taxable either on due basis or receipt basis. For computing income under the heads “Profits and gains of business or profession” and “Income from other sources”, the method of accounting regularly employed by the assessee should be considered, which can be either cash system or mercantile system. Some receipts are taxable only on receipt basis, like, income by way of interest received on compensation or enhanced compensation.
- **Application of Income vis-a-vis Diversion of Income:** Application of income means to discharge an obligation (which is gratuitous or selfimposed) after such income reaches the assessee. Where by virtue of an obligation by overriding title, income is diverted before it reaches the assessee, it is known as diversion of income. In case of the former, the income would be taxable in the hands of the person who applies it, whereas in the case of the latter, it is not taxable (i.e., even if the assessee were to collect the income he does so on behalf of the person to whom it is payable).

(3) Concept of revenue and capital receipts

Students should carefully study the various items of receipts included in the definition of income. Some of them like capital gains are not revenue receipts. However, since they have been included in the definition, they are chargeable as income under the Act. The concept of revenue and capital receipts is discussed hereunder -

The Act contemplates a levy of tax on income and not on capital and hence it is very essential to distinguish between capital and revenue receipts. Capital receipts cannot be taxed, unless they fall within the scope of the definition of “income” and so the distinction between capital and revenue receipts is material for tax purposes.

Certain capital receipts which have been specifically included in the definition of income are compensation for modification or termination of services, income by way of capital gains etc.

It is not possible to lay down any single test as infallible or any single criterion as decisive, final and universal in application to determine whether a particular receipt is capital or revenue in nature. Hence, the capital or revenue nature of the receipt must be determined with reference to the facts and circumstances of each case.

Criteria for determining whether a receipt is capital or revenue in nature

The following are some of the important criteria which may be applied to distinguish between capital and revenue receipts.

- **Fixed capital or Circulating capital:** A receipt referable to fixed capital would be a capital receipt whereas a receipt referable to circulating capital would be a revenue receipt. The former is not taxable while the latter is taxable. Tangible and intangible assets which the owner keeps in his possession for making profits are in the nature of fixed capital. The circulating capital is one which is turned over and yields income or loss in the process.
- **Income from transfer of capital asset or trading asset:** Profits arising from the sale of a capital asset are chargeable to tax as capital gains under section 45 whereas profits arising from the sale of a trading asset being of revenue nature are taxable as income from business under section 28 provided that the sale is in the regular course of assessee’s business or the transaction constitutes an adventure in the nature of trade.

Capital Receipts vis-a-vis Revenue Receipts: Tests to be applied

- (1) **Transaction entered into the course of business:** Profits arising from transactions which are entered into in the course of the business regularly carried on by the assessee, or are incidental to, or associated with the business of the assessee would be revenue receipts chargeable to tax.

Example : A banker's or financier's dealings in foreign exchange or sale of shares and securities, a shipbroker's purchase of ship in his own name, a share broker's purchase of shares on his own account would constitute transactions entered and yielding income in the ordinary course of their business. Whereas building and land would constitute capital assets in the hands of a trader in shares, the same would constitute stock-in-trade in the hands of a property dealer.

- (2) **Profit arising from sale of shares and securities:** In the case of profit arising from the sale of shares and securities, the nature of the profit has to be ascertained from the motive, intention or purpose with which they were bought. If the shares were acquired as an investor or with a view to acquiring a controlling interest or for obtaining a managing or selling agency or a directorship, the profit or loss on their sale would be of a capital nature; but if the shares were acquired in the ordinary course of business as a dealer in shares, it would constitute his stock-in-trade. If the shares were acquired with speculative motive, the profit or loss (although of a revenue nature) would have to be dealt with separately from the profit or loss of other businesses.

Securities held by Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992 would be treated as a capital asset. Even if the nature of such security in the hands of the Foreign Portfolio Investor is stock-in-trade, the same would be treated as a capital asset and the profit on transfer would be taxable as capital gains.

- (3) **A single transaction - Can it constitute business?** Even a single transaction may constitute a business or an adventure in the nature of trade even if it is outside the normal course of the assessee's business. Repetition of such transactions is not necessary. Thus, a bulk purchase followed by a bulk sale or a series of retail sales or bulk sale followed by a series of retail purchases would constitute an adventure in the nature of trade and consequently, the income arising there from would be taxable. Purchase of any article with no intention to resell it, but resold under changed circumstances would be a transaction of a capital nature and capital gains would arise. However, where an asset is purchased with the intention to resell it, the question whether the profit on sale is capital or revenue in nature depends upon
- (i) the conduct of the assessee,
 - (ii) the nature and quantity of the article purchased,
 - (iii) the nature of the operations involved,
 - (iv) whether the venture is on capital or revenue account, and
 - (v) other related circumstances of the case.
- (4) **Liquidated damages:** Receipt of liquidated damages directly and intimately linked with the procurement of a capital asset, which lead to delay in coming into existence of the profit-making apparatus, is a capital receipt. The amount received by the assessee towards compensation for sterilization of the profit earning source is not in the ordinary course of business. Hence, it is a capital receipt in the hands of the assessee.
- (5) **Compensation on termination of agency/service contract:** Where an assessee receives compensation on termination of the agency business being the only source of income, the receipt is of capital nature, but taxable under section 28(ii)(c). However, where the assessee has a number of agencies and one of them is terminated and compensation is received therefor, the receipt would be of a revenue nature since taking up an agency and exploiting the same for earning income is in the ordinary course of business. The loss of one agency would be made good by profit from another agency. Compensation received from the employer or from any person for premature termination of the service contract is a capital receipt, but is taxable as profit in lieu of salary under section 17(3) or as income from other sources under section 56(2)(xi), respectively. Compensation received or receivable in connection with the termination or the modification of the terms and conditions of any contract relating to its business shall be taxable as business income.

(6) Gifts: Normally, gifts constitute a capital receipt in the hands of the recipient. However, certain gifts are brought within the purview of income-tax, for example, receipt of property without consideration is brought to tax under section 56(2)(x).

For example, any sum of money or value of property received without consideration or for inadequate consideration by any person, other than a relative, is chargeable under the head "Income from Other Sources" [For details, refer to Unit - 5 of Chapter 3 :Income from Other Sources].

3.5 India [Section 2(25A)]

The term 'India' means –

- (i) the territory of India as per Article 1 of the Constitution,
- (ii) its territorial waters, seabed and subsoil underlying such waters,
- (iii) continental shelf,
- (iv) exclusive economic zone or
- (v) any other specified maritime zone and the air space above its territory and territorial waters.

Specified maritime zone means the maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

3.6 Agricultural income [Section 2(1A)]

Agricultural income definition is very wide and covers the income of not only the cultivators but also the land holders who might have rented out the lands. Agricultural income may be received in cash or in kind.

Agricultural income may arise in any one of the following three ways:-

- (1) It may be rent or revenue derived from land situated in India and used for agricultural purposes.
- (2) It may be income derived from such land by
 - (a) **agriculture** or
 - (b) the performance of a **process ordinarily employed** by a cultivator or receiver of rent in kind **to render the produce fit to be taken to the market** or
 - (c) the **sale**, by a cultivator or receiver **of rent in kind, of such agricultural produce raised or received by him**, in respect of which no process has been performed other than a process of the nature mentioned in point (b) above.
- (3) Lastly, agricultural income may be derived from any **farm building** required for agricultural operations.

Now let us take a critical look at the following aspects:

- (1) **Rent or revenue derived from land situated in India and used for agricultural purposes:** The following three conditions have to be satisfied for income to be treated as agricultural income:
 - (a) Rent or revenue should be derived from land;
 - (b) land has to be situated in India (If agricultural land is situated in a foreign country, the entire income would be taxable); and
 - (c) land should be used for agricultural purposes.

The amount received in money or in kind, by one person from another for right to use land is termed as **Rent**. The rent can either be received by the owner of the land or by the original tenant from the sub-tenant. It implies that ownership of land is not necessary. Thus, the rent received by the original tenant from sub-tenant would also be agricultural income subject to the other conditions mentioned above.

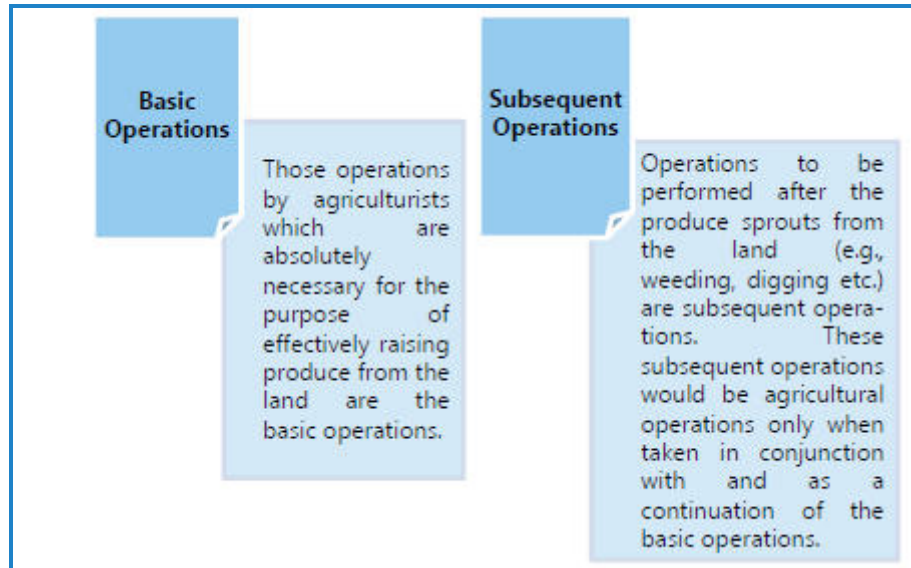
The scope of the term “**Revenue**” is much broader than rent. It includes income other than rent. For example, fees received for renewal for grant of land on lease would be revenue derived from land.

(2) Income derived from such land by

(a) Agriculture

The term “Agriculture” has not been defined in the Act. However, cultivation of a field involving human skill and labour on the land can be broadly termed as **agriculture**.

“Agriculture” means tilling of the land, sowing of the seeds and similar operations. It involves basic operations and subsequent operations.



Note: The term ‘agriculture’ cannot be extended to all activities which have some distant relation to land like dairy farming, breeding and rearing of live stock, butter and cheese making and poultry farming. This aspect is discussed in detail later on in this chapter.

Whether income from nursery constitutes agricultural income?

Yes, as per Explanation 3 to section 2(1A), income derived from saplings or seedlings grown in a nursery would be deemed to be agricultural income, whether or not the basic operations were carried out on land.

(b) Process ordinarily employed to render the produce fit to be taken to the market: Sometimes, to make the agricultural produce a saleable commodity, it becomes necessary to perform some kind of process on the produce. The income from the process employed to render the produce fit to be taken to the market would be agricultural income. However, it must be a process ordinarily employed by the cultivator or receiver of rent in kind and the process must be applied to make the produce fit to be taken to the market.

The ordinary process employed to render the produce fit to be taken to market includes thrashing, winnowing, cleaning, drying, crushing etc. For example, the process ordinarily employed by the cultivator to obtain the rice from paddy is to first remove the hay from the basic grain, and thereafter to remove the chaff from the grain. The grain has to be properly filtered to remove stones etc. and finally the rice has to be packed in gunny bags for sale in the market.

After such process, the rice can be taken to the market for sale. This process of making the rice ready for the market may involve manual operations or mechanical operations. All these operations constitute the process ordinarily employed to make the product fit for the market.

The produce must retain its original character in spite of the processing unless there is no market for selling it in that condition.

However, if marketing process is performed on a produce which can be sold in its raw form, income derived therefrom is partly agricultural income and partly business income.

- (c) Sale of such agricultural produce in the market:** Any income from the sale of any produce to the cultivator or receiver of rent-in kind is agricultural income provided it is from the land situated in India and used for agricultural purposes. However, if the produce is subjected to any process other than process ordinarily employed to make the produce fit for market, the income arising on sale of such produce would be partly agricultural income and partly non-agricultural income.

Similarly, if other agricultural produce like tea, cotton, tobacco, sugarcane etc. are subjected to manufacturing process and the manufactured product is sold, the profit on such sale will consist of agricultural income as well as business income. That portion of the profit representing agricultural income will be exempted.

Apportionment of Income between business income and agricultural income: Rules 7, 7A, 7B & 8 of Income-tax Rules, 1962 provide the basis of apportionment of income between agricultural income and business income.

- (i) Rule 7 - Income from growing and manufacturing of any product -** Where income is partially agricultural income and partially income chargeable to income-tax as business income, the market value of any agricultural produce which has been raised by the assessee or received by him as rent in kind and which has been utilised as raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted. No further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

Determination of market value - There are two possibilities here:

- (I) The agricultural produce is capable of being sold in the market either in its raw stage or after application of any ordinary process to make it fit to be taken to the market. In such a case, the value calculated at the average price at which it has been so sold during the relevant previous year will be the market value.
- (II) It is possible that the agricultural produce is not capable of being ordinarily sold in the market in its raw form or after application of any ordinary process. In such case the market value will be the total of the following:—
 - The expenses of cultivation;
 - The land revenue or rent paid for the area in which it was grown; and
 - Such amount as the Assessing Officer finds having regard to the circumstances in each case to represent at reasonable profit.

ILLUSTRATION 1

Mr. B grows sugarcane and uses the same for the purpose of manufacturing sugar in his factory. 30% of sugarcane produce is sold for ₹ 10 lakhs, and the cost of cultivation of such sugarcane is ₹ 5 lakhs. The cost of cultivation of the balance sugarcane (70%) is ₹ 14 lakhs and the market value of the same is ₹ 22 lakhs. After incurring ₹ 1.5 lakhs in the manufacturing process on the balance sugarcane, the sugar was sold for ₹ 25 lakhs. Compute B's business income and agricultural income.

SOLUTION**Computation of Business Income and Agriculture Income of Mr. B**

Particulars	Business Income	Agricultural Income	
	(₹)	(₹)	(₹)
Sale of Sugar			
Business income			
Sale Proceeds of sugar	25,00,000		
Less: Market value of sugarcane (70%)	22,00,000		
Less: Manufacturing exp.	1,50,000		
	1,50,000		
Agricultural income			
Market value of sugarcane (70%)		22,00,000	
Less: Cost of cultivation		14,00,000	
			8,00,000
Sale of sugarcane			
Agricultural Income			
Sale proceeds of sugarcane (30%)		10,00,000	
Less: Cost of cultivation		5,00,000	
			5,00,000
			13,00,000

- (ii) **Rule 7A – Income from growing and manufacturing of rubber** - This rule is applicable when income derived from the sale of centrifuged latex or cenex or latex based crepes or brown crepes or technically specified block rubbers manufactured or processed from field latex or coagulum obtained from rubber plants grown by the seller in India. In such cases, 35% profits on sale is taxable as business income under the head “Profits and gains from business or profession”, and the balance 65% is agricultural income which is exempt.

ILLUSTRATION 2

Mr. C manufactures latex from the rubber plants grown by him in India. These are then sold in the market for ₹ 30 lakhs. The cost of growing rubber plants is ₹ 10 lakhs and that of manufacturing latex is ₹ 8 lakhs. Compute his total income.

SOLUTION

The total income of Mr. C comprises of agricultural income and business income.

Total profits from the sale of latex = ₹ 30 lakhs – ₹ 10 lakhs – ₹ 8 lakhs = ₹ 12 lakhs.

Agricultural income = 65% of ₹ 12 lakhs = ₹ 7.8 lakhs

Business income = 35% of ₹ 12 lakhs = ₹ 4.2 lakhs

(iii) Rule 7B – Income from growing and manufacturing of coffee

- a) In case of income derived from the sale of coffee grown and cured by the seller in India, 25% profits on sale is taxable as business income under the head “Profits and gains from business or profession”, and the balance 75% is agricultural income and is exempt.
- b) In case of income derived from the sale of coffee grown, cured, roasted and grounded by the seller in India, with or without mixing chicory or other flavoring ingredients, 40% profits on sale is taxable as business income under the head “Profits and gains from business or profession”, and the balance 60% is agricultural income and is exempt.

(iv) Rule 8 - Income from growing and manufacturing of tea – This rule applies only in cases where the assessee himself grows tea leaves and manufactures tea in India. In such cases 40% profits on sale is taxable as business income under the head “Profits and gains from business or profession”, and the balance 60% is agricultural income and is exempt.

Rule	Apportionment of income in certain cases	Agricultural Income	Business Income
7A	Income from sale of rubber products derived from rubber plant grown by the seller in India.	65%	35%
7B	Income from sale of coffee <ul style="list-style-type: none"> • grown and cured by the seller in India • grown, cured, roasted and grounded by the seller in India 	75% 60%	25% 40%
8	Income from sale of tea grown and manufactured by the seller in India	60%	40%

(3) Income from farm building: Income from the farm building which is owned and occupied by the receiver of the rent or revenue of any such land or occupied by the cultivator or the receiver of rent in kind, of any land with respect to which, or the produce of which, any process discussed above is carried on, would be agricultural income.

However, the income arising from the use of such farm building for any purpose (including letting for residential purpose or for the purpose of business or profession) other than agriculture referred in (1) & (2) of para 3.6 in page 1.35 would not be agricultural income.

Further, the income from such farm building would be agricultural income only if the following conditions are satisfied:

- (a) The building should be on or in the immediate vicinity of the land; and
- (b) The receiver of the rent or revenue or the cultivator or the receiver of rent in kind should, by reason of his connection with such land require it as a dwelling house or as a store house.

In addition to the above conditions any one of the following two conditions should also be satisfied:

- (i) The land should either be assessed to land revenue in India or be subject to a local rate assessed and collected by the officers of the Government as such or;
- (ii) Where the land is not so assessed to land revenue in India or is not subject to local rate:-
- a. It should not be situated in any area as comprised within the jurisdiction of a municipality or a cantonment board and which has a population not less than 10,000 or

- b. It should not be situated in any area within such distance, measured aerially, in relation to the range of population as shown hereunder –

	Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item a.	Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year
(i)	≤ 2 kms	> 10,000
(ii)	>2 kms but ≤ 6 kms	> 1,00,000
(iii)	>6 kms but ≤ 8kms	> 10,00,000

Example:

	Area	Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item a.	Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year	Would income derived from farm building situated in this area be treated as agricultural income?
(i)	A	1 km	9,000	Yes
(ii)	B	1.5 kms	12,000	No
(iii)	C	2 kms	11,00,000	No
(iv)	D	3 kms	80,000	Yes
(v)	E	4 kms	3,00,000	No
(v)	F	5 kms	12,00,000	No
(vi)	G	6 kms	8,000	Yes
(vii)	H	7 kms	4,00,000	Yes
(viii)	I	8 kms	10,50,000	No
(ix)	J	9 kms	15,00,000	Yes

Would income arising from transfer of agricultural land situated in urban area be agricultural income?

No, as per Explanation 1 to section 2(1A), the capital gains arising from the transfer of urban agricultural land would not be treated as agricultural income under section 10 but will be taxable under section 45.

Example: Suppose A sells agricultural land situated in New Delhi for ₹ 10 lakhs and makes a surplus of ₹ 8 lakhs over its cost of acquisition. This surplus will not constitute agricultural income exempt under section 10(1) and will be taxable under section 45.

Indirect connection with land

We have seen above that agricultural income is exempt, whether it is received by the tiller or the landlord. However, non-agricultural income does not become agricultural merely on account of its indirect connection with the land. The following examples will illustrate the above point.

Example: A rural society has as its principal business the selling on behalf of its member societies, butter made by these societies from cream sold to them by farmers. The making of butter was a factory process separated from the farm.

The butter resulting from the factory operations separated from the farm was not an agricultural product and the society was, therefore, not entitled to exemption under section 10(1) in respect of such income.

Example: X was the managing agent of a company. He was entitled for a commission at the rate of 10% p.a. on the annual net profits of the company. A part of the company's income was agricultural income. X claimed that since his remuneration was calculated with reference to income of the company, part of which was agricultural income, such part of the commission as was proportionate to the agricultural income was exempt from income tax.

Since, X received remuneration under a contract for personal service calculated on the amount of profits earned by the company; such remuneration does not constitute agricultural income.

Example: Y owned 100 acres of agricultural land, a part of which was used as pasture for cows. The lands were purely maintained for manuring and other purposes connected with agriculture and only the surplus milk after satisfying the assessee's needs was sold. The question arose whether income from such sale of milk was agricultural income.

The regularity with which the sales of milk were effected and quantity of milk sold showed that the assessee carried on regular business of producing milk and selling it as a commercial proposition. Hence, it was not agricultural income.

Example: In regard to forest trees of spontaneous growth which grow on the soil unaided by any human skill and labour there is no cultivation of the soil at all. Even though operations in the nature of forestry operations performed by the assessee may have the effect of nursing and fostering the growth of such forest trees, it cannot constitute agricultural operations.

Income from the sale of such forest trees of spontaneous growth does not, therefore, constitute agricultural income.

Examples of Agricultural income and Non-agricultural income

For better understanding of the concept, certain examples of agricultural income and non-agricultural income are given below:

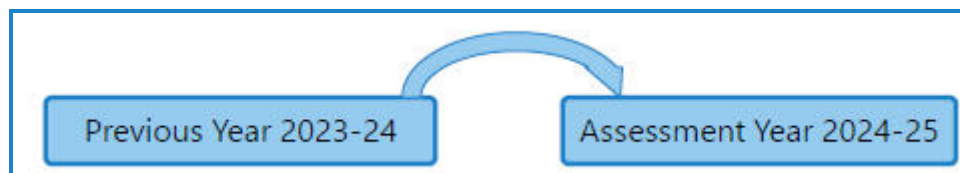
Example: Agricultural income

- Income derived from saplings or seedlings grown in a nursery.
- Income from growing of flowers and creepers.
- Rent received from land used for grazing of cattle required for agricultural activities.
- Income from growing of bamboo.

Example: Non-agricultural income

- Income from breeding of livestock.
- Income from poultry farming.
- Income from fisheries.
- Income from dairy farming.

4. PREVIOUS YEAR AND ASSESSMENT YEAR



4.1 Assessment year

The term has been defined under section 2(9). This means a period of 12 months commencing on 1st April every year. The year in which income is earned is the previous year and such income is taxable in the immediately following year which is the assessment year. Income earned in the previous year 2023-24 is taxable in the assessment year 2024-25.

Assessment year always starts from 1st April and it is always a period of 12 months.

4.2 Previous year

The term has been defined under section 3. It means the financial year immediately preceding the assessment year. As mentioned earlier, the income earned during the previous year is taxable in the assessment year.

Business or profession newly set up during the financial year - In such a case, the previous year shall be the period beginning on the date of setting up of the business or profession and ending with 31st March of the said financial year.

If a source of income comes into existence in the said financial year, then, the previous year will commence from the date on which the source of income newly comes into existence and will end with 31st March of the financial year.

Examples:

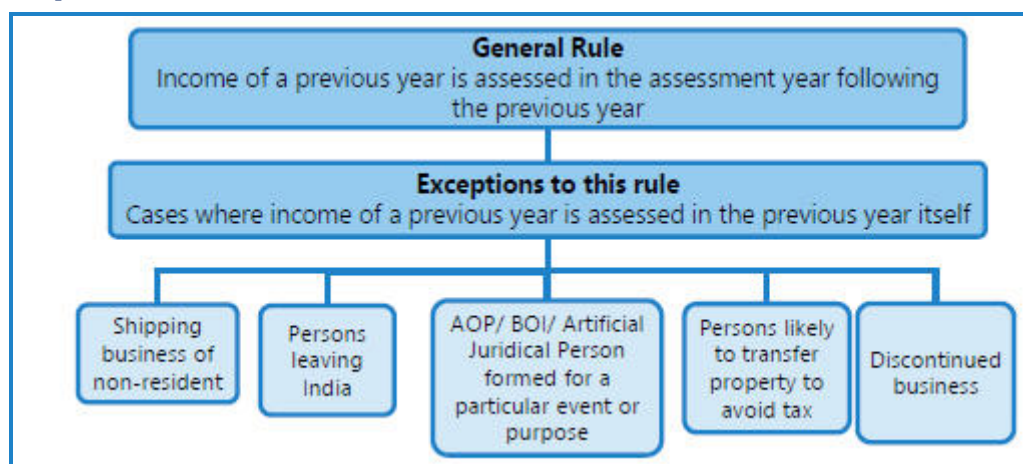
A is running a business from 1993 onwards. Determine the previous year for the assessment year 2024-25.

Ans. The previous year will be 1.4.2023 to 31.3.2024.

A chartered accountant sets up his profession on 1st July, 2023. Determine the previous year for the assessment year 2024-25.

Ans. The previous year will be from 1.7.2023 to 31.3.2024.

4.3 Certain cases when income of a previous year will be assessed in the previous year itself



The income of an assessee for a previous year is charged to income-tax in the assessment year following the previous year. For instance, income of previous year 2023-24 is assessed during 2024-25. Therefore, 2024-25 is the assessment year for assessment of income of the previous year 2023-24.

However, in a few cases, this rule does not apply and the income is taxed in the previous year in which it is earned. These exceptions have been made to protect the interests of revenue. The exceptions are as follows:

(i) Shipping business of non-resident [Section 172]

Where a ship, belonging to or chartered by a non-resident, carries passengers, livestock, mail or goods shipped at a port in India, the ship is allowed to leave the port only when the tax has been paid or satisfactory arrangement has been made for payment thereof. 7.5% of the freight paid or payable to the owner or the charterer or to any person on his behalf, whether in India or outside India on account of such carriage is deemed to be his income which is charged to tax in the same year in which it is earned.

(ii) Persons leaving India [Section 174]

Where it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry and he has no present intention of returning to India, the total income of such individual for the period from the expiry of the respective previous year up to the probable date of his departure from India is chargeable to tax in that assessment year.

Example: Suppose Mr. X is leaving India for USA on 10.6.2023 and it appears to the Assessing Officer that he has no intention to return. Before leaving India, Mr. X may be asked to pay income-tax on the income earned during the P.Y. 2022-23 as well as on the total income earned during the period 1.4.2023 to 10.06.2023.

(iii) AOP/BOI/Artificial Juridical Person formed for a particular event or purpose [Section 174A]

If an AOP/BOI etc. is formed or established for a particular event or purpose and the Assessing Officer apprehends that the AOP/BOI is likely to be dissolved in the same year or in the next year, he can make assessment of the income up to the date of dissolution as income of the relevant assessment year.

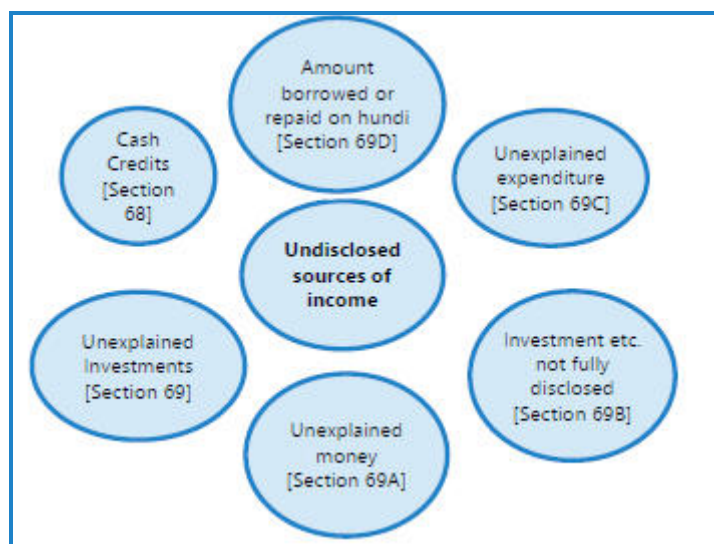
(iv) Persons likely to transfer property to avoid tax [Section 175]

During the current assessment year, if it appears to the Assessing Officer that a person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets to avoid payment of any liability under this Act, the total income of such person for the period from the expiry of the previous year to the date, when the Assessing Officer commences proceedings under this section is chargeable to tax in that assessment year.

(v) Discontinued business [Section 176]

Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year up to the date of such discontinuance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year.

5. UNDISCLOSED SOURCES OF INCOME



(i) Cash Credits [Section 68]

Where any sum is found credited in the books of an assessee maintained for any previous year and the assessee offers no explanation about the nature and source or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the sum so credited may be charged as income of the assessee of that previous year.

- **Unexplained loan or borrowing** - Where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by the assessee in whose books such sum is credited shall not be deemed to be satisfactory, unless -
 - the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and
 - such explanation in the opinion of the Assessing Officer has been found to be satisfactory.
- **Unexplained Share Capital/ Premium**- Any explanation offered by a closely held company in respect of any sum credited as share application money, share capital, share premium or any such amount, by whatever name called, in the accounts of such company shall be deemed to be not satisfactory, unless
 - the person, being a resident, in whose name such credit is recorded in the books of such company also explains about the nature and the source of such sum so credited and
 - such explanation in the opinion of the Assessing Officer has been found to be satisfactory

Non-applicability to Venture Capital Fund or Venture Capital Company -These additional conditions would not apply if the person, in whose name the sum is recorded, is a Venture Capital Fund or Venture Capital Company registered with SEBI.

(ii) Unexplained Investments [Section 69]

Where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account and the assessee offers no explanation about the nature and the source of investments or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the value of the investments are taxed as deemed income of the assessee of such financial year.

(iii) Unexplained money etc. [Section 69A]

Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and the same is not recorded in the books of account and the assessee offers no explanation

about the nature and source of acquisition of such money, bullion etc. or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the money and the value of bullion etc. may be deemed to be the income of the assessee for such financial year.

(iv) Amount of investments etc., not fully disclosed in the books of account [Section 69B]

Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article and the Assessing Officer finds that the amount spent on making such investments or in acquiring such articles exceeds the amount recorded in the books of account maintained by the assessee and he offers no explanation for the difference or the explanation offered is unsatisfactory in the opinion of the Assessing Officer, such excess may be deemed to be the income of the assessee for such financial year.

Example: If the assessee is found to be the owner of say 300 gms of gold (market value of which is ₹ 25,000) during the financial year ending 31.3.2024 but he has recorded to have spent ₹ 15,000 in acquiring it, the Assessing Officer can add ₹ 10,000 (i.e. the difference of the market value of such gold and ₹ 15,000) as the income of the assessee, if the assessee offers no satisfactory explanation thereof.

(v) Unexplained expenditure [Section 69C]

Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or the explanation is unsatisfactory in the opinion of the Assessing Officer, Assessing Officer can treat such unexplained expenditure as the income of the assessee for such financial year.

Such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as deduction under any head of income.

(vi) Amount borrowed or repaid on hundi [Section 69D]

Where any amount is borrowed on a hundi or any amount due thereon is repaid other than through an account-payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying for the previous year in which the amount was borrowed or repaid, as the case may be.

However, where any amount borrowed on a hundi has been deemed to be the income of any person, he will not be again liable to be assessed in respect of such amount on repayment of such amount. The amount repaid shall include interest paid on the amount borrowed.

6. RATES OF TAX, SURCHARGE & CESS

Income-tax

Income-tax is to be charged on every person at the **rates prescribed** for the year **by the Annual Finance Act or the Income-tax Act, 1961 or both.**

Surcharge

Surcharge is an additional tax payable over and above the income-tax. Surcharge is levied as a percentage of income-tax. Under the normal provisions of the Act, surcharge is presently being levied beyond a particular threshold of income for different persons. Also, higher rates of surcharge are prescribed for higher thresholds of income. Under the special tax regimes for domestic companies and co-operative societies, a uniform surcharge is prescribed irrespective of the level of total income.

“Health and Education cess” on Income-tax

The amount of income-tax as increased by the union surcharge, if applicable, should be further increased by an additional surcharge called the “Health and Education cess on income-tax”, calculated at the rate of 4% of such income-tax and surcharge, if applicable. Health and education cess is leviable in the case of all assesseees i.e.

individuals, HUF, AOPs/BOIs, Artificial Juridical Persons, firms, local authorities, co-operative societies and companies.

It is leviable to fulfill the commitment of the Government to provide and finance quality health services and universalised quality basic education and secondary and higher education.

6.1 Individual/Hindu Undivided Family (HUF)/Association of Persons (AOP)/Body of Individuals (BOI)/Artificial Juridical Person

Income-tax

Individuals/HUF/AoPs/BoIs and Artificial Juridical Persons can pay tax at concessional rates under the default tax regime under section 115BAC. However, he/it has to forego certain exemptions and deductions under this regime. Alternatively, they can exercise the option to shift out of the default tax regime and pay tax under the optional tax regime as per the regular provisions of the Act at the tax rates prescribed by the Annual Finance Act of that year.

Default tax regime under section 115BAC of the Income-tax Act, 1961

I. Concessional tax rates

Individuals/ HUF/ AoPs/ BoIs or artificial judicial persons, other than those who exercise the option to opt out this regime under section 115BAC(6), have to pay tax in respect of their total income (other than income chargeable to tax at special rates under Chapter XII such as section 111A, 112, 112A, 115BB, 115BBJ etc.) at the following concessional rates, subject to certain conditions specified under section 115BAC(2) –

(i)	Upto ₹ 3,00,000	NIL
(ii)	From ₹ 3,00,001 to ₹ 6,00,000	5%
(iii)	From ₹ 6,00,001 to ₹ 9,00,000	10%
(iv)	From ₹ 9,00,001 to ₹ 12,00,000	15%
(v)	From ₹ 12,00,001 to ₹ 15,00,000	20%
(vii)	Above ₹ 15,00,000	30%

II. Conditions to be satisfied

The following are the conditions to be satisfied:

S. No.	Particulars												
(1)	Certain deductions/exemptions not allowable: Section 115BAC(2) provides that while computing total income, the following deductions/exemptions would not be allowed:												
	<table border="1"> <thead> <tr> <th>Section</th> <th>Exemption/Deduction</th> </tr> </thead> <tbody> <tr> <td>10(5)</td> <td>Leave travel concession</td> </tr> <tr> <td>10(13A)</td> <td>House rent allowance</td> </tr> <tr> <td>10(14)</td> <td>Exemption in respect of special allowances or benefit to meet expenses relating to duties or personal expenses (other than those as may be prescribed for this purpose)</td> </tr> <tr> <td>10(17)</td> <td>Daily allowance or constituency allowance of MPs and MLAs</td> </tr> <tr> <td>10(32)</td> <td>Exemption in respect of income of minor child included in the income of parent</td> </tr> </tbody> </table>	Section	Exemption/Deduction	10(5)	Leave travel concession	10(13A)	House rent allowance	10(14)	Exemption in respect of special allowances or benefit to meet expenses relating to duties or personal expenses (other than those as may be prescribed for this purpose)	10(17)	Daily allowance or constituency allowance of MPs and MLAs	10(32)	Exemption in respect of income of minor child included in the income of parent
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10(17)	Daily allowance or constituency allowance of MPs and MLAs												
10(32)	Exemption in respect of income of minor child included in the income of parent												

S. No.	Particulars	
	Section	Exemption/Deduction
	10AA	Tax holiday for units established in SEZ
	16	(i) Entertainment allowance (ii) Professional tax
	24(b)	Interest on loan in respect of self-occupied property
	32(1)(iia)	Additional depreciation
	35(1)(ii),(iia),(iii) or 35(2AA)	Deduction in respect of contribution to <ul style="list-style-type: none"> • notified approved research association/university/college/other institutions for scientific research [Section 35(1)(ii)] • approved Indian company for scientific research [Section 35(1)(iia)] • notified approved research association/university/college/other institutions for research in social science or statistical research [Section 35(1)(iii)] • An approved National laboratory/university/IIT/ specified person for scientific research undertaken under an approved programme [Section 35(2AA)]
	35AD	Investment linked tax incentives for specified businesses
	80C to 80U	Deductions under Chapter VI-A (other than employers contribution towards NPS under section 80CCD(2), Central Government contribution towards Agnipath Scheme under section 80CCH(2) and deduction in respect of employment of new employees under section 80JJA).
(2)	Certain losses not allowed to be set-off: While computing total income, set-off of any loss – <ol style="list-style-type: none"> (i) carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable to any of the deductions referred to in (1) above; or (ii) under the head house property with any other head of income; would not be allowed. 	
(3)	Depreciation or additional depreciation: Depreciation u/s 32 is to be determined in the prescribed manner. Depreciation in respect of any block of assets entitled to more than 40%, would be restricted to 40% on the written down value of such block of assets. Additional depreciation u/s 32(1)(iia), however, cannot be claimed.	
(4)	Exemption or deduction for allowances or perquisite: While computing total income, any exemption or deduction for allowances or perquisite, by whatever name called, provided under any other law for the time being force in India would not be allowed.	

Additional points:

Total income under default tax regime should be computed without set-off of any loss brought forward or depreciation from any earlier assessment year, where such loss or depreciation is attributable to any of the deductions listed in (1) above. Such loss and depreciation would be deemed to have been already given effect to and no further deduction for such loss or depreciation shall be allowed for any subsequent year.

Where income-tax on total income of the assessee is computed under this section and there is a depreciation allowance in respect of a block of asset from an earlier assessment year attributable to additional depreciation u/s 32(1)(iia), which has not been given full effect to prior to A.Y. 2024-25 and which is not allowed to be set-off in the A.Y.2024-25 due to section 115BAC, corresponding adjustment shall be made to the WDV of such block of assets as on 1.4.2023 in the prescribed manner i.e., the WDV as on 1.4.2023 will be increased by the unabsorbed additional depreciation not allowed to be set-off.

Example: Let us consider the case of Mr. X, who carries on business of manufacturing of steel. He has unabsorbed depreciation as on 1.4.2023, which includes amount attributable to additional depreciation u/s 32(1)(iia) of P.Y.2022-23 or any earlier previous year in respect of block of plant and machinery. If he pays tax under default tax regime under section 115BAC for P.Y.2023-24 relevant to A.Y.2024-25, the amount so attributable to additional depreciation of earlier year remaining unabsorbed as on 1.4.2023 would not be eligible for set-off against current year income and no further deduction for such loss or depreciation shall be allowed for any subsequent year. Accordingly, the WDV of the block as on 1.4.2023 has to be increased by the said amount not allowed to be set-off.

III. Time limit for exercising the option to shift out of the default tax regime

- (i) **In case of an assessee having no income from business or profession:** Where such individual/HUF / AoP/BoI or Artificial Juridical person is not having income from business or profession, he/it can exercise an option to shift out/opt out of the default tax regime under this section and such option has to be exercised along with the return of income to be furnished under section 139(1) for a previous year relevant to the assessment year. In effect, such individual/HUF/AoP/BoI or Artificial Juridical person can choose whether or not to exercise the option of shifting out of the default tax regime in each previous year. He may choose to pay tax under default tax regime under section 115BAC in one year and exercise the option to shift out of default tax regime in another year.
- (ii) **In case of an assessee having income from business or profession:** Such individual/HUF/AoP/BoI or Artificial Juridical person having income from business or profession has an option to shift out/ opt out of the default tax regime under this section and the option has to be exercised on or before the due date specified under section 139(1) for furnishing the return of income for such previous year and once such option is exercised, it would apply to subsequent assessment years.

Such person who has exercised the above option of shifting out of the default tax regime for any previous year shall be able to withdraw such option only once and pay tax under the default tax regime under section 115BAC for a previous year other than the year in which it was exercised.

Thereafter, such person shall never be eligible to exercise option under this section, except where such person ceases to have any business income in which case, option under (i) above would be available.

AMT liability not attracted: Individual/HUF/AoP/BoI or Artificial Juridical person paying tax under default tax regime under section 115BAC is not liable to alternate minimum tax u/s 115JC. Such person would not be eligible to claim AMT credit also.

Note: It may be noted that in case of Individual/HUF/AoP/BoI or Artificial Juridical person not having income from business or profession, the total income and tax liability (including provisions relating to AMT, if applicable under normal provisions) may be computed every year both in accordance with the regular provisions of the Income-tax Act, 1961 and in accordance with the provisions of section 115BAC, in order to determine which is more beneficial and accordingly such person may decide whether to pay tax under default tax regime under section 115BAC or exercise the option to shift out and pay tax under normal provisions of the Act for that year.

ILLUSTRATION 3

Mr. X has a total income of ₹ 16,00,000 for P.Y.2023-24, comprising of income from house property and interest on fixed deposits. Compute his tax liability for A.Y.2024-25 under the default tax regime under section 115BAC.

SOLUTION**Computation of Tax liability of Mr. X for A.Y. 2024-25**

Tax liability:

First ₹ 3,00,000	- Nil	
Next ₹ 3,00,001 – ₹ 6,00,000	- @5% of ₹ 3,00,000	= ₹ 15,000
Next ₹ 6,00,001 – ₹ 9,00,000	- @10% of ₹ 3,00,000	= ₹ 30,000
Next ₹ 9,00,001 – ₹ 12,00,000	- @15% of ₹ 3,00,000	= ₹ 45,000
Next ₹ 12,00,001 – ₹ 15,00,000	- @20% of ₹ 3,00,000	= ₹ 60,000
Balance i.e., ₹ 16,00,000 minus ₹ 15,00,000	- @30% of ₹ 1,00,000	= ₹ 30,000
		<hr/>
		= ₹ 1,80,000
Add: Health and Education cess@4%		= ₹ 7,200
		<hr/>
		= ₹ 1,87,200

Tax rates prescribed by the Annual Finance Act for optional tax regime

The slab rates for A.Y. 2024-25 applicable to an Individual/HUF/AOP/BOI/ Artificial Juridical Person, which has exercised the option of shifting out of the default tax regime, are as follows:

(i)	where the total income does not exceed ₹ 2,50,000	NIL
(ii)	where the total income exceeds ₹ 2,50,000 but does not exceed ₹ 5,00,000	5% of the amount by which the total income exceeds ₹ 2,50,000
(iii)	where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 12,500 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
(iv)	where the total income exceeds ₹ 10,00,000	₹ 1,12,500 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

For a senior citizen (being a resident individual who is of the age of 60 years or more at any time during the previous year), the basic exemption limit is ₹ 3,00,000 and for a very senior citizen (being a resident individual who is of the age of 80 years or more at any time during the previous year), the basic exemption limit is ₹ 5,00,000. Therefore, the tax slabs for these assesseees would be as follows –

For senior citizens (being resident individuals of the age of 60 years or more but less than 80 years)

(i)	where the total income does not exceed ₹ 3,00,000	NIL
(ii)	where the total income exceeds ₹ 3,00,000 but does not exceed ₹ 5,00,000	5% of the amount by which the total income exceeds ₹ 3,00,000
(iii)	where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	₹ 10,000 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
(iv)	where the total income exceeds ₹ 10,00,000	₹ 1,10,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

For resident individuals of the age of 80 years or more at any time during the previous year

(i)	where the total income does not exceed ₹ 5,00,000	NIL
(ii)	where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000	20% of the amount by which the total income exceeds ₹ 5,00,000
(iii)	where the total income exceeds ₹ 10,00,000	₹ 1,00,000 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

Clarification regarding attaining prescribed age of 60 years/ 80 years on 31st March itself, in case of senior/very senior citizens whose date of birth falls on 1st April [Circular No. 28/2016, dated 27-07-2016]

The CBDT has clarified that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday. In particular, the question of attainment of age of eligibility for being considered a senior/very senior citizen would be decided on the basis of above criteria.

Therefore, a resident individual whose 60th birthday falls on 1st April, 2024, would be treated as having attained the age of 60 years in the P.Y.2023-24 and would be eligible for higher basic exemption limit of ₹ 3 lakh while computing his tax liability for A.Y.2024-25 under the optional tax regime as per the normal provisions of the Act. Likewise, a resident individual whose 80th birthday falls on 1st April, 2024, would be treated as having attained the age of 80 years in the P.Y.2023-24, and would be eligible for higher basic exemption limit of ₹ 5 lakh in computing his tax liability for A.Y.2024-25 under the optional tax regime as per the normal provisions of the Act.

In respect of certain types of income, as mentioned below, the Income-tax Act, 1961 has prescribed specific rates. The special rates of tax have to be applied on the respective component of total income irrespective of the tax regime and the slab rates have to be applied on the balance of total income after adjusting the basic exemption limit.

S. No.	Section	Income	Rate of Tax						
(a)	112	Long term capital gains (other than LTCG taxable as per section 112A)	20%						
(b)	112A	Long term capital gains on transfer of - <ul style="list-style-type: none"> Equity share in a company Unit of an equity oriented fund Unit of business trust Condition for availing the benefit of this concessional rate is that securities transaction tax should have been paid - <table border="1" style="width: 100%; margin-top: 10px;"> <thead> <tr> <th>In case of (Capital Asset)</th> <th>Time of payment of STT</th> </tr> </thead> <tbody> <tr> <td>Equity shares in a company</td> <td>both at the time of acquisition and transfer</td> </tr> <tr> <td>Unit of equity oriented fund or unit of business trust</td> <td>at the time of transfer</td> </tr> </tbody> </table>	In case of (Capital Asset)	Time of payment of STT	Equity shares in a company	both at the time of acquisition and transfer	Unit of equity oriented fund or unit of business trust	at the time of transfer	10% [On LTCG > ₹ 1 lakh]
In case of (Capital Asset)	Time of payment of STT								
Equity shares in a company	both at the time of acquisition and transfer								
Unit of equity oriented fund or unit of business trust	at the time of transfer								
Note: LTCG upto ₹ 1 lakh is exempt. LTCG exceeding ₹ 1 lakh is taxable @10%.									

S. No.	Section	Income	Rate of Tax
(c)	111A	Short-term capital gains on transfer of – <ul style="list-style-type: none"> • Equity shares in a company • Unit of an equity oriented fund • Unit of business trust The conditions for availing the benefit of this concessional rate are – <ol style="list-style-type: none"> (i) the transaction of sale of such equity share or unit should be entered into on or after 1.10.2004; and (ii) such transaction should be chargeable to securities transaction tax. 	15%
(d)	115BB	Winnings from <ul style="list-style-type: none"> • Lotteries; • Crossword puzzles; • Races including horse races; • Card games and other games of any sort; • Gambling or betting of any form or nature (other than winning from any online game)	30%
(e)	115BBJ	Net winnings from online games	30%
(f)	115BBE	Unexplained money, investment, expenditure, etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D [See discussion below]	60%

Unexplained money, investments etc. to attract tax@60% [Section 115BBE]

- (i) In order to control laundering of unaccounted money by availing the benefit of basic exemption limit, the unexplained money, investment, expenditure, etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D would be taxed at the rate of 60% plus surcharge @25% of tax. Thus, the effective rate of tax (including surcharge@25% of tax and cess@4% of tax and surcharge) is 78%.
- (ii) No basic exemption or allowance or expenditure shall be allowed to the assessee under any provision of the Income-tax Act, 1961 in computing such deemed income.
- (iii) Further, no set off of any loss shall be allowable against income brought to tax under sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

ILLUSTRATION 4

Mr. X has a total income of ₹ 16,00,000 for P.Y.2023-24, comprising of income from house property and interest on fixed deposits. Compute his tax liability for A.Y.2024- 25 assuming his age is –

- (a) 45 years
- (b) 63 years
- (c) 82 years

Assume that Mr. X has exercised the option to shift out/ opt out of the default tax regime.

SOLUTION**(a) Computation of Tax liability of Mr. X (aged 45 years)****Tax liability:**

First ₹ 2,50,000	- Nil	
Next ₹ 2,50,001 – ₹ 5,00,000	- @5% of ₹ 2,50,000	= ₹ 12,500
Next ₹ 5,00,001 – ₹ 10,00,000	- @20% of ₹ 5,00,000	= ₹ 1,00,000
Balance i.e., ₹ 16,00,000 minus ₹ 10,00,000	- @30% of ₹ 6,00,000	= ₹ 1,80,000
		<hr/>
		= ₹ 2,92,500
Add: Health and Education cess@4%		<hr/>
		= ₹ 11,700
		<hr/>
		= ₹ 3,04,200

(b) Computation of Tax liability of Mr. X (aged 63 years)**Tax liability:**

First ₹ 3,00,000	- Nil	
Next ₹ 3,00,001 – ₹ 5,00,000	- @5% of ₹ 2,00,000	= ₹ 10,000
Next ₹ 5,00,001 – ₹ 10,00,000	- @20% of ₹ 5,00,000	= ₹ 1,00,000
Balance i.e., ₹ 16,00,000 minus ₹ 10,00,000	- @30% of ₹ 6,00,000	= ₹ 1,80,000
		<hr/>
		= ₹ 2,90,000
Add: Health and Education cess@4%		<hr/>
		= ₹ 11,600
		<hr/>
		= ₹ 3,01,600

(c) Computation of Tax liability of Mr. X (aged 82 years)**Tax liability:**

First ₹ 5,00,000	- Nil	
Next ₹ 5,00,001 – ₹ 10,00,000	- @ 20% of ₹ 5,00,000	= ₹ 1,00,000
Balance i.e., ₹ 16,00,000 minus ₹ 10,00,000	- @ 30% of ₹ 6,00,000	= ₹ 1,80,000
		<hr/>
		= ₹ 2,80,000
Add: Health and Education cess@4%		<hr/>
		= ₹ 11,200
		<hr/>
		= ₹ 2,91,200

Surcharge

In case the Individual/HUF/AoP4/BoI and Artificial Juridical Person pays tax under default tax regime under section 115BAC

Income-tax computed in accordance with the provisions of section 115BAC and/ or section 111A or section 112 or section 112A or 115BBE or section 115BBJ would be increased by surcharge given under the following table:

	Particulars	Rate of surcharge on incometax	Example	
			Components of total income	Applicable rate of surcharge
(i)	Where the total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 50 lakhs but ≤ ₹ 1 crore	10%	<p>Example</p> <ul style="list-style-type: none"> • Dividend ₹ 15 lakhs; • STCG u/s 111A ₹ 15 lakhs; • LTCG u/s 112 ₹ 25 lakhs; • LTCG u/s 112A ₹ 20 lakhs; and • Other income ₹ 25 lakhs 	
(ii)	Where total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 1 crore but ≤ ₹ 2 crore	15%	<p>Example</p> <ul style="list-style-type: none"> • Dividend income ₹ 10 lakhs; • STCG u/s 111A ₹ 35 lakhs; • LTCG u/s 112 ₹ 50 lakhs; • LTCG u/s 112A ₹ 35 lakhs; and • Other income ₹ 55 lakhs 	
(iii)	Where total income (excluding dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore	25%	<p>Example</p> <ul style="list-style-type: none"> • Dividend income ₹ 51 lakhs; • STCG u/s 111A ₹ 44 lakh; • LTCG u/s 112 ₹ 42 lakhs; • LTCG u/s 112A ₹ 55 lakh; and • Other income ₹ 6 crores 	
	The rate of surcharge on the income-tax payable on the portion of dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A	Not exceeding 15%	<ul style="list-style-type: none"> • Dividend income of ₹ 51 lakhs; • STCG of ₹ 44 lakhs chargeable to tax u/s 111A; • LTCG of ₹ 42 lakhs chargeable to tax u/s 112; and • LTCG of ₹ 55 lakhs chargeable to tax u/s 112A. <p>Surcharge@25% would be leviable on income-tax computed on other income of ₹ 6 crores included in total income</p>	

	Particulars	Rate of	Example
(iv)	Where total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore in cases not covered under (iii) above	15%	<p>Example</p> <ul style="list-style-type: none"> Dividend income ₹ 40 lakhs; STCG u/s 111A ₹ 35 lakhs; LTCG u/s 112 ₹ 42 lakhs; LTCG u/s 112A ₹ 50 lakhs; and Other income ₹ 1.10 crore <p>Surcharge would be levied@15% on income-tax computed on total income of ₹2.77 crore.</p>

Marginal relief

The purpose of marginal relief is to ensure that the increase in amount of tax payable (including surcharge) due to increase in total income of an assessee beyond the prescribed limit should not exceed the amount of increase in total income.

Marginal relief is available in case of such persons paying tax under default tax regime u/s 115BAC referred to in above i.e., -

	Particulars	Marginal relief
(i)	Where the total income > ₹ 50 lakhs but ≤ ₹ 1 crore	<p>Step 1 - Compute income-tax on total income; and add surcharge@10% on such income-tax (A)</p> <p>Step 2 - Compute income-tax on ₹ 50 lakhs</p> <p>Step 3 - Total income (-) ₹ 50 lakhs</p> <p>Step 4 - Add the amount computed in Step 2 and Step 3 (B)</p> <p>Step 5 - Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., A) or Step 4 (i.e., B). Consequently, if A>B, the marginal relief would be A - B.</p>
(ii)	Where the total income > ₹ 1 crore but ≤ ₹ 2 crores	<p>Step 1 - Compute income-tax on total income; and add surcharge@15% on income-tax (C)</p> <p>Step 2 - Compute income-tax on total income of ₹ 1 crore + surcharge on such income-tax@10%</p> <p>Step 3 - Total income (-) ₹ 1 crore</p> <p>Step 4 - Add the amount computed in Step 2 and Step 3 (D)</p> <p>Step 5 - Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., C) or Step 4 (i.e., D). Consequently, if C>D, the marginal relief would be C - D.</p>
(iii)	Where the total income > ₹ 2 crores	<p>Step 1 - Compute income-tax on total income; and add surcharge@25% on income-tax (E)</p> <p>Step 2 - Compute income-tax on total income of ₹ 2 crore + surcharge on such income-tax@15%</p> <p>Step 3 - Total income (-) ₹ 2 crore</p> <p>Step 4 - Add the amount computed in Step 2 and Step 3 (F)</p> <p>Step 5 - Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., E) or Step 4 (i.e., F). Consequently, if E>F, the marginal relief would be E - F.</p>

Note – It is presumed that the total income referred to above does not include dividend income, long term capital gains taxable under section 112/ 112A and short-term capital gains taxable under section 111A.

In case the total income includes dividend income, long term capital gains taxable under section 112/ 112A or short term capital gains taxable under section 111A, surcharge on income-tax computed on such dividend income and capital gains cannot exceed 15%. This must be kept in mind while computing marginal relief in cases referred to in (iii) above.

In case the Individual/HUF/AoP5/BoI and Artificial Juridical Person exercises the option to shift out of the default tax regime Income-tax computed in accordance with normal provisions of the Act or section 111A or section 112 or section 112A or 115BBE or section 115BBJ would be increased by surcharge given under the following table:

	Particulars	Rate of surcharge on income- tax	Example	
			Components of total income	Applicable rate of surcharge
(i)	Where the total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 50 lakhs but ≤ ₹ 1 crore	10%	Example <ul style="list-style-type: none"> Dividend ₹10 lakhs; STCG u/s 111A ₹ 20 lakhs; LTCG u/s 112 ₹ 15 lakhs; LTCG u/s 112A ₹ 20 lakhs; and Other income ₹ 25 lakhs 	Surcharge would be levied@10% on income-tax computed on total income of ₹ 90 lakhs.
(ii)	Where total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 1 crore but ≤ ₹ 2 crore	15%	Example <ul style="list-style-type: none"> Dividend income ₹ 10 lakhs; STCG u/s 111A ₹ 40 lakhs; LTCG u/s 112 ₹ 55 lakhs; LTCG u/s 112A ₹ 35 lakhs; and Other income ₹ 50 lakhs 	Surcharge would be levied@15% on income-tax computed on total income of ₹ 1.90 crores.
(iii)	Where total income (excluding dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore but ≤ ₹ 5 crore	25%	Example <ul style="list-style-type: none"> Dividend income ₹ 51 lakhs; STCG u/s 111A ₹ 44 lakh; LTCG u/s 112 ₹ 42 lakhs; LTCG u/s 112A ₹ 55 lakh; and Other income ₹ 3 crores 	Surcharge@15% would be levied on income-tax on: <ul style="list-style-type: none"> Dividend income of ₹ 51 lakhs; STCG of ₹ 44 lakhs chargeable to tax u/s 111A; LTCG of ₹ 42 lakhs chargeable to tax u/s 112; and LTCG of ₹ 55 lakhs chargeable to tax u/s 112A.
	The rate of surcharge on the income-tax payable on the portion of dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A	Not exceeding 15%		

	Particulars	Rate of surcharge on income- tax	Example	
			Components of total income	Applicable rate of surcharge
				Surcharge@25% would be leviable on income-tax computed on other income of ₹ 3 crores included in total income
(iv)	Where total income (excluding dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 5 crore	37%	Example	
	Rate of surcharge on the income-tax payable on the portion of dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A	Not exceeding 15%	<ul style="list-style-type: none"> Dividend income ₹ 60 lakhs; STCG u/s 111A ₹ 50 lakhs; LTCG u/s 112 ₹ 42 lakhs; LTCG u/s 112A ₹ 25 lakhs; and Other income ₹ 6 crore 	Surcharge@15% would be levied on income-tax on: <ul style="list-style-type: none"> Dividend income of ₹ 60 lakhs; STCG of ₹ 50 lakhs chargeable to tax u/s 111A; LTCG of ₹ 42 lakhs chargeable to tax u/s 112; and LTCG of ₹ 25 lakhs chargeable to tax u/s 112A. Surcharge@37% would be leviable on the income-tax computed on other income of ₹ 6 crores included in total income.
(v)	Where total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore in cases not covered under (iii) and (iv) above	15%	Example	
			<ul style="list-style-type: none"> Dividend income ₹ 55 lakhs; STCG u/s 111A ₹ 60 lakhs; LTCG u/s 112 ₹ 42 lakhs; LTCG u/s 112A ₹ 35 lakhs; and Other income ₹ 1.10 crore 	Surcharge would be levied@15% on income-tax computed on total income of ₹ 3.02 crore.

Marginal relief

	Particulars	Marginal relief
(i)	Where the total income > ₹ 50 lakhs but ≤ ₹ 1 crore	<p>Step 1 - Compute income-tax on total income; and add surcharge@10% on such income-tax (A)</p> <p>Step 2 - Compute income-tax on ₹ 50 lakhs</p> <p>Step 3 - Total income (-) ₹ 50 lakhs</p> <p>Step 4 - Add the amount computed in Step 2 and Step 3 (B)</p> <p>Step 5 - Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., A) or Step 4 (i.e., B). Consequently, if A>B, the marginal relief would be A - B.</p>

	Particulars	Marginal relief
(ii)	Where the total income > ₹ 1 crore but ≤ ₹ 2 crores	<p>Step 1 - Compute income-tax on total income; and add surcharge@15% on income-tax (C)</p> <p>Step 2 - Compute income-tax on total income of ₹ 1 crore + surcharge on such income-tax@10%</p> <p>Step 3 - Total income (-) ₹ 1 crore</p> <p>Step 4 - Add the amount computed in Step 2 and Step 3 (D)</p> <p>Step 5 - Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., C) or Step 4 (i.e., D). Consequently, if C>D, the marginal relief would be C - D.</p>
(iii)	Where the total income > ₹ 2 crores but ≤ ₹ 5 crores	<p>Step 1 - Compute income-tax on total income; and add surcharge@25% on income-tax (E)</p> <p>Step 2 - Compute income-tax on total income of ₹ 2 crore + surcharge on such income-tax@15%</p> <p>Step 3 - Total income (-) ₹ 2 crore</p> <p>Step 4 - Add the amount computed in Step 2 and Step 3 (F)</p> <p>Step 5 - Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., E) or Step 4 (i.e., F). Consequently, if E>F, the marginal relief would be E - F.</p>
(iv)	Where the total income > ₹ 5 crores	<p>Step 1 - Compute income-tax on total income; and add surcharge@37% on income-tax (G)</p> <p>Step 2 - Compute income-tax on total income of ₹ 5 crore + surcharge on such income-tax@25%</p> <p>Step 3 - Total income (-) ₹ 5 crore</p> <p>Step 4 - Add the amount computed in Step 2 and Step 3 (H)</p> <p>Step 5 - Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., G) or Step 4 (i.e., H). Consequently, if G>H, the marginal relief would be G - H.</p>

Note - It is presumed that the total income referred to above does not include dividend income, long term capital gains taxable under section 112/ 112A and short-term capital gains taxable under section 111A.

In case the total income includes dividend income, long term capital gains taxable under section 112/ 112A or short term capital gains taxable under section 111A, surcharge on income-tax computed on such dividend income and capital gains cannot exceed 15%. This must be kept in mind while computing marginal relief in cases referred to in (iii) and (iv) above.

ILLUSTRATION 5

Compute the tax liability of Mr. A (aged 42), having total income of ₹ 51 lakhs for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit. Assume that Mr. A has exercised the option to shift out of section 115BAC.

SOLUTION**Computation of tax liability of Mr. A for the A.Y.2024-25**

(A)	Income-tax (including surcharge) computed on total income of ₹ 51,00,000	
	₹ 2,50,000 – ₹ 5,00,000 @5%	₹ 12,500
	₹ 5,00,001 – ₹ 10,00,000 @20%	₹ 1,00,000
	₹ 10,00,001 – ₹ 51,00,000 @30%	₹ 12,30,000
	Total	₹ 13,42,500
	Add: Surcharge @ 10%	₹ 1,34,250
		₹ 14,76,750
(B)	Income-tax computed on total income of ₹ 50 lakhs (₹ 12,500 plus ₹ 1,00,000 plus ₹ 12,00,000)	₹ 13,12,500
(C)	Total Income Less ₹ 50 lakhs	₹ 1,00,000
(D)	Income-tax computed on total income of ₹ 50 lakhs plus the excess of total income over ₹ 50 lakhs (B + C)	₹ 14,12,500
(E)	Tax liability: lower of (A) and (D)	₹ 14,12,500
	Add: Health and education cess @4%	₹ 56,500
	Tax liability (including cess)	₹ 14,69,000
(F)	Marginal Relief (A - D)	₹ 64,250

Alternative method -

(A)	Income-tax (including surcharge) computed on total income of ₹ 51,00,000	
	₹ 2,50,000 – ₹ 5,00,000@5%	₹ 12,500
	₹ 5,00,001 – ₹ 10,00,000@20%	₹ 1,00,000
	₹ 10,00,001 – ₹ 51,00,000@30%	₹ 12,30,000
	Total	₹ 13,42,500
	Add: Surcharge@10%	₹ 1,34,250
		₹ 14,76,750
(B)	Income-tax computed on total income of ₹ 50 lakhs (₹ 12,500 plus ₹ 1,00,000 plus ₹ 12,00,000)	₹ 13,12,500
(C)	Excess tax payable (A)-(B)	₹ 1,64,250
(D)	Marginal Relief (₹ 1,64,250 – ₹ 1,00,000, being the amount of income in excess of ₹ 50,00,000)	₹ 64,250
(E)	Tax liability (A)-(D)	₹ 14,12,500
	Add: Health and education cess @4%	₹ 56,500
	Tax liability (including cess)	₹ 14,69,000

ILLUSTRATION 6

Compute the tax liability of Mr. B (aged 51) under the default tax regime, having total income of ₹ 1,01,00,000 for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit.

SOLUTION**Computation of tax liability of Mr. B for the A.Y. 2024-25**

(A) Income-tax (including surcharge) computed on total income of ₹ 1,01,00,000	
₹ 3,00,000 – ₹ 6,00,000@5%	₹ 15,000
₹ 6,00,001 – ₹ 9,00,000@10%	₹ 30,000
₹ 9,00,001 – ₹ 12,00,000@15%	₹ 45,000
₹ 12,00,001 – ₹ 15,00,000@20%	₹ 60,000
₹ 15,00,001 – ₹ 1,01,00,000@30%	₹ 25,80,000
Total	₹ 27,30,000
Add: Surcharge@15%	₹ 4,09,500
Tax liability without marginal relief	₹ 31,39,500
(B) Income-tax computed on total income of ₹ 1 crore (₹ 1,50,000 plus ₹ 25,50,000)	₹ 27,00,000
Add: Surcharge@10%	₹ 2,70,000
	₹ 29,70,000
(C) Total Income Less ₹ 1 crore	₹ 1,00,000
(D) Income-tax computed on total income of ₹ 1 crore plus the excess of total income over ₹ 1 crore (B +C)	₹ 30,70,000
(E) Tax liability: lower of (A) & (D)	₹ 30,70,000
Add: Health and education cess @4%	₹ 1,22,800
Tax liability (including cess)	₹ 31,92,800
(F) Marginal relief (A-D)	₹ 69,500

Alternative method:

(A) Income-tax (including surcharge) computed on total income of ₹ 1,01,00,000	
₹ 3,00,000 – ₹ 6,00,000@5%	₹ 15,000
₹ 6,00,001 – ₹ 9,00,000@10%	₹ 30,000
₹ 9,00,001 – ₹ 12,00,000@15%	₹ 45,000
₹ 12,00,001 – ₹ 15,00,000@20%	₹ 60,000
₹ 15,00,001 – ₹ 1,01,00,000@30%	₹ 25,80,000
Total	₹ 27,30,000

Add: Surcharge @ 15%	₹ 4,09,500
	₹ 31,39,500
(B) Income-tax computed on total income of ₹ 1 crore [(₹ 1,50,000 plus ₹ 25,50,000) plus surcharge@10%]	₹ 29,70,000
	₹ 1,69,500
(C) Excess tax payable (A)-(B)	₹ 69,500
(D) Marginal Relief (₹ 1,69,500 – ₹ 1,00,000, being the amount of income in excess of ₹ 1,00,00,000)	₹ 69,500
(E) Tax liability (A) - (D)	₹ 30,70,000
Add: Health and education cess @4%	₹ 1,22,800
Tax liability (including cess)	₹ 31,92,800

ILLUSTRATION 7

Compute the tax liability of Mr. C (aged 58), having total income of ₹ 2,01,00,000 for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit.

Assume that Mr. C has exercised the option to shift out of section 115BAC.

SOLUTION**Computation of tax liability of Mr. C for the A.Y. 2024-25**

(A) Income-tax (including surcharge) computed on total income of ₹ 2,01,00,000	
₹ 2,50,000 – ₹ 5,00,000 @ 5%	₹ 12,500
₹ 5,00,001 – ₹ 10,00,000 @ 20%	₹ 1,00,000
₹ 10,00,001 – ₹ 2,01,00,000@30%	₹ 57,30,000
Total	₹ 58,42,500
Add: Surcharge @ 25%	₹ 14,60,625
	₹ 73,03,125
(B) Income-tax computed on total income of ₹ 2 crore (₹ 12,500 plus ₹ 1,00,000 plus ₹ 57,00,000)	₹ 58,12,500
Add: Surcharge@15%	₹ 8,71,875
	₹ 66,84,375
(C) Total Income Less ₹ 2 crore	₹ 1,00,000
(D) Income-tax computed on total income of ₹ 2 crore plus the excess of total income over ₹ 2 crore (B +C)	₹ 67,84,375
(E) Tax liability (A) or (D), whichever is lower	₹ 67,84,375
Add: Health and education cess @4%	₹ 2,71,375
Tax liability (including cess)	₹ 70,55,750
(F) Marginal relief (A-D)	₹ 5,18,750

Alternative method

(A) Income-tax (including surcharge) computed on total income of ₹ 2,01,00,000	
₹ 2,50,000 – ₹ 5,00,000 @ 5%	₹ 12,500
₹ 5,00,001 – ₹ 10,00,000 @ 20%	₹ 1,00,000
₹ 10,00,001 – ₹ 2,01,00,000@30%	₹ 57,30,000
Total	₹ 58,42,500
Add: Surcharge@25%	₹ 14,60,625
	₹ 73,03,125
(B) Income-tax computed on total income of ₹ 2 crore [(₹ 12,500 plus ₹ 1,00,000 plus ₹ 57,00,000) plus surcharge@15%]	₹ 66,84,375
(C) Excess tax payable (A)-(B)	₹ 6,18,750
(D) Marginal Relief (₹ 6,18,750 – ₹ 1,00,000, being the amount of income in excess of ₹ 2,00,00,000)	₹ 5,18,750
(E) Tax liability (A) - (D)	₹ 67,84,375
Add: Health and education cess@4%	₹ 2,71,375
Tax liability (including cess)	₹ 70,55,750

ILLUSTRATION 8

Compute the tax liability of Mr. D (aged 65) in a most beneficial manner. He is having total income of ₹ 5,01,00,000 for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit and is the same under both tax regimes.

SOLUTION**Computation of tax liability of Mr. D under default tax regime for the A.Y. 2024-25**

Income-tax (including surcharge) computed on total income of ₹ 5,01,00,000

₹ 3,00,000 – ₹ 6,00,000@5%	₹ 15,000	
₹ 6,00,001 – ₹ 9,00,000@10%	₹ 30,000	
₹ 9,00,001 – ₹ 12,00,000@15%	₹ 45,000	
₹ 12,00,001 – ₹ 15,00,000@20%	₹ 60,000	
₹ 15,00,001 – ₹ 5,01,00,000@30%	₹	
	1,45,80,000	
Total	₹	
	1,47,30,000	
Add: Surcharge@25%	₹ 36,82,500	₹ 1,84,12,500
Add: Health and education cess @4%		₹ 7,36,500
Tax liability		₹ 1,91,49,000

Computation of tax liability of Mr. D under optional tax regime for the A.Y. 2024-25

(A) Income-tax (including surcharge) computed on total income of ₹ 5,01,00,000		
₹ 3,00,000 – ₹ 5,00,000 @ 5%	₹ 10,000	
₹ 5,00,001 – ₹ 10,00,000 @ 20%	₹ 1,00,000	
₹ 10,00,001 – ₹ 5,01,00,000@30%	₹ 1,47,30,000	
Total	₹ 1,48,40,000	
Add: Surcharge @ 37%	₹ 54,90,800	₹ 2,03,30,800
(B) Income-tax computed on total income of ₹ 5 crore (₹ 10,000 plus ₹ 1,00,000 plus ₹ 1,47,00,000)	₹ 1,48,10,000	
Add: Surcharge@25%	₹ 37,02,500	
	₹ 1,85,12,500	
(C) Total Income Less ₹ 5 crore	₹ 1,00,000	
(D) Income-tax computed on total income of ₹ 5 crore plus the excess of total income over ₹ 5 crore (B +C)	₹ 1,86,12,500	
(E) Tax liability (A) or (D), whichever is lower	₹ 1,86,12,500	
Add: Health and education cess@4%	₹ 7,44,500	
Tax liability (including cess)	₹ 1,93,57,000	
(F) Marginal Relief (A - D)	₹ 17,18,300	
Alternative method		
(A) Income-tax (including surcharge) computed on total income of ₹ 5,01,00,000		
₹ 3,00,000 – ₹ 5,00,000@5%	₹ 10,000	
₹ 5,00,001 – ₹ 10,00,000@20%	₹ 1,00,000	
₹ 10,00,001 – ₹ 5,01,00,000@30%	₹ 1,47,30,000	
Total	₹ 1,48,40,000	
Add: Surcharge @ 37%	₹ 54,90,800	₹ 2,03,30,800
(B) Income-tax computed on total income of ₹ 5 crore [(₹ 10,000 plus ₹ 1,00,000 plus ₹ 1,47,00,000) plus surcharge@25%]	₹ 1,85,12,500	
(C) Excess tax payable (A)-(B)	₹ 18,18,300	
(D) Marginal Relief (₹ 18,18,300 – ₹ 1,00,000, being the amount of income in excess of ₹ 5,00,00,000)	₹ 17,18,300	
(E) Tax liability (A) - (D)	₹ 1,86,12,500	
Add: Health and education cess @4%	₹ 7,44,500	
Tax liability (including cess)	₹ 1,93,57,000	

It is beneficial for Mr. D to pay tax under default tax regime under section 115BAC, since his tax liability would be lower by ₹ 2,08,000 (₹ 1,93,57,000 - ₹ 1,91,49,000).

6.2 Firm/ LLP/ Local Authority

Income-tax

On the whole of the total income 30%

Special rates for capital gains under sections 112, 112A and 111A would be applicable to Firm/ LLP/ local authority also.

Surcharge

Where the total income exceeds ₹ 1 crore, surcharge is payable at the rate of 12% of income-tax computed as above.

Marginal Relief

Marginal relief is available in case of such persons having a total income exceeding ₹ 1 crore i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax computed on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

6.3 Co-operative Society

Income-tax rates as per the normal provisions of the Act

(i)	Where the total income doesnot exceed ₹ 10,000	10% of the total income
(ii)	Where the total income exceeds ₹ 10,000 but does not exceed ₹ 20,000	₹ 1,000 plus 20% of the amount by which the total income exceeds ₹ 10,000
(iii)	Where the total income exceeds ₹ 20,000	3,000 plus 30% of the amount by which the total income exceeds ₹ 20,000

Note – A manufacturing co-operative society, resident in India, can opt for concessional rates of tax under section 115BAE and other co-operative societies, resident in India, can opt for concessional rates of tax under section 115BAD.

Tax rate in case of a manufacturing co-operative society, resident in India (set up and registered on or after 1.4.2023 and commences manufacture of article or thing before 31.3.2024) opting for concessional tax regime u/s 115BAE

15% of income derived from or incidental to manufacturing or production of an article or thing

Tax rate in case of other resident co-operative society opting for concessional tax regime u/s 115BAD:

22% of total income

Note - Co-operative society, resident in India, can opt for concessional rate of tax u/s 115BAD or 115BAE, as the case may be, subject to certain conditions. The total income of such co-operative societies would be computed without giving effect to deduction under section 10AA, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC, additional depreciation under section 32(1)(iia), deductions under Chapter VI-A (other than section 80JJA) etc. and set off of loss and depreciation brought forward from earlier years relating to the above deductions. The provisions of alternate minimum tax under section 115JC would not be applicable to a cooperative society opting for section 115BAD or 115BAE. This section will be dealt with in detail at Final level.

Special rates for capital gains under sections 112, 112A and 111A would be applicable to Co-operative society also.

Surcharge

- (a) In case of a co-operative society (other than a co-operative society opting for section 115BAD or section 115BAE), whose total income > ₹ 1 crore but is ≤ ₹ 10 crore

Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at the rate of 7% of income-tax computed in accordance with the slab rates given above and/ or section 111A or section 112 or section 112A.

Marginal Relief

Marginal relief is available in case of such co-operative societies i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax computed on total income of ₹1 crore by more than the amount of income that exceeds ₹ 1 crore.

- (b) In case of a co-operative society (other than a co-operative society opting for section 115BAD or section 115BAE), whose total income is > ₹ 10 crore

Where the total income exceeds ₹ 10 crore, surcharge is payable at the rate of 12% of income-tax computed in accordance with the slab rates given above and/ or section 111A or section 112 or section 112A.

Marginal Relief

Marginal relief is available in case of such co-operative societies i. e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax and surcharge computed on total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

- (c) In case of a co-operative society opting for section 115BAD or section 115BAE

Surcharge @10% of income-tax computed under section 115BAD or section 115BAE would be leviable. Since there is no threshold limit for applicability of surcharge, consequently, there would be no marginal relief.

6.4 Domestic Company

Income-tax

If the total turnover or gross receipt in the P.Y.2021-22 ≤ ₹ 400 crore	25% of the total income
In any other case	30% of the total income

Notes –

- In case of a domestic manufacturing company (set up and registered on or after 1.10.2019 and commences manufacture of article or thing before 31.3.2024) exercising option u/s 115BAB: 15% of income derived from or incidental to manufacturing or production of an article or thing

- In case of a domestic company exercising option u/s 115BAA: 22% of total income

Domestic company can opt for section 115BAA or section 115BAB, as the case may be, subject to certain conditions. The total income of such companies would be computed without giving effect to deductions under section 10AA, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35(2AB), 35AD, 35CCC, 35CCD, Chapter

VI-A (except section 80JJAA or section 80M), additional depreciation under section 32(1)(iia) etc. and without set-off of brought forward loss and unabsorbed depreciation attributable to such deductions.

These sections will be dealt with in detail at Final Level

Special rates for capital gains under sections 112, 112A and 111A would be applicable to domestic company also.

Surcharge

- (a) In case of a domestic company (other than a domestic company opting for section 115BAA or section 115BAB), whose total income > ₹ 1 crore but is ≤ ₹ 10 crore**

Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at the rate of 7% of income-tax computed in accordance with the rates given above.

Marginal Relief

Marginal relief is available in case of such companies i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax computed on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

- (b) In case of a domestic company (other than a domestic company opting for section 115BAA or section 115BAB), whose total income is > ₹ 10 crore**

Where the total income exceeds ₹ 10 crore, surcharge is payable at the rate of 12% of income-tax computed in accordance with the rates given above.

Marginal Relief

Marginal relief is available in case of such companies i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax and surcharge computed on total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

- (c) In case of a domestic company opting for section 115BAA or section 115BAB**

Surcharge @10% of income-tax computed under section 115BAA or section 115BAB would be leviable. Since there is no threshold limit for applicability of surcharge, consequently, there would be no marginal relief.

6.5 Foreign Company

Income-tax

Royalties and fees for rendering technical services (FTS) received from Government or an Indian concern in pursuance of an agreement, approved by the Central Government, made by the company with the Government or Indian concern between 1.4.1961 and 31.3.1976 (in case of royalties) and between 1.3.1964 and 31.3.1976 (in case of FTS)	50%
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Other income	40%
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Special rates for capital gains under sections 112, 112A and 111A would be applicable to foreign company also.

Surcharge

- (a) In case of a foreign company, whose total income > ₹ 1 crore but is ≤ ₹ 10 crore**

Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at the rate of 2% of income-tax computed in accordance with the rates given above.

Marginal Relief

Marginal relief is available in case of such companies i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax computed on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

(b) In case of a foreign company, whose total income is > ₹ 10 crore

Where the total income exceeds ₹ 10 crore, surcharge is payable at the rate of 5% of income-tax computed in accordance with the rates given above.

Marginal Relief

Marginal relief is available in case of such companies i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax and surcharge computed on total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

7. REBATE FOR RESIDENT INDIVIDUALS [SECTION 87A]

In order to provide tax relief to the individual tax payers, section 87A provides a rebate from the tax payable by an assessee, being an **individual resident in India**.

Rebate to resident individual paying tax under default tax regime u/s 115BAC

- (i) If total income of such individual **does not exceed ₹ 7,00,000**, the rebate shall be equal to the amount of income-tax payable on his total income for any assessment year or an amount of **₹ 25,000**, whichever is less.

The amount of rebate under section 87A shall not exceed the amount of income-tax (as computed before allowing such rebate) on the total income of the assessee with which he is chargeable for any assessment year.

ILLUSTRATION 9

Mr. Raghav aged 26 years and a resident in India, has a total income of ₹ 6,50,000, comprising his salary income and interest on bank fixed deposit.

Compute his tax liability for A.Y.2024-25 under default tax regime under section 115BAC.

SOLUTION

Computation of tax liability of Mr. Raghav for A.Y. 2024-25

Particulars	₹
Tax on total income of ₹ 6,50,000	
Tax@10%of ₹ 50,000 + ₹ 15,000	20,000
Less: Rebate u/s 87A (Lower of tax payable or ₹ 25,000)	20,000
Tax Liability	Nil

- (ii) If total income of such individual exceeds ₹ 7,00,000 and income-tax payable on such total income exceeds the amount by which the total income is in excess of ₹ 7,00,000, the rebate would be as follows.

Step 1 – Total income (-) ₹ 7 lakhs **(A)**

Step 2 - Compute income-tax liability on total income **(B)**

Step 3 - If B>A, rebate under section 87A would be a **B - A**.

The amount of rebate under section 87A shall not exceed the amount of income-tax (as computed before allowing such rebate) on the total income of the assessee.

ILLUSTRATION 10

Mr. Pawan aged 35 years and a resident in India, has a total income of ₹ 7,15,000, comprising his salary income and interest on bank fixed deposit. Compute his tax liability for A.Y.2024-25 under default tax regime under section 115BAC.

SOLUTION**Computation of tax liability of Mr. Pawan for A.Y. 2024-25**

Particulars	₹	
Step 1: Total Income of ₹ 7,15,000 - ₹ 7,00,000	15,000	(A)
Step 2: Tax on total income of ₹ 7,15,000		
Tax@10%of ₹ 1,15,000 + ₹ 15,000	26,500	(B)
Step 3: Since B>A, rebate u/s 87A would be B-A		
[₹ 26,500 - ₹ 15,000]	11,500	
	15,000	
Add: HEC@4%	600	
Tax Liability	15,600	

Rebate to a resident individual paying tax under optional tax regime (normal provisions of the Act)

If total income of such individual **does not exceed ₹ 5,00,000**, the rebate shall be equal to the amount of income-tax payable on his total income for any assessment year or an amount of ₹ **12,500**, whichever is less.

The amount of rebate under section 87A shall not exceed the amount of income-tax (as computed before allowing such rebate) on the total income of the assessee with which he is chargeable for any assessment year.

ILLUSTRATION 11

Mr. Piyush, aged 35 years and a resident in India, has a total income of ₹ 4,15,000, comprising his salary income and interest on bank fixed deposit. Compute his tax liability for A.Y.2024-25 if he exercises the option to shift out of the default tax regime.

SOLUTION**Computation of tax liability of Mr. Piyush for A.Y. 2024-25**

Particulars	₹
Tax on total income of ₹ 4,15,000	
Tax@5%of ₹ 1,65,000	8,250
Less: Rebate u/s 87A (Lower of tax payable or ₹ 12,500)	8,250
Tax Liability	Nil

- Rebate under section 87A is allowed from income-tax computed before adding Health and education cess on income-tax.
- Rebate under section 87A is, however, not available in respect of tax payable @10% on long-term capital gains taxable u/s 112A.

8. PARTIAL INTEGRATION OF AGRICULTURAL INCOME WITH NON-AGRICULTURAL INCOME

Agricultural income is exempt subject to conditions mentioned in the definition given under section 2(1A). However, a method has been laid down to levy tax on agricultural income in an indirect way. This concept is known as **partial integration of agricultural income with non-agricultural income**. It is applicable to individuals, HUF, AOPs, BOIs and artificial juridical persons. Two conditions which need to be satisfied for partial integration are:

1. The net agricultural income should exceed ₹ 5,000 p.a., and
2. Non-agricultural income should exceed the maximum amount not chargeable to tax. (i.e., If such person is paying tax under default tax regime u/s 115BAC, then ₹ 3,00,000 is the basic exemption limit irrespective of the age of the person. If such person has exercised the option to shift out of the default tax regime, then, the basic exemption limit would be ₹ 5,00,000 for resident individuals of the age of 80 years or more at any time during the previous year, ₹ 3,00,000 for resident individuals of the age of 60 years or more (but less than 80 years) at any time during the previous year and ₹ 2,50,000 for all others). Only if non-agricultural income exceeds this limit, partial integration would be required.

It may be noted that aggregation provisions do not apply to company, LLP, firm, co-operative society and local authority. The object of aggregating the net agricultural income with non-agricultural income is to tax the non-agricultural income at higher rates.

Tax calculation in such cases is as follows:

- Step 1:** Add non-agricultural income with net agricultural income. Compute tax on the aggregate amount.
- Step 2:** Add net agricultural income and the basic exemption limit available to the assessee. Compute tax on the aggregate amount.
- Step 3:** Deduct the amount of income tax calculated in step 2 from the income tax calculated in step 1 i.e., Step 1 – Step 2.
- Step 4:** The sum so arrived at shall be –
- increased by surcharge, if applicable,
 - reduced by the rebate, if any, available u/s 87A.
- Step 5:** Thereafter, it would be increased by health and education cess @4%. The above concept can be clearly understood with the help of the following illustration:

ILLUSTRATION 12

Mr. X, a resident, has provided the following particulars of his income for the P.Y. 2023-24.

- i. Income from salary (computed) - ₹ 4,80,000
- ii. Income from house property (computed) - ₹ 2,50,000
- iii. Agricultural income from a land in Jaipur - ₹ 4,80,000
- iv. Expenses incurred for earning agricultural income - ₹ 1,70,000

Compute his tax liability for A.Y. 2024-25 assuming his age is -

- (a) 45 years
- (b) 70 years

SOLUTION**(a) Computation of tax liability (age 45 years)**

Computation of total income of Mr. X for the A.Y. 2024-25 under default tax regime under section 115BAC
For the purpose of partial integration of taxes, Mr. X has satisfied both the conditions i.e.

1. Net agricultural income exceeds ₹ 5,000 p.a., and
2. Non-agricultural income exceeds the basic exemption limit of ₹ 3,00,000.

His tax liability is computed in the following manner:

Particulars	₹	₹
Income from salary		4,80,000
Income from house property		2,50,000
Net agricultural income [₹ 4,80,000 - ₹ 1,70,000]	3,10,000	
Less: Exempt under section 10(1)	(3,10,000)	-
Gross Total Income		7,30,000
Less: Deductions under Chapter VI-A		-
Total Income		<u>7,30,000</u>

Step 1 : ₹ 7,30,000 + ₹ 3,10,000 = ₹ 10,40,000

Tax on ₹ 10,40,000 = ₹ 66,000

(i.e., 5% of ₹ 3,00,000 plus 10% of ₹ 3,00,000 plus 15% of ₹ ,410,000)

Step 2 : ₹ 3,10,000 + ₹ 3,00,000 = ₹ 6,10,000

Tax on ₹ 6,10,000 = ₹ 16,000

(i.e. 5% of ₹ 3,00,000 plus 10% of ₹ 10,000)

Step 3 : ₹ 66,000 - ₹ 16,000 = ₹ 50,000

Step 4 & 5 : Total tax payable = ₹ 50,000

= ₹ 50,000 + 4% of ₹ 50,000 = ₹ 52,000.

Computation of total income of Mr. X for the A.Y. 2024-25 under normal provisions of the Act

For the purpose of partial integration of taxes, Mr. X has satisfied both the conditions i.e.

3. Net agricultural income exceeds ₹ 5,000 p.a., and
4. Non-agricultural income exceeds the basic exemption limit of ₹ 2,50,000.

His tax liability is computed in the following manner:

Particulars	₹	₹
Income from salary		4,80,000
Income from house property		2,50,000
Net agricultural income [₹ 4,80,000 - ₹ 1,70,000]	3,10,000	
Less: Exempt under section 10(1)	(3,10,000)	-
Gross Total Income		7,30,000
Less: Deductions under Chapter VI-A		-
Total Income		<u>7,30,000</u>

Step 1 :	$\text{₹ } 7,30,000 + \text{₹ } 3,10,000 = \text{₹ } 10,40,000$
	Tax on ₹ 10,40,000 = ₹ 1,24,500
	(i.e., 5% of ₹ 2,50,000 plus 20% of ₹ 5,00,000 plus 30% of ₹ 40,000)
Step 2 :	$\text{₹ } 3,10,000 + \text{₹ } 2,50,000 = \text{₹ } 5,60,000$
	Tax on ₹ 5,60,000 = ₹ 24,500
	(i.e. 5% of ₹ 2,50,000 plus 20% of ₹ 60,000)
Step 3 :	$\text{₹ } 1,24,500 - \text{₹ } 24,500 = \text{₹ } 1,00,000$
Step 4 & 5 :	Total tax payable = ₹ 1,00,000
	= ₹ 1,00,000 + 4% of ₹ 1,00,000 = ₹ 1,04,000.

(b) Computation of tax liability (age 70 years)

Computation of total income of Mr. X for the A.Y. 2024-25 under default tax regime under section 115BAC

Tax liability of Mr. X would be same under default tax regime whether he is of age of 45 years of 70 years i.e., ₹ 52,000.

Computation of total income of Mr. X for the A.Y. 2024-25 under normal provisions of the Act

His tax liability is computed in the following manner:

Step 1 :	$\text{₹ } 7,30,000 + \text{₹ } 3,10,000 = \text{₹ } 10,40,000$
	Tax on ₹ 10,40,000 = ₹ 1,22,000
	(i.e., 5% of ₹ 2,00,000 plus 20% of ₹ 5,00,000 plus 30% of ₹ 40,000)
Step 2 :	$\text{₹ } 3,10,000 + \text{₹ } 3,00,000 = \text{₹ } 6,10,000$
	Tax on ₹ 6,10,000 = ₹ 32,000
	(i.e. 5% of ₹ 2,00,000 plus 20% of ₹ 1,10,000)
Step 3 :	$\text{₹ } 1,22,000 - \text{₹ } 32,000 = \text{₹ } 90,000$
Step 4 & 5 :	Total tax payable = ₹ 90,000
	= ₹ 90,000 + 4% of ₹ 1,00,000 = ₹ 93,600.

LET US RECAPITULATE

Income-tax is the most significant direct tax. **Entry 82 of the Union List** i.e., List I of Seventh Schedule to Article 246 of the Constitution of India has given the power to Parliament to make laws on taxes on income other than agricultural income.

Components of income-tax law

- **Income-tax Act, 1961** – governs the levy of income-tax in India.
- **Income-tax Rules, 1962** – formulated for proper administration of the Act.
- **Annual Finance Act** – Amendments in the Income-tax Act, 1961 are effected every year through the Annual Finance Act.
- **Circulars** – issued by CBDT to clarify the meaning and scope of certain provisions of the Act.
- **Notifications** – issued to give effect to the provisions of the Act/ make or amend Rules.
- **Court decisions** – interprets the various provisions of income-tax law.

Income-tax is a **TAX** levied on the **TOTAL INCOME** of the **PREVIOUS YEAR** of every **PERSON**.

(1) Total Income: Total income has to be computed as per the provisions contained in the Income-tax Act, 1961. The following steps has to be followed for computing the total income of an assessee:

Step 1 - Determination of residential status

Step 2 - Classification of income under different heads

Step 3 - Computation of income under each head after providing for permissible deductions/ exemptions.

In this step, it is necessary to consider whether the individual is paying tax under the default tax regime or exercising the option to shift out of the default tax regime and pay tax under the optional tax regime as per the normal provisions of the Act. Certain deductions which are allowable under the normal provisions of the Act are not permissible under the default tax regime.

Step 4 - Clubbing of income of spouse, minor child etc.

Step 5 - Set-off or carry forward and set-off of losses

Step 6 - Computation of Gross Total Income

Step 7 - Providing Deductions from Gross Total Income

Here again, only very select deductions, namely, 80CCD(2), 80CCH(2) and 80JJAA, are allowable under the default tax regime under section 115BAC.

Step 8 - Computation of Total income

Step 9 - Application of the rates of tax on the total income For default tax regime, concessional tax rates are provided under section 115BAC. For optional tax regime as per the normal provisions of the Act, the tax rates are provided in the Annual Finance Act. The special rates u/s 111A, 112, 112A, 115BB, 115BBJ, etc. would apply under both tax regimes.

Step 10 - Add Surcharge, if applicable/ Deduct Rebate under section 87A, if applicable

Step 11 - Add Health and education cess on income-tax

Step 12 - Compute Alternate Minimum Tax (AMT), if applicable, [under the optional tax regime]

Step 13 - Examine whether to pay tax under default tax regime under section 115BAC or pay tax under the regular provisions of the Act, by comparing the tax liability under both regimes.

Step 14 - Deduct Advance tax and tax deducted/ collected at source

Step 15 - The resultant figure would be Tax Payable/Tax Refundable

(2) Person: A person includes an individual, Hindu Undivided Family (HUF), Association of Persons (AOP), Body of Individuals (BOI), a firm, a company etc.

(3) Concept of Previous year (P.Y.) and Assessment Year (A.Y.): Previous year is the financial year immediately preceding the assessment year i.e., it is the financial year ending on 31st March, in which the income has accrued/received.

In case of a newly set-up business, the previous year would be the period beginning with the date of setting up of the business or profession or, as the case may be, the date on which the source of income newly came into existence, and ending on 31st March.

Assessment year (A.Y.): Assessment year means the period of twelve months commencing on the 1st April every year.

Exceptions to the rule that income is charged to income-tax in the Assessment Year following the previous year:

The income of an assessee for a previous year is charged to income-tax in the assessment year following the previous year. However, in the following cases, this rule does not apply and the income is taxed in the

previous year in which it is earned.

- (i) Shipping business of non-resident [Section 172]
- (ii) Persons leaving India [Section 174]
- (iii) AOP/BOI/Artificial Juridical Person formed for a particular event or purpose [Section 174A]
- (iv) Persons likely to transfer property to avoid tax [Section 175]
- (v) Discontinued business [Section 176]

Rate of tax for Undisclosed Sources of Income: The following undisclosed incomes are chargeable to tax @78% [i.e., 60% plus surcharge @25% plus cess @4%] as specified under section 115BBE:

- (i) Cash Credits [Section 68]
- (ii) Unexplained Investments [Section 69]
- (iii) Unexplained money etc. [Section 69A]
- (iv) Amount of investments etc., not fully disclosed in the books of account [Section 69B]
- (v) Unexplained expenditure [Section 69C]
- (vi) Amount borrowed or repaid on hundi [Section 69D]

(4) Tax liability: Tax has to be computed by applying the rates of tax mentioned in the Annual Finance Act and the rate specified under the Incometax Act, 1961, as the case may be.

If an Individual/ Hindu Undivided Family (HUF)/ Association of Persons (AOP)/ Body of Individuals (BOI)/ Artificial Juridical Person is paying tax under default tax regime, concessional tax rates are prescribed under section 115BAC. However, if he/it exercises the option to shift out of the default tax regime, tax rates prescribed by the Annual Finance Act of that year would apply.

Persons	Rate of taxes	
Individual (As per the normal provisions of the Act under the optional tax regime)	Total income (in ₹)	Rate of Tax
	Upto ₹ 3,00,000	Nil
	₹ 3,00,001 to ₹ 6,00,000	5%
	₹ 6,00,001 to ₹ 9,00,000	10%
	₹ 9,00,001 to ₹ 12,00,000	15%
	₹ 12,00,001 to ₹ 15,00,000	20%
	Above ₹ 15,00,000	30%
Individual (As per the normal provisions of the Act under the optional tax regime)	Total income (in ₹)	Rate of Tax
	Upto ₹ 2,50,000 (below 60 years) Upto ₹ 3,00,000 (60 years or above but less than 80 years and resident in India) Upto ₹ 5,00,000 (above 80 years and resident in India)	Nil
	₹ 2,50,001/ ₹ 3,00,001, as the case may be, to ₹ 5,00,000 [in cases (i) and (ii) above, respectively]	5%
	₹ 5,00,001 to ₹ 10,00,000	20%
	Above ₹ 10,00,000	30%

Persons	Rate of taxes		
HUF/AOP/BOI/ Artificial Juridical Person (As per the normal provisions of the Act under the optional tax regime)	Total income (in ₹)		Rate of Tax
	Upto ₹ 2,50,000		Nil
	₹ 2,50,001 to ₹ 5,00,000		5%
	₹ 5,00,001 to ₹ 10,00,000		20%
	Above ₹ 10,00,000		30%
Firm/LLP/local authority	30%		
Co-operative Society (not opting for the provisions of section 115BAD or section 115BAE)	Total income (in ₹)		Rate of Tax
	Upto ₹ 10,000		10%
	₹ 10,001 to ₹ 20,000		20%
	Above ₹ 20,000		30%
Company (not opting for the provisions of section 115BAA/115BAB)	Domestic Company		Foreign Company
	Total turnover or gross receipts in the P.Y. 2021-22 ≤ ₹ 400 crore	Other domestic companies	
	25%	30%	40%

Surcharge

Under the default tax regime

Individual/ HUF/ AOP (other than an AOP consisting of only companies as members)/ BOI/ Artificial juridical person

(i)	Where the total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 50 lakh but is ≤ ₹ 1 crore	10%
(ii)	Where the total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 1 crore but is ≤ ₹ 2 crore	15%
(iii)	- Where the total income (excluding dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore	25%
	- Rate of surcharge on the income-tax payable on the portion of dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A	Not exceeding 15%
(iv)	Where the total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore in cases not covered in (iii) above	15%

Under the optional tax regime as per the normal provisions of the Act Individual/ HUF/ AOP (other than an AOP consisting of only companies as members)/ BOI/ Artificial juridical person

(i)	Where the total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 50 lakh but is ≤ ₹ 1 crore	10%
(ii)	Where the total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 1 crore but is ≤ ₹ 2 crore	15%
(iii)	- Where the total income (excluding dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore but is ≤ ₹ 5 crore - Rate of surcharge on the income-tax payable on the portion of dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A	25% Not exceeding 15%
(iv)	- Where the total income (excluding dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 5 crore - Rate of surcharge on the income-tax payable on the portion of dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A.	37% Not exceeding 15%
(v)	Where the total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore in cases not covered in (iii) and (iv) above	15%

In case of an AOP of only companies as members

(i)	Where the total income > ₹ 50 lakh but is < ₹ 1 crore	10%
(ii)	Where the total income > ₹ 1 crore	15%

Firm/Limited Liability Partnership/Local Authorities

Where the total income > ₹ 1 crore	12%
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Co-operative societies (other than a co-operative society opting for section 115BAD or section 115BBE)

Total income > ₹ 1 crore but is ≤ ₹ 10 crore	7%
Total income is > ₹ 10 crore	12%

Domestic company (other than a domestic company opting for section 115BAA or section 115BAB)

Total income > ₹ 1 crore but is ≤ ₹ 10 crore	7%
Total income is > ₹ 10 crore	12%

Foreign company

Total income > ₹ 1 crore but is ≤ ₹ 10 crore	2%
Total income is > ₹ 10 crore	5%

Rebate under section 87A:

Under default tax regime

- (i) Where total income ≤ ₹ 7,00,000 - Rebate of up to ₹ 25,000 for resident individuals.
- (ii) Where total income > ₹ 7,00,000 and income-tax payable on such total income exceeds the amount by which the total income is in excess of ₹ 7,00,000 - Rebate of tax on total income as reduced by the total income exceeding ₹ 7,00,000 for resident individuals.

Under normal provisions of the Act

Rebate of up to ₹ 12,500 for resident individuals having total income of up to ₹ 5 lakh.

“Health and Education cess” on Income-tax: 4% of income-tax and surcharge, if applicable

Agricultural income is exempt under section 10(1).

However, agricultural income has to be aggregated with non-agricultural income for determining the rate at which non-agricultural income would be subject to tax, in case of individuals, HUF, AOPs & BOIs etc., where the –

- agricultural income exceeds ₹ 5,000 p.a. and
- non-agricultural income exceeds basic exemption limit.

The following are the steps to be followed in computation of tax-

Step 1: Tax on non-agricultural income plus agricultural income

Step 2: Tax on agricultural income plus basic exemption limit

Step 3: Tax payable by the assessee = Step 1 – Step 2

Step 4: Add Surcharge/Deduct Rebate u/s 87A, if applicable.

Step 5: Add Health and Education Cess@4%.

TEST YOUR KNOWLEDGE

1. Who is an “Assessee”? Explain
2. State any four instances where the income of the previous year is assessable in the previous year itself instead of the assessment year.
3. Whether the income derived from saplings or seedlings grown in a nursery is taxable under the Income-tax Act, 1961? Examine.
4. What are the two schools of Hindu law and where are they prevalent? Explain.
Also, mention the difference between the two schools of Hindu Law.
5. What is the difference between an Association of Persons and Body of Individuals?
6. Mr. Sumit, a resident Indian, earns income of ₹ 15 lakhs from sale of rubber manufactured from latex obtained from rubber plants grown by him in India and ₹ 20 lakhs from sale of rubber manufactured from latex obtained from rubber plants grown by him in Malaysia during the A.Y.2024-25. What would be his business income, assuming he has no other business?
7. Mr. Raja, a resident Indian, earns income of ₹ 10 lakhs from sale of coffee grown and cured in India during the A.Y.2024-25. His friend, Mr. Shyam, a resident Indian, earns income of ₹ 20 lakhs from sale of coffee grown, cured, roasted and grounded by him in India during the A.Y.2024-25. What would be the business income chargeable to tax in India of Mr. Raja and Mr. Shyam?
8. The Jain HUF in Assam comprises of Mr. Suresh Jain, his wife Mrs. Sapna Jain, his son Mr. Sarthak Jain, his daughter-in-law Mrs. Preeti Jain, his daughter Miss Seema Jain and his unmarried brother Mr. Pritam Jain. Which of the members of the HUF are eligible for coparcenary rights?
9. Compute the tax liability under default tax regime of Mr. Kashyap (aged 35), having total income of ₹ 51,75,000 for the Assessment Year 2024-25. Assume that his total income comprises of salary income, income from house property and interest on fixed deposit.

10. Mr. Agarwal, aged 40 years and a resident in India, has a total income of ₹ 6,50,00,000, comprising long term capital gain taxable under section 112 of ₹ 55,00,000, short term capital gain taxable under section 111A of ₹ 65,00,000 and other income of ₹ 5,30,00,000. Compute his tax liability for A.Y.2024-25 under the default tax regime and optional tax regime as per the normal provisions of the Act assuming that the total income and its components are the same in both tax regimes.
11. Mr. Sharma aged 62 years and a resident in India, has a total income of ₹ 2,30,00,000, comprising long term capital gain taxable under section 112 of ₹ 52,00,000, short term capital gain taxable under section 111A of ₹ 64,00,000 and other income of ₹ 1,14,00,000. Compute his tax liability for A.Y.2024-25 under the default tax regime and optional tax regime as per the normal provisions of the Act assuming that the total income and its components are the same in both tax regimes.

ANSWERS

1. As per section 2(7), assessee means a person by whom any tax or any other sum of money is payable under the Income-tax Act, 1961.

In addition, the term includes –

- Every person in respect of whom any proceeding under the Act has been taken for the assessment of –
 - his income; or
 - the income of any other person in respect of which he is assessable; or
 - the loss sustained by him or by such other person; or
 - the amount of refund due to him or to such other person.
- Every person who is deemed to be an assessee under any provision of the Act;
- Every person who is deemed to be an assessee in default under any provision of the Act.

2. The income of an assessee for a previous year is charged to income-tax in the assessment year following the previous year. However, in a few cases, the income is taxed in the previous year in which it is earned. These exceptions have been made to protect the interests of revenue. The exceptions are as follows:

- (i) Where a ship, belonging to or chartered by a non-resident, carries passengers, livestock, mail or goods shipped at a port in India, the ship is allowed to leave the port only when the tax has been paid or satisfactory arrangement has been made for payment thereof. 7.5% of the freight paid or payable to the owner or the charterer or to any person on his behalf, whether in India or outside India on account of such carriage is deemed to be his income which is charged to tax in the same year in which it is earned.
- (ii) Where it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry and he has no present intention of returning to India, the total income of such individual for the period from the expiry of the respective previous year up to the probable date of his departure from India is chargeable to tax in that assessment year.
- (iii) If an AOP/BOI etc. is formed or established for a particular event or purpose and the Assessing Officer apprehends that the AOP/BOI is likely to be dissolved in the same year or in the next year, he can make assessment of the income up to the date of dissolution as income of the relevant assessment year.
- (iv) During the current assessment year, if it appears to the Assessing Officer that a person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets to avoid payment of any liability under this Act, the total income of such person for the period from the expiry of the previous year to the date, when the Assessing Officer commences proceedings under this section is chargeable to tax in that assessment year.

(v) Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year up to the date of such discontinuance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year.

3. As per Explanation 3 to section 2(1A), income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income and exempt from tax, whether or not the basic operations were carried out on land.

4. The two schools of Hindu law are Dayabaga school, prevalent in West Bengal and Assam, and Mitakshara school, prevalent in rest of India.

Under the Dayabaga school of Hindu Law, nobody acquires the right, share in the property by birth as long as the head of family is living. Thus, the children do not acquire any right, share in the family property, as long as his father is alive and only on death of the father, the children will acquire right/share in the property. Hence, the father and his brothers would be the coparceners of the HUF.

Under the Mitakshara school of Hindu Law, one acquires the right to the family property by his birth and not by succession irrespective of the fact that his elders are living. Thus, every child born in the family acquires a right/share in the family property.

5. In order to constitute an Association of Persons (AOP), persons must join for a common purpose or action and their object must be to produce income; it is not enough that the persons receive the income jointly.

Body of Individuals denotes the status of persons like executors or trustees who merely receive the income jointly and who may be assessable in like manner and to the same extent as the beneficiaries individually. Thus, coexecutors or co-trustees are assessable as a BOI as their title and interest are indivisible.

The difference between an AOP and BOI is that in case of a BOI, only individuals can be the members, whereas in case of AOP, any person can be its member i.e. entities like company, firm etc. can be the member of AOP but not of BOI.

In case of an AOP, members voluntarily come together with a common will for a common intention or purpose, whereas in case of BOI, such common will may or may not be present.

6. Since Mr. Sumit is a resident, his global income would be taxable in India.

Income of ₹ 20 lakhs from sale of rubber manufactured from latex obtained from rubber plants grown by him in Malaysia would be his business income since it is from rubber plants grown outside India. 35% income from sale of rubber manufactured from latex obtained from rubber plants grown by him in India would be taxable as business income and balance 65% would be exempt as agricultural income.

Business income = 35% of ₹ 15 lakhs + ₹ 20 lakhs = ₹ 25.25 lakhs

7. In case of income derived from the sale of coffee grown and cured by the seller in India, 25% income on such sale is taxable as business income. In case of income derived from the sale of coffee grown, cured, roasted and grounded by the seller in India, 40% income on such sale is taxable as business income.

Business income of Mr. Raja = 25% of ₹ 10 lakhs = ₹ 2.5 lakhs

Business income of Mr. Shyam = 40% of ₹ 20 lakhs = ₹ 8 lakhs

8. Dayabaga school of Hindu law is prevalent in Assam. In Dayabaga school of Hindu law, nobody acquires the right, share in the property by birth as long as the head of family is living.

Thus, the children do not acquire any right, share in the family property, as long as his father is alive and only on death of the father, the children will acquire right/share in the property.

Hence, Mr. Suresh Jain and his brother, Mr. Pritam Jain would be the coparceners of the Jain HUF and are eligible for coparcenary rights.

9. Computation of tax liability of Mr. Kashyap for the A.Y.2024-25 under default tax regime

(A) Tax payable including surcharge on total income of ₹ 51,75,000		
₹ 3,00,000 – ₹ 6,00,000 @5%	₹ 15,000	
₹ 6,00,001 – ₹ 9,00,000 @10%	₹ 30,000	
₹ 9,00,001 – ₹ 12,00,000 @15%	₹ 45,000	
₹ 12,00,001 – ₹ 15,00,000 @20%	₹ 60,000	
₹ 15,00,001 – ₹ 51,75,000 @30%	₹ 11,02,500	
Total		₹ 12,52,500
Add: Surcharge @ 10%	₹ 1,25,250	₹ 13,77,750
(B) Tax Payable on total income of ₹ 50 lakhs (₹ 1,50,000 plus ₹ 10,50,000)		₹ 12,00,000
(C) Total Income Less ₹ 50 lakhs		₹ 1,75,000
(D) Tax payable on total income of ₹ 50 lakhs plus the excess of total income over ₹ 50 lakhs (B +C)		₹ 13,75,000
(E) Tax payable: lower of (A) and (D)		₹ 13,75,000
Add: Health and education cess @4%		₹ 55,000
Tax liability		₹ 14,30,000
(F) Marginal Relief (A – D)		₹ 2,750

Alternative method -

(A) Tax payable including surcharge on total income of ₹ 51,75,000		
₹ ,00,0300 – ₹ ,00,0600 @5%	₹ 5,0010	
₹ 6,00,001 ₹ ,-00,0900 @10%	₹ 0, 0030	
₹ 9,00,001 ₹ 2-,001,000 @15%	₹ 45, 000	
₹ 12,00,001 ₹ 5-,001,000 @20%	₹ 0, 0060	
₹ 15,00,001 ₹ 51-,75,000 @30%	₹ 11,02,500	
Total	₹ 12,52,500	
Add: Surcharge@10%	₹ 1,25,250	₹ 13,77,750
(B) Tax Payable on total income of ₹ 50 lakhs (₹ 1,50,000 plus ₹ 10,50,000)		₹ 12,00,000
(C) Excess tax payable (A)-(B)		₹ 1,77,750
(D) Marginal Relief (₹ 1,77,750 – ₹ 1,75,000, being the amount of income in excess of ₹ 50,00,000)		₹ 2,750
(E) Tax payable (A)-(D)		₹ 13,75,000
Add: Health and education cess @4%		₹ 55,000
Tax liability		₹ 14,30,000

10. Computation of tax liability of Mr. Agarwal for the A.Y.2024-25 under default tax regime

Particulars		₹
<u>Tax on total income of ₹ 6,50,00,000</u>		
Tax@20% of ₹ 55,00,000		11,00,000
Tax@15% of ₹ 65,00,000		9,75,000
Tax on other income of ₹ 5,30,00,000		
₹ 3,00,000 – ₹ 6,00,000 @5%	15,000	
₹ 6,00,000 – ₹ 9,00,000 @10%	30,000	
₹ 9,00,000 – ₹ 12,00,000 @15%	45,000	
₹ 12,00,000 – ₹ 15,00,000 @20%	60,000	
₹ 15,00,000 – ₹ 5,30,00,000 @30%	1,54,50,000	1,56,00,000
		1,76,75,000
Add: Surcharge @15% on ₹ 20,75,000	3,11,250	
@25% on ₹ 1,56,00,000	39,00,000	42,11,250
		2,18,86,250
Add: Health and education cess @4%		8,75,450
Tax Liability		2,27,61,700

Computation of tax liability of Mr. Agarwal for the A.Y.2024-25 under normal provisions of the Act

Particulars		₹
Tax on total income of ₹ 6,50,00,000		
Tax@20% of ₹ 55,00,000		11,00,000
Tax@15% of ₹ 65,00,000		9,75,000
Tax on other income of ₹ 5,30,00,000		
₹ 2,50,000 – ₹ 5,00,000 @5%	12,500	
₹ 5,00,000 – ₹ 10,00,000 @20%	1,00,000	
₹ 10,00,000 – ₹ 5,30,00,000 @30%	1,56,00,000	1,57,12,500
		1,77,87,500
Add: Surcharge @15% on ₹ 20,75,000	3,11,250	
@37% on ₹ 1,57,12,500	58,13,625	61,24,875
		2,39,12,375
Add: Health and education cess @4%		9,56,495
Tax Liability		2,48,68,870

11. Computation of tax liability of Mr. Sharma for the A.Y.2024-25 under default tax regime

Particulars		₹
<u>Tax on total income of ₹ 2,30,00,000</u>		
Tax@20% of ₹ 52,00,000		10,40,000
Tax@15% of ₹ 64,00,000		9,60,000
Tax on other income of ₹ 1,14,00,000		
₹ 3,00,000 – ₹ 6,00,000 @5%	15,000	
₹ 6,00,000 – ₹ 9,00,000 @10%	30,000	
₹ 9,00,000 – ₹ 12,00,000 @15%	45,000	
₹ 12,00,000 – ₹ 15,00,000 @20%	60,000	
₹ 15,00,000 – ₹ 1,14,00,000 @30%	29,70,000	31,20,000
		51,20,000
Add: Surcharge @15%		7,68,000
		58,88,000
Add: Health and education cess @4%		235,520
Tax Liability		61,23,520

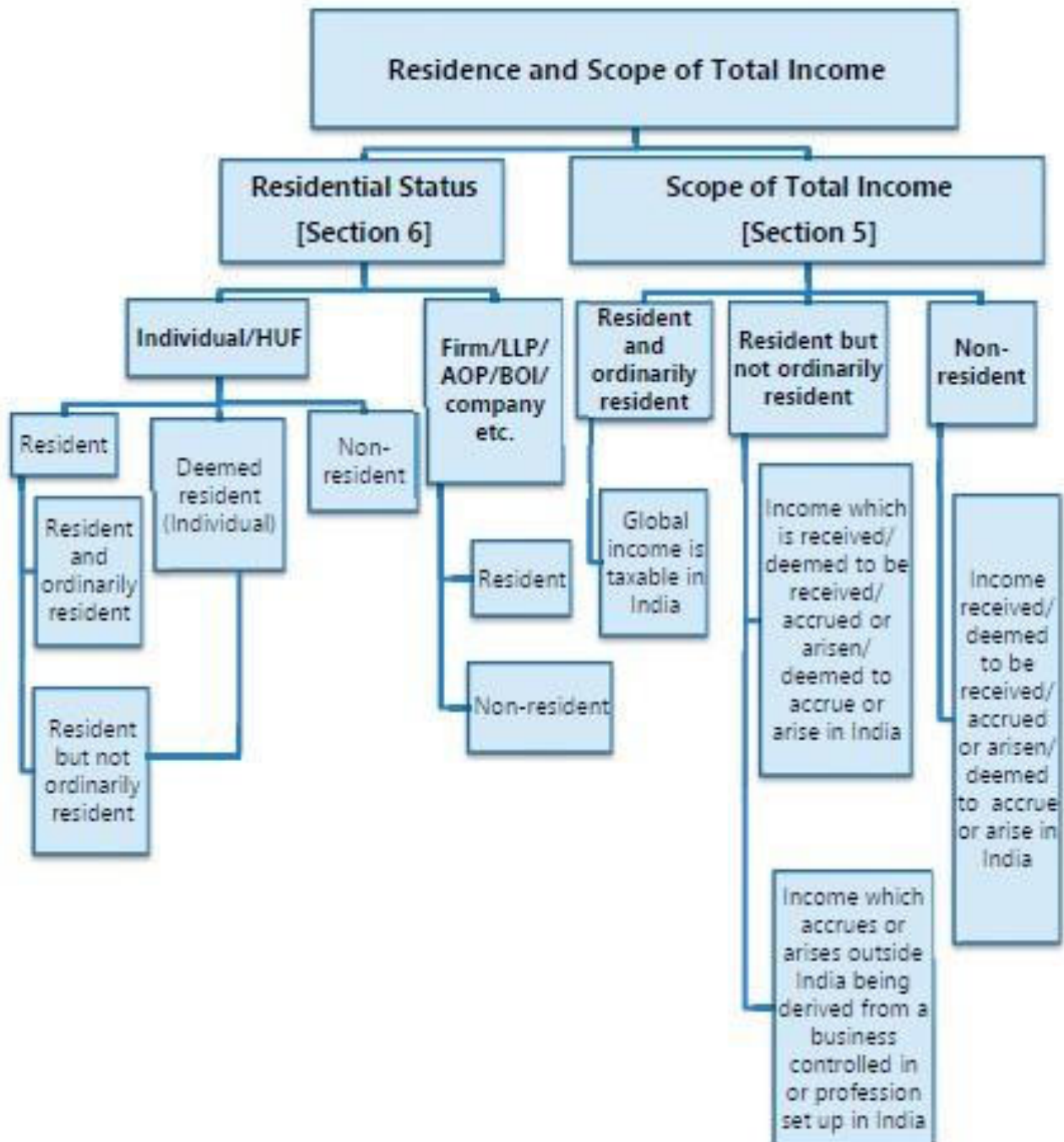
Computation of tax liability of Mr. Sharma for the A.Y.2024-25 under normal provisions of the Act

Particulars		₹
<u>Tax on total income of ₹ 2,30,00,000</u>		
Tax@20% of ₹ 52,00,000		10,40,000
Tax@15% of ₹ 64,00,000		9,60,000
Tax on other income of ₹ 1,14,00,000		
₹ 3,00,000 – ₹ 5,00,000 @5%	10,000	
₹ 5,00,000 – ₹ 10,00,000 @20%	1,00,000	
₹ 10,00,000 – ₹ 1,14,00,000 @30%	31,20,000	32,30,000
		52,30,000
Add: Surcharge @15%		7,84,500
		60,14,500
Add: Health and education cess @4%		2,40,580
Tax Liability		62,55,080

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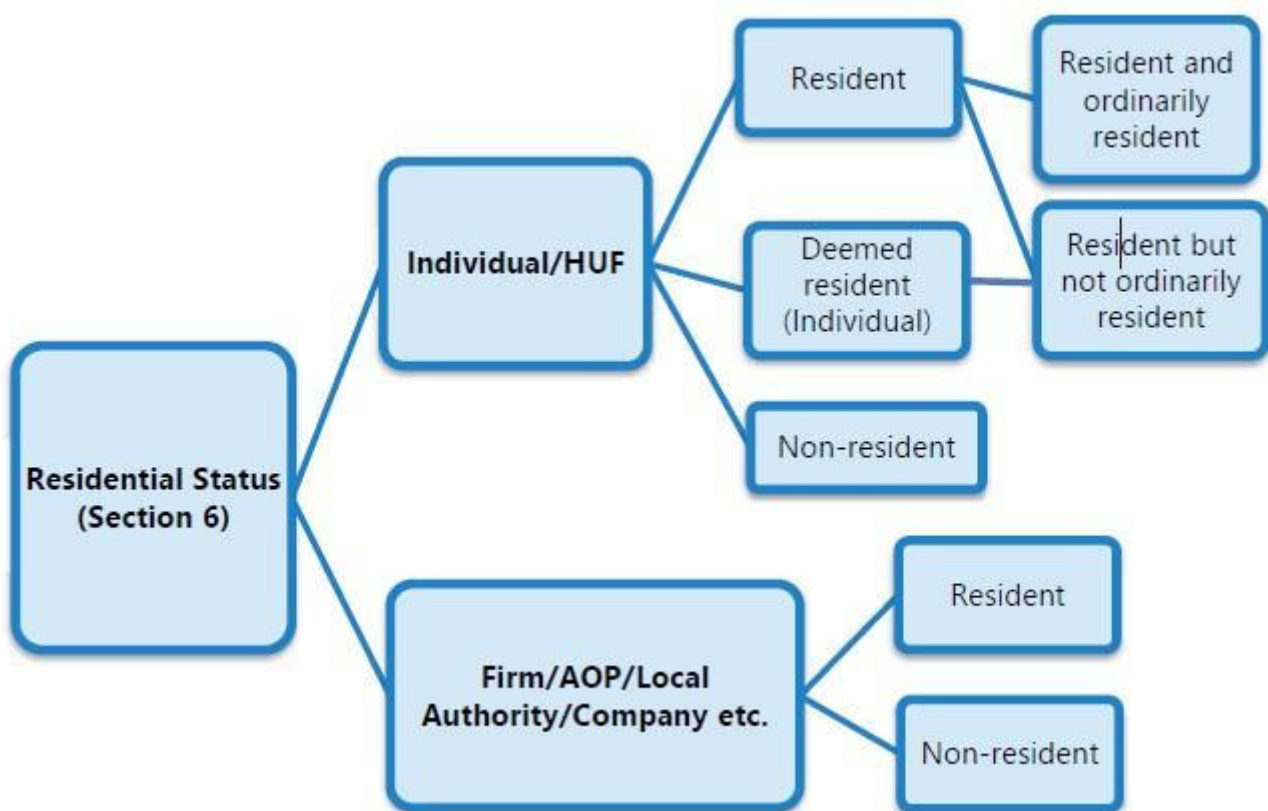
CHAPTER - 2

RESIDENCE AND SCOPE OF TOTAL INCOME



1. RESIDENTIAL STATUS [SECTION 6]

- The incidence of tax on any assessee depends upon his residential status under the Act. For all purposes of income-tax, taxpayers (individuals and HUF) are classified into three broad categories on the basis of their residential status viz.
 - Resident and ordinarily resident
 - Resident but not ordinarily resident
 - Non-resident
- Taxpayers (other than individuals and HUF) are classified into two broad categories on the basis of their residential status viz.
 - Resident
 - Non-resident



- The residential status of an assessee must be ascertained with reference to each previous year. A person who is resident and ordinarily resident in one year may become non-resident or resident but not ordinarily resident in another year or vice versa.
- The provisions for determining the residential status of assessees are :

1.1 Residential Status of Individuals

- Residential status on the basis of number of days of stay in India** - Under section 6(1), an individual is said to be resident in India in any previous year, if he satisfies any one of the following conditions:
 - He has been in India during the previous year for a total period of 182 days or more, or
 - He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the relevant previous year.

If the individual satisfies any one of the conditions mentioned above, he is a resident. If both the above conditions are not satisfied, the individual is a non-resident.

- The term "stay in India" includes stay in the territorial waters of India (i. . 12 nautical miles into the sea from the Indian coastline). Even the stay in a ship or boat moored in the territorial waters of India would be sufficient to make the individual resident in India.
- It is not necessary that the period of stay must be continuous or active nor is it essential that the stay should be at the usual place of residence, business or employment of the individual.
- For the purpose of counting the number of days stayed in India, both the date of departure as well as the date of arrival are considered to be in India.
- The residence of an individual for income-tax purpose has nothing to do with citizenship, place of birth or domicile. An individual can, therefore, be resident in more countries for tax purposes than one even though he can have only one domicile.

Exceptions :

- The following categories of individuals will be treated as resident in India only if the period of their stay during the relevant previous year amounts to 182 days or more. In other words, even if such persons were in India for 60 days or more (but less than 182 days) in the relevant previous year, they will not be treated as resident due to the reason that their stay in India was for 65 days or more during the 4 immediately preceding years.
 - (1) Indian citizen, who leaves India during the relevant previous year as a member of the crew of an Indian ship or for purposes of employment outside India, or
 - (2) Indian citizen or person of Indian origin¹ who, being outside India comes on a visit to India during the relevant previous year.
- However, such person having total income, other than the income from foreign sources [i.e., income which accrues or arises outside India (except income from a business controlled in or profession set up in India) and which is not deemed to accrue or arise in India], exceeding ₹ 15 lakhs during the previous year will be treated as resident in India if -
 - the period of his stay during the relevant previous year amounts to 182 days or more, or
 - he has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 120 days in the previous year.

Stay in India for 120 days in the relevant P.Y. is not a standalone condition. This condition requires stay in India for 120 days in the relevant P.Y. + 365 days in the 4 years immediately preceding the P.Y.

How to determine period of stay in India for an Indian citizen, being a crew member ?

- In case of foreign bound ships where the destination of the voyage is outside India, there is uncertainty regarding the manner and the basis of determining the period of stay in India for an Indian citizen, being a crew member.
- To remove this uncertainty, Explanation 2 to section 6(1) provides that in the case of an individual, being a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined in the prescribed manner and subject to the prescribed conditions.
- Accordingly, the CBDT has, vide Notification No.70/2015 dated 17.8.2015, inserted Rule 126 in the Income-tax Rules, 1962 to compute the period of stay in such cases.

- According to Rule 126, for the purposes of section 6(1), in case of an individual, being a citizen of India and a member of the crew of a ship, the period or periods of stay in India shall, in respect of an eligible voyage, not include the following period :

Period to be excluded :

Period commencing from		Period ending on
the date entered into the Continuous Discharge Certificate in respect of joining the ship by the said individual for the eligible voyage	and	the date entered into the Continuous Discharge Certificate in respect of signing off by that individual from the ship

Meaning of certain term :

Term	Meaning
Eligible voyage	A voyage undertaken by a ship engaged in the carriage of passengers or freight in international traffic where –
	(i) for the voyage having originated from any port in India, has as its destination any port outside India; and
	(ii) for the voyage having originated from any port outside India, has as its destination any port in India.

ILLUSTRATION 1 :

Mr. Anand is an Indian citizen and a member of the crew of a Singapore bound Indian ship engaged in carriage of passengers in international traffic departing from Chennai port on 6th June, 2023. From the following details for the P.Y. 2023-24, determine the residential status of Mr. Anand for A.Y. 2024-25, assuming that his stay in India in the last 4 previous years (preceding P.Y. 2023-24) is 400 days :

Particulars	Date
Date entered into the Continuous Discharge Certificate in respect of joining the ship by Mr. Anand	6th June, 2023
Date entered into the Continuous Discharge Certificate in respect of signing off the ship by Mr. Anand	9th December, 2023

SOLUTION :

- In this case, since Mr. Anand is an Indian citizen and leaving India during P.Y. 2023-24 as a member of the crew of the Indian ship, he would be resident in India if he stayed in India for 182 days or more.
- The voyage is undertaken by an Indian ship engaged in the carriage of passengers in international traffic, originating from a port in India (i.e., the Chennai port) and having its destination at a port outside India (i.e., the Singapore port). Hence, the voyage is an eligible voyage for the purposes of section 6(1).
- Therefore, the period commencing from 6th June, 2023 and ending on 9th December, 2023, being the dates entered into the Continuous Discharge Certificate in respect of joining the ship and signing off from the ship by Mr. Anand, an Indian citizen who is a member of the crew of the ship, has to be excluded for computing the period of his stay in India. Accordingly, 187 days [25+31+31+30+31+30+9] have to be excluded from the period of his stay in India. Consequently, Mr. Anand's period of stay in India during the P.Y. 2023-24 would be 179 days [i.e., 366 days – 187 days]. Since his period of stay in India during the P.Y.

2023-24 is less than 182 days, he is a non-resident for A.Y. 2024-25.

2. **Deemed resident [Section 6(1A)]** : An individual, being an Indian citizen, having total income, other than the income from foreign sources [i.e., income which accrues or arises outside India (except income from a business controlled in or profession set up in India) and which is not deemed to accrue or arise in India], exceeding ₹ 15 lakhs during the previous year would be deemed to be resident in India in that previous year, if he is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.

However, this provision will not apply in case of an individual who is a resident of India in the previous year as per section 6(1).

- **Meaning of “liable to tax”** – Liable to tax, in relation to a person and with reference to a country, means that there is an income-tax liability on such person under the law of that country for the time being in force. It also includes a person who has subsequently been exempted from such liability under the law of that country.

- Only Indian citizen can be deemed resident. An individual who is not an Indian citizen but a person of Indian Origin cannot be deemed resident u/s 6(1A).
- Stay in India is not necessary for being a deemed resident u/s 6(1A).

Resident and ordinarily resident/Resident but not ordinarily resident

- Only individuals and HUF can be “resident but not ordinarily resident” in India. All other classes of assessee can be either a resident or non-resident. A not ordinarily resident person is one who satisfies any one of the conditions specified u/s 6(6).
 - (i) If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or
 - (ii) If such individual has, during the 7 previous years preceding the relevant previous year, been in India for a period of 729 days or less, or
 - (iii) If such individual is an Indian citizen or person of Indian origin (who, being outside India, comes on a visit to India in any previous year) having total income, other than the income from foreign sources [i.e., income which accrues or arises outside India (other than income derived from a business controlled in or profession set up in India) and which is not deemed to accrue or arise in India], exceeding ₹ 15 lakhs during the previous year, who has been in India for 120 days or more but less than 182 days during that previous year, or
 - (iv) If such individual is an Indian citizen who is deemed to be resident in India under section 6(1A).

A deemed resident u/s 6(1A) is always RNOR.

ILLUSTRATION 2 :

Brett Lee, an Australian cricket player visits India for 100 days in every financial year. This has been his practice for the past 10 financial years.

- (a) Find out his residential status for the assessment year 2024-25.
- (b) Would your answer change if the above facts relate to Srinath, an Indian citizen who resides in Australia and represents the Australian cricket team?
- (c) What would be your answer if Srinath had visited India for 120 days instead of 100 days every year, including P.Y.2023-24 ?

SOLUTION :**(a) Determination of Residential Status of Mr. Brett Lee for the A.Y. 2024-25 :**

Period of stay during previous year 2023-24 = 100 days

Calculation of period of stay during 4 preceding PYs (100 x 4 = 400 days)

2022-23	100 days
2021-22	100 days
2020-21	100 days
2019-20	100 days
Total	400 days

- Mr. Brett Lee has been in India for a period more than 60 days during previous year 2023-24 and for a period of more than 365 days during the 4 immediately preceding previous years. Therefore, since he satisfies one of the basic conditions under section 6(1), he is a resident for the A.Y. 2024-25.

Computation of period of stay during 7 preceding previous years = 100×7

= 700 days

2022-23	100 days
2021-22	100 days
2020-21	100 days
2019-20	100 days
2018-19	100 days
2017-18	100 days
2016-17	100 days
Total	700 days

- Since his period of stay in India during the past 7 previous years is less than 730 days, he is a not-ordinarily resident during the A.Y. 2024-25 (See Note below).
- Therefore, Mr. Brett Lee is a resident but not ordinarily resident during the previous year 2023-24 relevant to the assessment year 2024-25.

Note : An individual, not being an Indian citizen, would be not-ordinarily resident person if he satisfies any one of the conditions specified under section 6(6), i.e,

- If such individual has been non-resident in India in any 9 out of the 10 previous years preceding the relevant previous year, or
- If such individual has during the 7 previous years preceding the relevant previous year been in India for a period of 729 days or less.

In this case, since Mr. Brett Lee satisfies condition (ii), he is a not-ordinarily resident for the A.Y. 2024-25.

- (b) If the above facts relate to Mr. Srinath, an Indian citizen, who residing in Australia, comes on a visit to India, he would be treated as non-resident in India, irrespective of his total income (excluding income from foreign sources), since his stay in India in the current financial year is, in any case, less than 120 days.
- (c) In this case, if Srinath's total income (excluding income from foreign sources) exceeds ₹ 15 lakh, he would be treated as resident but not ordinarily resident in India for P.Y.2023-24, since his stay in India is 120 days in the P.Y.2023-24 and 480 days (i.e., 120 days x 4 years) in the immediately four preceding previous years.
- If his total income (excluding income from foreign sources) does not exceed ₹ 15 lakh, he would be treated as non-resident in India for the P.Y.2023-24, since his stay in India is less than 182 days in the P.Y.2023-24.

ILLUSTRATION 3 :

Mr. B, a Canadian citizen, comes to India for the first time during the P.Y. 2019-20. During the financial years 2019-20, 2020-21 2021-22, 2022-23 and 2023-24, he was in India for 55 days, 60 days, 90 days, 150 days and 70 days, respectively. Determine his residential status for the A.Y. 2024-25.

SOLUTION :

- During the P.Y. 2023-24, Mr. B was in India for 70 days and during the 4 years preceding the P.Y. 2023-24, he was in India for 355 days (i.e. 55+ 60+ 90+ 150 days).
- Thus, he does not satisfy the basic condition under section 6(1). Therefore, he is a non-resident for the P.Y. 2023-24.

1.2 Residential status of HUF

- **Resident** : A HUF would be resident in India if the control and management of its affairs is situated wholly or partly in India.
- **Non-resident** : If the control and management of the affairs is situated wholly outside India, it would become a non-resident.

"Meaning of the term "control and management"

- The expression 'control and management' referred to under section 6 refers to the central control and management and not to the carrying on of day-to-day business by servants, employees or agents.
- Control and management means de facto control and management and not merely having the right to control or manage. © The Institute of Chartered Accountants of India
- The business may be done from outside India and yet its control and management may be wholly within India. Therefore, control and management of a business is said to be situated at a place where the head and brain of the adventure is situated. Merely because the family has a house in India, where some of the members reside in the previous year, does not constitute that place as the seat of control and management of the affairs of the HUF unless important decisions concerning the affairs of the HUF are taken at that place.
- The place of control may be different from the usual place of running the business and sometimes even the registered office of the assessee. This is because the control and management of a business need not necessarily be done from the place of business or from the registered office of the assessee.
- But control and management do imply the functioning of the controlling and directing power at a particular place with some degree of permanence.

Resident and ordinarily resident/ Resident but not ordinarily resident

If Karta of resident HUF satisfies both the following additional conditions (as applicable in case of individual) then, resident HUF will be resident and ordinarily resident, otherwise it will be resident but not ordinarily resident.

- Karta of resident HUF should be resident in at least 2 previous years out of 10 previous years immediately preceding relevant previous year.
- Stay of Karta during 7 previous years immediately preceding relevant previous year should be 730 days or more.

ILLUSTRATION 4 :

The business of a HUF is transacted from Australia and all the policy decisions are taken there. Mr. E, the Karta of the HUF, who was born in Kolkata, visits India during the P.Y. 2023-24 after 15 years. He comes to India on 1.4.2023 and leaves for Australia on 1.12.2023. Determine the residential status of Mr. E and the HUF for A.Y. 2024-25.

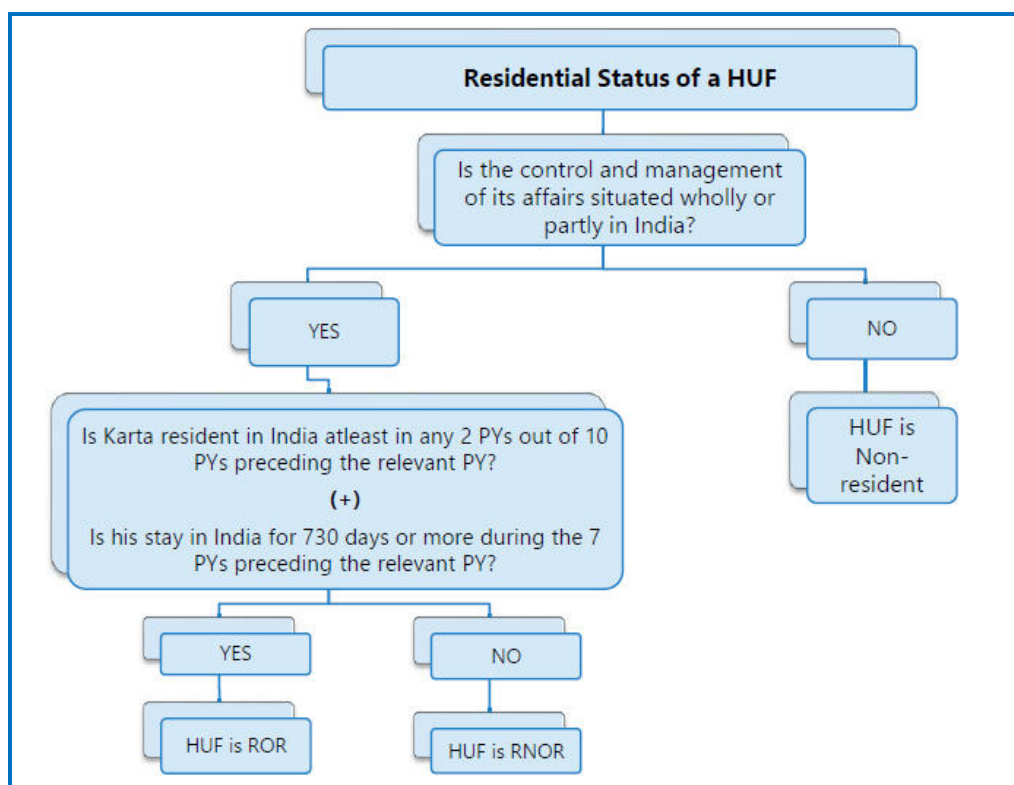
SOLUTION :

- (a) During the P.Y. 2023-24, Mr. E has stayed in India for 245 days (i.e. 30+31+30+31+31+30+31+30+1 days). Therefore, he is a resident. However, © The Institute of Chartered Accountants of India since he has come to India after 15 years, he does not satisfy the condition for being ordinarily resident.

Therefore, the residential status of Mr. E for the P.Y. 2023-24 is resident but not ordinarily resident.

- (b) Since the business of the HUF is transacted from Australia and policy decisions are taken there, it is assumed that the control and management is in Australia i.e., the control and management is wholly outside India. Therefore, the HUF is a non-resident for the P.Y. 2023-24.

Note – If the control and management is in India, even partially, then, the HUF would be resident in India. In such a case, the residential status of HUF would be resident but not ordinarily resident, since the Karta's stay in India is for less than 730 days in the 7 previous years immediately preceding the relevant previous year.



1.3 Residential status of firms, AoPs and BoIs

- **Resident:** A firm, AoP and BoI would be resident in India if the control and management of its affairs is situated wholly or partly in India.
- **Non-resident:** Where the control and management of the affairs is situated wholly outside India, the firm, AoP and BoI would become a non-resident.

The residential status of the partners/ members is immaterial while determining the residential status of a Firm/AOP/BOI.

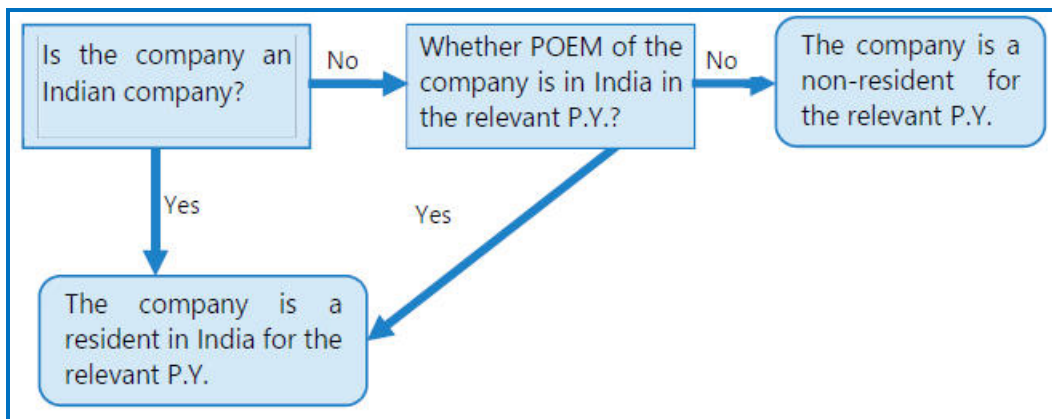
1.4 RESIDENTIAL STATUS OF COMPANIES

A company would be resident in India in any previous year, if :

- it is an Indian company; or
- its place of effective management, in that year, is in India.

“Place of effective management” to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made [Explanation to section 6(3)].

Determination of residential status of a company :



Note – The guidelines issued by CBDT for determination of POEM of a foreign company and transition mechanism for a company which is incorporated outside India, which has not been assessed to tax in India earlier and has become resident in India for the first time due to application of POEM, has been provided in Chapter XII-BC. The same will be dealt with at the Final level.

1.5 Residential Status Of Local Authorities and Artificial Juridical Persons

- **Resident** : Local authorities and artificial juridical persons would be resident in India if the control and management of its affairs is situated wholly or partly in India.
- **Non-resident** : Where the control and management of the affairs is situated wholly outside India, they would become non-residents.

2. SCOPE OF TOTAL INCOME

Section 5 provides the scope of total income in terms of the residential status of the assessee because the incidence of tax on any person depends upon his residential status in India. The scope of total income of an assessee depends upon the following three important considerations:

- the residential status of the assessee;
- the place of accrual or receipt of income, whether actual or deemed; and
- the point of time at which the income had accrued to or was received by or on behalf of the assessee.

The ambit of total income of the three classes of assesseees would be as follows:

(1) Resident and ordinarily resident (ROR)

The total income of an ROR would, under section 5(1), consist of:

- (i) income received or deemed to be received in India during the previous year;
- (ii) income which accrues or arises or is deemed to accrue or arise in India during the previous year; and
- (iii) income which accrues or arises outside India even if it is not received or brought into India during the previous year.

- In simpler terms, an ROR has to pay tax on the total income accrued or deemed to accrue, received or deemed to be received in or outside India during the relevant previous year.

(2) Resident but not ordinarily resident (RNOR)

Under section 5(1), the total income of an RNOR would consist of –

- (i) income received or deemed to be received in India during the previous year;
- (ii) income which accrues or arises or is deemed to accrue or arise in India during the previous year; and
- (iii) income derived from a business controlled in or profession set up in India, even though it accrues or arises outside India.

Note – All other income accruing or arising outside India which is not received or deemed to be received or deemed to accrue or arise in India would not be included in his total income.

(3) Non-resident

A non-resident's total income under section 5(2) includes :

- (i) income received or deemed to be received in India in the previous year; and
- (ii) income which accrues or arises or is deemed to accrue or arise in India during the previous year.

Note : All assesseees, whether resident or not, are chargeable to tax in respect of their income accrued, arisen, received or deemed to accrue, arise or to be received in India whereas a resident alone (resident and ordinarily resident in the case of individuals and HUF) is chargeable to tax in respect of income which accrues or arises outside India.

Clarification regarding liability to income-tax in India of a non-resident seafarer receiving remuneration in NRE (Non-Resident External) account maintained with an Indian Bank [Circular No.13/2017, dated 11.04.2017 and Circular No.17/2017, dated 26.04.2017]

Income by way of salary, received by non-resident seafarers, for services rendered outside India on a foreign going ship (with Indian flag or foreign flag) and received into the NRE bank account maintained with an Indian bank shall not be included in the total income.

Residential Status and Scope of Total Income: Whether the following incomes are to be included in Total Income ?

Scope of total Income	Resident and Ordinarily Resident (ROR)	Resident but not Ordinarily Resident (RNOR)	Non-Resident
Income received or deemed to be received in India during the previous year	Yes	Yes	Yes
Income accruing or arising or deeming to accrue or arise in India during the previous year	Yes	Yes	Yes

Scope of total Income	Resident and Ordinarily Resident (ROR)	Resident but not Ordinarily Resident (RNOR)	Non-Resident
Income accruing or arising outside India during the previous year	Yes, even if such income is not received or brought into India during the previous year	Yes, but only if such income is derived from a business controlled in or profession set up in India; Otherwise, No.	No

ILLUSTRATION 5 :

From the following particulars of income furnished by Mr. Anirudh pertaining to the year ended 31.3.2024, compute the total income for the A.Y. 2024-25, if he is:

- (i) Resident and ordinary resident;
- (ii) Resident but not ordinarily resident;
- (iii) Non-resident

	Particulars	₹
(a)	Short term capital gains on sale of shares of an Indian Company, received in Germany	15,000
(b)	Dividend from a Japanese Company, received in Japan	10,000
(c)	Rent from property in London deposited in a bank in London, later on remitted to India through approved banking channels	75,000
(d)	Dividend from RP Ltd., an Indian Company	6,000
(e)	Agricultural income from land in Gujarat	25,000

SOLUTION :**Computation of total income of Mr. Anirudh for the A.Y. 2024-25**

Particulars	Resident & ordinarily resident ₹	Resident but not ordinarily resident ₹	Non-Resident ₹
1) Short term capital gains on sale of shares of an Indian company, received in Germany	15,000	15,000	15,000
2) Dividend from a Japanese company, received in Japan	10,000	-	-
3) Rent from property in London deposited in a bank in London [See Note (i) below]	52,500	-	-
4) Dividend from RP Ltd., an Indian Company	6,000	6,000	6,000
5) Agricultural income from land in Gujarat [See Note (ii) below]	-	-	-
Total Income	83,500	21,000	21,000

Notes :

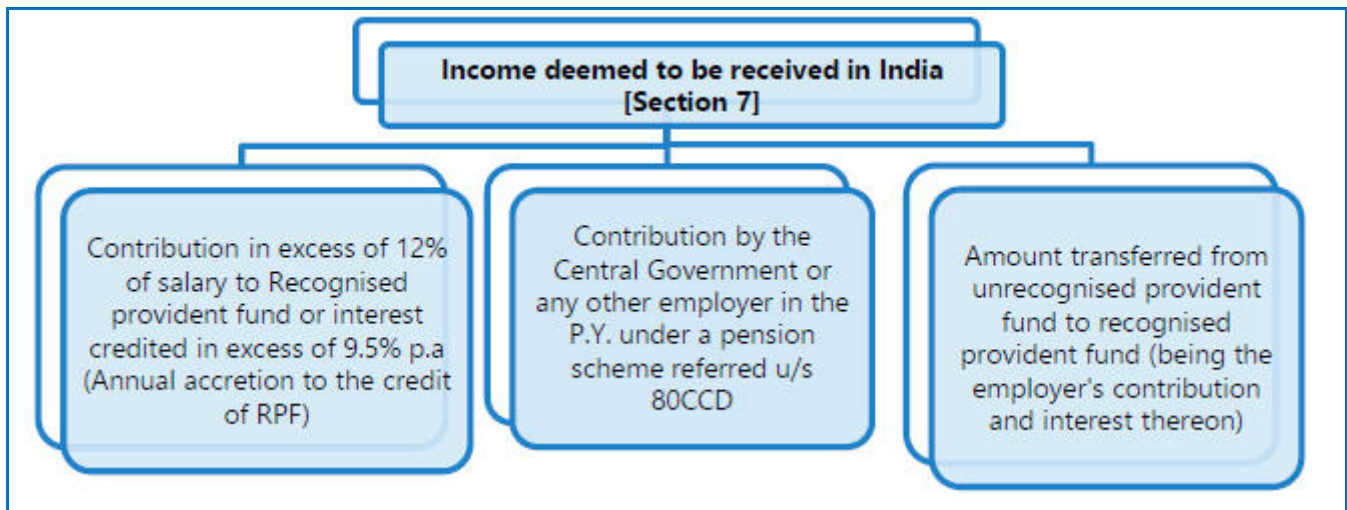
- (i) It has been assumed that the rental income is the gross annual value of the property. Therefore, deduction @30% under section 24, has been provided and the net income so computed is taken into account for determining the total income of a resident and ordinarily resident.

	₹
Rent received (assumed as gross annual value)	75,000
Less: Deduction under section 24 (30% of ₹ 75,000)	22,500
Income from house property	52,500

- (ii) Agricultural income is exempt under section 10(1).

2.1 Meaning of "Income Received or Deemed to be Received"

- All assesseees are liable to tax in respect of the income received or deemed to be received by them in India during the previous year irrespective of -
 - their residential status, and
 - the place of its accrual.
- Income is to be included in the total income of the assessee immediately on its actual or deemed receipt. The receipt of income refers to only the first occasion when the recipient gets the money under his control. Therefore, when once an amount is received as income, remittance or transmission of that amount from one place or person to another does not constitute receipt of income in the hands of the subsequent recipient or at the place of subsequent receipt.



2.2 Meaning of Income 'accruing' and 'arising'

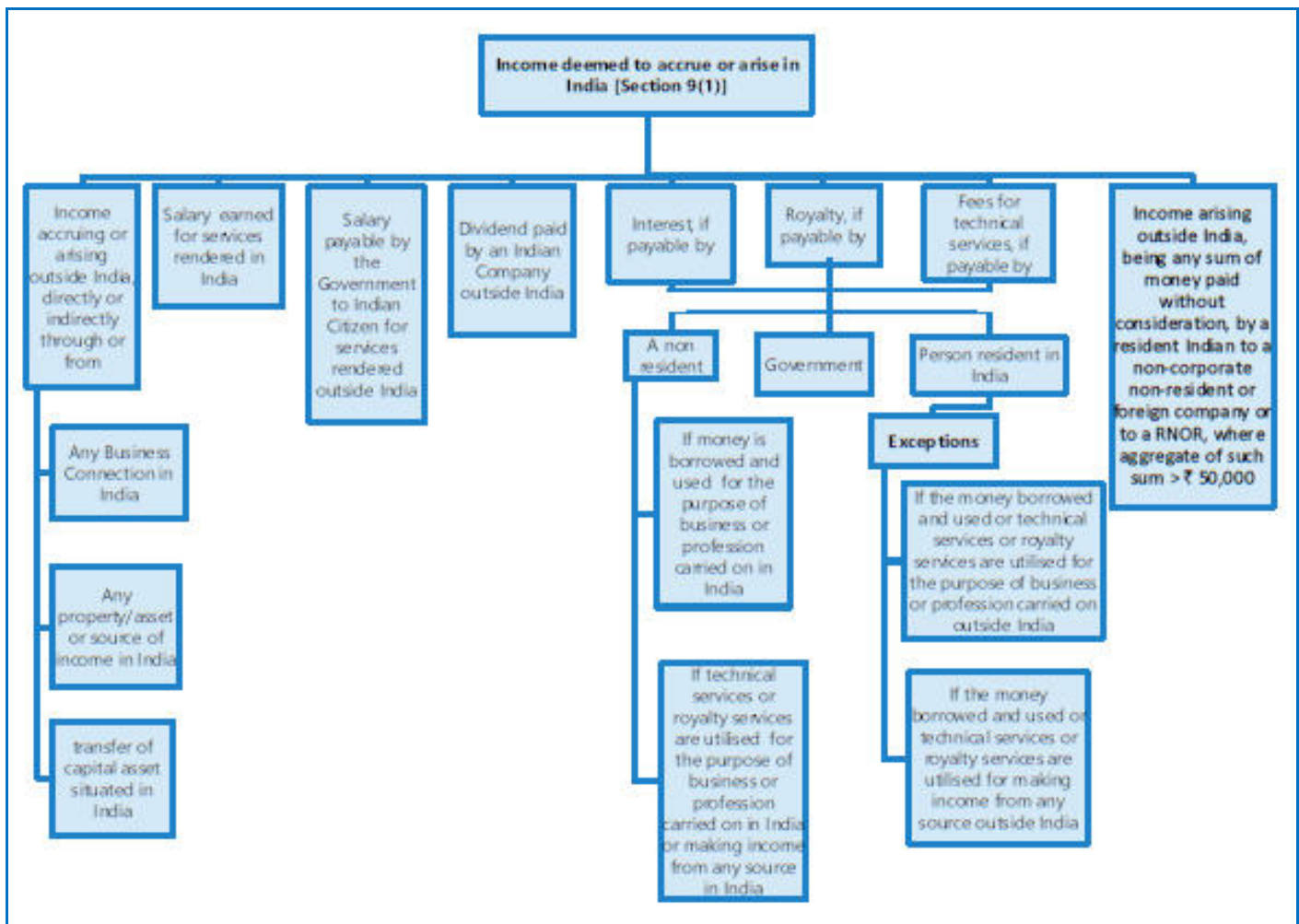
- Accrue refers to the right to receive income, whereas due refers to the right to enforce payment of the same. In other words, when the right to receive income becomes vested in the assessee, it is said to accrue or arise. For e.g. salary for work done in December will accrue throughout the month, day to day, but will become due on the salary bill being passed on 31st December or 1st January.
- Similarly, on Government securities, interest payable on specified dates arise during the period of holding, day to day, but will become due for payment on the specified dates.

Example : Interest on Government securities is usually payable on specified dates, say on 1st January and 1st July. In all such cases, the interest would be said to accrue from 1st July to 31st December and on 1st January, it will fall due for payment.

- It must be noted that income which has been taxed on accrual basis cannot be assessed again on receipt basis, as it will amount to double taxation. With a view to removing difficulties and clarifying doubts in the taxation of income, Explanation 1 to section 5 specifically provides that an item of income accruing or arising outside India shall not be deemed to be received in India merely because it is taken into account in a balance sheet prepared in India.
- Further, Explanation 2 to section 5 makes it clear that once an item of income is included in the assessee's total income and subjected to tax on the ground of its accrual/deemed accrual, it cannot again be included in the person's total income and subjected to tax either in the same or in a subsequent year on the ground of its receipt - whether actual or deemed.

2.3 Income deemed to accrue or arise in India [Section 9]

- Certain types of income are deemed to accrue or arise in India even though they may actually **accrue or arise outside India**.



The categories of income which are deemed to accrue or arise in India are :

- (1) Any income accruing or arising to an assessee in any place outside India whether directly or indirectly
- through or from any business connection in India,
 - through or from any property in India,
 - through or from any asset or source of income in India or
 - through the transfer of a capital asset situated in India would be deemed to accrue or arise in India. [Section 9(1)(i)]

- **In the case of a non-resident, the following shall not, however, be deemed to accrue or arise in India [Explanation 1 to section 9(1)(i)]:**
 - (i) In the case of a business, in respect of which all the operations are not carried out in India [Explanation 1(a) to section 9(1)(i)] :** In the case of a business of which all the operations are not carried out in India, the income of the business deemed to accrue or arise in India shall be only such part of income as is reasonably attributable to the operations carried out in India. Therefore, it follows that such part of income which cannot be reasonably attributed to the operations in India, is not deemed to accrue or arise in India.
 - (ii) Purchase of goods in India for export [Explanation 1(b) to section 9(1)(i)] :** In the case of a non-resident, no income shall be deemed to accrue or arise in India to him through or from operations which are confined to the purchase of goods in India for the purpose of export.
 - (iii) Collection of news and views in India for transmission out of India [Explanation 1(c) to section 9(1)(i)]:** In the case of a non-resident, being a person engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India to him through or from activities which are confined to the collection of news and views in India for transmission out of India.
 - (iv) Shooting of cinematograph films in India [Explanation 1(d) to section 9(1)(i)] :** In the case of a non-resident, no income shall be deemed to accrue or arise in India through or from operations which are confined to the shooting of any cinematograph film in India, if such non-resident is :
 - (a) an individual, who is not a citizen of India or
 - (b) a firm which does not have any partner who is a citizen of India or who is resident in India; or
 - (c) a company which does not have any shareholder who is a citizen of India or who is resident in India.
 - (v) Activities confined to display of rough diamonds in SNZs [Explanation 1(e) to section 9(1)(i)]:** In the case of a foreign company engaged in the business of mining of diamonds, no income shall be deemed to accrue or arise in India to it through or from the activities which are confined to display of uncut and unassorted diamonds in any special zone notified by the Central Government in the Official Gazette in this behalf.

Income from property, asset or source of income in India:

- Any income which arises from any property (movable, immovable, tangible and intangible property) would be deemed to accrue or arise in India.

Examples :

1. Hire charges or rent paid outside India for the use of the machinery or buildings situated in India,
2. Deposits with an Indian company for which interest is received outside India etc.
3. Mr. X, resident in New York, USA, has a house property situated in India which has been given on rent by him. Rent receivable/ received by Mr. X would be taxable in India whether such rent is received by him in India or outside India as the house property is situated in India.

Income through transfer of a capital asset situated in India

- Capital gains arising through the transfer of a capital asset situated in India would be deemed to accrue or arise in India in all cases irrespective of the fact whether
 - (i) the capital asset is movable or immovable, tangible or intangible;

- (ii) the place of registration of the document of transfer etc., is in India or outside; and
- (iii) the place of payment of the consideration for the transfer is within India or outside.

(2) Income from salaries earned in India [Section 9(1)(ii)] :

- Income, which falls under the head “Salaries”, is deemed to accrue or arise in India, if it is earned in India. Salary payable for service rendered in India would be treated as earned in India.
- Further, any income under the head “Salaries” payable for rest period or leave period which is preceded and succeeded by services rendered in India, and forms part of the service contract of employment, shall be regarded as income earned in India.

(3) Income from salaries payable by the Government for services rendered outside India [Section 9(1)(iii)]

- Income from ‘Salaries’ which is payable by the Government to a citizen of India for services rendered outside India would be deemed to accrue or arise in India.
- The following conditions have to be satisfied to treat such income as deemed to accrue or arise in India :
 - Income should be chargeable under the head ‘Salaries’;
 - The payer should be Government of India;
 - The recipient should be an Indian citizen, whether resident or non-resident in India;

The services should be rendered outside India.

- However, allowances and perquisites paid or allowed outside India by the Government to an Indian citizen for services rendered outside India is exempt, by virtue of section 10(7).

Exemption under section 10(7) would be available to an assessee irrespective of the regime under which he pays tax.

ILLUSTRATION 6 :

Mr. David, an Indian citizen aged 40 years, a Government employee serving in the Ministry of External Affairs, left India for the first time on 31.03.2023 due to his transfer to High Commission of Canada. He did not visit India any time during the P.Y. 2023-24. He has received the following income for the F.Y. 2023-24:

S. No.	Particulars	₹
(i)	Salary (Computed)	5,00,000
(ii)	Foreign Allowance [not included in (i) above]	4,00,000
(iii)	Interest on fixed deposit from bank in India	1,00,000
(iv)	Income from agriculture in Nepal	2,00,000
(v)	Income from house property in Nepal	2,50,000

Compute his Gross Total Income for A.Y. 2024-25.

SOLUTION :

- As per section 6(1), Mr. David is a non-resident for the A.Y. 2024-25, since he was not present in India at any time during the P.Y. 2023-24.
- As per section 5(2), a non-resident is chargeable to tax in India only in respect of following incomes:
 - (i) Income received or deemed to be received in India; and

(ii) Income accruing or arising or deemed to accrue or arise in India.

- In view of the above provisions, income from agriculture in Nepal and income from house property in Nepal would not be chargeable to tax in the hands of David, assuming that the same were received in Nepal. Income from 'Salaries' payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India as per section 9(1)(iii). Hence, such income is taxable in the hands of Mr. David, even though he is a non-resident.
- However, allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for rendering service outside India is exempt under section 10(7). Hence, foreign allowance of ₹ 4,00,000 is exempt under section 10(7) in the hands of Mr. David.

Gross Total Income of Mr. David for A.Y. 2024-25 :

Particulars	₹
Salaries (computed)	5,00,000
Income from other sources (Interest on fixed deposit in India)	1,00,000
Gross Total Income	6,00,000

(4) Dividend paid by an Indian company outside India [Section 9(1)(iv)]

Dividends paid by an Indian company outside India is deemed to accrue or arise in India and would be taxable in the hands of shareholders.

(5) Interest [Section 9(1)(v)]

Under section 9(1)(v), an interest is deemed to accrue or arise in India if it is payable by -

- (i) the Government;
- (ii) a person who is resident in India;

Exception : Where it is payable in respect of any debt incurred or money borrowed and used for the purposes of a business or profession carried on by him outside India or for the purposes of making or earning any income from any source outside India, it will not be deemed to accrue or arise in India.

- (iii) a person who is a non-resident, when it is payable in respect of any debt incurred or money borrowed and used for the purpose of a business or profession carried on in India by him.

Exception : Interest on money borrowed by the non-resident for any purpose in India other than a business or profession, will not be deemed to accrue or arise in India.

Example : If a non-resident 'A' borrows money from a non-resident 'B' and invests the same in shares of an Indian company, interest payable by 'A' to 'B' will not be deemed to accrue or arise in India.

(5) Royalty [Section 9(1)(vi)] :

Royalty will be deemed to accrue or arise in India when it is payable by -

- (i) the Government;
- (ii) a person who is a resident in India

Exception : where it is payable in respect for the transfer of any right or the use of any property or information used or for the utilization of services for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India; or

- (iii) a person who is a non-resident, only when the royalty is payable in respect of any right, property or information used or services utilised for purposes of a business or profession carried on in India or for the purposes of making or earning any income from any source in India.

Important points :

- 1) Lumpsum royalty not deemed to accrue or arise in India:** Lumpsum royalty payments made by a resident for the transfer of all or any rights (including the granting of a licence) in respect of **computer software** supplied by a non-resident manufacturer along with computer hardware under any scheme approved by the Government under the Policy on Computer Software Export, Software Development and Training, 1986 shall not be deemed to accrue or arise in India.
- 2) Meaning of Royalty:** The term 'royalty' means consideration (including any lumpsum consideration but excluding any consideration which would be the income of the recipient chargeable under the head 'Capital gains') for:
 - (i) the transfer of all or any rights (including the granting of licence) in respect of a patent, invention, model, design, secret formula or process or trade mark or similar property;
 - (ii) the imparting of any information concerning the working of, or the use of, a patent, invention, model, design, secret formula or process or trade mark or similar property;
 - (iii) the use of any patent, invention, model, design, secret formula or process or trade mark or similar property;
 - (iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;
 - (v) the use or right to use any industrial, commercial or scientific equipment; (but not including the amounts referred to in section 44BB containing presumptive tax provisions relating to non-resident engaged in the business of exploration, etc., of mineral oils, which will be dealt with at the final level.)
 - (vi) the transfer of all or any rights (including the granting of licence) in respect of any copyright, literary, artistic or scientific work including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting.

Note: Consideration for sale, distribution or exhibition of cinematographic films is covered within the scope of royalty.
 - (vii) the rendering of any service in connection with the activities listed above.

The definition of 'royalty' for this purpose is wide enough to cover both industrial royalties as well as copyright royalties. The definition specially excludes income which should be chargeable to tax under the head 'capital gains'.

(3) Consideration for use or right to use of computer software is royalty within the meaning of section 9(1)(vi)

The consideration for use or right to use of computer software is royalty by clarifying that, transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

(4) Consideration in respect of any right, property or information – Is it royalty ?

Royalty includes and has always included consideration in respect of any right, property or information, whether or not,

- (a) the possession or control of such right, property or information is with the payer;

(ii) such right, property or information is used directly by the payer;

(iii) the location of such right, property or information is in India.

Meaning of Process : The term “process” includes and shall be deemed to have always included transmission by satellite (including up-linking, amplification, conversion for downlinking of any signal), cable, optic fibre or by any other similar technology, whether or not such process is secret.

(7) Fees for technical services [Section 9(1)(vii)] :

- Any fees for technical services will be deemed to accrue or arise in India if they are payable by -

(i) the Government,

(ii) a person who is resident in India

Exception : Where the fees are payable in respect of technical services utilised in a business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India.

(iii) a person who is a non-resident, only where the fees are payable in respect of services utilised in a business or profession carried on by the non-resident in India or where such services are utilised for the purpose of making or earning any income from any source in India.

Fees for technical services means any consideration (including any lumpsum consideration) for the rendering of any managerial, technical or consultancy services (including providing the services of technical or other personnel). However, it does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head ‘Salaries’.

Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fees for technical services to be taxed irrespective of territorial nexus (Explanation to section 9)

Income by way of interest, royalty or fees for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of the non-resident, whether or not –

(i) the non-resident has a residence or place of business or business connection in India; or

(ii) the non-resident has rendered services in India.

In effect, the income by way of fees for technical services, interest or royalty, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India.

ILLUSTRATION 7 :

Miss Vivitha paid a sum of 5000 USD to Mr. Kulasekhara, a management consultant practising in Colombo, specializing in project financing. The payment was made in Colombo. Mr. Kulasekhara is a non-resident. The consultancy is related to a project in India with possible Ceylonese collaboration. Is this payment chargeable to tax in India in the hands of Mr. Kulasekhara, since the services were used in India?

SOLUTION :

- A non-resident is chargeable to tax in respect of income received outside India only if such income accrues or arises or is deemed to accrue or arise to him in India.
- The income deemed to accrue or arise in India under section 9 comprises, inter alia, income by way of fees for technical services, which includes any consideration for rendering of any managerial, technical or consultancy services. Therefore, payment to a management consultant relating to project financing is

covered within the scope of “fees for technical services”.

- The Explanation below section 9(2) clarifies that income by way of, inter alia, fees for technical services, from services utilized in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India or whether or not the non-resident has a residence or place of business or business connection in India.
- In the instant case, since the services were utilized in India, the payment received by Mr. Kulasekhara, a non-resident, in Colombo is chargeable to tax in his hands in India, as it is deemed to accrue or arise in India.

(7) Any sum of money paid by a resident Indian to a non-corporate non-resident or foreign company or to a resident but not ordinarily resident in India [Section 9(1)(viii)]

Income arising outside India, being any sum of money paid without consideration, by an Indian resident person to a non-corporate non-resident or foreign company **or to a RNOR** would be deemed to accrue or arise in India if the same is chargeable to tax under section 56(2)(x) i.e., if the aggregate of such sum received by a non-corporate non-resident or foreign company **or a RNOR** exceeds ₹ 50,000. You may refer to Unit 5 of Chapter 3 where chargeability of any sum of money received is discussed in detail.

This deeming provision applies to only sum of money paid outside India to a non-corporate non-resident or foreign company or to a RNOR, and not in respect of property, movable or immovable, transferred outside India without consideration or for inadequate consideration to a non-corporate non-resident or foreign company or a RNOR.

ILLUSTRATION 8 :

Compute the total income in the hands of an individual aged 35 years, being a resident and ordinarily resident, resident but not ordinarily resident, and non-resident for the A.Y. 2024-25, assuming that he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A) :

Particulars	Amount (₹)
Interest on UK Development Bonds, 50% of interest received in India	10,000
Income from a business in Chennai (50% is received in India)	20,000
Short term capital gains on sale of shares of an Indian company, received in London	20,000
Dividend from British company received in London	5,000
Long term capital gains on sale of plant at Germany, 50% of gains are received in India	40,000
Income earned from business in Germany which is controlled in Delhi (₹ 40,000 is received in India)	70,000
Profits from a business in Delhi but managed entirely from London	15,000
Income from house property in London deposited in a Bank at London, brought to India (Computed)	50,000
Interest on debentures in an Indian company, received in London	12,000
Fees for technical services rendered in India but received in London	8,000

Particulars	Amount (₹)
Profits from a business in Mumbai, managed from London	26,000
Income from property situated in Nepal received there (Computed)	16,000
Past foreign untaxed income brought to India during the previous year	5,000
Income from agricultural land in Nepal, received there and then brought to India	18,000
Income from profession in Kenya which was set up in India, received there but spent in India	5,000
Gift received on the occasion of his wedding	20,000
Interest on savings bank deposit in State Bank of India	12,000
Income from a business in Russia, controlled in Russia	20,000
Dividend from Reliance Petroleum Limited, an Indian Company	5,000
Agricultural income from a land in Rajasthan	15,000

SOLUTION :**Computation of total income for the A.Y. 2024-25 :**

Particulars	Resident and ordinarily resident ₹	Resident but not ordinarily resident ₹	Non-resident ₹
Interest on UK Development Bonds, 50% of interest received in India	10,000	5,000	5,000
Income from a business in Chennai (50% is received in India)	20,000	20,000	20,000
Short term capital gains on sale of shares of an Indian company, received in London	20,000	20,000	20,000
Dividend from British company received in London	5,000		
Long term Capital gains on sale of plant at Germany, 50% of gains are received in India	40,000	-20,000	-20,000
Income earned from business in Germany which is controlled in Delhi, out of which ₹ 40,000 is received in India	70,000	70,000	40,000
Profits from a business in Delhi but managed entirely from London	15,000	15,000-	15,000-

Particulars	Resident and ordinarily resident ₹	Resident but not ordinarily resident ₹	Non-resident ₹
Income from house property in London deposited in a Bank at London, later on remitted to India	50,000		
Interest on debentures in an Indian company, received in London	12,000	12,000	12,000
Fees for technical services rendered in India but received in London	8,000	8,000	8,000
Profits from a business in Mumbai, managed from London	26,000	26,000	26,000
Income from property situated in Nepal and received there	16,000	-	-
Past foreign untaxed income brought to India during the previous year	-	-	-
Income from agricultural land in Nepal, received there and then brought to India	1	-	-
Income from profession in Kenya which was set up in India, received there but spent in India	8,000	5,000	-
Gift received on the occasion of his wedding [not taxable]	5,000	-	1
Interest on savings bank deposit in State Bank of India	-12,000	12,000	2,000
Income from a business in Russia, controlled in Russia	20,000	-5,000	-5,000
Dividend from Reliance Petroleum Limited, an Indian Company	5,000	-	-
Agricultural income from a land in Rajasthan [Exempt under section 10(1)]	-	-	-
Gross Total Income	3,52,000	2,18,000	1,83,000
Less: Deduction under section 80TTA [Interest on savings bank account subject to a maximum of ₹ 10,000]	10,000	10,000	10,000
Total Income	3,42,000	2,08,000	1,73,000

LET US RECAPITULATE :

(I) Residential status of an individual

(1) Section	(2) 6(1)	(3) 6(1)	(4) 6(1)	(5) 6(1)	(6) 6(1A)
Main conditions	All individuals [Other than (3), (4) and (5)] [Either (a) or (b) should be satisfied for being a resident]	Indian citizen leaving India in relevant P.Y. for employment or as member of crew of Indian ship	Indian citizen or PIO residing outside India visiting India during the relevant P.Y. and having total income (excl. Income from foreign sources) ≤ ₹ 15 lakh	Indian citizen or PIO residing outside India visiting India during the relevant P.Y. and having total income (excl. Income from foreign sources) > ₹ 15 lakh	Deemed resident – Indian citizen whose total income (excl. Income from foreign sources) > ₹ 15 lakh, who is not liable to tax in any other country
(a)	√	√	√	√	X
(b)	(OR) √	X	X	≥ 120 days in the relevant P.Y. + ≥ 365 days in 4 immediately preceding PYs	X
Additional conditions	Section 6(6)			Section 6(6)	Section 6(6)
(i)	If both (i) and (ii) are satisfied, ROR. Otherwise RNOR i.e., if either (i) or (ii) are satisfied or neither (i) nor (ii) are satisfied, RNOR.			By default RNOR, if individual becomes resident due to the fulfillment of modified second condition above	By default RNOR
(ii)	Resident for ≥ 2 years out of the 10 immediately preceding PYs				

Notes :

- Section 6(1A) would not apply in case of an individual who is said to be resident in India in the previous year under section 6(1).
- A person is said to be of Indian origin if he or either of his parents or either of his grandparents was born in undivided India
- "Income from foreign sources" means income which accrues or arises outside India (except income derived from a business controlled in or a profession set up in India) and which is not deemed to accrue or arise in India.

(ii) HUF [ROR/RNOR/non-resident] "

- A HUF would be resident in India if the control and management of its affairs is situated wholly or partly in India.
- If the control and management of the affairs is situated wholly outside India, it would become a non-resident.
- If the HUF is resident, then the satisfaction or otherwise of additional conditions by Karta would determine whether the HUF is ROR or RNOR.
- If Karta satisfies both the additional conditions [(i) & (ii)] in (I) above, then, the HUF would be ROR. Otherwise, the HUF would be RNOR.

(iii) Firms , AoPs and BoIs [Resident/Non-resident]

- A firm, AoP or BoI would be resident in India, if the control and management of its affairs is situated wholly or partly in India.
- If the control and management of the affairs is situated wholly outside India, they would become a non-resident.

(iv) Companies [Resident/Non-resident] :

- (i) A company would be **resident in India** in any previous year, if it is an Indian company or its place of effective management (POEM) in that year, is in India.
- (ii) If the company is not an Indian Company and its POEM is also not in India in that year, it would become a non-resident for that year.

Section 5 [Scope of Total Income]

Resident and Ordinarily Resident	Resident but not Ordinarily Resident	Non-Resident
Income received/ deemed to be received/accrued or arisen/deemed to accrue or arise in or outside India	Income which is received/ deemed to be received/ accrued or arisen/ deemed to accrue or arise in India;	Income received/ deemed to be received/accrued or arisen/deemed to accrue or arise in India.
In short, the global income is taxable.	AND	
	Income which accrues or arises outside India being derived from a business controlled in or profession set up in India.	

TEST YOUR KNOWLEDGE

- Q.1** Mr. Ram, an Indian citizen, left India on 22.09.2023 for the first time to work as an officer of a company in Germany. Determine the residential status of Ram for the A.Y. 2024-25.
- Q.2** Mr. Dey, residing in US since 1990, visits India for 30 days every year. He came back to India on 1.4.2022 for permanent settlement. What will be his residential status for A.Y. 2024-25?
- Q.3** Mr. Ramesh & Mr. Suresh are brothers and they earned the following incomes during the F.Y. 2023-24. Mr. Ramesh settled in Canada in the year 1996 and Mr. Suresh settled in Delhi. Compute the total income for the
- Q.4** A.Y. 2024-25 assuming that both have exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

Sr. No.	Particulars	Mr. Ramesh (₹)	Mr. Suresh (₹)
1.	Interest on Canada Development Bonds (only 50% of interest received in India)	35,000	40,000
2.	Dividend from British company, received in London	28,000	20,000
3.	Profits from a business in Nagpur, but managed directly from London	1,00,000	1,40,000
4.	Short term capital gain on sale of shares of an Indian company, received in India	60,000	90,000

Sr. No.	Particulars	Mr. Ramesh (₹)	Mr. Suresh(₹)
5.	Income from a business in Chennai	80,000	70,000
6.	Fees for technical services rendered in India, but received in Canada	1,00,000	-
7.	Interest on savings bank deposit in UCObank, Delhi	7,000	12,000
8.	Agricultural income from a land situated in Andhra Pradesh	55,000	45,000
9.	Rent received in respect of house property at Bhopal	1,00,000	60,000
10.	Life insurance premium paid	---	30,000

Q.5 Examine the correctness or otherwise of the statement - "Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fees for technical services is to be taxed irrespective of territorial nexus".

Q.6 Examine with reasons whether the following transactions attract income-tax in India in the hands of recipients:

- (i) Salary payable by Central Government to Mr. John, a citizen of India of ₹ 7,00,000 for the services rendered outside India considering that he pays tax as per the provisions of section 115BAC.
- (ii) Interest on moneys borrowed from outside India ₹ 5,00,000 by a non-resident for the purpose of business within India say, at Mumbai.
- (iii) Post office savings bank interest of ₹ 19,000 received by a resident assessee, Mr. Ram, aged 46 years if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).
- (iv) Royalty paid by a resident to a non-resident in respect of a business carried on outside India.
- (v) Legal charges of ₹ 5,00,000 paid in Delhi to a lawyer of United Kingdom who visited India to represent a case at the Delhi High Court.

ANSWERS

1 :

- Under section 6(1), an individual is said to be resident in India in any previous year if he satisfies any one of the following conditions -
- He has been in India during the previous year for a total period of 182 days or more, or
- He has been in India during the 4 years immediately preceding the previous year for a total period of 365 days or more and has been in India for at least 60 days in the previous year.
- In the case of Indian citizens leaving India for employment, the period of stay during the previous year must be 182 days instead of 60 days given in (ii) above.
- During the previous year 2023-24, Mr. Ram, an Indian citizen, was in India for 175 days only (i.e., 30+31+30+31+31+22 days). Thereafter, he left India for employment purposes.
- Since he does not satisfy the minimum criteria of 182 days stay in India during the relevant previous

year, he is a non-resident for the A.Y. 2024-25.

2.

- Mr. Dey is a resident in A.Y. 2024-25 since he has stayed in India for a period of 366 days (more than 182 days) during the P.Y. 2023-24.
- As per section 6(6), a person will be “Not ordinarily Resident” in India in any previous year, if such person, *inter alia*,:
 - (a) has been a non-resident in 9 out of 10 previous years preceding the relevant previous year; or
 - (b) has during the 7 previous years immediately preceding the relevant previous year been in India for 729 days or less.
- If he does not satisfy either of these conditions, he would be a resident and ordinarily resident.
- For the previous year 2023-24 (A.Y. 2024-25), his status would be “Resident but not ordinarily resident” since he was non-resident in 9 out of 10 previous years immediately preceding the P.Y. 2023-24. He was resident only in the P.Y. 2022-23. Prior to that, he was non-resident in all the years since his stay in India was only for 30 days each year.
- He can be resident but not ordinarily resident also due to the fact that he has stayed in India only for 545 days [365 days in P.Y. 2022-23 + (30 days x 6 years)] in 7 previous years immediately preceding the P.Y. 2023-24, which is less than 730 days.

3. **Computation of total income of Mr. Ramesh & Mr. Suresh for the A.Y. 2024-25**

S. No.	Particulars	Mr. Ramesh (Non-Resident) (₹)	Mr. Suresh (Resident) (₹)
1.	Interest on Canada Development Bond (See Note 2)	17,500	40,000
2.	Dividend from British Company received in London (See Note 3)	-	20,000
3.	Profits from a business in Nagpur but Managed directly from London (See Note 2)	1,00,000	1,40,000
4.	Short term capital gain on sale of shares of an Indian company received in India (See Note 2)	60,000	90,000
5.	Income from a business in Chennai (See Note 2)	80,000	70,000
6.	Fees for technical services rendered in India, but received in Canada (See Note 2)	1,00,000	-
7.	Interest on savings bank deposit in UCO Bank, Delhi (See Note 2)	7,000	12,000
8.	Agricultural income from a land situated in Andhra Pradesh (See Note 4)	-	-
9.	Income from house property at Bhopal (See Note 5)	70,000	42,000
	Gross Total income	4,34,500	4,14,000
	<i>Less:</i> Deduction under Chapter VI-A		
	Section 80C - Life insurance premium	-	30,000
	Section 80TTA (See Note 6)	7,000	10,000
	Total Income	4,27,500	3,74,000

Notes :

1. Mr. Ramesh is a non-resident since he has been living in Canada since 1996. Mr. Suresh, is settled in Delhi, and thus, assumed as a resident and ordinarily resident.
2. In case of a resident and ordinarily resident, his global income is taxable as per section 5(1). However, as per section 5(2), in case of a non-resident, only the following incomes are chargeable to tax :
 - (i) Income received or deemed to be received in India; and
 - (ii) Income accruing or arising or deemed to accrue or arise in India
 - Therefore, fees for technical services rendered in India would be taxable in the hands of Mr. Ramesh, even though he is a non-resident.
 - The income referred to in Sl. No. 3,4,5 and 7 are taxable in the hands of both Mr. Ramesh and Mr. Suresh since they accrue or arise/ deemed to accrue or arise in India.
 - Interest on Canada Development Bond would be fully taxable in the hands of Mr. Suresh, whereas only 50%, which is received in India, is taxable in the hands of Mr. Ramesh.
3. Dividend received from British company in London by Mr. Ramesh, a non-resident, is not taxable since it is accrued and received outside India. However, such dividend received by Mr. Suresh is taxable, since he is a resident and ordinarily resident.
4. Agricultural income from a land situated in India is exempt under section 10(1) in the case of both non-residents and residents.
5. Income from house property :

	Mr. Ramesh (₹)	Mr. Suresh (₹)
Rent received	1,00,000	60,000
Less: Deduction u/s 24(a) @30%	30,000	18,000
Net income from house property	70,000	42,000

The net income from house property in India would be taxable in the hands of both Mr. Ramesh and Mr. Suresh, since the accrual and receipt of the same are in India.

6. In case of an individual, interest upto ₹ 10,000 from savings account with, *inter alia*, a bank is allowable as deduction under section 80TTA.

4. This statement is correct :

As per *Explanation* to section 9, income by way of interest, royalty or fees for technical services which is deemed to accrue or arise in India by virtue of clauses (v), (vi) and (vii) of section 9(1), shall be included in the total income of the non-resident, whether or not -

- (i) non-resident has a residence or place of business or business connection in India; or
- (ii) the non-resident has rendered services in India.

In effect, the income by way of fees for technical services, interest or royalty from services utilised in India would be deemed to accrue or arise in India in case of a non-resident and be included in his total income, whether or not such services were rendered in India and irrespective of whether the non-resident has a residence or place of business or business connection in India.

5. Taxability of receipts :

	Taxable/Not Taxable	Amount liable to tax (₹)	Reason
(i)	Taxable	6,50,000	As per section 9(1)(iii), salaries payable by the Government to a citizen of India for service rendered outside India shall be deemed to accrue or arise in India. Therefore, salary paid by Central Government to Mr. John for services rendered outside India would be deemed to accrue or arise in India since he is a citizen of India. He would be entitled to standard deduction of ₹ 50,000 under section 16(ia).
(ii)	Taxable	5,00,000	As per section 9(1)(v)(c), interest payable by a non-resident on moneys borrowed and used for the purposes of business carried on by such person in India shall be deemed to accrue or arise in India in the hands of the recipient.
(iii)	Partly Taxable	5,500	The interest on Post office savings bank a/c would be exempt u/s 10(15)(i) only to the extent of ₹ 3,500 in case of an individual a/c. Further, interest upto ₹ 10,000, would be allowed as
			deduction u/s 80TTA from Gross Total Income. Balance ₹ 5,500 i.e., ₹ 19,000 - ₹ 3,500 - ₹ 10,000 would be taxable in the hands of Mr. Ram, a resident.
(iv)	Not Taxable	-	Royalty paid by a resident to a non-resident in respect of a business carried outside India would not be taxable in the hands of the non-resident provided the same is not received in India. This has been provided as an exception to deemed accrual mentioned in section 9(1)(vi)(b).
(v)	Taxable	5,00,000	In case of a non-resident, any income which accrues or arises in India or which is deemed to accrue or arise in India or which is received in India or is deemed to be received in India is taxable in India. Therefore, legal charges paid in India to a non-resident lawyer of UK, who visited India to represent a case at the Delhi High Court would be taxable in India.



CHAPTER - 3

HEADS OF INCOME

UNIT 1 : SALARIES

Proforma for computation of income under the head “Salaries” as per default tax regime under section 115BAC :

	Particulars Amt		(₹)
(i)	Basic Salary		xxx
(ii)	Fees/Commission		xxx
(iii)	Bonus		xxx
(iv)	Allowances :		
	(a) Dearness Allowance [Fully taxable]		xxx
	(b) House Rent Allowance (HRA) [Fully taxable]		xxx
	(c) Children Education Allowance [Fully taxable]		xxx
	(d) Children Hostel Allowance [Fully taxable]		xxx
	(e) Transport allowance		xxx
	Less: ₹ 3,200 per month only in case of blind/ deaf and dumb/orthopedically handicapped employee	xxx	xxx
		xxx	xxx
	(f) Entertainment Allowance [Fully taxable]		xxx
	(g) Travelling Allowance/Daily Allowance/ Conveyance Allowance		xxx
	Less: Exempt if the amount is fully utilised for the purpose	xxx	xxx
	(h) Other Allowances including overtime allowance, city compensatory allowance etc. [Fully taxable]		xxx
(v)	Taxable Perquisites		
	(a) Value of rent-free accommodation provided to the employee*		xxx

Particulars	Amt	(₹)
(b) Value of any accommodation provided to the employee at a concessional rate*		xxx
I) Where the accommodation is provided by the Govt. to its employees		
License fee determined by the Govt.	xxx	
Less: Rent actually paid by the employer	xxx	
II) Where the accommodation is provided by any other employer		
If accommodation is owned by the employer		
I) Cities having population > 25 lakh as per 2001 census 15% of salary in respect of the period of occupation (-) rent recovered from employee	xxx	
i) Cities having population > 10 lakh ≤ 25 lakh as per 2001 census 10% of salary in respect of the period of occupation (-) rent recovered from employee	xxx	
(ii) Cities having population > 10 lakh ≤ 25 lakh as per 2001 census 10% of salary in respect of the period of occupation (-) rent recovered from employee	xxx	
iii) In other cities : 7.5% of salary in respect of the period of occupation (-) rent recovered from employee	xxx	
If accommodation is taken on lease/rent by the employer		
Lower of lease rental paid or payable by the employer (or) 15% of salary	xxx	
Less: Rent recovered from the employee	xxx	
c) Obligation of employee discharged by employer: For e.g., Professional tax paid by the employer		xxx
d) Any sum payable by the employer to effect an assurance on the life of the employee or to effect a contract for annuity: Actual expenditure incurred by the employer		xxx
e) Amount or aggregate of amounts of any contribution made - in a recognised provident fund, - in NPS referred to in section 80CCD(1) - in an approved superannuation fund by the employer to the account of the assessee, to the extent it exceeds ₹ 7,50,000 in a P.Y.		Xxx
f) Annual accretion by way of interest, dividend or any other amount of similar nature during the P.Y. to the balance at the credit of the recognized provident fund or NPS or approved superannuation fund to the extent it relates to the employer's contribution which is included in total income in any P.Y. under section 17(2)(vii)		xxx
(g) Value of use of motor car [Refer Table below]		Xxx
(h) Any other perquisite: For example,		xxx

	Particulars Amt	(₹)
	<p>(1) Provision of services of a sweeper, gardener, watchman or personal attendant: Actual cost to employer by way of salary paid or payable for such services (-) amount paid by the employee</p> <p>(2) Gas, electricity, or water supplied by employer for household consumption of the employee: Amount paid on that account by the employer to the agency supplying gas etc. (-) amount paid by the employee</p> <p>(3) Provision of free or concessional education facilities for any member of employee's household: Sum equal to the expenditure incurred by the employer (-) amount paid or recovered from the employee</p> <p>Where educational institution is maintained and owned by employer: Cost of such education in similar institution in or near the locality (-) amount paid or recovered from employee [However, there would be no perquisite if the value of benefit per child does not exceed ₹ 1,000 p.m.]</p> <p>Note : Above perquisites in (g) and (h) are taxable only in case of specified employees.</p> <p>(4) Interest-free or concessional loan exceeding ₹ 20,000: Interest computed at the rate charged by SBI as on 1st day of relevant P.Y. in respect of loans for similar purposes on the maximum outstanding monthly balance (-) interest actually paid by employee</p> <p>(5) Free food and non-alcoholic beverages through paid vouchers</p> <p>(6) Value of gift, voucher: Sum equal to the amount of such gift [If value of gift, voucher is below ₹ 5,000, there would be no perquisite]</p> <p>(7) Use of moveable assets [Refer table at page 3.88]</p> <p>(8) Transfer of moveable assets: Actual cost of asset to employer – cost of normal wear and tear – Amount paid or recovered from employee [Refer table at page 3.89]</p>	
(vi)	Leave travel concession [Fully taxable	Xxx
(vii)	Gratuity	
	<p>(a) Received during the tenure of employment (fully taxable) xxx</p> <p>(b) Received at the time of retirement or otherwise xxx</p> <p>Less: Exempt u/s 10(10) [Refer fig at Page 3.32] xxx</p>	Xxx
(viii)	Uncommuted pension (fully taxable)	Xxx
(ix)	<p>Commutated pension xxx</p> <p>Less: Exempt u/s 10(10A) [Refer fig at Page 3.29] xxx</p>	Xxx
(x)	Leave encashment	
	<p>(a) Received during the employment (fully taxable) xxx</p> <p>(b) Received at the time of retirement or otherwise xxx</p> <p>Less: Exempt u/s 10(10AA) [Refer fig at Page 3.36] xxx</p>	
(xi)	Voluntary retirement compensation	xxx

	Particulars Amt	(₹)
	Less: Exempt u/s 10(10C) - Least of the following:	Xxx
	(a) Compensation received/receivable on voluntary retirement	xxx
	(b) ₹ 5,00,000	xxx
	(c) 3 months' salary x completed years of service	xxx
	(d) Last drawn salary x remaining months of service left	xxx
(xi)	Retrenchment compensation etc.	xxx
	Less: Exempt u/s 10(10B)] – Least of the following	Xxx
	(a) Compensation actually received	xxx
	(b) ₹ 5,00,000	xxx
	(c) 15 days average pay x completed years of service and part thereof in excess of 6 months	xxx
	Gross Salary :	xxx
Less	Deduction under section 16	
:	Standard deduction u/s 16(ia) -amount of salary or ₹ 50,000, whichever is less	Xxx
	Income under the head “Salaries”	xxx

Proforma for computation of income under the head “Salaries” under the optional tax regime (i.e., the normal provisions of the Act)

	Particulars	Amt(₹)
(i)	Basic Salary	xxx
(ii)	Fees/Commission	xxx
(iii)	Bonus	xxx
(iv)	Allowances:	xxx
(a)	Dearness Allowance [Fully taxable]	xxx
(b)	House Rent Allowance (HRA)	xxx
	Less: Least of the following is exempt [Section 10(13A)]	xxx
	HRA actually received	xxx
	Rent paid (-)10% of salary for the relevant period	xxx
	50% of salary, if accommodation is located in Mumbai, Kolkata, Delhi or Chennai or 40% of salary in any other city for the relevant period	xxx
(c)	Children Education Allowance	xxx
	Less: Exempt upto ₹ 100 per month per child upto maximum of two children	xxx xxx
(d)	Children Hostel Allowance	xxx

	<i>Less:</i> Exempt upto ₹ 300 per month per child upto maximum of two children	xxx	xxx
(e)	Transport allowance	xxx	
	<i>Less:</i> ₹ 3,200 per month only in case of blind/ deaf and dumb/ orthopedically handicapped employee	xxx	xxx
(f)	Entertainment Allowance		xxx
(g)	Travelling Allowance/ Daily Allowance/ Conveyance Allowance	xxx	
	<i>Less:</i> Exempt if the amount is fully utilised for the purpose	xxx	xxx
(h)	Other Allowances including overtime allowance, city compensatory allowance etc.		xxx
(v)	Taxable Perquisites		
(a)	Value of rent free accommodation[†] provided to the employee		xxx
(b)	Value of any accommodation provided to the employee at a concessional rate		xxx
	I) Where the accommodation is provided by the Govt. to its employees		
	License fee determined by the Govt.	xxx	
	<i>Less:</i> Rent actually paid by the employer	xxx	
	II) Where the accommodation is provided by any other employer		
	If accommodation is owned by the employer		
	Cities having population > 25 lakh as per 2001 census		
	15% of salary in respect of the period of occupation (-)		
	rent recovered from employee	xxx	
	Cities having population >10 lakh ≤ 25 lakh as per 2001 census		
	10% of salary in respect of the period of occupation (-)		
	rent recovered from employee	xxx	
	In other cities		
	7.5% of salary in respect of the period of occupation (-)		
	rent recovered from employee	xxx	
	If accommodation is taken on lease/rent by the employer		
	Lower of lease rental paid or payable by the employer (or) 15% of salary		xxx
	<i>Less:</i> Rent recovered from the employee		xxx
(c)	Obligation of employee discharged by employer: For e.g., Professional tax paid by the employer		xxx
(d)	Any sum payable by the employer to effect an assurance on the life of the employee or to effect a contract for annuity: Actual expenditure incurred by the employer		xxx
(e)	Amount or aggregate of amounts of any contribution made –		
	- in a recognised provident fund,		
	- in NPS referred to in section 80CCD(1)		
	- in an approved superannuation fund		

	by the employer to the account of the assessee, to the extent it exceeds ₹ 7,50,000		
(f)	Annual accretion by way of interest, dividend or any other amount of similar nature during the P.Y. to the balance at the credit of the recognized provident fund or NPS or approved superannuation fund to the extent it relates to the employer's contribution which is included in total income in any P.Y. under section 17(2)(vii)	XXX	
(g)	Value of use of motor car [Refer Table below]		
(h)	Any other perquisite: For example,		
	(1) Provision of services of a sweeper, gardener, watchman or personal attendant: Actual cost to employer by way of salary paid or payable for such services (-) amount paid by the employee		
	(2) Gas, electricity, or water supplied by employer for household consumption of the employee: Amount paid on that account by the employer to the agency supplying gas etc. (-) amount paid by the employee		
	(3) Provision of free or concessional education facilities for any member of employee's household: Sum equal to the expenditure incurred by the employer (-) amount paid or recovered from the employee		
	Where educational institution is maintained and owned by employer: Cost of such education in similar institution in or near the locality (-) amount paid or recovered from employee [However, there would be no perquisite if the value of benefit per child does not exceed ₹ 1,000 p.m.]		
	<i>Note: Above perquisites in (g) and (h) are taxable only in case of specified employees.</i>		
	(4) Interest-free or concessional loan exceeding : ₹ 20,000: Interest computed at the rate charged by SBI as on 1 st day of relevant P.Y. in respect of loans for similar purposes on the maximum outstanding monthly balance (-) interest actually paid by employee		
	(5) Free food and non-alcoholic beverages: Expenses incurred by employer (-) amount recovered from employee [Free food and non-alcoholic beverages provided during office hours or paid vouchers upto ₹ 50 per meal is exempt]		
	(6) Value of gift, voucher: Sum equal to the amount of such gift [If value of gift, voucher is below ₹ 5,000, there would be no perquisite]		
	(7) Use of moveable assets [Refer table at page 3.88]		
	(8) Transfer of moveable assets: Actual cost of asset to employer – cost of normal wear and tear – Amount paid or recovered from employee [Refer table at page 3.89]		
(vi)	(vi) Leave travel concession	xxx	
	Less: Exempt u/s 10(5) [Refer table at Page 3.63]	xxx	Xxx
(vii)	Gratuity		
	(a) Received during the tenure of employment (fully taxable)	xxx	
	(b) Received at the time of retirement or otherwise	xxx	
	Less: Exempt u/s 10(10) [Refer fig at Page 3.32]	xxx	Xxx
(vii)	Uncommuted pension (fully taxable)		Xxx

(ix)	Commuted pension	xxx	
	Less: Exempt u/s 10(10A) [Refer fig at Page 3.29]	xxx	Xxx
(x)	Leave encashment		
(a)	Received during the employment (fully taxable)	xxx	
(b)	Received at the time of retirement or otherwise	xxx	
	Less: Exempt u/s 10(10AA) [Refer fig at Page 3.36]	xxx	xxx
(xi)	Voluntary retirement compensation	xxx	
	Less: Exempt u/s 10(10C) - Least of the following:	xxx	Xxx
(a)	Compensation received/receivable on voluntary retirement	xxx	
(b)	₹ 5,00,000	xxxx	
(c)	3 months' salary x completed years of service	xxx	
(d)	Last drawn salary x remaining months of service left	xxx	
(xii)	Retrenchment compensation etc.	xxx	
	Less: Exempt u/s 10(10B)] – Least of the following:	xxx	Xxx
(a)	Compensation actually received	xxx	
(b)	₹ 5,00,000	xxx	
(c)	15 days average pay x completed years of service and part thereof in excess of 6 months	xxx	
	Gross Salary		Xxx
Less :	Deduction under section 16 Standard deduction u/s 16(ia) -amount of salary or ₹ 50,000, whichever is less		xxx
	Entertainment allowance u/s 16(ii) (only for Govt. employees)	xxx	
	Least of the following is allowable as deduction:	xxx	
(a)	₹ 5,000	xxx	
(b)	1/5th of basic salary	xxx	
(c)	Actual entertainment allowance received	xxx	
	Professional Tax/Tax on employment (paid by employer/ employee) u/s 16(iii)		xxx
	Income under the head “Salaries”		xxx

Proforma for computation of income under the head “Salaries” under optional tax regime taking Salaries computed as per default tax regime under section 115BAC as the starting point

Particulars	Amt(₹)
Income under the head “Salaries” under default tax regime under section 115BAC	xxx
Less: HRA exempt under section 10(13A) – Least of the three limits	xxx
Children Education Allowance (Upto ₹ 100 per month per child upto maximum of two children)	xxx
Children Hostel Allowance (Upto ₹ 300 per month per child upto maximum of two children)	xxx
Free food and non-alcoholic beverages through paid vouchers upto ₹ 50 per meal	xxx
Leave travel concession exempt u/s 10(5)	xxx
	Xxx
Less: Deduction under section 16	
Entertainment allowance u/s 16(ii) (only for Govt. employees)	xxx xxx
Professional Tax/Tax on employment (paid by employer/ employee) u/s 16(iii)	
Income under the head “Salaries” under optional tax regime	xxx

PERQUISITE VALUE OF MOTOR CAR

S. No.	Car owned/hired by	Expenses met by	Wholly official use	Partly personal use						
1	Employer	Employer	No value*	<table border="1"> <thead> <tr> <th>cc of engine</th> <th>Perquisite value</th> </tr> </thead> <tbody> <tr> <td>upto 1.6 litres</td> <td>₹ 1,800 p.m.</td> </tr> <tr> <td>above 1.6 litres</td> <td>₹ 2,400 p.m.</td> </tr> </tbody> </table> <p>If chauffeur is also provided, ₹ 900 p.m. should be added to the above value.</p>	cc of engine	Perquisite value	upto 1.6 litres	₹ 1,800 p.m.	above 1.6 litres	₹ 2,400 p.m.
cc of engine	Perquisite value									
upto 1.6 litres	₹ 1,800 p.m.									
above 1.6 litres	₹ 2,400 p.m.									
2	Employee	Employer	No value* -	Actual amount of expenditure incurred by the employer as reduced by the perquisite value arrived at in (1) above.						
3	Employer	Employee		<table border="1"> <thead> <tr> <th>cc of engine</th> <th>Perquisite value</th> </tr> </thead> <tbody> <tr> <td>upto 1.6 litres</td> <td>₹ 600 p.m.</td> </tr> <tr> <td>above 1.6 litres</td> <td>₹ 900 p.m.</td> </tr> </tbody> </table> <p>If chauffeur is also provided, ₹ 900 p.m. should be added to the above value.</p>	cc of engine	Perquisite value	upto 1.6 litres	₹ 600 p.m.	above 1.6 litres	₹ 900 p.m.
cc of engine	Perquisite value									
upto 1.6 litres	₹ 600 p.m.									
above 1.6 litres	₹ 900 p.m.									

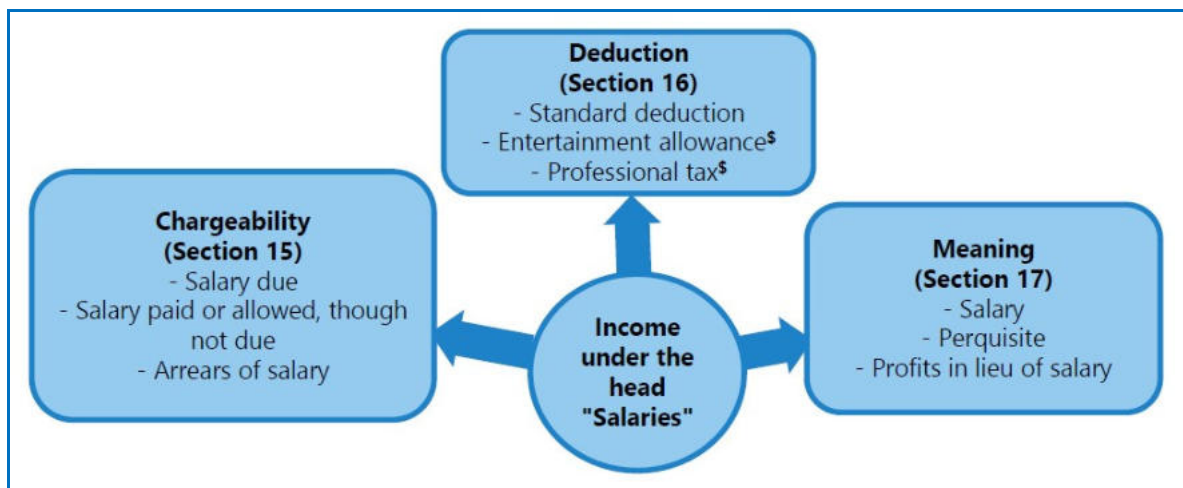
provided employer maintains the complete details of such journey and expenditure thereon and gives a certificate that such expenditure are incurred wholly for official use.

Perquisite value of motor car is taxable only in case of specified employees if motor car is provided by the employer to the employee. However, where the motor car is owned by the employee and used by him or members of his family wholly for personal purpose and for which employer reimburses the running and maintenance expenses of the car, the perquisite value of motor car would be taxable in case of all employees

- Where car is owned by employer and expenses are also met by the employer, the taxable perquisite in case such car is used wholly for personal purposes of the employee would be equal to the actual expenditure incurred by the employer on running and maintenance expenses and normal wear and tear (calculated @10% p.a. of actual cost of motor car) less amount charged from the employee for such use

1.1 INTRODUCTION :

The provisions pertaining to Income under the head "Salaries" are contained in section 15, 16 and 17 in the following manner.



- § Deduction for Entertainment allowance for Government employees and Professional tax are allowable only under the optional tax regime i.e., if the employee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). The same are not allowable under the default tax regime under section 115BAC.
- Before learning the provisions, it is essential to understand the important concepts relating to Salaries.

(1) Employer-employee relationship : Every payment made by an employer to his employee for service rendered would be chargeable to tax as salaries. Before an income can become chargeable under the head 'salaries', it is vital that there should exist between the payer and the payee, the relationship of an employer and an employee.

Example : Sujata, an actress, is employed in Chopra Films, where she is paid a monthly remuneration of ₹ 2 lakh. She acts in various films produced by various producers. The remuneration for acting in such films is directly paid to Chopra Films by the different producers.

In this case, ₹ 2 lakh will constitute salary in the hands of Sujata, since the relationship of employer and employee exists between Chopra Films and Sujata.

Example : In the above example, if Sujata acts in various films and gets fees from different producers, the same income will be chargeable as income from profession since the relationship of employer and employee does not exist between Sujata and the film producers.

Example : Commission received by a Director from a company is salary if the Director is an employee of the company. If, however, the Director is not an employee of the company, the said commission cannot be charged as salary but has to be charged either as income from business or as income from other sources depending upon the facts.

Example : Salary paid to a partner by a firm is nothing but an appropriation of profits. Any salary, bonus, commission or remuneration by whatever name called due to or received by partner of a firm shall not be regarded as salary. The same is to be charged as income from profits and gains of business or profession. This is primarily because the relationship between the firm and its partners is not that of an employer and employee.

Example : Remuneration received by a Member of Parliament/State Legislature is not taxable under the head 'Salaries' as such person is not a government employee. Such income would be taxable as 'Income from Other Sources'.

(2) Full-time or part-time employment : Once the relationship of employer and employee exists, the income is to be charged under the head "salaries". It does not matter whether the employee is a full-time employee or a part-time one.

If, for example, an employee works with more than one employer, salaries received from all the employers should be clubbed and brought to charge for the relevant previous years.

(3) Forgoing of salary : Once salary accrues, the subsequent waiver by the employee does not absolve him from liability to income-tax. Such waiver is only an application and hence, chargeable to tax.

Example : Mr. A, an employee instructs his employer that he is not interested in receiving the salary for April 2023 and the same might be donated to a charitable institution.

In this case, Mr. A cannot claim that he cannot be charged in respect of the salary for April 2023. It is only due to his instruction that the donation was made to a charitable institution by his employer. It is only an application of income.

Hence, the salary for the month of April 2023 will be taxable in the hands of Mr. A. He is, however, entitled to claim a deduction under section 80G for the amount donated to the institution. Deduction under section 80G is available only if Mr. A exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). [The concept of deductions is explained in detail in Chapter 6].

(4) Surrender of salary : However, if an employee surrenders his salary, in the public interest, to the Central Government under section 2 of the Voluntary Surrender of Salaries (Exemption from Taxation) Act, 1961, the salary so surrendered would be exempt while computing his taxable income.

(5) Salary paid tax-free : This, in other words, means that the employer bears the burden of the tax on the salary of the employee. In such a case, the income from salaries in the hands of the employee will consist of his salary income and also the tax on this salary paid by the employer.

However, as per section 10(10CC), the income-tax paid by the employer on non-monetary perquisites on behalf of the employee would be exempt in the hands of the employee.

(6) Place of accrual of salary : Under section 9(1)(ii), salary earned in India is deemed to accrue or arise in India even if it is paid outside India or it is paid or payable after the contract of employment in India comes to an end.

If an employee is paid pension abroad in respect of services rendered in India, the same will be deemed to accrue in India. Similarly, leave salary paid abroad in respect of leave earned in India is deemed to accrue or arise in India.

Section 9(1)(iii) provides that salaries payable by the Government to a citizen of India for services outside India shall be deemed to accrue or arise in India. However, by virtue of section 10(7), any allowance or perquisites paid or allowed outside India by the Government to a citizen of India for rendering services outside India will be fully exempt. Individual assessee who are not citizens of India are entitled to the following exemptions in respect of remuneration/ salary received by them under section 10(6):

(i) Remuneration received by officials of Embassies etc. of Foreign States [Section 10(6)(ii)]

The remuneration received by a person for services as an official of an embassy, high commission, legation, commission, consulate or the trade representation of a foreign State or as a member of the staff of any of these officials is exempt.

Conditions :

- (a) The remuneration received by our corresponding Government officials or members of the staff resident in such foreign countries for similar purposes should be exempt.
- (b) The above-mentioned members of the staff should be the subjects of the respective countries represented and should not be engaged in any other business or profession or employment in India.

(ii) Remuneration received for services rendered in India as an employee of foreign enterprise [Section 10(6)(vi)]

Remuneration received by a foreign national as an employee of a foreign enterprise for service rendered by him during his stay in India is also exempt from tax.

Conditions :

- (a) The foreign enterprise is not engaged in any business or trade in India;
- (b) The employee's stay in India does not exceed 90 days during the previous year;
- (c) The remuneration is not liable to be deducted from the employer's income chargeable to tax under the Act.

(iii) Salary received by a non-citizen non-resident for services rendered in connection with employment on foreign ship [Section 10(6)(viii)]

Salary income received by or due to a non-citizen of India who is also non-resident for services rendered in connection with his employment on a foreign ship is exempt where his total stay in India does not exceed 90 days during the previous year.

(iv) Remuneration received by Foreign Government employees during their stay in India for specified training [Section 10(6)(xi)]

Any remuneration received by employees of foreign Government from their respective Government during their stay in India, is exempt from tax, if such remuneration is received in connection with their training in any establishment or office of or in any undertaking owned by :

- (a) the Government; or
- (b) any company wholly owned by the Central or any State Government(s) or jointly by the Central and one or more State Governments; or
- (c) any company which is subsidiary of a company referred to in (b) above; or
- (d) any statutory corporation; or

- (e) any society registered under the Societies Registration Act, 1860 or any other similar law, which is wholly financed by the Central Government or any State Government(s) or jointly by the Central and one or more State Governments. Now, let us discuss the chargeability under section 15, the provisions explaining the meaning of Salary, Perquisite and Profits in lieu of salary contained in section 17 and the deductions under section 16.

Exemption under section 10(6) and 10(7) would be available to an assessee irrespective of the regime under which he pays tax.

1.2 BASIS OF CHARGE [SECTION 15]

- (i) Section 15 deals with the basis of charge under the head "Salaries". Salary is chargeable to tax either on 'due' basis or on 'receipt' basis, whichever is earlier.
- (ii) However, where any salary, paid in advance, is assessed in the year of payment, it cannot be subsequently brought to tax in the year in which it becomes due.
- (iii) If the salary paid in arrears has already been assessed on due basis, the same cannot be taxed again when it is paid.

Example : If A draws his salary in advance for the month of April 2024 in the month of March 2024 itself, the same becomes chargeable on receipt basis and is to be assessed as income of the P.Y.2023-24 i.e., A.Y.2024-25. However, the salary for the A.Y.2025-26 will not include that of April 2024.

Example : If the salary due for March 2024 is received by A later in the month of April 2024, it is still chargeable as income of the P.Y.2023-24 i.e., A.Y.2024-25 on due basis. Obviously, salary for the A.Y.2025-26 will not include that of March 2024.

1.2.1 Advance Salary :

- Advance salary is taxable when it is received by the employee irrespective of the fact whether it is due or not. The rule behind this is the basis of taxability of salary i.e., salary is taxed on due or receipt basis, whichever is earlier.
- It may so happen that when advance salary is included and charged in a particular previous year, the rate of tax at which the employee is assessed may be higher than the normal rate of tax to which he would have been assessed. Section 89 provides for relief in these types of cases. The concept of relief under section 89 is explained in this unit later on.

Difference between advance salary and advance against salary :

- Loan is different from salary. When an employee takes a loan from his employer, which is repayable in certain specified installments, the loan amount cannot be brought to tax as salary of the employee.
- Similarly, advance against salary is different from advance salary. It is an advance taken by the employee from his employer. This advance is generally adjusted with his salary over a specified time period. It cannot be taxed as salary.

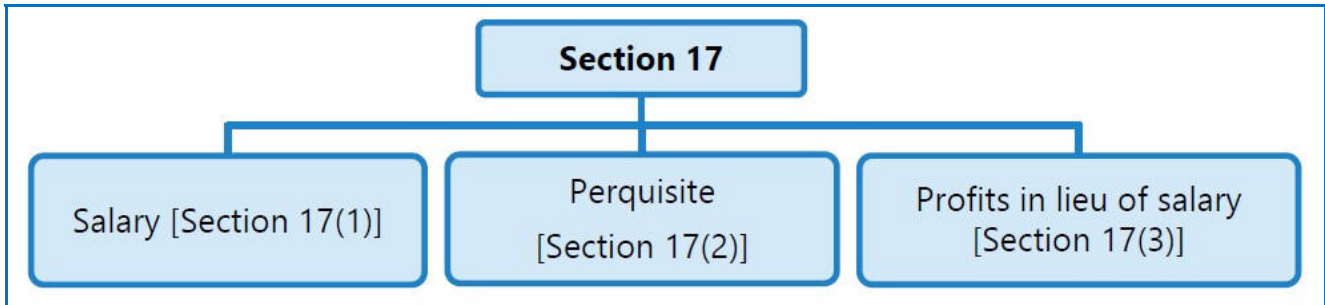
1.2.2 Arrears of salary

- Normally speaking, salary arrears must be charged on due basis. However, there are circumstances when it may not be possible to bring the same to charge on due basis.

Example : If the Pay Commission is appointed by the Central Government and it recommends revision of salaries of employees with retrospective date, the arrears received in that connection will be charged on receipt basis. Here also, relief under section 89 is available.

Example : If the Central Government announces increase in HRA in the previous year 2023-24 which is effective from 1.1.2022, then the arrears from 1.1.2022 to 31.3.2023 will be taxed in the previous year in which they are paid because they were never due earlier. Here also, relief under section 89 is available.

1.3 SALARY, PERQUISITE AND PROFITS IN LIEU OF SALARY [SECTION 17]



1.3.1 Meaning of Salary

- The meaning of the term 'salary' for purposes of income-tax is much wider than what is normally understood. The term 'salary' for the purposes of Income-tax Act, 1961 will include both monetary payments (e.g. basic salary, bonus, commission, allowances etc.) as well as non-monetary facilities (e.g. housing accommodation, medical facility, interest free loans etc.).
- Section 17(1) defines the term "Salary". It is an inclusive definition and includes monetary as well as non-monetary items.

'Salary' under section 17(1), includes the following :

(i)	wages,
(ii)	any annuity or pension,
(iii)	any gratuity,
(iv)	any fees, commission, perquisites or profits in lieu of or in addition to any salary or wages,
(v)	any advance of salary,
(vi)	any payment received in respect of any period of leave not availed by him i.e., leave salary or leave encashment,
(vii)	Provident Fund:
	<ul style="list-style-type: none"> • the portion of the annual accretion in any previous year to the balance at the credit of an employee participating in a recognised provident fund to the extent it is taxable and • transferred balance in recognized provident fund to the extent it is taxable,
(viii)	the contribution made by the Central Government or any other employer in the previous year to the account of an employee under a pension scheme referred to in section 80CCD.
(ix)	<i>the contribution made by the Central Government in the previous year, to the Agniveer Corpus Fund account of an individual enrolled in the Agnipath Scheme referred to in section 80CCH.</i>

(1) Wages

- In common parlance, the term “wages” means fixed regular payment earned for work or services. The words “wages”, “salary”, “basic salary” are used interchangeably. Moreover, the payments in the form of Bonus, Allowances etc. made to the employee are also included within the meaning of salary.
- Under the Income-tax Act, there are certain payments made which are fully taxable, partly taxable and fully exempt. For Example, wages, salary, bonus, dearness allowance etc. are fully taxable payments. Whereas monetary benefits in the form of allowances such as House Rent Allowance, conveyance allowance etc. are partially taxable.

Allowances :

Allowances are monetary payments made by the employer to the employees for meeting specific expenditure, whether personal or for the performance of duties. Under the Income-tax Act, 1961, allowance is taxable on due or receipt basis, whichever is earlier. These allowances are generally taxable unless some specific exemption has been provided in respect of such allowance. Various types of allowances normally in vogue are discussed below:

Allowances		
Fully Taxable under both regimes	Fully Taxable under default tax regime/ Partly Exempt under the optional tax regime	Fully Exempt only under the optional tax regime
(i) Entertainment Allowance (ii) Dearness Allowance (iii) Overtime Allowance (iv) Fixed Medical Allowance (v) City Compensatory Allowance (to meet increased cost of living in cities) (vi) Interim Allowance (vii) Servant Allowance (viii) Project Allowance (ix) Tiffin/Lunch/Dinner Allowance (x) Any other cash allowance (xi) Warden Allowance (xii) Non-practicing Allowance (xiii) Transport allowance to employee other blind/ deaf and dumb/ orthopedically handicapped employee	(i) House Rent Allowance [u/s 10(13A)] (ii) Special Allowances [u/s 10(14)] Except (a) Travelling allowance (b) Daily allowance (c) Conveyance allowance (d) Transport allowance to blind/ deaf and dumb/ orthopedically handicapped employee Note - The exceptions in (a) to (d) above are partly exempt under both the tax regimes.	(i) Allowances to High Court Judges (ii) Salary and Allowances paid by the United Nations Organization (iii) Sumptuary allowance granted to High Court or Supreme Court Judges Note - In cases (i) and (iii) above, the respective Acts provide for such exemption, not with standing anything contained in the Income- tax Act, 1961. In case (ii), exemption is provided under the respective Act, notwithstanding anything to the contrary contained in any other law. Fully Exempt under both tax regimes Allowance granted to Government employees outside India [Section 10(7)]

(A) Allowances which are fully taxable under both regime

- (1) City compensatory allowance :** City Compensatory Allowance is normally intended to compensate the employees for the higher cost of living in cities. It is taxable irrespective of the fact whether it is given as compensation for performing his duties in a particular place or under special circumstances.
- (2) Entertainment allowance :** This allowance is given to employees to meet the expenses towards hospitality in receiving customers etc. The Act gives a deduction towards entertainment allowance only to a Government employee in case he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). The details of deduction permissible are discussed later on in this Unit.
- (3) Transport allowance :** Transport allowance granted to an employee to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty is fully taxable. However, in case of blind/ deaf and dumb/ orthopedically handicapped employees exemption upto ₹ 3,200 p.m. is provided under section 10(14)(ii) read with Rule 2BB. This exemption would be available under both regimes.

(B) Allowances which are partially exempt under the optional tax regime/Allowances which are fully taxable under default tax regime

- (1) House rent allowance [Section 10(13A)] :** HRA is a special allowance specifically granted to an employee by his employer towards payment of rent for residence of the employee. HRA granted to an employee is exempt to the extent of least of the following, in case such assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A):

Metro Cities (i.e., Delhi, Kolkata, Mumbai, Chennai)	Other Cities
1) HRA actually received for the relevant period	1) HRA actually received for the relevant period
2) Rent paid (-) 10% of salary for the relevant period	2) Rent paid (-) 10% of salary for the relevant period
3) 50% of salary for the relevant period	3) 40% of salary for the relevant period

- Exemption u/s 10(13A) would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided u/s 115BAC(1A). It is not available under the default tax regime u/s 115BAC.
- Exemption is not available to an assessee who lives in his own house, or in a house for which he has not incurred the expenditure of rent.
- "Salary" for this purpose means basic salary, dearness allowance, if provided in terms of employment and commission as a fixed percentage of turnover.
- Relevant period means the period during which the said accommodation was occupied by the assessee during the previous year.

ILLUSTRATION 1 :

Mr. Raj Kumar has the following receipts from his employer:

Basic pay

₹ 40,000 p.m.

Dearness allowance (D.A.)	₹ 6,000 p.m.
Commission	₹ 50,000 p.a.
Motor car for personal use (expenses met by the employer)	₹ 1,500 p.m.
House rent allowance	₹ 15,000 p.m.

Find out the amount of HRA exempt in the hands of Mr. Raj Kumar assuming that he paid a rent of ₹ 16,000 p.m. for his accommodation at Kanpur. DA forms part of salary for retirement benefits. Mr. Raj Kumar exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

Solution :

HRA received	₹ 1,80,000
Less: Exempt under section 10(13A) [Note]	₹ 1,36,800
Taxable HRA	₹ 43,200

Note : Exemption shall be least of the following three limits:

$$(a) \text{ the actual amount received (₹ 15,000} \times 12) = ₹ 1,80,000$$

excess of the actual rent paid by the assessee over 10% of his salary

= Rent Paid (-) 10% of salary for the relevant period

$$= (₹ 16,000 \times 12) (-) 10\% \text{ of } [(₹ 40,000 + ₹ 6,000) \times 12]$$

$$= ₹ 1,92,000 - ₹ 55,200 = ₹ 1,36,800$$

40% salary as his accommodation is situated at Kanpur

$$= 40\% \text{ of } [(₹ 40,000 + ₹ 6,000) \times 12] = ₹ 2,20,800$$

Note : For the purpose of exemption under section 10(13A), salary includes dearness allowance only when the terms of employment so provide, but excludes all other allowances and perquisites.

(2) Special allowances to meet expenses relating to duties or personal expenses [Section 10(14)]

This clause provides for exemption (as per Rule 2BB) in respect of the following :

(i) Special allowances or benefit, not being in the nature of a perquisite, specifically granted to meet expenses incurred wholly, necessarily and exclusively in the performance of the duties of an office or employment of profit **[Section 10(14)(i)]**

These allowances would be exempt to that extent such expenses are actually incurred for that purpose. In other words, actual allowance received or actual amount spent for the performance of the duties of an office or employment of profit, whichever is less would be exempt.

(ii) Special allowances granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides or to compensate him for the increased cost of living **[Section 10(14)(ii)]**.

For the allowances under this category, **there is a limit on the amount which the employee can receive from the employer**. Any amount received by the employee in excess of these specified limits will be taxable in his hands as income from salary for the year. It does not matter whether the amount which is received is actually spent or not by the employee for the purpose for which it was given to him.

Rule 2BB :

The following allowances have been prescribed in Rule 2BB :

Allowances prescribed for the purposes of section 10(14)(i)

- (a) any allowance granted to meet the expenditure incurred on a helper where such helper is engaged in the performance of the duties of an office or employment of profit (**Helper Allowance**);
- (b) any allowance granted for encouraging the academic, research and training pursuits in educational and research institutions(**Research allowance**);
- (c) any allowance granted to meet the expenditure on the purchase or maintenance of uniform for wear during the performance of the duties of an office or employment of profit (**Uniform Allowance**).

Allowances prescribed for the purposes of section 10(14)(ii)

S. No.	Name of Allowance	Extent to which allowance is exempt
1.	Any Special Compensatory Allowance In the nature of Special Compensatory (Hilly Areas) Allowance or High Altitude Allowance or Uncongenial Climate Allowance or Snow Bound Area Allowance or Avalanche Allowance	₹ 800 or ₹ 300 per month depending upon the specified locations ₹ 7,000 per month in Siachen area of Jammu and Kashmir
2.	Any Special Compensatory Allowance in the nature of border area allowance or remote locality allowance or difficult area allowance or disturbed area allowance	₹ 1,300 or ₹ 1,100 or ₹ 1,050 or ₹ 750 or ₹ 300 or ₹ 200 per month depending upon the specified locations
3.	Special Compensatory (Tribal Areas/Schedule Areas/Agency Areas) Allowance [Specified States]	₹ 200 per month
4.	Any allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed in the course of running such transport from one place to another, provided that such employee is not in receipt of daily allowance	70% of such allowance upto a maximum of ₹ 10,000 per month
5.	Children Education Allowance	₹ 100 per month per child upto a maximum of two children
6.	Any allowance granted to an employee to meet the hostel expenditure on his child	₹ 300 per month per child upto a maximum of two children
7.	Compensatory Field Area Allowance [Specified areas in Specified States]	₹ 2,600 per month
8.	Compensatory Modified Field Area Allowance [Specified areas in Specified States]	₹ 1,000 per month
9.	Any special allowance in the nature of counter insurgency allowance granted to the members of the armed forces operating in areas away from their permanent locations.	₹ 3,900 per month

S. No.	Name of Allowance	Extent to which allowance is exempt
10.	Underground Allowance granted to an employee who is working in uncongenial, unnatural climate in underground mines.	₹ 800 per month
11.	Any special allowance in the nature of high Altitude allowance granted to the member of the armed forces operating in high altitude areas	
	For altitude of 9,000 to 15,000 feet For above 15,000 feet	₹ 1,060 per month ₹ 1,600 per month
12.	Any special allowance in the nature of special compensatory highly active field area allowance granted to the member of the armed forces	₹ 4,200 per month
13.	Any special allowance in the nature of Island (duty) allowance granted to the member of the armed forces in Andaman & Nicobar and Lakshadweep Group of Islands	₹ 3,250 per month

Any assessee claiming exemption in respect of allowances mentioned at serial numbers 7 & 8 and 9 shall not be entitled to exemption in respect of the allowance and disturbed area allowance referred at serial number 2, respectively.

(c) Allowances which are partly exempt under both regimes

The following allowances prescribed in Rule 2BB would be exempt under both the default and optional tax regimes :

Allowances prescribed for the purposes of section 10(14)(i)

- (a) any allowance granted to meet the cost of travel on tour or on transfer (Travelling Allowance);
Explanation - "allowance granted to meet the cost of travel on transfer" includes any sum paid in connection with the transfer, packing and transportation of personal effects on such transfer.
- (b) any allowance, whether granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty (**Daily allowance**);
- (c) any allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit (**Conveyance Allowance**);

Allowances prescribed for the purposes of section 10(14)(ii)

Any **transport allowance** granted to an employee who is blind or deaf and dumb or orthopedically handicapped with disability of the lower extremities of the body, to meet his expenditure for commuting between his residence and place of duty would be exempt upto ₹ 3,200 per month.

ILLUSTRATION 2 :

Mr. Srikant has two sons. He is in receipt of children education allowance of ₹ 150 p.m. for his elder son and ₹ 70 p.m. for his younger son. Both his sons are going to school. He also receives the following allowances:

Transport allowance : ₹ 1,800 p.m.

Tribal area allowance : ₹ 500 p.m.

Compute his taxable allowances

SOLUTION :

Taxable allowance in the hands of Mr. Srikant is computed as under -

If Mr. Srikant exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)

Children Education Allowance:

Elder son [(₹ 150 – ₹ 100) p.m. × 12 months]	= ₹ 600	
Younger son [(₹ 70 – ₹ 70) p.m. × 12 months]	= Nil	₹ 600
Transport allowance (₹ 1,800 p.m. × 12 months)		₹ 21,600
Tribal area allowance [(₹ 500 – ₹ 200) p.m. × 12 months]		₹ 3,600
Taxable allowances		₹ 25,800

If Mr. Srikant pays tax under default tax regime under section 115BAC

Children Education Allowance [(₹ 150 + ₹ 70) p.m. × 12 months]	₹ 2,640
Transport allowance (₹ 1,800 p.m. × 12 months)	₹ 21,600
Tribal area allowance (₹ 500 p.m. × 12 months)	₹ 6,000
Taxable allowances	₹ 30,240

(D) Allowances which are fully exempt only under the optional tax regime (i.e., the normal provisions of the Act)

- (1) Allowance to Supreme Court/ High Court Judges :** Any allowance paid to a Judge of a High Court and Supreme Court under section 22A(2) of the High Court Judges (Conditions of Service) Act, 1954 and section 23(1A) of the Supreme Court Judges (Salaries and Conditions of services) Act, 1958, respectively, is not taxable under the optional tax regime (i.e., normal provisions of the Act).
- (2) Allowance received from United Nations Organisation (UNO):** Salary and Allowance paid by the UNO to its employees is not taxable by virtue of section 2 of the United Nations (Privileges and Immunities) Act, 1947. Besides salary, any pension covered under the United Nations (Privileges and Immunities) Act and received from UNO is also exempt from tax under the optional tax regime (i.e., normal provisions of the Act).
- (3) Sumptuary allowance:** of Service) Act, 1954 and Supreme Court Judges under section 23B of the Sumptuary allowance given to High Court Judges under section 22C of the High Court Judges (Conditions Supreme Court Judges (Conditions of Service) Act, 1958 is not chargeable to tax under the optional tax regime (i.e., normal provisions of the Act)

Note – In cases (1) and (3) above, the respective Acts provide for such exemption, notwithstanding anything contained in the Income-tax Act, 1961. In case (2), exemption is provided under the respective Act, notwithstanding anything to the contrary contained in any other law.

(E) Allowances which are fully exempt under both regimes

Allowances payable outside India [Section 10(7)] : Allowances or perquisites paid or allowed as such outside India by the Government to a citizen of India for services rendered outside India are exempt from tax.

(2) Annuity or Pension

Meaning of Annuity

- As per the definition, ‘annuity’ is treated as salary. Annuity is a sum payable in respect of a particular year. It is a yearly grant. If a person invests some money entitling him to series of equal annual sums, such annual sums are annuities in the hands of the investor.
- Annuity received by a present employer is to be taxed as salary. It does not matter whether it is paid in pursuance of a contractual obligation or voluntarily.
- Annuity received from a past employer is taxable as profit in lieu of salary.
- Annuity received from person other than an employer is taxable as “income from other sources”.

Pension

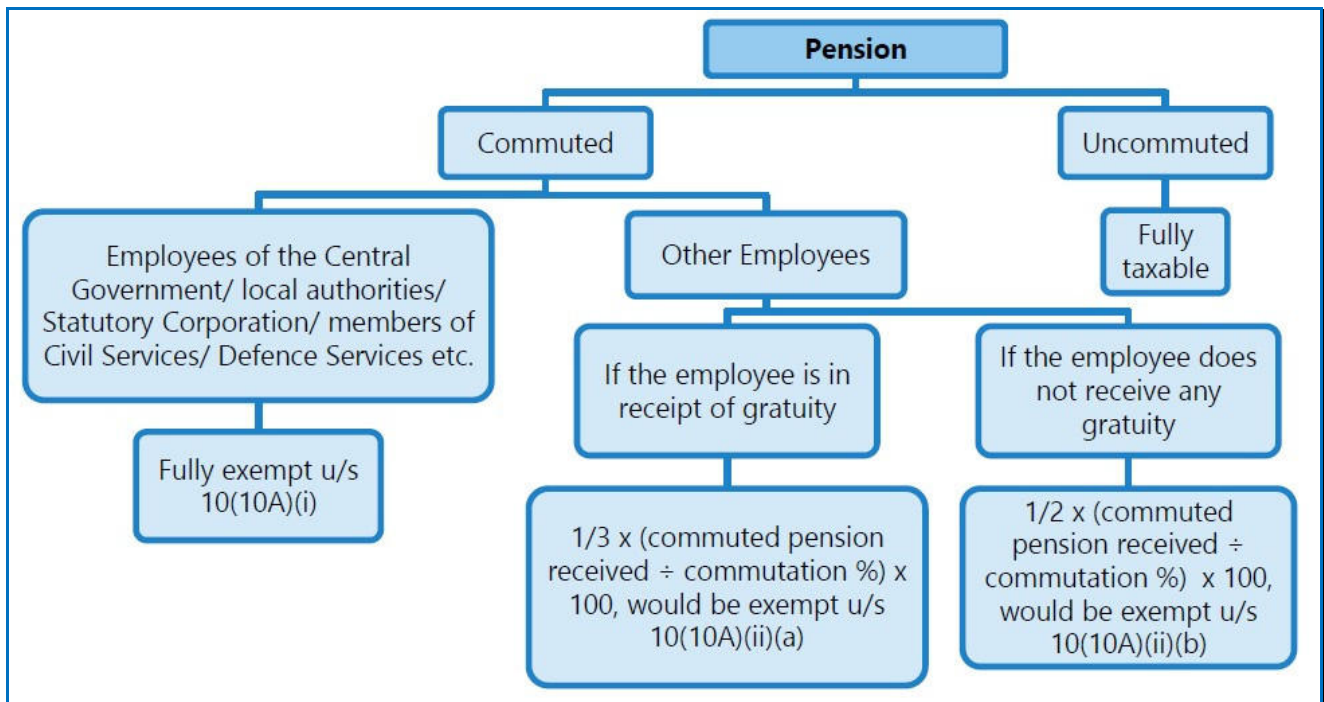
Concise Oxford Dictionary defines ‘pension’ as a periodic payment made especially by Government or a company or other employers to the employee in consideration of past service payable after his retirement. Pension is of two types: commuted and uncommuted.

- **Uncommuted Pension** : Uncommuted pension refers to pension received periodically. It is fully taxable in the hands of both government and non- government employees.
- **Commuted Pension** : Commutation means inter-change. Commuted pension means lump sum amount taken by commuting the whole or part of the pension. Many persons convert their future right to receive pension into a lumpsum amount receivable immediately.

Example : Suppose a person is entitled to receive a pension of say ₹ 10,000 p.m. for the rest of his life. He may commute 1/4th i.e., 25% of this amount and get a lumpsum of say ₹ 1,50,000. After commutation, his pension will now be the balance 75% of ₹ 10,000 p.m. = ₹ 7,500 p.m.

Exemption in respect of Commuted Pension [Section 10(10A)] :

- As per section 10(10A), the payment in respect of commuted pension is exempt, subject to the conditions specified therein. Its tax treatment is depicted hereunder:



- Exemption u/s 10(10A) in respect of commuted pension is available to an assessee irrespective of the regime under which he pays tax.
- Judges of the Supreme Court and High Court will be entitled to the exemption of the commuted portion u/s 10(10A)(i).

ILLUSTRATION 3 :

Mr. Sagar who retired on 1.10.2023 is receiving ₹ 5,000 p.m. as pension. On 1.2.2024, he commuted 60% of his pension and received ₹ 3,00,000 as commuted pension. You are required to compute his taxable pension assuming:

- He is a government employee.
- He is a private sector employee and received gratuity of ₹ 5,00,000 at the time of retirement.
- He is a private sector employee and did not receive any gratuity at the time of retirement.

SOLUTION :**(a) He is a government employee :**

Uncommuted pension received (October – March)		₹ 24,000
[(₹ 5,000 × 4 months) + (40% of ₹ 5,000 × 2 months)]		
Commuted pension received	₹ 3,00,000	
Less: Exempt u/s 10(10A)	₹ 3,00,000	NIL
Taxable pension		₹ 24,000

(b) He is a private sector employee and received gratuity ₹ 5,00,000 at the time of retirement

Uncommuted pension received (October – March)		₹ 24,000
[(₹ 5,000 × 4 months) + (40% of ₹ 5,000 × 2 months)]		
Commuted pension received	₹ 3,00,000	
Less: Exempt u/s 10(10A)		
$\left(\frac{1}{3} \times \frac{₹ 3,00,000}{60\%} \times 100\%\right)$	₹ 1,66,667	₹ 1,33,333
Taxable pension		₹ 1,57,333

(c) He is a private sector employee and did not receive any gratuity at the time of retirement

Uncommuted pension received (October – March)		₹ 24,000
[(₹ 5,000 × 4 months) + (40% of ₹ 5,000 × 2 months)]		
Commuted pension received	₹ 3,00,000	
Less: Exempt u/s 10(10A)		
$\left(\frac{1}{3} \times \frac{₹ 3,00,000}{60\%} \times 100\%\right)$	₹ 2,50,000	₹ 50,000
Taxable pension		₹ 74,000

Exemption in respect of pension received by recipient of gallantry awards [Section 10(18)]

- Any income by way of pension received by an individual is exempt from income- tax if –
 - (a) such individual was an employee of Central or State Government and
 - (b) has been awarded “Param Vir Chakra” or “Maha Vir Chakra” or “Vir Chakra” or such other gallantry award notified by the Central Government in this behalf.
- In case of the death of such individual, any income by way of family pension received by any member of the family of such individual shall also be exempt under this clause.
- “Family”, in relation to an individual, means –
 - The spouse and children of the individual; and
 - The parents, brothers and sisters of the individuals or any of them, wholly or mainly dependent on the individual.

Exemption under section 10(18) would be available to an assessee irrespective of the regime under which he pays tax.

Exemption of disability pension granted to disabled personnel of armed forces who have been invalided on account of disability attributable to or aggravated by such service [Circular No. 13/2019, dated 24.6.2019]

The entire disability pension, i.e., “disability element” and “service element” of pension granted to members of naval, military or air forces who have been invalided out of naval, military or air force service on account of bodily disability attributable to or aggravated by such service would be exempt from tax.

The CBDT has, vide this circular, clarified that exemption in respect of disability pension would be available to all armed forces personnel (irrespective of rank) who have been invalided out of such service on account of bodily disability attributable to or aggravated by such service. However, such tax exemption will be available only to armed forces personnel who have been invalided out of service on account of bodily disability attributable to or aggravated by such service and not to personnel who have been retired on superannuation or otherwise.

(3) Gratuity :

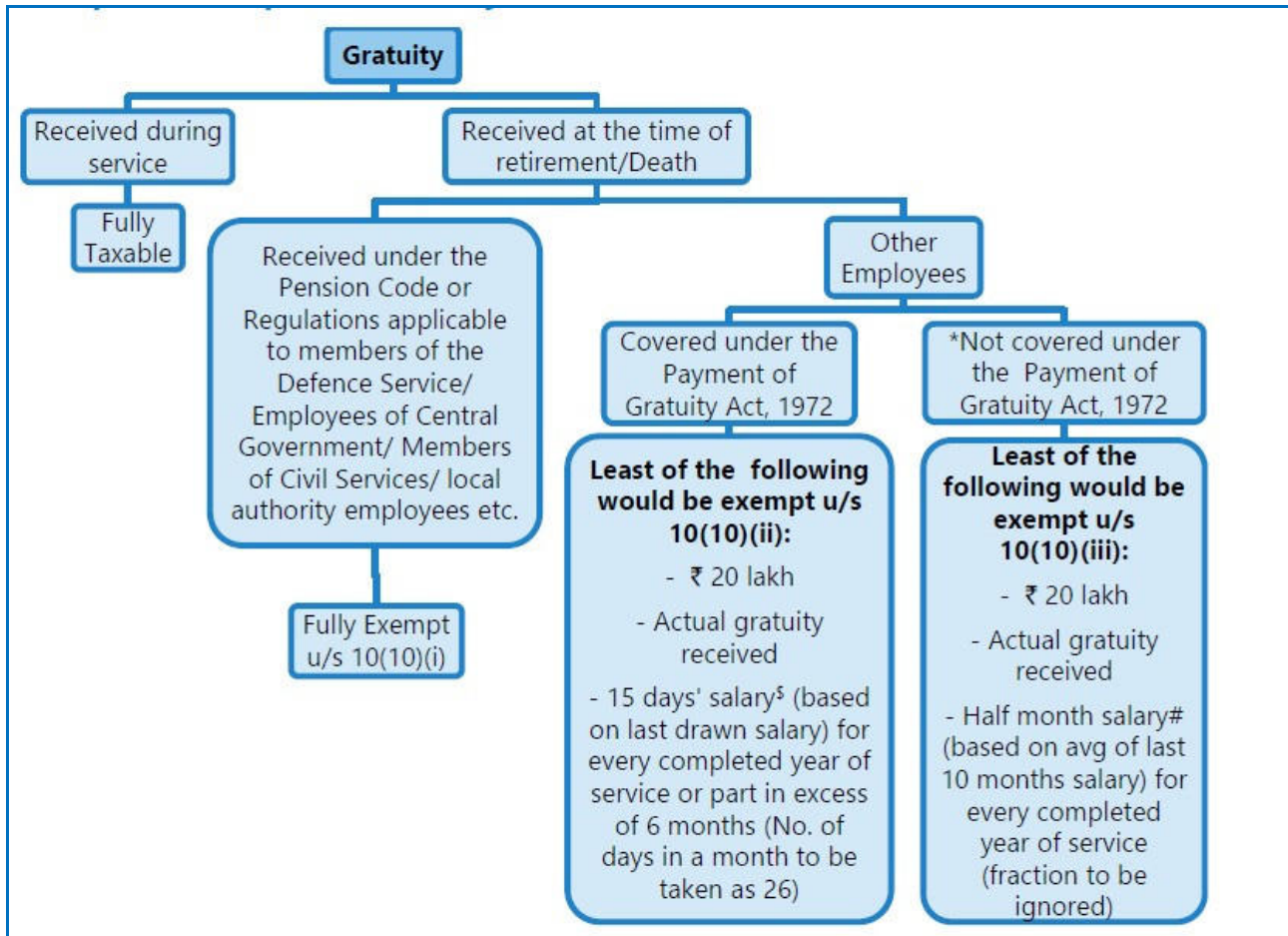
Gratuity is a voluntary payment made by an employer in appreciation of services rendered by the employee. Now-a-days gratuity has become a normal payment applicable to all employees. In fact, Payment of Gratuity Act, 1972 is a statutory recognition of the concept of gratuity. Almost all employers enter into an agreement with employees to pay gratuity.

Exemption in respect of Gratuity [Section 10(10)] :

*Any death cum retirement gratuity received by an employee on his retirement or his becoming incapacitated prior to such retirement or on his termination or any gratuity received by his widow, children or dependents on his death

\$ Salary for this purpose means basic salary and dearness allowance. No. of days in a month for this purpose, shall be taken as 26.

#Salary for this purpose means basic salary and dearness allowance, if provided in the terms of employment for retirement benefits, forming part of salary and commission which is expressed as a fixed percentage of turnover.



- Where gratuity is received from 2 or more employers in the same previous year, then, aggregate amount of gratuity exempt from tax cannot exceed ₹ 20,00,000.
- Where gratuity is received in any earlier previous year from former employer and again received from another employer in a later previous year, the limit of ₹ 20,00,000 will be reduced by the amount of gratuity exempt earlier.
- It is important to note the difference in definition of "Salary" and the manner of computation of the third limit in case of employees covered under the Payment of Gratuity Act, 1972 and those not covered for determining the amount of exempt gratuity.
- Exemption under section 10(10) would be available to an assessee irrespective of the regime under which he pays tax.

ILLUSTRATION 4 :

Mr. Ravi retired on 15.6.2023 after completion of 26 years 8 months of service and received gratuity of ₹ 15,00,000. At the time of retirement, his salary was:

Basic Salary	: ₹ 50,000 p.m.
Dearness Allowance	: ₹ 10,000 p.m. (60% of which is for retirement benefits)
Commission	: 1% of turnover (turnover in the last 12 months was ₹ 1,20,00,000)
Bonus	: ₹ 25,000 p.a. Compute his taxable gratuity assuming:

- (a) He is private sector employee and covered by the Payment of Gratuity Act, 1972.
 (b) He is private sector employee and **not** covered by Payment of Gratuity Act, 1972.
 (c) He is a Government employee.

SOLUTION :**(a) He is covered by the Payment of Gratuity Act 1972 :**

Gratuity received at the time of retirement ₹ 15,00,000

Less: Exemption under section 10(10)

Least of the following :

i) Gratuity received	₹ 15,00,000	
ii) Statutory limit	₹ 20,00,000	
iii) 15 days' salary based on last drawn salary for each completed year of service or part thereof in excess of 6 months $\frac{15}{26} \times$ last drawn salary \times years of service $\frac{15}{26} \times (50,000 + 10,000) \times 27 =$	₹ 9,34,615	₹ 9,34,615
Taxable Gratuity		₹ 5,65,385

(b) He is not covered by the Payment of Gratuity Act 1972

Gratuity received at the time of retirement	₹ 15,00,000
Less: Exemption under section 10(10) (Note)	₹ 8,58,000
Taxable Gratuity	₹ 6,42,000

Note : Exemption under section 10(10) is least of the following:

- (i) Gratuity received ₹ 15,00,000
 (ii) Statutory limit ₹ 20,00,000
 (iii) Half month's salary based on average salary of last 10 months preceding the month of retirement for each completed year of service. i.e. $\frac{1}{2} \times$ Average salary \times years of service

$$= \frac{1}{2} \times \left[\frac{(50,000 \times 10) + (10,000 \times 60\% \times 10) + \left(1\% \times 1,20,000 \times \frac{10}{12}\right)}{10} \right] \times 26 = ₹ 8,58,000$$

(c) He is a government employee

Gratuity received at the time of retirement	₹ 15,00,000
Less: Exemption under section 10(10)	₹ 15,00,000
Taxable gratuity	Nil

(4) Fees, commission, perquisites or profits in lieu of or in addition to any salary or wages

- The payment in the form of fees or commission by the employer to the employee are fully taxable. Commission may be paid as fixed percentage of turnover or net profits etc.

- Section 17(2) and 17(3) contains the provisions relating to perquisites and profits in lieu of salary, respectively. The provisions of these sections would be discussed in detail separately in this unit.

(5) Any Advance of Salary

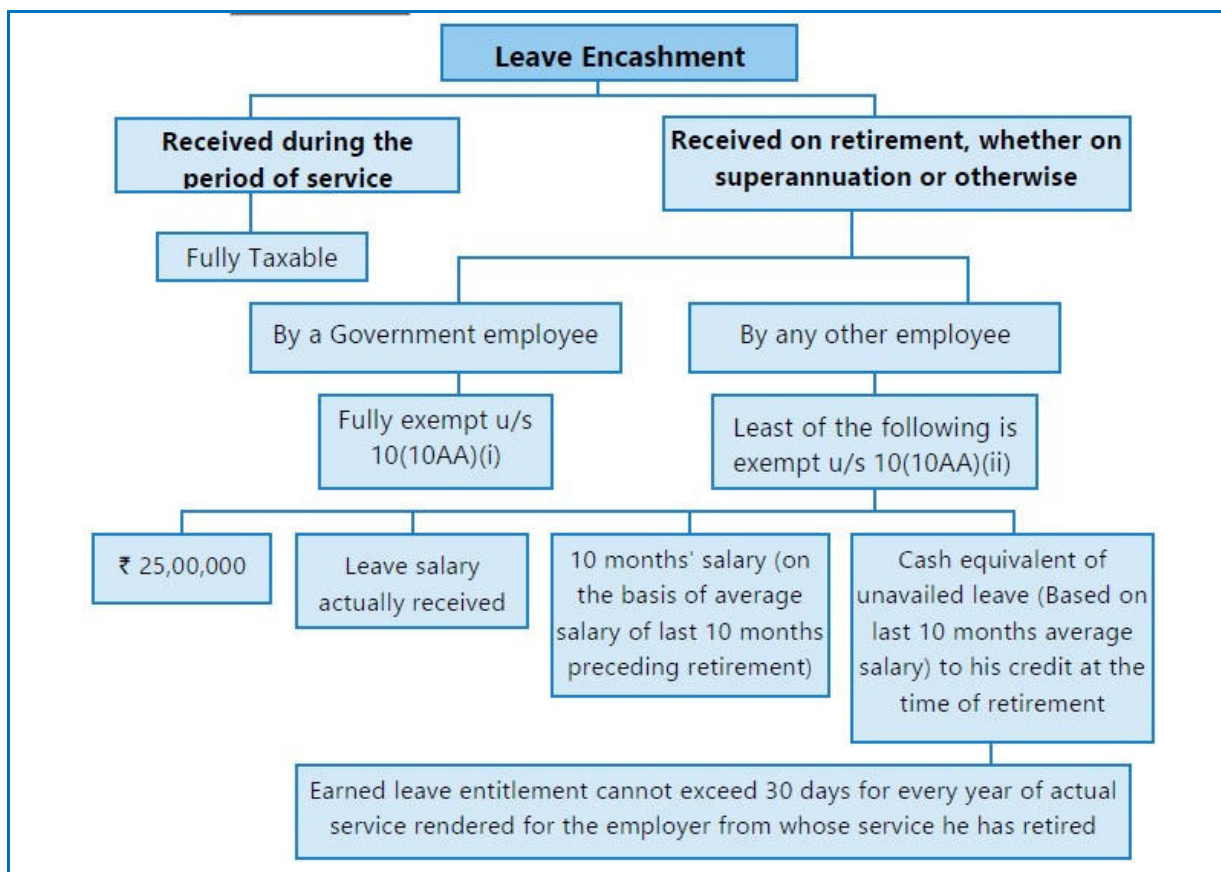
The treatment of “Advance Salary” is already discussed in this unit.

(6) Leave Salary or Leave Encashment

Generally, employees are allowed to take leave during the period of service. Employee may avail such leave or in case the leave is not availed, then the leave may either lapse or be accumulated for future or allowed to be encashed every year or at the time termination/ retirement. The payment received on account of encashment of unavailed leave would form part of salary. However, section 10(10AA) provides exemption in respect of amount received by way of encashment of unutilised earned leave by an employee at the time of his retirement, whether on superannuation or otherwise.

Exemption of amount received by way of encashment of unutilised earned leave on retirement [Section 10(10AA)]

The taxability and exemption provisions are depicted hereunder :



- Where leave salary is received from two or more employers in the same previous year, then the aggregate amount of leave salary exempt from tax cannot exceed ₹ 25,00,000.
- Where leave salary is received in any earlier previous year from a former employer and again received from another employer in a later previous year, the limit of ₹ 25,00,000 will be reduced by the amount of leave salary exempt earlier.
- Salary for this purpose means basic salary and dearness allowance, if provided in the terms of employment for retirement benefits and commission which is expressed as a fixed percentage of turnover.

- 'Average salary' will be determined on the basis of the salary drawn during the period of ten months immediately preceding the date of his retirement whether on superannuation or otherwise.
- Exemption under section 10(10AA) would be available to an assessee irrespective of the regime under which he pays tax.

ILLUSTRATION 5 :

Mr. Gupta retired on 1.12.2023 after 20 years of service and received leave salary of ₹ 5,00,000. Other details of his salary income are :

Basic Salary	: ₹ 5,000 p.m. (₹ 1,000 was increased w.e.f. 1.4.2023)
Dearness Allowance	: ₹ 3,000 p.m. (60% of which is for retirement benefits)
Commission	: ₹ 500 p.m.
Bonus	: ₹ 1,000 p.m.
Leave availed during service	: 480 days

He was entitled to 30 days leave every year.

You are required to compute his taxable leave salary assuming:

- He is a government employee.
- He is a non-government employee.

SOLUTION :**(a) He is a government employee :**

Leave Salary received at the time of retirement	₹ 5,00,000
Less: Exemption under section 10(10AA)	₹ 5,00,000
Taxable Leave salary	Nil

(b) He is a non-government employee :

Leave Salary received at the time of retirement	₹ 5,00,000
Less: Exempt under section 10(10AA) [See Note below]	₹ 26,400
Taxable Leave Salary	₹ 4,73,600

Note : Exemption under section 10(10AA) is least of the following:

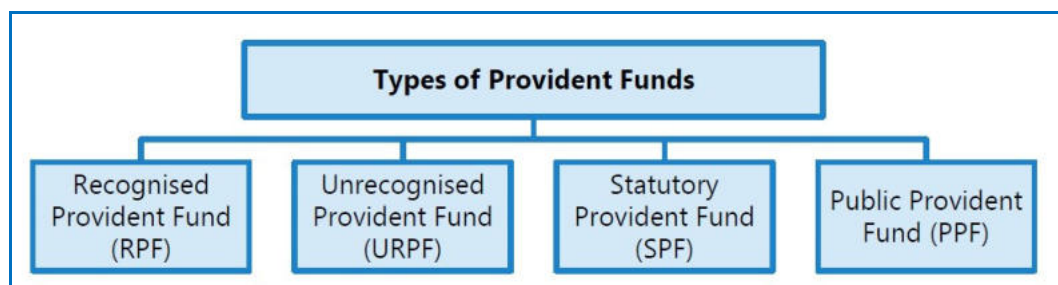
- Leave salary received ₹ 5,00,000
- Statutory limit ₹ 25,00,000
- 10 months' salary based on average salary of last 10 months
 i.e. $\left[10 \times \frac{\text{Salary of last 10 months i.e. Feb. - Nov}}{10 \text{ Months}} \right]$
 $= \left[10 \times \frac{(5000 \times 8) + (4000 \times 2) + (60\% \times 3000 \times 10)}{10 \text{ Months}} \right] = ₹ 66,000$

- Cash equivalent of leave standing at the credit of the employee based on the average salary of last 10 months' (max. 30 days per year of service) Leave Due = Leave allowed – Leave taken
 $= (30 \text{ days per year} \times 20 \text{ years}) - 480 \text{ days} = 120 \text{ days}$

$$\begin{aligned} & \text{i.e. } \left[\frac{\text{Leav due (in case)}}{30 \text{ days}} \times \text{Average salary p.m.} \right] \\ & = \left[\frac{120 \text{ days}}{30 \text{ days}} \times \frac{\text{₹}66,000}{10} \right] \quad \text{₹ } 26,400 \end{aligned}$$

(7) Provident fund :

- Provident fund scheme is a scheme intended to give substantial benefits to an employee at the time of his retirement. Under this scheme, a specified sum is deducted from the salary of the employee each month or at regular intervals as his contribution towards the fund. The employer also generally contributes the same amount out of his pocket, to the fund. The contributions of the employer and the employee are invested in approved securities. Interest earned thereon is also credited to the account of the employee. Thus, the credit balance in a provident fund account of an employee consists of the following:
 - employee's contribution
 - interest on employee's contribution
 - employer's contribution
 - interest on employer's contribution.
- The accumulated balance is paid to the employee at the time of his retirement or resignation. In the case of death of the employee, the same is paid to his legal heirs.
- The provident fund represents an important source of small savings available to the Government. Hence, the Income-tax Act, 1961 gives certain deductions on savings in a provident fund account.



- Recognised Provident Fund (RPF) :** Recognised provident fund means a provident fund recognised by the Commissioner of Income-tax for the purposes of income-tax. It is governed by Part A of Schedule IV to the Income- tax Act, 1961. This schedule contains various rules regarding the following :
 - Recognition of the fund
 - Employee's and employer's contribution to the fund
 - Treatment of accumulated balance etc.
 A fund constituted under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 will also be a Recognised Provident Fund.
- Unrecognised Provident Fund (URPF) :** A fund not recognised by the Commissioner of Income-tax is Unrecognised Provident Fund.
- Statutory Provident Fund (SPF) :** The SPF is governed by Provident Funds Act, 1925. It applies to employees of government, railways, semi-government institutions, local bodies, universities and all recognised educational institutions.
- Public Provident Fund (PPF) :** Public provident fund is operated under the Public Provident Fund Act, 1968. A membership of the fund is open to every individual though it is ideally suited to self-employed people. A salaried employee may also contribute to PPF in addition to the fund operated by his employer. An individual may contribute to the fund on his own behalf as also on behalf of a minor of whom he is the guardian.

For getting a deduction under section 80C, a member is required to contribute to the PPF a minimum of ₹ 500 in a year. The maximum amount that may qualify for deduction on this account is ₹ 1,50,000 as per PPF rules.

A member of PPF may deposit his contribution in as many installments in multiples of ₹ 500 as is convenient to him. The amount of contribution may be paid at any of the offices or branch offices of the State Bank of India or its subsidiaries and specified branches of banks or any Post Office.

The tax treatment is given below: During the Employment period :

Particulars	Recognised PF	Unrecognised PF	Statutory PF	Public PF
Employer's Contribution	Contribution in excess of 12% of salary is taxable as "salary" u/s 17(1)	Not taxable at the time of contribution	Fully exempt	N.A.(as there is only assessee's own contribution)
Employee's Contribution	Eligible for deduction u/s 80C, where an employee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)	Not eligible for deduction	Eligible for deduction u/s 80C, where an employee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)	Eligible for deduction u/s 80C, where an employee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)
Interest Credited on Employer's Contribution	Amount in excess of 9.5% p.a. is taxable as "salary" u/s 17(1)	Not taxable at the time of credit of interest	Fully exempt	N.A.
Interest Credited on Employee's Contribution Amount withdrawn on retirement/termination	Amount in excess of 9.5% p.a. is taxable as "salary" u/s 17(1) [See Note below] Exempt u/s 10(12) subject to certain conditions detailed in the chart below	Not taxable at the time of credit of interest <ul style="list-style-type: none"> Employee's contribution is not taxable. Interest on Employee's contribution is taxable under 'Income from Other Sources'. Employer's contribution and interest thereon is salary 	Exempt upto certain limit of contribution [See Note below] Exempt u/s 10(11)	Fully exempt Fully exempt u/s 10(11)

Salary for this purpose means basic salary and dearness allowance, if provided in the terms of employment for retirement benefits and commission as a percentage of turnover.

Note : Interest credited on contribution by such person/employee

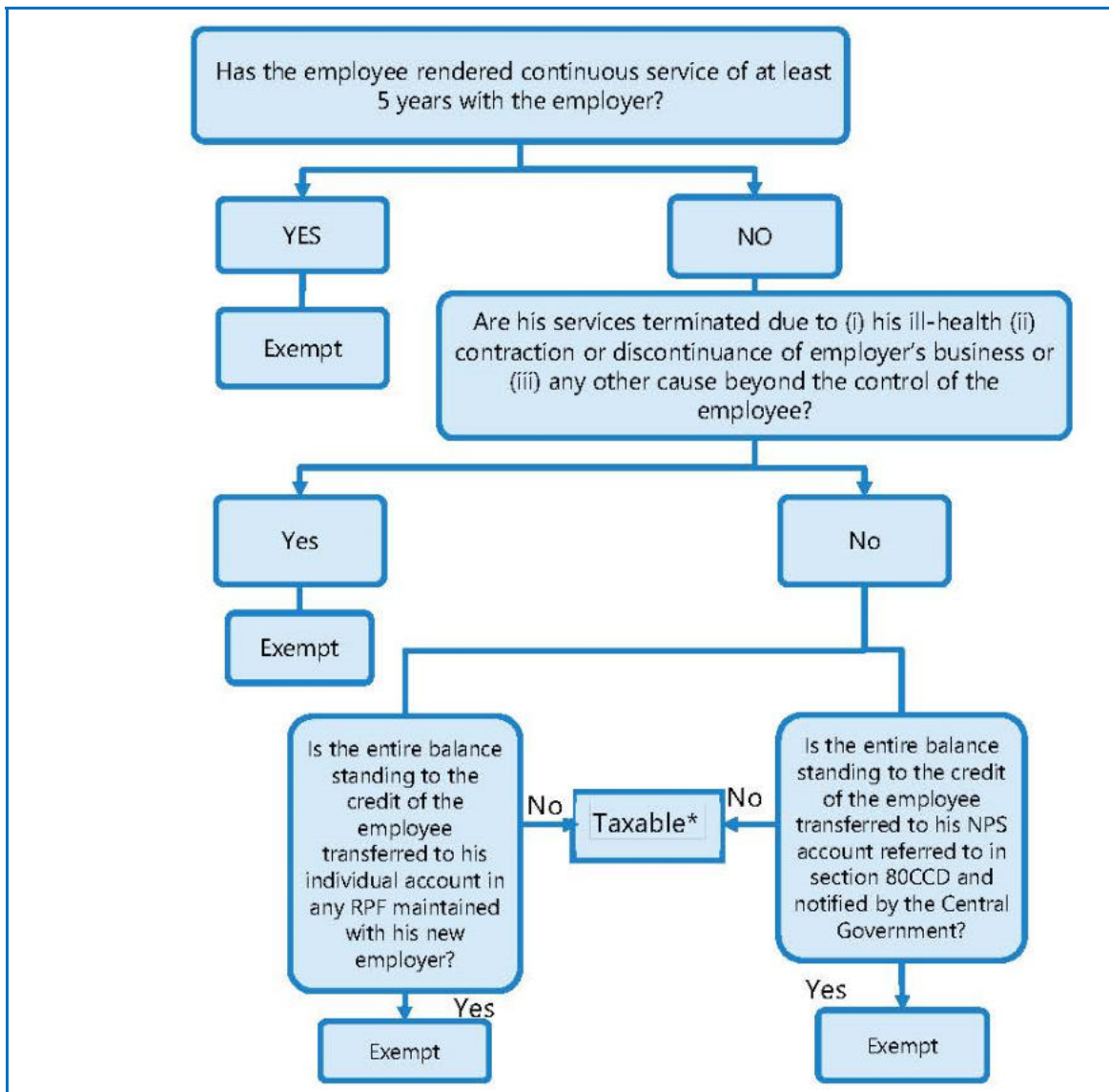
- As per section 10(11), any payment from a Provident Fund (PF) to which Provident Fund Act, 1925, applies or from Public Provident Fund would be exempt.

- Accumulated balance due and becoming payable to an employee participating in a Recognized Provident Fund (RPF) would be exempt under section 10(12).
- However, the exemption under section 10(11) or 10(12) would not be available in respect of income by way of interest accrued during the previous year to the extent it relates to the amount or the aggregate of amounts of contribution made by that person/employee exceeding ₹ 2,50,000 in any previous year in that fund, on or after 1st April, 2021.
- If the contribution by such person/employee is in a fund in which there is no employer's contribution, then, a higher limit of ₹ 5,00,000 would be applicable for such contribution, and interest accrued in any previous year in that fund, on or after 1st April, 2021 would be exempt upto that limit.
- It may be noted that interest accrued on contribution to such funds upto 31st March, 2021 would be exempt without any limit, even if the accrual of income is after that date.
- Exemption under section 10(11) and 10(12) would be available to an assessee irrespective of the regime under which he pays tax.
- The CBDT has, vide Rule 9D, notified the manner to calculate taxable interest relating to contribution in a provident fund or recognized provident fund, exceeding threshold limit.
- Interest income accrued during the previous year which is not exempt from inclusion in the total income of a person (taxable interest) shall be computed as the interest accrued during the previous year in the taxable contribution account.
- For this purpose, separate accounts within the provident fund account shall be maintained during the previous year 2021-22 and all subsequent previous years for taxable contribution and non-taxable contribution made by a person.
 - (a) Non-taxable contribution account – Aggregate of
 - (i) closing balance in the account as on 31.03.2021;
 - (ii) any contribution made by the person in the account during the previous year 2021-22 and subsequent previous years, which is not included in the taxable contribution account; and
 - (iii) interest accrued on (i) and (ii),
 as reduced by the withdrawal, if any, from such account.
 - (b) Taxable contribution account – Aggregate of
 - (i) contribution made by the person in the account during the previous year 2021-22 and subsequent previous years, which is in excess of the yearly threshold limit; and
 - (ii) interest accrued on (i)
 as reduced by the withdrawal, if any, from such account.
- Yearly threshold limit is ₹ 5,00,000, if the contribution by such person/employee is in a fund in which there is no employer's contribution and ₹ 2,50,000 in other cases.
- It may be noted that interest accrued on contribution to such funds upto 31st March, 2021 would be exempt without any limit, even if the accrual of income is after that date.
- Exemption under section 10(11) and 10(12) would be available to an assessee irrespective of the regime under which he pays tax.
- The CBDT has, vide Rule 9D, notified the manner to calculate taxable interest relating to contribution in a provident fund or recognized provident fund, exceeding threshold limit.
- Interest income accrued during the previous year which is not exempt from inclusion in the total income of a person (taxable interest) shall be computed as the interest accrued during the previous year in the taxable contribution account.

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 - (i) closing balance in the account as on 31.03.2021;
 - (ii) any contribution made by the person in the account during the previous year 2021-22 and subsequent previous years, which is not included in the taxable contribution account; and
 - (iii) interest accrued on (i) and (ii),
 as reduced by the withdrawal, if any, from such account.
 - (b) Taxable contribution account – Aggregate of
 - (i) contribution made by the person in the account during the previous year 2021-22 and subsequent previous years, which is in excess of the yearly threshold limit; and
 - (ii) interest accrued on (i)
 - (iii) as reduced by the withdrawal, if any, from such account.

Yearly threshold limit is ₹ 5,00,000, if the contribution by such person/employee is in a fund in which there is no employer’s contribution and ₹ 2,50,000 in other cases.

Exemption of Accumulated balance of RPF, payable to an employee



* Where the accumulated balance in RPF becomes taxable, the tax payable in each of the years would be computed as if the fund had been an URPF and the difference in tax would be payable by the employee.

Note : If, after termination of his employment with one employer, the employee obtains employment under another employer, then, only so much of the accumulated balance in his provident fund account will be exempt which is transferred to his individual account in a recognised provident fund maintained by the new employer. In such a case, for exemption of payment of accumulated balance by the new employer, the period of service with the former employer shall also be taken into account for computing the period of five years' continuous service.

ILLUSTRATION 6 :

Mr. A retires from service on December 31, 2023, after 25 years of service. Following are the particulars of his income/investments for the previous year 2023-24:

Particulars	₹
Basic pay @ ₹ 16,000 per month for 9 months	1,44,000
Dearness pay (50% forms part of the retirement benefits) ₹ 8,000 per month for 9 months	72,000
Lumpsum payment received from the Unrecognized Provident Fund	6,00,000
Deposits in the PPF account	40,000

Out of the amount received from the unrecognised provident fund, the employer's contribution was ₹ 2,20,000 and the interest thereon ₹ 50,000. The employee's contribution was ₹ 2,50,000 and the interest thereon ₹ 60,000. What is the taxable portion of the amount received from the unrecognized provident fund in the hands of Mr. A for the assessment year 2024-25?

SOLUTION :

Taxable portion of the amount received from the URPF in the hands of Mr. A for the A.Y. 2024-25 is computed hereunder:

Particulars	₹
Amount taxable under the head "Salaries":	
Employer's share in the payment received from the URPF	2,20,000
Interest on the employer's share	50,000
Total	2,70,000
Amount taxable under the head "Income from Other Sources":	
Interest on the employee's share	60,000
Total amount taxable from the amount received from the fund	3,30,000

Note : Since the employee is not eligible for deduction under section 80C for contribution to URPF at the time of such contribution, the employee's share received from the URPF is *not taxable at the time of withdrawal as this amount has already been taxed as his salary income.*

ILLUSTRATION 7 :

Will your answer be any different if the fund mentioned above was a recognised provident fund?

SOLUTION :

Since the fund is a recognised one, and the maturity is taking place after a service of 25 years, the entire amount received on the maturity of the RPF will be fully exempt from tax.

ILLUSTRATION 8 :

Mr. B is working in XYZ Ltd. and has given the details of his income for the P.Y. 2023-24. You are required to compute his gross salary from the details given below:

Basic Salary	₹10,000 p.m.
D.A. (50% is for retirement benefits)	₹ 8,000 p.m.
Commission as a percentage of turnover	0.1%
Turnover during the year	₹ 50,00,000
Bonus	₹ 40,000
Gratuity	₹ 25,000
His own contribution in the RPF	₹ 20,000
Employer's contribution to RPF	20% of his basic salary
Interest accrued in the RPF @ 13% p.a.	₹ 13,000

SOLUTION : Computation of Gross Salary of Mr. B for the A.Y.2024-25 :

Particulars	₹	₹
Basic Salary [₹ 10,000 × 12]		1,20,000
Dearness Allowance [₹ 8,000 × 12]		96,000
Commission on turnover [0.1% × ₹ 50,00,000]		5,000
Bonus		40,000
Gratuity [Note 1]		25,000
Employers contribution to RPF [20% of ₹ 1,20,000]	24,000	
<i>Less: Exempt [Note 2]</i>	20,760	3,240
Interest accrued in the RPF@13% p.a.	13,000	
<i>Less: Exempt@9.5% p.a.</i>	9,500	3,500
Gross Salary		2,92,740

Notes :

- Gratuity received during service is fully taxable.
- Employers' contribution in the RPF is exempt up to 12% of the salary i.e., 12% of [Basic Salary + Dearness Allowance forming part of retirement benefits + Commission based on turnover] = 12% of [₹ 1,20,000 + (50% × ₹ 96,000) + ₹ 5,000] = 12% of ₹ 1,73,000 = ₹ 20,760
- Employee's contribution to RPF is not taxable. It is eligible for deduction under section 80C, if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

(8) The contribution made by the Central Government or any other employer in the previous year to the account of an employee under a pension scheme referred to in section 80CCD

National Pension scheme is a scheme approved by the Government for Indian citizen aged between 18-70 years. Subscriber of the NPS account contributes some amount in their account. In case of any employee, being a subscriber of the NPS account, employer may also contribute into the employee's account.

Employer's contribution to NPS account would form part of salary of employees under section 17(1).

However, while computing total income of the employee-assessee, a deduction under section 80CCD is allowed to the assessee in respect of the employer's as well as employee's contribution under a pension scheme referred therein. (*Deduction under section 80CCD will be discussed in detail in Chapter 6 – "Deductions from Gross Total Income"*)

Deduction under section 80CCD(2) in respect of employer's contribution would be available to an assessee irrespective of the regime under which he pays tax. However, deduction under section 80CCD(1)/(1B) in respect of employee's contribution would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

(9) The contribution made by the Central Government in the previous year, to the Agniveer Corpus Fund account of an individual enrolled in the Agnipath Scheme referred to in section 80CCH.

- Agnipath Scheme is a Central Government Scheme launched in 2022 for enrolment of Indian youth in the Indian Armed Forces as Agniveers for four years to serve the country.
- In pursuance of the Government's decision to implement the Agnipath Scheme, 2022, the Competent Authority has decided to create a non-lapsable dedicated Agniveer Corpus Fund in the interest-bearing section of the Public Account head.
- In this account, fixed percentage of monthly emoluments would be contributed by the Agniveer and matching amount would be contributed by the Central Government.
- The Agniveer Corpus Fund is defined as a Fund in which consolidated contributions of all the Agniveers and matching contributions of the Government along with interest on these contributions would be held in their respective accounts.
- **Central Government's contribution to Agniveer Corpus Fund account would form part of salary of employees under section 17(1).**
- However, while computing total income of an individual enrolled in the Agnipath Scheme, being the assessee, a deduction under section 80CCH is allowed to the assessee in respect of his contribution as well as Central Government's contribution under Agniveer Corpus Fund referred therein. (*Deduction under section 80CCH will be discussed in detail in Chapter 6 – "Deductions from Gross Total Income"*)

Deduction under section 80CCH(2) in respect of Central Government's contribution would be available to an assessee irrespective of the regime under which he pays tax. However, deduction under section 80CCH(1) in respect of employee's contribution would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

1.3.1 Profits in lieu of salary [Section 17(3)]

It includes the following:

(i) Compensation on account of termination of his employment

The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment.

(ii) Compensation on account of modification of the terms and conditions of employment

The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the modification of the terms and conditions of employment.

Usually, such compensation is treated as a capital receipt. However, by virtue of this provision, the same is treated as a revenue receipt and is chargeable as salary. Note: It is to be noted that merely because a payment is made by an employer to a person who is his employee does not automatically fall within the scope of the above provisions. The payment must be arising due to master-servant relationship between the payer and the payee. If it is not on that account, but due to considerations totally unconnected with employment, such payment is not profit in lieu of salary.

(iii) Payment from provident fund or other fund

Any payment due to or received by an assessee from his employer or former employer from a provident or other fund other than

- Gratuity [Section 10(10)]
- Pension [Section 10(10A)]
- Compensation received by a workman under Industrial Disputes Act, 1947 [Section 10(10B)]
- from provident fund or public provident fund [Section 10(11)]
- from recognized provident fund [Section 10(12)]
- from approved superannuation fund [Section 10(13)]
- any House Rent Allowance [Section 10(13A)],

to the extent to which it does not consist of employee's contributions or interest on such contributions.

Note : *If any sum is paid to an employee at the time of maturity from an unrecognised provident fund it is to be dealt with as follows :*

- (a) *that part of the sum which represents the employer's contribution to the fund and interest thereon is taxable under the head "Salaries".*
- (b) *that part of the sum which represents employee's contribution is not chargeable to tax as no deduction or exemption was available at the time of contribution.*
- (c) *that part of the sum which represents the interest on employee's contribution is chargeable to tax as 'Income from other sources'.*

(iv) Keyman Insurance policy

Any sum received by an assessee under a Key man Insurance policy including the sum allocated by way of bonus on such policy.

(v) Lump sum Payment or otherwise

Any amount, whether in lump sum or otherwise, due to the assessee or received by him, from any person -

- (a) before joining employment with that person, or
- (b) after cessation of his employment with that person.

(1) Retrenchment compensation [Section 10(10B)]

- The retrenchment compensation means the compensation paid under Industrial Disputes Act, 1947 or under any Act, Rule, Order or Notification issued under any law. It also includes compensation paid on transfer of employment under section 25F or closing down of an undertaking under section 25FF of the Industrial Disputes Act, 1947.
- It may be noted that compensation on account of termination and due to modification in terms and conditions of employment would be taxable as “profits in lieu of salary”. However, the retrenchment compensation would be exempt under section 10(10B), subject to following limits.
 - (a) Amount calculated in accordance with the provisions of section 25F of the Industrial Disputes Act, 1947
i.e., 15 days average pay x completed years of service and part thereof in excess of 6 months (or)
 - (b) An amount, not less than ₹ 5,00,000 as may be notified by the Central Government in this behalf, whichever is lower.

Notes :

1. *The above limits will not be applicable to cases where the compensation is paid under any scheme approved by the Central Government for giving special protection to workmen under certain circumstances.*
2. *Average pay means average of the wages payable to a workman*
 - *in the case of monthly paid workman, in the three complete calendar months,*
 - *in the case of weekly paid workman, in the four calendar weeks,*
 - *in the case of daily paid workman, in the twelve full working weeks,**preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days, as the case may be, and where such calculation cannot be made, the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.*
3. *Wages for this purpose means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of his employment or of work done in such employment, and includes*
 - *such allowances including DA as the workman is for the time being entitled to;*
 - *the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any other service or of any concessional supply of food grains or other articles;*
 - *any travel concession; and*
 - *any commission payable on the promotion of sales or business or both**However, it does not include*
 - *any bonus;*
 - *contribution to a retirement benefit scheme;*
 - *any gratuity payable on the termination of his service.*
4. *Exemption under section 10(10B) would be available to an assessee irrespective of the regime under which he pays tax.*

(2) Voluntary Retirement Receipts [Section 10(10C)]

Lump sum payment or otherwise received by an employee at the time of voluntary retirement would be taxable as “profits in lieu of salary”. However, it would be exempt under section 10(10C), subject to the following conditions :

- **Eligible Undertakings :** The employees of the following undertakings are eligible for exemption under this clause:
 - (i) Public sector company
 - (ii) Any other company
 - (iii) An authority established under a Central/State or Provincial Act
 - (iv) A local authority
 - (v) A co-operative society
 - (vi) An University established or incorporated under a Central/State or Provincial Act and an Institution declared to be an University by the University Grants Commission
 - (vii) An Indian Institute of Technology
 - (viii) Such Institute of Management as the Central Government may, by notification in the Official Gazette, specify in this behalf
 - (ix) Any State Government
 - (x) The Central Government
 - (xi) An institution, having importance throughout India or in any State or States, as the Central Government may specify by notification in the Official Gazette.
- **Limit :** The maximum limit of exemption should not exceed ₹ 5 lakh.

Such compensation should be at the time of his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or, in the case of public sector company, a scheme of voluntary separation. The exemption will be available even if such compensation is received in installments.

Guidelines :

- The schemes should be framed in accordance with such guidelines, as may be prescribed and should include the criteria of economic viability.
- Rule 2BA prescribes that the exemption under this section would be available to an employee who has completed 10 years of service or completed 40 years of age. However, this requirement is not applicable in case of an employee of a public sector company under the scheme of voluntary separation framed by the company.
- The amount receivable on account of voluntary retirement or separation of the employee **must not exceed** -
 - the amount equivalent to three months' salary for each completed year of service or
 - salary at the time of retirement multiplied by the balance months of service left before the date of his retirement or superannuation.

- Where any relief has been allowed to any assessee u/s 89 for any
- A.Y. in respect of any amount received or receivable on his voluntary retirement or termination of service or voluntary separation, no exemption u/s 10(10C) shall be allowed to him in relation to that A.Y. or any other A.Y.

- Where exemption for voluntary retirement compensation under section 10(10C) has been allowed in any A.Y., then no exemption thereunder shall be allowed to him in any other A.Y.
- “Salary” for this purpose means basic salary and dearness allowance, if provided in the terms of employment for retirement benefits, forming part of salary and commission which is expressed as a fixed percentage of turnover.
- Exemption under section 10(10C) would be available to an assessee irrespective of the regime under which he pays tax.

ILLUSTRATION 9 :

Mr. Dutta received voluntary retirement compensation of ₹ 7,00,000 after 30 years 4 months of service. He still has 6 years of service left. At the time of voluntary retirement, he was drawing basic salary ₹ 20,000 p.m.; Dearness allowance (which forms part of pay) ₹ 5,000 p.m. Compute his taxable voluntary retirement compensation, assuming that he does not claim any relief under section 89.

SOLUTION :

Voluntary retirement compensation received	₹ 7,00,000
Less: Exemption under section 10(10C) [See Note below]	₹ 5,00,000
	₹ 2,00,000
axable voluntary retirement compensation	₹ 2,00,000

Note : Exemption is to the extent of least of the following:

Compensation actually received	= ₹ 7,00,000
Statutory limit	= ₹ 5,00,000
3 months' salary × completed years of service	
= (₹ 20,000 + ₹ 5,000) × 3 × 30 years	= ₹ 22,50,000
Last drawn salary × remaining months of service left	
= (₹ 20,000 + ₹ 5,000) × 6 × 12 months	= ₹ 18,00,000

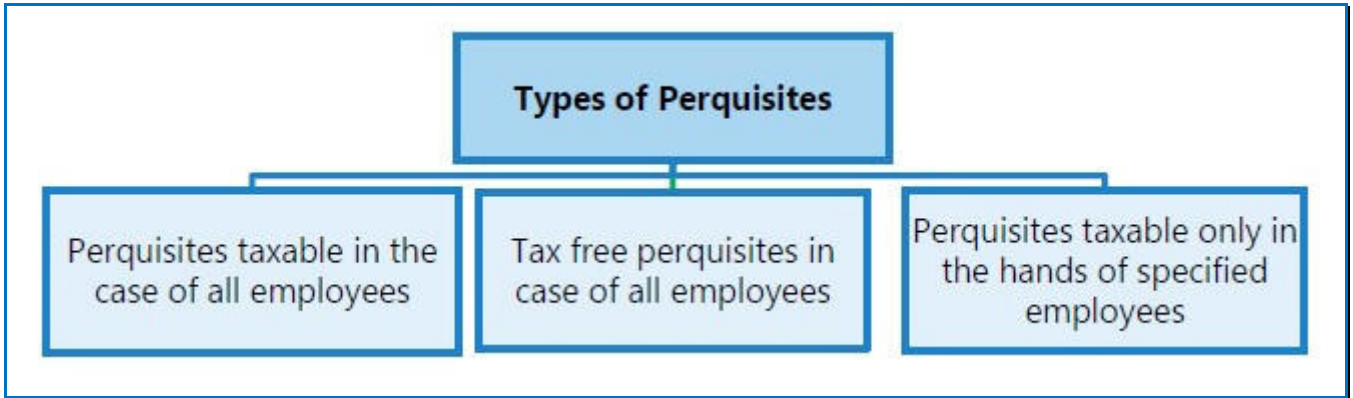
1.3.3 Perquisites

- The term 'perquisite' indicates some extra benefit in addition to the amount that may be legally due by way of contract for services rendered. In modern times, the salary package of an employee normally includes monetary salary and perquisites like housing, car etc.
 - Perquisite may be provided in cash or in kind.
 - Reimbursement of expenses incurred in the official discharge of duties is not a perquisite.
 - Perquisite may arise in the course of employment or in the course of profession. If it arises from a relationship of employer-employee, then the value of the perquisite is taxable as salary. However, if it arises during the course of profession, the value of such perquisite is chargeable as profits and gains of business or profession.
- Perquisite will become taxable only if it has a legal origin. An unauthorised advantage taken by an employee without his employer's sanction cannot be considered as a perquisite under the Act.

Example: Mr. A, an employee, is given a house by his employer. On 31.3.2024, he is terminated from service, but he continues to occupy the house without the permission of the employer for six more months after which he is evicted by the employer. The question arises whether the value of the benefit enjoyed by him during the six months period can be considered as a perquisite and be charged to salary. It cannot be done since the relationship of employer-employee ceased to exist after 31.3.2024. However, the definition of income is wide enough to bring the value of the benefit enjoyed by Mr. A to tax as "Income from other sources".

(1) Definition of "Perquisite"

The term "perquisite" is defined under section 17(2). The definition of perquisite is an inclusive one. Based on the definition, perquisites can be classified in following three ways :



(A) Perquisites taxable in the case of all employees

The following perquisites are chargeable to tax in case of all employees:

Rent Free Accommodation	Value of rent-free accommodation provided to the assessee by his employer computed in prescribed manner [Section 17(2)(i)]. [Refer discussion on valuation of perquisite]
Exception : <i>Rent-free official residence provided to a Judge of a High Court or to a Judge of the Supreme Court is not taxable if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A).</i>	
Concession in rent	Value of any accommodation provided to the assessee by his employer at a concessional rate. Accommodation would be deemed to have been provided at a concessional rate, if the value of accommodation computed in the prescribed manner exceeds the rent recoverable from, or payable by, the assessee [Section 17(2)(ii)].
Payment by the employer in respect of an obligation of employee	Amount paid by an employer in respect of any obligation which otherwise would have been payable by the employee [Section 17(2)(iv)].

Example: If a domestic servant is engaged by an employee and the employer reimburses the salary paid to the servant, it becomes an obligation which the employee would have discharged even if the employer did not reimburse the same. This perquisite will be covered by section 17(2)(iv) and will be taxable in the hands of all employees.

<p>Amount payable by an employer directly or indirectly to effect an assurance on the life of the assessee</p>	<p>Amount payable by an employer directly or indirectly to effect an assurance on the life of the assessee or to effect a contract for an annuity, other than payment made to RPF or approved superannuation fund or deposit-linked insurance fund established under the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 or Employees' Provident Fund and Miscellaneous Provisions Act, 1952 [Section 17(2)(v)].</p> <p>However, there are schemes like group annuity scheme, employees state insurance scheme and fidelity insurance scheme, under which insurance premium is paid by employer on behalf of the employees. Such payments are not regarded as perquisite in view of the fact that the employees have only an expectancy of the benefit in such schemes.</p>
<p>Specified security or sweat equity shares allotted or transferred, by the employer</p>	<p>The value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer or former employer, free of cost or at concessional rate to the assessee [Section 17(2)(vi)] [Refer discussion on valuation of perquisite].</p>
<p>Amount or the aggregate of amounts of any contribution made to the account of the assessee by employer</p> <ul style="list-style-type: none"> ○ In a recognised provident fund ○ in NPS ○ In an approved superannuation fund 	<p>The amount or aggregate of amounts of any contribution made</p> <ul style="list-style-type: none"> ○ in a recognised provident fund ○ in NPS referred to in section 80CCD(1) ○ in an approved superannuation fund <p>by the employer to the account of the assessee, to the extent it exceeds ₹ 7,50,000 [Section 17(2)(vii)].</p>
<p>Annual accretion to the balance at the credit of the recognised provident fund/NPS/approved superannuation fund which relates to the employer's contribution and included in total income (on account of the same having exceeded ₹ 7,50,000)</p>	<p>Refer discussion below</p>
<p>Any other fringe benefit or amenity</p>	<p>The value of any other fringe benefit or amenity as may be prescribed by the CBDT [Section 17(2)(viii)]. Rule 3(7) prescribed the following other benefits or amenity taxable in case of all employees.</p> <ul style="list-style-type: none"> ○ Interest free or concessional loan ○ Travelling, touring and accommodation ○ Free or concessional food and non-alcoholic beverages ○ Gift, voucher or token in lieu of such gift ○ Credit card expense ○ Club expenditure ○ Use of movable assets ○ Transfer of movable assets ○ Other benefit or amenity [For valuation, refer discussion on valuation of perquisite]
<p>Annual accretion to the balance at the credit of the recognised provident fund/NPS/approved superannuation fund which relates to the employer's contribution and included in total income (on account of the same having exceeded ₹ 7,50,000)</p>	

- Any annual accretion by way of interest, dividend or any other amount of similar nature during the previous year to the balance at the credit of the recognized provident fund or NPS or approved superannuation fund to the extent it relates to the employer's contribution which is included in total income in any previous year under section 17(2)(vii) computed in prescribed manner [Section 17(2)(viiia)].
- In other words, interest, dividend or any other amount of similar nature on the amount which is included in total income under section 17(2)(vii) would also be treated as a perquisite.
- The CBDT has, vide Rule 3B, notified the following manner to compute the annual accretion by way of interest, dividend or any other amount of similar nature during the previous year-

$$TP = (PC/2)*R + (PC1 + TP1)*R$$

Where,

TP	Taxable perquisite under section 17(2)(viiia) for the current P.Y.
PC	Amount or aggregate of amounts of employer's contribution in excess of ₹ 7.5 lakh to recognized provident fund, national pension scheme u/s 80CCD and approved superannuation fund during the P.Y.
PC1	Amount or aggregate of amounts of employer's contribution in excess of ₹ 7.5 lakh to recognized provident fund, national pension scheme u/s 80CCD and approved superannuation fund for the previous year or years commencing on or after 1 st April, 2020 other than the current P.Y.
TP1	Aggregate of taxable perquisite under section 17(2)(viiia) for the previous year or years commencing on or after 1 st April, 2020 other than the current P.Y.
R	I/ Favg
I	Amount or aggregate of amounts of income accrued during the current P.Y. in recognized provident fund, national pension scheme u/s 80CCD and approved superannuation fund
Favg	(Amount or aggregate of amounts of balance to the credit of recognized provident fund, national pension scheme u/s 80CCD and approved superannuation fund on first day of the current P.Y. + Amount or aggregate of amounts of balance to the credit of recognized provident fund, national pension scheme u/s 80CCD and approved superannuation fund on last day of the current P.Y.)/2

Where the amount or aggregate of amounts of TP1 and PC1 exceeds the amount or aggregate of amounts of balance to the credit of the specified fund or scheme on the first day of the current previous year, then, the amount in excess of the amount or aggregate of amounts of the said balance shall be ignored for the purpose of computing the amount or aggregate of amounts of TP1 and PC1.

ILLUSTRATION 10 :

Mr. X is appointed as a CFO of ABC Ltd. in Mumbai from 1.9.2021. His basic salary is ₹ 6,00,000 p.m. He is paid 8% as D.A. He contributes 10% of his pay and D.A. towards his recognized provident fund and the company contributes the same amount. The accumulated balance in recognized provident fund as on 1.4.2022, 31.3.2023 and 31.3.2024 is ₹ 9,81,137, ₹ 27,43,048 and ₹ 46,48,555, respectively. Compute the perquisite value chargeable to tax in the hands of Mr. X u/s 17(2)(vii) and 17(2)(viiia) for the A.Y. 2023-24 and A.Y. 2024-25. Prior to 1.9.2021, he was a consultant, whose professional fees was taxable under the head "Profits and gains of business or profession".

SOLUTION :**Computation of perquisite value taxable u/s 17(2)(vii) and 17(2)(viia) for A.Y. 2023-24 :**

1. Perquisite value taxable u/s 17(2)(vii) = ₹ 7,77,600, being employer's contribution to recognized provident fund during the P.Y. 2022-23 - ₹ 7,50,000 = ₹ 27,600
2. Perquisite value taxable u/s 17(2)(viia) = Annual accretion on perquisite taxable u/s 17(2)(vii) = $(PC/2)*R + (PC1 + TP1)*R = (27,600/2) \times 0.111 + 0 = ₹ 1,532$

PC ABC Ltd.'s contribution in excess of ₹ 7.5 lakh to recognized provident fund during P.Y. 2022-23 = ₹ 27,600

PC1 Nil since employer's contribution is less than ₹ 7.5 lakh to recognized provident fund in P.Y. 2021-22 and there is no employer's contribution in P.Y. 2020-21.

TP1 Nil

R $I/Favg = 2,06,711/18,62,093 = 0.111$

I RPF balance as on 31.3.2023 - employee's and employer's contribution during the year - RPF balance as on 1.4.2022 = ₹ 2,06,711 (₹ 27,43,048 - ₹ 7,77,600 - ₹ 7,77,600 - ₹ 9,81,137)

Favg Balance to the credit of recognized provident fund as on 1st April, 2022 + Balance to the credit of recognized provident fund as on 31st March, 2023)/2 = (₹ 9,81,137 + ₹ 27,43,048)/2 = ₹ 18,62,093

Note : Interest on the aggregate of following will also be chargeable to tax during A.Y. 2023-24 -

- (i) ₹ 2,03,600 [Employee's contribution exceeding ₹ 2,50,000 during P.Y. 2021-22]
- (ii) ₹ 5,27,600 [Employee's contribution exceeding ₹ 2,50,000 during P.Y. 2022-23]
- (iii) interest accrued on ₹ 2,03,600 being excess employee's contribution of P.Y. 2021-22

Computation of perquisite value taxable u/s 17(2)(vii) and 17(2)(viia) for A.Y. 2024-25

1. Perquisite value taxable u/s 17(2)(vii) = ₹ 7,77,600, being employer's contribution to recognized provident fund during the P.Y. 2023-24 - ₹ 7,50,000 = ₹ 27,600
2. Perquisite value taxable u/s 17(2)(viia) = Annual accretion on perquisite taxable u/s 17(2)(vii) = $(PC/2)*R + (PC1 + TP1)*R = (27,600/2) \times 0.09479 + (27,600 + 1,532) \times 0.09479 = ₹ 1,308 + ₹ 2,761 = ₹ 4,069$

PC ABC Ltd.'s contribution in excess of ₹ 7.5 lakh to recognized provident fund during P.Y. 2023-24 = ₹ 27,600

PC1 Amount of employer's contribution in excess of ₹ 7,50,000 to RPF in P.Y. 2020-21 and P.Y. 2021-22 = ₹ 27,600

TP1 Taxable perquisite under section 17(2)(viia) for the P.Y. 2022-23 = ₹ 1,532

R $I/Favg = 3,50,307/36,95,802 = 0.09479$

I RPF balance as on 31.3.2024 - employee's and employer's contribution during the year - RPF balance as on 1.4.2023 = ₹ 3,50,307 (₹ 46,48,555 - ₹ 7,77,600 - ₹ 7,77,600 - ₹ 27,43,048)

Favg Balance to the credit of recognized provident fund as on 1st April, 2023 + Balance to the credit of recognized provident fund as on 31st March, 2024)/2 = (₹ 27,43,048 + ₹ 46,48,555)/2 = ₹ 36,95,802

Note : Interest on the aggregate of following will also be chargeable to tax during A.Y. 2024-25 –

- (i) ₹2,03,600 [Employee's contribution exceeding ₹2,50,000 during P.Y. 2021-22]
- (ii) ₹5,27,600 [Employee's contribution exceeding ₹2,50,000 during P.Y. 2022-23]
- (iii) ₹5,27,600 [Employee's contribution exceeding ₹2,50,000 during P.Y. 2023-24]
- (iv) interest accrued on ₹ 2,03,600 being excess employee's contribution of P.Y. 2021-22
- (v) interest accrued on ₹ 5,27,600 being excess employee's contribution of P.Y. 2022-23

Exemption in respect of payment from superannuation funds [Section 10(13)] :

Any payment received by any employee from an approved superannuation fund shall be entirely excluded from his total income if the payment is made :

- (a) on the death of a beneficiary;
- (b) to an employee in lieu or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement; or
- (c) by way of refund of contribution on the death of a beneficiary; or
- (d) by way of contribution to an employee on his leaving the service in connection with which the fund is established otherwise than by retirement at or after a specified age or his becoming incapacitated prior to such retirement, to the extent the payment made does not exceed the contribution made prior to 1-4-1962 and the interest thereon.
- (e) by way of transfer to the account of the employee under a pension scheme referred to in section 80CCD, which is notified by the Central Government.

(B) Tax free perquisites in all cases

The following perquisites are exempt from tax in the hands of all employees.

Telephone	Telephone provided by an employer to an employee at his residence
Transport Facility	Transport facility provided by an employer engaged in the business of carrying of passengers or goods to his employees either free of charge or at concessional rate;
Privilege passes and privilege ticket	Privilege passes and privilege ticket orders granted by Indian Railways to its employees;
Perquisites allowed outside India by the Government	Perquisites allowed outside India by the Government to a citizen of India for rendering services outside India;
Employer's contribution to staff group insurance scheme;	Employer's contribution to staff group insurance scheme;
Annual premium by employer on personal accident policy	Payment of annual premium by employer on personal accident policy effected by him on the life of the employee;
Refreshment	Refreshment provided to all employees during working hours in office premises;
Subsidized lunch	Subsidized lunch provided to an employee during working hours at office or business premises provided the value of such meal is upto ₹ 50; This exemption is available only if the employee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

Recreational facilities	Recreational facilities, including club facilities, extended to employees in general i.e., not restricted to a few select employees;
Amount spent on training of employees	Amount spent by the employer on training of employees or amount paid for refresher management course including expenses on boarding and lodging;
Sum payable by employer to a RPF or an approved superannuation fund	Sum payable by an employer to a RPF or an approved superannuation fund or deposit-linked insurance fund established under the Coal Mines Provident Fund and Miscellaneous provisions Act, 1948 or the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 upto the limit prescribed;
Leave travel concession	Leave travel concession if the assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A), subject to the conditions specified under section 10 (discussed below)
Note : Value of Leave travel concession provided to the High Court judge or the Supreme Court Judge and members of his family are completely exempt without any conditions if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A).	
Medical facilities	Medical facilities subject to certain prescribed limits [Refer proviso to section 17(2)];
Rent-free official residence	Rent-free official residence provided to a Judge of a High Court or the Supreme Court if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A);
Conveyance facility	Conveyance facility provided to High Court Judges under section 22B of the High Court Judges (Conditions of Service) Act, 1954 and Supreme Court Judges under section 23A of the Supreme Court Judges (Conditions of Service) Act, 1958 if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A).

Exemption in respect of Leave travel concession [Section 10(5)] :

- (i) This clause exempts the leave travel concession (LTC) received by employees from their employers for proceeding to any place in India,
- either on leave or
 - after retirement from service or
 - after termination of his service.

Exemption under this section would be available only to employees exercising the option of shifting out of the default tax regime provided under section 115BAC(1A). It is not available under the default tax regime under section 115BAC.

- (ii) **The benefit is available to individuals** - citizens as well as non-citizens - in respect of travel concession or assistance for himself or herself and for his/her family- i.e., spouse and children of the individual and parents, brothers and sisters of the individual or any of them wholly or mainly dependent on the individual.

(iii) Limit of exemption- The exemption in all cases will be limited to the amount actually spent subject to such conditions as specified in Rule 2B regarding the ceiling on the number of journeys for the place of destination.

Under Rule 2B, exemption will be available in respect of 2 journeys performed in a block of 4 calendar years commencing from the calendar year 1986. Where such travel concession or assistance is not availed by the individual during any block of 4 calendar years, one such unavailed LTC will be carried forward to the immediately succeeding block of 4 calendar years and will be eligible for exemption.

Example : An employee does not avail any LTC for the block 2018-21. He is allowed to carry forward maximum one unavailed LTC to be used in the succeeding block of 2022-25. Accordingly, if he avails LTC in April, 2023, the same will be treated as having availed in respect of the block 2018-2021. Therefore, he will be eligible for exemption in respect of that journey and two more journeys can be further availed in respect of the block of 2022-25.

(iv) Monetary limits - Where the journey is performed on or after the 1.10.1997, the amount exempted under section 10(5) in respect of the value of LTC shall be the amount actually incurred on such travel subject to the following conditions:

S.No.	Journey performed by		Limit
1	Air		Amount not exceeding the air economy fare of the National Carrier by the shortest route to the place of destination.
2	Any other mode:		
	(i)	Where rail service is available	Amount not exceeding the air- conditioned first class rail fare by the
			Shortest route to the place of destination
	(ii)	Where rail service is not available	
		(a) a recognised public transport system exists	amount not exceeding the 1st class or deluxe class fare, as the case may be, on such transport by the shortest route to the place of destination
		(b) no recognised public transport system exists	amount equivalent to the air- conditioned first class rail fare, for the distance of the journey by the shortest route, as if the journey had been performed by rail

Note : The exemption referred to shall not be available to more than two surviving children of an individual after 1.10.1998. This restrictive sub-rule shall not apply in respect of children born before 1.10.1998 and also in case of multiple births after one child.

Exemption in respect of leave travel concession under section 10(5) would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

ILLUSTRATION 11 :

Mr. D went on a holiday on 25.12.2023 to Delhi with his wife and three children (one son – age 5 years; twin daughters – age 3 years). They went by flight (economy class) and the total cost of tickets reimbursed by his employer was ₹ 60,000 (₹ 45,000 for adults and ₹ 15,000 for the three minor children). Compute the amount of LTC exempt if Mr. D exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION :

Since the son's age is more than the twin daughters, Mr. D can avail exemption for all his three children. The restriction of two children is not applicable to multiple births after one child. The holiday being in India and the journey being performed by air (economy class), the entire reimbursement met by the employer is fully exempt in the hands of Mr. D, since he is exercising the option of shifting out of the default tax regime provided under section 115BAC(1A).

ILLUSTRATION 12 :

In the above illustration 11, will there be any difference if among his three children the twins were 5 years old and the son 3 years old? Discuss.

SOLUTION :

Since the twins' age is more than the son, Mr. D cannot avail for exemption for all his three children. LTC exemption can be availed in respect of only two children. Taxable

$$\text{LTC} = 15,000 \times \frac{1}{3} = ₹ 5,000$$

LTC exempt would be only ₹ 55,000 (i.e. ₹ 60,000 – ₹ 5,000)

Medical facilities [Proviso to section 17(2)]

The following medical facilities **are exempt from tax:**

- (i) Value of medical treatment in any hospital maintained by the employer :** The value of any medical treatment provided to an employee or any member of his family in any hospital maintained by the employer;
- (ii) Reimbursement of expenditure actually incurred on medical treatment :** Any sum paid by the employer in respect of any expenditure actually incurred by the employee on his medical treatment or treatment of any member of his family

- **in any hospital** maintained by the Government/local authority/any other hospital approved by the Government for the purpose of medical treatment of its employees;
- **in respect of the prescribed disease** or ailments in any hospital approved by the Principal Chief Commissioner or Chief Commissioner having regard to the prescribed guidelines.
- **in respect of any illness relating to COVID-19 subject to conditions notified by the Central Government**

Accordingly, the Central Government has, vide Notification No. 90/2022 dated 5.8.2022, specified that for claiming benefit of such exemption, the employee has to submit the following documents to the employer, –

- (a) the COVID-19 positive report of the employee or family member, or medical report if clinically determined to be COVID-19 positive *through investigations, in a hospital or an in-patient facility by a treating physician of a person so admitted;*

- (b) all necessary documents of medical diagnosis or treatment of the employee or his family member for COVID-19 or illness related to COVID-19 suffered within 6 months from the date of being determined as COVID-19 positive; and
- (c) a certification in respect of all expenditure incurred on the treatment of COVID-19 or illness related to COVID-19 of the employee or of any member of his family.

- (iii) Premium paid to effect an insurance on the health of employee :** Any premium paid by an employer in relation to an employee to effect an insurance on the health of such employee. However, any such scheme should be approved by the Central Government or the Insurance Regulatory Development Authority (IRDA) for the purposes of section 36(1)(ib).
- (iv) Reimbursement of premium paid to effect an insurance on the health of employee or for the family of an employee :** Any sum paid by the employer in respect of any premium paid by the employee to effect an insurance on his health or the health of any member of his family under any scheme approved by the Central Government or the Insurance Regulatory Development Authority (IRDA) for the purposes of section 80D.
- (v) Amount paid towards expenditure incurred outside India on medical treatment :** Any expenditure incurred by the employer or any sum paid by the employer on any expenditure actually incurred by the employee on the following:
- (a) medical treatment** of the employee or any member of the family of such employee outside India;
- (b) travel and stay abroad** of the employee or any member of the family of such employee for medical treatment;
- (c) travel and stay abroad of one attendant** who accompanies the patient in connection with such treatment.

Conditions :

1. The requisite element in respect of expenditure on medical treatment and stay abroad will be exempt only to the extent permitted by the RBI.
2. The expenses in respect of traveling of the patient and the attendant will be exempt if the employee's gross total income as computed before including the said expenditure does not exceed ₹ 2 lakh.

Note : For this purpose, family means spouse and children of the individual. Children may be dependent or independent, married or unmarried. It also includes parents, brothers and sisters of the individual if they are wholly or mainly dependent upon him. Hospital includes a dispensary or a clinic or a nursing home.

ILLUSTRATION 13 :

Compute the taxable value of the requisite in respect of medical facilities received by Mr. G from his employer during the P.Y. 2023-24 :

Medical premium paid for insuring health of Mr. G	₹ 7,000
Treatment of Mr. G by his family doctor	₹ 5,000
Treatment of Mrs. G in a Government hospital	₹ 25,000
Treatment of Mr. G's grandfather in a private clinic	₹ 12,000

Treatment of Mr. G's mother (68 years and dependant) by family doctor	₹ 8,000
Treatment of Mr. G's sister (dependant) in a nursing home	₹ 3,000
Treatment of Mr. G's brother (independent)	₹ 6,000
Treatment of Mr. G's father (75 years and dependent) abroad	₹ 50,000
Expenses of staying abroad of the patient	₹ 30,000
Limit specified by RBI	₹ 75,000

SOLUTION :**Computation of taxable value of perquisite in the hands of Mr. G :**

Particulars	₹	₹
Treatment of Mrs. G in a Government hospital		-
Treatment of Mr. G's father (75 years and dependent) abroad Expenses of staying abroad of the patient and attendant	50,000 30,000 80,000	
<i>Less: Exempt up to limit specified by RBI</i>	75,000	5,000
Medical premium paid for insuring health of Mr. G		-
Treatment of Mr. G by his family doctor		5,000
Treatment of Mr. G's mother (dependent) by family doctor		8,000
Treatment of Mr. G's sister (dependent) in a nursing home		3,000
Treatment of Mr. G's grandfather in a private clinic		12,000
Treatment of Mr. G's brother (independent)		6,000
Taxable value of perquisite		39,000

Payment of premium on personal accident insurance policies

- If an employer takes personal accident insurance policies on the life of employees and pays the insurance premium, no immediate benefit would become payable and benefit will accrue at a future date only if certain events take place.
- Moreover, the employers would be taking such policy in their business interest only, so as to indemnify themselves from payment of any compensation. Therefore, the premium so paid will not constitute a taxable perquisite in the employees' hands[‡].

(c) Perquisites taxable only in the hands of specified employees [Section 17(2)(iii)]

- Any monetary obligation of the employee which is discharged by the employer is perquisite in the hands of all employees as per section 17(2)(iv). However, sometimes instead of discharging employee's obligation, employer provides perquisites in the form of facility to the employee. Such perquisites are taxable in the hands of specified employees only.

- The value of any benefit or amenity granted or provided free of cost or at concessional rate which have not been included in (A) & (B) above will be taxable in the hands of specified employees. Followings are the example of such services :
 - (i) Provision of sweeper, gardener, watchman or personal attendant
 - (ii) Facility of use of gas, electricity or water supplied by employer
 - (iii) Free or concessional tickets
 - (iv) Use of motor car
 - (v) Free or concessional educational facilities

For valuation of such perquisites, refer discussion on valuation of perquisite.

Meaning of specified employees :

- (i) Director employee:** An employee of a company who is also a director is a specified employee. It is immaterial whether he is a full-time director or part-time director. It also does not matter whether he is a nominee of the management, workers, financial institutions or the Government. It is also not material whether or not he is a director throughout the previous year.
- (ii) An employee who has substantial interest in the company:** An employee of a company who has substantial interest in that company is a specified employee. A person has a substantial interest in a company if he is a beneficial owner of equity shares carrying 20% or more of the voting power in the company.
- Beneficial and legal ownership :** In order to determine whether a person has a substantial interest in a company, it is the beneficial ownership of equity shares carrying 20% or more of the voting power that is relevant rather than the legal ownership.
- (iii) Employee drawing in excess of ₹ 50,000:** An employee other than an employee described in (i) & (ii) above, whose income chargeable under the head 'salaries' exceeds ₹ 50,000 is a specified employee. The above salary is to be considered exclusive of the value of all benefits or amenities not provided by way of monetary payments.

Example : A, Karta of a HUF, is a registered shareholder of Bright Ltd. The amount for purchasing the shares is financed by the HUF. The dividend is also received by the HUF. Supposing further that A is an employee in Bright Ltd., the question arises whether he is a specified employee.

In this case, he cannot be called a specified person since he has no beneficial interest in the shares registered in his name. It is only for the purpose of satisfying the statutory requirements that the shares are registered in the name of A. All the benefits arising from the shareholding goes to the HUF. Conversely, it may be noted that an employee who is not a registered shareholder will be considered as a specified employee if he has beneficial interest in 20% or more of the equity shares in the company.

In other words, for computing the limit of ₹ 50,000, the following items have to be excluded or deducted:

(a)	all non-monetary benefits;
(b)	monetary benefits which are exempt under section 10. This is because the exemptions provided under section 10 are excluded completely from salaries.
(c)	Standard deduction upto ₹ 50,000 [under section 16(ia)] is to be excluded irrespective of the regime.
(d)	Deduction for entertainment allowance [under section 16(ii)] and deduction toward professional tax [under section 16(iii)] are also to be excluded if the assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

If an employee is employed with more than one employer, the aggregate of the salary received from all employers is to be taken into account in determining the above ceiling limit of ₹ 50,000, i.e., Salary for this purpose = Basic Salary + Dearness Allowance + Commission, whether payable monthly or turnover based + Bonus + Fees + Any other taxable payment + Any taxable allowances + Any other monetary benefits – Deductions under section 16]

(2) Valuation of Perquisites :

The Income-tax Rules, 1962 contain the provisions for valuation of perquisites. It is important to note that only those perquisites which the employee actually enjoys have to be valued and taxed in his hand.

Example : Suppose a company offers a housing accommodation rent-free to an employee but the latter declines to accept it, then the value of such accommodation obviously cannot be evaluated and taxed in the hands of the employees.

For the purpose of computing the income chargeable under the head “Salaries”, the value of perquisites provided by the employer directly or indirectly to the employee or to any member of his household by reason of his employment shall be determined in accordance with **Rule 3**.

(A) Value of rent free accommodation/ Value of accommodation provided to employee at a concessional rate [Sub-rule (1) of Rule 3]

- Accommodation would be deemed to have been provided at a concessional rate, if the value of accommodation computed in the prescribed manner exceeds the rent recoverable from, or payable by, the assessee [Explanation to section 17(2)(ii)].
- The value of residential accommodation provided by the employer during the previous year shall be determined in the following manner –

Sl. No.	Circumstances	In case of unfurnished accommodation	In case of furnished accommodation
(1)	(2)	(3)	(4)
1.	Where the accommodation is provided by the Central Government or any State Government to the employees either holding office or post in connection with the affairs of the Union or of such State	<ul style="list-style-type: none"> • License fee determined by the Central Government or any State Government in respect of Accommodation in accordance with the rules framed by such Government as reduced by • the rent actually paid by the employee. 	<ul style="list-style-type: none"> • The value of perquisite as determined under column (3) should be increased by <ul style="list-style-type: none"> (i) If furniture is owned by employer, 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment). (ii) If such furniture is hired from a third party, <ul style="list-style-type: none"> • The actual hire charges payable for the same as reduced by • any charges paid or payable for the same by the employee during the previous year
2.	Where the accommodation is provided by any other	(i) 15% of salary in cities having population > 25 lakhs as per 2001 census;	<ul style="list-style-type: none"> • The value of perquisite as determined under column (3) should be increased by

Sl. No.	Circumstances	In case of unfurnished accommodation	In case of furnished accommodation
(1)	(2)	(3)	(4)
	<p>employer</p> <p>(a) where the accommodation is owned by the employer</p>	<p>(ii) 10% of salary in cities having population > 10 lakhs ≤ 25 lakhs as per 2001 census;</p> <p>(iii) 7.5% of salary in other areas,</p> <p>in respect of the period during which the said accommodation was occupied by the employee during the previous year as reduced by the rent, if any, actually paid by the employee.</p>	<p>(i) If furniture is owned by employer, 10% per annum of the cost of furniture (including television sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets).</p> <p>(ii) If such furniture is hired from a third party,</p> <ul style="list-style-type: none"> • the actual hire charges payable for the same as reduced by • any charges paid or payable for the same by the employee during the previous year
	<p>(b) where the accommodation is taken on lease or rent by the employer</p>	<ul style="list-style-type: none"> • Actual amount of lease rental paid or payable by the employer or • 15% of salary whichever is lower, as reduced by • the rent, if any, actually paid by the employee. 	<ul style="list-style-type: none"> • The value of perquisite as determined under column (3) should be increased by (i) If furniture is owned by employer, 10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets). (ii) If such furniture is hired from a third party, • the actual hire charges payable for the same as reduced by • any charges paid or payable for the same by the employee during the previous year
3.	<p>Where the accommodation is provided by any employer, whether Government or any other employer, in a hotel.</p>	Not applicable	<ul style="list-style-type: none"> • 24% of salary paid or payable for the previous year or • the actual charges paid or payable to such hotel, whichever is lower, for the period during which such accommodation is provided • as reduced by • the rent, if any, actually paid or payable by the employee. • However, where the employee is provided such accommodation for a period not exceeding in aggregate fifteen days on his transfer from one place to another, there would be no perquisite.

Notes :

- (1) If an employee is provided with accommodation, on account of his transfer from one place to another, at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be determined with reference to only one such accommodation which has the lower perquisite value, as calculated above, for a period not exceeding 90 days and thereafter, the value of perquisite shall be charged for both such accommodations.
- (2) Where the accommodation is provided by the Central Government or any State Government to an employee who is serving on deputation with any body or undertaking under the control of such Government,-
 - (i) the employer of such an employee shall be deemed to be that body or undertaking where the employee is serving on deputation; and
 - (ii) the value of perquisite of such an accommodation shall be the amount calculated in accordance with Sl. No.2.(a) of the above table, as if the accommodation is owned by the employer.
- (3) "Accommodation" includes a house, flat, farm house or part thereof, or accommodation in a hotel, motel, service apartment, guest house, caravan, mobile home, ship or other floating structure.
- (4) "Hotel" includes licensed accommodation in the nature of motel, service apartment or guest house.

Meaning of Salary for Valuation Rules

"Salary" includes pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called, from one or more employers, as the case may be. However, it does not include the following, namely—

- (1) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;
- (2) employer's contribution to the provident fund account of the employee;
- (3) allowances which are exempted from the payment of tax;
- (4) value of the perquisites specified in section 17(2);
- (5) any payment or expenditure specifically excluded under proviso to section 17(2);
- (6) lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments;

ILLUSTRATION 14 :

Mr. C is a Finance Manager in ABC Ltd. The company has provided him with rent- free unfurnished accommodation in Mumbai. He gives you the following particulars :

Basic salary	₹ 6,000 p.m.
Dearness Allowance	₹ 2,000 p.m. (30% is for retirement benefits)
Bonus	₹ 1,500 p.m.

Even though the company allotted the house to him on 1.4.2023, he occupied the same only from 1.11.2023. Calculate the taxable value of the perquisite for A.Y.2024-25.

SOLUTION :

$$\begin{aligned}
 &\text{Value of the rent free unfurnished accommodation} \\
 &= 15\% \text{ of salary for the relevant period} \\
 &= 15\% \text{ of } [(\text{₹ } 6000 \times 5) + (\text{₹ } 2,000 \times 30\% \times 5) + (\text{₹ } 1,500 \times 5)] \text{ [See Note below]} \\
 &= 15\% \text{ of ₹ } 40,500 = \text{₹ } 6,075.
 \end{aligned}$$

Note : Since, Mr. C occupies the house only from 1.11.2023, we have to include the salary due to him only in respect of months during which he has occupied the accommodation. Hence salary for 5 months (i.e. from 1.11.2023 to 31.03.2024) will be considered.

ILLUSTRATION 15 :

Using the data given in the previous illustration 14, compute the value of the perquisite if Mr. C is required to pay a rent of ₹ 1,000 p.m. to the company, for the use of this accommodation.

SOLUTION :

- First of all, we have to see whether the accommodation is provided at a concessional rate. If the value of accommodation computed in prescribed manner exceeds the rent recoverable, or payable by, the assessee, the accommodation would be deemed to have been provided at a concessional rate.
- In this case, 15% of salary would be ₹ 6,075 (i.e. 15% of ₹ 40,500). The rent paid by the employee is ₹ 5,000 (i.e., ₹ 1,000 x 5). Since 15% of salary exceeds the rent recovered from the employee, the accommodation would be deemed to have been provided at a concessional rate.

Value of the accommodation	= ₹ 6,075
Less: Rent paid by the employee (₹ 1,000 × 5)	= ₹ 5,000
Perquisite value of accommodation given at a concessional rent	= ₹ 1,075

ILLUSTRATION 16 :

Using the data given in illustration 14, compute the value of the perquisite if ABC Ltd. has taken this accommodation on a lease rent of ₹ 1,200 p.m. and Mr. C is required to pay a rent of ₹ 1,000 p.m. to the company, for the use of this accommodation.

SOLUTION:

- Here again, we have to see whether the accommodation is provided at a concessional rate.
- In the case of accommodation taken on lease by the employer, the accommodation would be deemed to have been provided at a concessional rate if the rent paid by the employer or 15% of salary, whichever is lower, exceeds rent recoverable from the employee.
- In this case, 15% of salary is ₹ 6,075 (i.e. 15% of ₹ 40,500). Rent paid by the employer is ₹ 6,000 (i.e. ₹ 1,200 x 5). The lower of the two is ₹ 6,000, which exceeds the rent paid by the employee i.e., ₹ 5,000 (₹ 1,000 x 5). Therefore, the accommodation would be deemed to have been provided at a concessional rate.

Value of the accommodation [Note]	= ₹ 6,000
Less: Rent paid by the employee (₹ 1,000 × 5)	= ₹ 5,000
Value of accommodation given at a concessional rent	= ₹ 1,000

Note : Value of the accommodation is lower of

- (i) Lease rent paid by the company for relevant period = ₹ 1,200 × 5 = ₹ 6,000
- (ii) 15% of salary for the relevant period (computed earlier) = ₹ 6,075

ILLUSTRATION 17 :

Using the data given in illustration 14, compute the value of the perquisite if ABC Ltd. has provided a television (WDV ₹ 10,000; Cost ₹ 25,000) and two air conditioners. The rent paid by the company for the air conditioners is ₹ 400 p.m. each. The television was provided on 1.1.2024. However, Mr. C is required to pay a rent of ₹ 1,000 p.m. to the company, for the use of this furnished accommodation.

SOLUTION :

- Here again, we have to see whether the accommodation is provided at a concessional rate. In the case of accommodation owned by the employer in a city having a population exceeding 25 lakh, the accommodation would be deemed to have been provided at a concessional rate, if 15% of salary exceeds rent recoverable from the employee. In case of furnished accommodation, the excess of hire charges paid or 10% p.a. of the cost of furniture, as the case may be, over and above the charges paid or payable by the employee has to be added to the value arrived at above to determine whether the accommodation is provided at a concessional rate.
- In this case, 15% of salary is ₹ 6,075 (i.e. 15% of ₹ 40,500). The value of furniture of ₹ 4,625 (**See Note below**) is to be added to 15% of salary. The rent paid by the employee is ₹ 5,000 (i.e. ₹ 1,000 × 5). Therefore, the accommodation would be deemed to have been provided at a concessional rate.

Value of the accommodation (computed earlier)	= ₹ 6,075
Add: Value of furniture provided by the employer [Note]	= ₹ 4,625
Value of furnished accommodation	= ₹ 10,700
Less: Rent paid by the employee (₹ 1,000 × 5)	= ₹ 5,000
Value of furnished accommodation given at a concessional rent	= ₹ 5,700 ₹

Note : Value of the furniture provided = (₹ 400 p.m. × 2 × 5 months) + (₹ 25,000 × 10% p.a. for 3 months) = ₹ 4,000 + ₹ 625 = ₹ 4,625

ILLUSTRATION 18 :

Using the data given in illustration 17 above, compute the value of the perquisite if Mr. C is a government employee. The licence fees determined by the Government for this accommodation was ₹ 700 p.m.

SOLUTION :

- In the case of Government employees, the accommodation would be deemed to have been provided at a concessional rate, if the licence fees determined by the employer as increased by the value of furniture and fixture exceeds the rent recovered/ recoverable from the employee.
- In this case, ₹ 3,500 (licence fees: ₹ 700 × 5) + ₹ 4,625 (Value of furniture) is the value of furnished accommodation. The rent paid by the employee is ₹ 5,000 (i.e. ₹ 1,000 × 5). Therefore, the accommodation would be deemed to have been provided at a concessional rate.

Value of the accommodation (₹ 700 × 5)	= ₹ 3,500
Add: Value of furniture provided by the employer (computed earlier)	= ₹ 4,625
Value of furnished accommodation	= ₹ 8,125
Less: Rent paid by the employee (₹ 1,000 × 5)	= ₹ 5,000
Perquisite value of furnished accommodation given at concessional rent	= ₹ 3,125

(B) Motor Car [Sub-rule (2) of Rule 3]

- If motor car is provided by the employer to the employee, it will be perquisite in the hands of specified employees only. However, the use of any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or from such office or place to his residence shall not be regarded as a benefit given or provided to him free of cost or at concessional rate. [Explanation below section 17(2)(iii)]
- But if the motor car is owned by the employee and used by him or members of his family wholly for personal purpose and for which employer reimburses the running and maintenance expenses of the car, it will be perquisite in the hands of all employees.
- The value of perquisite by way of use of motor car to an employee by an employer shall be determined in the following manner –

VALUE OF PERQUISITE PER CALENDAR MONTH

Sl. No.	Circumstances	Where cubic capacity of engine does not exceed 1.6 litres	Where cubic capacity of engine exceeds 1.6 litres
(1)	(2)	(3)	(4)
(1)	Where the motor car is owned or hired by the employer and –		
	(a) is used wholly and exclusively in the performance of his official duties	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.
	(b) is used exclusively for the private or personal purposes of the employee or any member of his household and the running and maintenance expenses are met or reimbursed by the employer;	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged from the employee for such use.	Actual amount of expenditure incurred by the employer on the running and maintenance of motor car during the relevant previous year including remuneration, if any, paid by the employer to the chauffeur as increased by the amount representing normal wear and tear of the motor car and as reduced by any amount charged from the employee for such use.

	(c) is used partly in the performance of duties and partly for private or personal purposes of his own or any member of his household and-		
	(i) the expenses on maintenance and running are met or reimbursed by the employer (ii) the expenses on running and maintenance for private or personal use are fully met by the assessee.	₹ 1,800 (plus ₹ 900, if chauffeur is also provided to run the motor car) ₹ 600 (plus ₹ 900, if chauffeur is also provided by the employer to run the motor car)	₹ 2,400 (plus ₹ 900, if chauffeur is also provided to run the motor car) ₹ 900 (plus ₹ 900, if chauffeur is also provided by the employer to run the motor car)
(2)	<u>Where the employee owns a motor car</u> but the actual running and maintenance charges (including remuneration of the chauffeur, if any) are met or reimbursed to him by the employer and -		
	(i) such reimbursement is for the use of the vehicle wholly and exclusively for official purposes	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.	Not a perquisite, provided the documents specified in Note (2) below the table are maintained by the employer.
	(ii) such reimbursement is for the use of the vehicle partly for official purposes and partly for personal or private purposes of the employee or any member of his household.	The actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(c)(i) above (Also see note (2) below this table).	The actual amount of expenditure incurred by the employer as reduced by the amount specified in Sl. No. (1)(c)(i) above (Also see note (2) below this table).
(3)	Where the employee owns any other automotive conveyance but the actual running and maintenance		

charges are met or reimbursed to him by the employer and		
(a) Such reimbursement is for the use of the vehicle wholly and exclusively for official purposes	Not a perquisite, provided the documents specified in the note (2) below the table are maintained by the employer.	Not applicable.
(b) Such reimbursement is <u>for the use of vehicle partly for official purposes and partly for personal or private purposes of the employee</u>	The actual amount of expenditure incurred by the employer as reduced by the amount of ₹ 900. (Also see note (2) below the table)	

Notes :

1. **Where more than one motor car is provided** - Where one or more motor-cars are owned or hired by the employer and the employee or any member of his household are allowed the use of such motor-car or all of any of such motor-cars (otherwise than wholly and exclusively in the performance of his duties), the value of perquisite shall be the amount calculated in respect of one car as if the employee had been provided one motor-car for use partly in the performance of his duties and partly for his private or personal purposes and the amount calculated in respect of the other car or cars as if he had been provided with such car or cars exclusively for his private or personal purposes.
2. **Documents to be maintained in certain cases** - Where the employer or the employee claims that the motor-car is used wholly and exclusively in the performance of official duty or that the actual expenses on the running and maintenance of the motor-car owned by the employee for official purposes is more than the amounts deductible in Sl. No. 2(b) or 3(b) of the above table, he may claim a higher amount attributable to such official use and the value of perquisite in such a case shall be the actual amount of charges met or reimbursed by the employer as reduced by such higher amount attributable
 - (a) to official use of the vehicle provided that the following conditions are fulfilled :-
 - (b) the employer has maintained complete details of journey undertaken for official purpose which may include date of journey, destination, mileage, and the amount of expenditure incurred thereon;
 - (c) the employer gives a certificate to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.
- (3) **Meaning of Normal wear and tear of a motor-car** - For computing the perquisite value of motor car, the normal wear and tear of a motor-car shall be taken at 10% per annum of the actual cost of the motor-car or cars.

Valuation of benefit of provision of domestic servants [Sub-rule (3) of Rule 3]

- If servants are engaged by the employee and employer paid or reimbursed the employee for the wages of such servants, it will be perquisite in the hands of all employees. But if the domestic servants are engaged by the employer and facility of such servants is provided to the employee, it will be perquisite in the hands of specified employees only.

- The value of benefit to the employee or any member of his household resulting from the provision by the employer of the services of a sweeper, a gardener, a watchman or a personal attendant, shall be the actual cost to the employer.
- The actual cost in such a case shall be the total amount of salary paid or payable by the employer or any other person on his behalf for such services as reduced by any amount paid by the employee for such services.

ILLUSTRATION 19 :

Mr. X and Mr. Y are working for M/s. Gama Ltd. As per salary fixation norms, the following perquisites were offered:

- For Mr. X, who engaged a domestic servant for ₹ 500 per month, his employer reimbursed the entire salary paid to the domestic servant i.e. ₹ 500 per month.
- For Mr. Y, he was provided with a domestic servant @ ₹ 500 per month as part of remuneration package.

You are required to comment on the taxability of the above in the hands of Mr. X and Mr. Y, who are not specified employees.

SOLUTION :

- In the case of Mr. X, it becomes an obligation which the employee would have discharged even if the employer did not reimburse the same. Hence, the perquisite will be covered under section 17(2)(iv) and will be taxable in the hands of Mr. X. This is taxable in the case of all employees.
- In the case of Mr. Y, it cannot be considered as an obligation which the employee would meet. The employee might choose not to have a domestic servant. This is taxable only in the case of specified employees covered by section 17(2)(iii). Hence, there is no perquisite element in the hands of Mr. Y.

(D) Valuation of gas, electricity or water supplied by employer [Sub-rule (4) of Rule 3]

If gas, electricity or water connections are taken by the employee and employer paid or reimbursed the employee for such expenses, it will be perquisite in the hands of all employees. But if the gas, electricity or water connections are taken in the name of employer and facility of such supplies are provided to the employee, it will be perquisite in the hands of specified employees only. The value of benefit to the employee resulting from the provision of gas, electricity or water supplied by the employer shall be determined as follow:

Circumstances	Value of benefit
If payment is made to agency supplying of gas, electricity etc.	sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water
If supply is made from resources owned by the employer	manufacturing cost per unit incurred by the employer

Where the employee is paying any amount in respect of such services, the amount so paid shall be deducted from the value so arrived at.

(E) Valuation of free or concessional educational facilities [Sub-rule (5) of Rule 3]

If school fees of children of employee or any member of employee's house hold is paid or reimbursed by the employer on employee's behalf, it will be perquisite in the hands of all employees. But if the education facility is provided in the school maintained by the employer or in any school by reason of his being employment at free of cost or at concessional rate, it would be perquisite in the hands of specified

employees only. The value of benefit to the employee resulting from the provision of free or concessional educational facility for any member of his household shall be determined as follow:

Circumstances	Value of benefit
If the educational institution is maintained and owned by the employer	cost of such education in a similar institution in or near the locality. However, there would be no perquisite if the cost of such education or the value of such benefit per child does not exceed ₹ 1,000 p.m.
If free educational facilities are allowed in any other educational institution by reason of his being in employment of that employer	
Others	amount of expenditure incurred by the employer in that behalf

Where any amount is paid or recovered from the employee on that account, the value of benefit shall be reduced by the amount so paid or recovered.

Note : The exemption of ₹ 1,000 p.m is allowed only in case of education facility provided to the children of the employee and not in case of education facility provided to other household members.

(F) Free or concessional tickets [Sub-rule (6) of Rule 3]

- The value of any benefit or amenity resulting from the provision by an employer
 - who is engaged in the carriage of passengers or goods,
 - to any employee or to any member of his household for personal or private journey free of cost or at concessional fare,
 - in any conveyance owned, leased or made available by any other arrangement by such employer for the purpose of transport of passengers or goods
- shall be taken to be the value at which such benefit or amenity is offered by such employer to the public as reduced by the amount, if any, paid by or recovered from the employee for such benefit or amenity.
- However, there would be no such perquisite to the employees of an airline or the railways.

(G) Valuation of other fringe benefits and amenities [Sub-rule (7) of Rule 3] :

Section 17(2)(viii) provides that the value of any other fringe benefit or amenity as may be prescribed would be included in the definition of perquisite and taxable in the hands of all employees. Accordingly, the following other fringe benefits or amenities are prescribed and the value thereof shall be determined in the manner provided hereunder:-

(i) Interest-free or concessional loan [Sub-rule 7(i) of Rule 3]

- (a) The value of the benefit to the assessee resulting from the provision of interest-free or concessional loan for any purpose made available to
- the employee or
 - any member of his household
- during the relevant previous year by the employer or any person on his behalf shall be determined as the sum equal to the interest computed at the rate charged per annum by the State Bank of India, as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it on the maximum outstanding monthly balance as reduced by the interest, if any, actually paid by him or any such member of his household.

“Maximum outstanding monthly balance” means the aggregate outstanding balance for each loan as on the last day of each month.

- (b) However, **no value would be charged** if such loans are made available for medical treatment in respect of prescribed diseases (like cancer, tuberculosis, etc.) or where the amount of loans are **not exceeding in the aggregate ₹ 20,000**.
- (c) Further, where the benefit relates to the loans made available for medical treatment referred to above, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme.

(ii) Travelling, touring and accommodation [Sub-rule 7(ii) of Rule 3]

- (a) **If Travelling, touring, accommodation etc. expenses are paid or reimbursed by employer** - The value of travelling, touring, accommodation and any other expenses paid for or borne or reimbursed by the employer for any holiday availed of by the employee or any member of his household, other than leave travel concession or assistance, shall be determined as the sum equal to the amount of the expenditure incurred by such employer in that behalf.
- (b) **If Travelling, touring, accommodation etc. facilities are maintained by employer to particular employees only** - Where such facility is maintained by the employer, and is not available uniformly to all employees, the value of benefit shall be taken to be the value at which such facilities are offered by other agencies to the public.
- (c) **Expenses on any member of household accompanying such employee on office tour** - Where the employee is on official tour and the expenses are incurred in respect of any member of his household accompanying him, the amount of expenditure so incurred shall also be a fringe benefit or amenity.
- (d) **If official tour is extended as vacation** - However, where any official tour is extended as a vacation, the value of such fringe benefit shall be limited to the expenses incurred in relation to such extended period of stay or vacation. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.

(iii) Free or concessional food and non-alcoholic beverages [Sub-rule 7(iii) of Rule 3]

- (a) The value of free food and non-alcoholic beverages provided by the employer to an employee shall be the amount of expenditure incurred by such employer. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.
- (b) However, the following would not be treated as a perquisite -
 - (1) free food and non-alcoholic beverages provided by such employer
 - during working hours at office or business premises or
 - through paid vouchers which are not transferable and usable only at eating joints, to the extent the value thereof either case does not exceed fifty rupees per meal or
 - (2) tea or snacks provided during working hours or
 - (3) free food and non-alcoholic beverages during working hours provided in a remote area or an off-shore installation.

Exemption in respect of free food and non-alcoholic beverage provided by such employer through paid voucher would not be available in case an employee pays tax under the default tax regime under section 115BAC.

(iv) Value of gift, voucher or token in lieu of such gift [Sub-rule 7(iv) of Rule 3]

- (a) The value of any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise from the employer shall be determined as the sum equal to the amount of such gift:
- (b) However, if the value of such gift, voucher or token, as the case may be, is below ₹ 5,000 in the aggregate during the previous year, the value of perquisite shall be taken as 'Nil'.

(v) Credit card expenses [Sub-rule 7(v) of Rule 3]

- (a) The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household, which is charged to a credit card (including any add-on-card) provided by the employer, or otherwise, paid for or reimbursed by such employer shall be taken to be the value of perquisite chargeable to tax as reduced by the amount, if any paid or recovered from the employee for such benefit or amenity.
- (b) However, such expenses incurred wholly and exclusively for official purposes would not be treated as a perquisite if the following conditions are fulfilled.
- (1) complete details in respect of such expenditure are maintained by the employer which may, *inter alia*, include the date of expenditure and the nature of expenditure;
 - (2) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.

(vi) Club expenditure [Sub-rule 7(vi) of Rule 3]

- (a) The value of benefit to the employee resulting from the payment or reimbursement by the employer of any expenditure incurred (including the amount of annual or periodical fee) in a club by him or by a member of his household shall be determined to be the actual amount of expenditure incurred or reimbursed by such employer on that account. The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.

However, where the employer has obtained corporate membership of the club and the facility is enjoyed by the employee or any member of his household, the value of perquisite shall not include the initial fee paid for acquiring such corporate membership.

- (b) Further, if such expenditure is incurred wholly and exclusively for business purposes, it would not be treated as a perquisite provided the following conditions are fulfilled :-
- (1) complete details in respect of such expenditure are maintained by the employer which may, *inter alia*, include the date of expenditure, the nature of expenditure and its business expediency;
 - (2) the employer gives a certificate for such expenditure to the effect that the same was incurred wholly and exclusively for the performance of official duties.
- (c) There would be no perquisite for use of health club, sports and similar facilities provided uniformly to all employees by the employer.

(vi) Use of moveable assets [Sub-rule 7(vii) of Rule 3]

Value of perquisite is determined as under:

Asset given	Value of benefit
(a) Use of laptops and computers	Nil
(b) Movable assets, other than - (i) laptops and computers; and (ii) assets already specified	10% p.a. of the actual cost of such asset, or the amount of rent or charge paid, or payable by the employer, as the case may be

Note : Where the employee is paying any amount in respect of such asset, the amount so paid shall be deducted from the value of perquisite determined above.

(viii) Transfer of moveable assets [Sub-rule 7(viii) of Rule 3]

Value of perquisite is determined as under:

Assets transferred	Value of perquisite
Computers and electronic items	Depreciated value of asset [depreciation is computed @50% on WDV for each completed year of usage]
Motor cars	Depreciated value of asset [depreciation is computed @20% on WDV for each completed year of usage]
Any other asset	Depreciated value of asset [depreciation is computed @10% on SLM for each completed year of usage]

Note : Where the employee is paying any amount in respect of such asset, the amount so paid shall be deducted from the value of perquisite determined above.

(ix) Other benefit or amenity [Sub-rule 7(ix) of Rule 3]

The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer under an arms' length transaction as reduced by the employee's contribution, if any.

However, there will be no taxable perquisite in respect of expenses on telephones including mobile phone actually incurred on behalf of the employee by the employer i.e., if an employer pays or reimburses telephone bills or mobile phone charges of employee, there will be no taxable perquisite.

ILLUSTRATION 20

Mr. X retired from the services of M/s Y Ltd. on 31.01.2024, after completing service of 30 years and one month. He had joined the company on 1.1.1994 at the age of 30 years and received the following on his retirement:

- (i) Gratuity ₹ 6,00,000. He was covered under the Payment of Gratuity Act, 1972.
- (ii) Leave encashment of ₹ 3,30,000 for 330 days leave balance in his account. He was credited 30 days leave for each completed year of service.
- (iii) As per the scheme of the company, he was offered a car which was purchased on 30.01.2021 by the company for ₹ 5,00,000. Company has recovered ₹ 2,00,000 from him for the car. Company depreciates the vehicles at the rate of 15% on Straight Line Method.
- (iv) An amount of ₹ 3,00,000 as commutation of pension for 2/3 of his pension commutation.
- (v) Company presented him a gift voucher worth ₹ 6,000 on his retirement.
- (vi) His colleagues also gifted him a Television (LCD) worth ₹ 50,000 from their own contribution.

Following are the other particulars :

- (i) He has drawn a basic salary of ₹ 20,000 and 50% dearness allowance per month for the period from 01.04.2023 to 31.01.2024.
- (ii) Received pension of ₹ 5,000 per month for the period 01.02.2024 to 31.03.2024 after commutation of pension.

Compute his gross total income from the above for Assessment Year 2024-25 assuming he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION :**Computation of Gross Total Income of Mr. X for A.Y. 2024-25 :**

Particulars	₹
Basic Salary = ₹ 20,000 x 10	2,00,000
Dearness Allowance = 50% of basic salary	1,00,000
Gift Voucher (See Note - 1)	6,000
Transfer of car (See Note - 2)	56,000
Gratuity (See Note - 3)	80,769
Leave encashment (See Note - 4)	1,30,000
Uncommuted pension (₹ 5000 x 2)	10,000
Commuted pension (See Note - 5)	1,50,000
Gross Salary	7,32,769
Less: Standard deduction u/s 16(ia)	50,000
Taxable Salary /Gross Total Income	6,82,769

Notes :

- (1) As per Rule 3(7)(iv), the value of any gift or voucher or token in lieu of gift received by the employee or by member of his household not exceeding ₹ 5,000 in aggregate during the previous year is exempt. In this case, the amount was received on his retirement and the sum exceeds the limit of ₹ 5,000.

Therefore, the entire amount of ₹ 6,000 is liable to tax as perquisite.

Note : An alternate view possible is that only the sum in excess of ₹ 5,000 is taxable. In such a case, the value of perquisite would be ₹ 1,000 and gross total income would be ₹ 7,27,769.

- (2) **Perquisite value of transfer of car:** As per Rule 3(7)(viii), the value of benefit to the employee, arising from the transfer of an asset, being a motor car, by the employer is the actual cost of the motor car to the employer as reduced by 20% of WDV of such motor car for each completed year during which such motor car was put to use by the employer. Therefore, the value of perquisite on transfer of motor car, in this case, would be:

Particulars	₹
Purchase price (30.1.2021)	5,00,000
Less: Depreciation @ 20%	1,00,000
WDV on 29.1.2022	4,00,000
Less: Depreciation @ 20%	80,000
WDV on 29.1.2023	3,20,000
Less: Depreciation @ 20%	64,000
WDV on 29.1.2024	2,56,000
Less: Amount recovered	2,00,000
Value of perquisite	56,000

The rate of 15% as well as the straight line method adopted by the company for depreciation of vehicle is **not** relevant for calculation of perquisite value of car in the hands of Mr. X.

(3) Taxable gratuity

Particulars	₹
Gratuity received	6,00,000
Less : Exempt under section 10(10) - Least of the following :	
(i) Notified limit = ₹ 20,00,000	
(ii) Actual gratuity = ₹ 6,00,000	
(iii) $15/26 \times$ last drawn salary \times no. of completed years of services or part in excess of 6 months	
$15/26 \times ₹ 30,000 \times 30 = ₹ 5,19,231$	5,19,231
Taxable Gratuity	80,769

Note : As per the Payment of Gratuity Act, 1972, D.A. is included in the meaning of salary. Since in this case, Mr. X is covered under payment of Payment of Gratuity Act, 1972, D.A. has to be included within the meaning of salary for computation of exemption under section 10(10).

(4) Taxable leave encashment :

Particulars	₹
Leave Salary received	3,30,000
Less : Exempt under section 10(10AA) - Least of the following:	
(i) Notified limit	₹ 25,00,000
(ii) Actual leave salary	₹ 3,30,000
(iii) 10 months \times ₹ 20,000	₹ 2,00,000
(iv) Cash equivalent of leave to his credit	₹ 2,20,000
$\left(\frac{33}{30} \times 20,000\right)$	2,00,000
Taxable Leave encashment	1,30,000

Note : It has been assumed that dearness allowance does not form part of salary for retirement benefits. In case it is assumed that dearness allowance forms part of pay for retirement benefits, then, the third limit for exemption under section 10(10AA) in respect of leave encashment would be ₹ 3,00,000

(i.e. $10 \times ₹ 30,000$) and the fourth limit ₹ 3,30,000, in which case, the taxable leave encashment would be ₹ 30,000 (₹ 3,30,000 - ₹ 3,00,000). In such a case, the gross total income would be ₹ 6,32,769.

(5) Commuted Pension :

Since Mr. X is a non-government employee in receipt of gratuity, exemption under section 10(10A) would be available to the extent of $1/3^{\text{rd}}$ of the amount of the pension which he would have received had he commuted the whole of the pension.

Particulars	₹
Amount received	3,00,000
Less: Exemption under section 10(10A) = $\frac{1}{3} \times \left[3,00,000 \times \frac{3}{2} \right]$	1,50,000
Taxable amount	1,50,000

- (6) The taxability provisions under section 56(2)(x) are not attracted in respect of television received from colleagues, since television is not included in the definition of property therein.

ILLUSTRATION 21 :

Shri Bala employed in ABC Co. Ltd. as Finance Manager gives you the list of perquisites provided by the company to him for the entire financial year 2023-24 :

- (i) Domestic servant was provided at the residence of Bala. Salary of domestic servant is ₹ 1,500 per month. The servant was engaged by him and the salary is reimbursed by the company (employer).
In case the company has employed the domestic servant, what is the value of perquisite?
- (ii) Free education was provided to his two children Arthy and Ashok in a school maintained and owned by the company. The cost of such education for Arthy is computed at ₹ 900 per month and for Ashok at ₹ 1,200 per month. No amount was recovered by the company for such education facility from Bala.
- (iii) The employer has provided movable assets such as television, refrigerator and air-conditioner at the residence of Bala. The actual cost of such assets provided to the employee is ₹ 1,10,000.
- (iv) A gift voucher worth ₹ 10,000 was given on the occasion of his marriage anniversary. It is given by the company to all employees above certain grade.
- (v) Telephone provided at the residence of Shri Bala and the bill aggregating to ₹ 25,000 paid by the employer.
- (vi) Housing loan @ 6% per annum. Amount outstanding on 1.4.2023 is ₹ 6,00,000. Shri Bala pays ₹ 12,000 per month towards principal, on 5th of each month.

Compute the chargeable perquisite in the hands of Mr. Bala for the A.Y. 2024-25. The lending rate of State Bank of India as on 1.4.2023 for housing loan may be taken as 10%.

SOLUTION :

Taxability of perquisites provided by ABC Co. Ltd. to Shri Bala :

- (i) Domestic servant was employed by the employee and the salary of such domestic servant was paid/reimbursed by the employer. It is taxable as perquisite for all categories of employees.

$$\text{Taxable perquisite value} = ₹ 1,500 \times 12 = ₹ 18,000.$$

If the company had employed the domestic servant and the facility of such servant is given to the employee, then the perquisite is taxable only in the case of specified employees. The value of the taxable perquisite in such a case also would be ₹ 18,000.

- (ii) Where the educational institution is owned by the employer, the value of perquisite in respect of free education facility shall be determined with reference to the reasonable cost of such education in a similar institution in or near the locality. However, there would be no perquisite if the cost of such education per child does not exceed ₹ 1,000 per month.

Therefore, there would be no perquisite in respect of cost of free education provided to his child Arthy, since the cost does not exceed ₹ 1,000 per month.

However, the cost of free education provided to his child Ashok would be taxable, since the cost exceeds ₹ 1,000 per month. The taxable perquisite value would be ₹ 14,400 (₹ 1,200 × 12).

Note – An alternate view possible is that only the sum in excess of ₹ 1,000 per month is taxable. In such a case, the value of perquisite would be ₹ 2,400.

- (iii) Where the employer has provided movable assets to the employee or any member of his household, 10% per annum of the actual cost of such asset owned or the amount of hire charges incurred by the employer shall be the value of perquisite. However, this will not apply to laptops and computers. In this case, the movable assets are television, refrigerator and air conditioner and actual cost of such assets is ₹ 1,10,000.

The perquisite value would be 10% of the actual cost i.e., ₹ 11,000, being 10% of ₹ 1,10,000.

- (iv) The value of any gift or voucher or token in lieu of gift received by the employee or by member of his household not exceeding ₹ 5,000 in aggregate during the previous year is exempt. In this case, the amount was received on the occasion of marriage anniversary and the sum exceeds the limit of ₹ 5,000.

Therefore, the entire amount of ₹ 10,000 is liable to tax as perquisite.

Note - An alternate view possible is that only the sum in excess of ₹ 5,000 is taxable. In such a case, the value of perquisite would be ₹ 5,000

- (v) Telephone provided at the residence of the employee and payment of bill by the employer is a tax free perquisite.
- (vi) The value of the benefit to the assessee resulting from the provision of interest-free or concessional loan made available to the employee or any member of his household during the relevant previous year by the employer or any person on his behalf shall be determined as the sum equal to the interest computed at the rate charged per annum by the State Bank of India (SBI) as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it. This rate should be applied on the maximum outstanding monthly balance and the resulting amount should be reduced by the interest, if any, actually paid by him.

“Maximum outstanding monthly balance” means the aggregate outstanding balance for loan as on the last day of each month.

The perquisite value for computation is $10\% - 6\% = 4\%$

Month	Maximum outstanding balance as on last date of month (₹)	Perquisite value at 4% for the month (₹)
April, 2023	5,88,000	1,960
May, 2023	5,76,000	1,920
June, 2023	5,64,000	1,880
July, 2023	5,52,000	1,840
August, 2023	5,40,000	1,800
September, 2023	5,28,000	1,760
October, 2023	5,16,000	1,720
November, 2023	5,04,000	1,680
December, 2023	4,92,000	1,640
January, 2024	4,80,000	1,600
February, 2024	4,68,000	1,560
March, 2024	4,56,000	1,520
Total value of this perquisite		20,880

Total value of taxable perquisite

= ₹ 74,280 [i.e. ₹ 18,000 + ₹ 14,400 + ₹ 11,000 + ₹ 10,000 + ₹ 20,880].

Note - In case the alternate views are taken for items (ii) & (iv), the total value of taxable perquisite would be ₹ 57,280 [i.e., ₹ 18,000 + ₹ 2,400 + ₹ 11,000 + ₹ 5,000 + ₹ 20,880].

(H) Valuation of specified security or sweat equity share for the purpose of section 17(2)(vi)**[Sub-rule (8)]**

The fair market value of any specified security or sweat equity share, being an equity share in a company, on the date on which the option is exercised by the employee, shall be determined in the following manner -

(1) If shares are listed on recognized stock exchange - In a case where, on the date of the exercising of the option, the share in the company is listed on a recognized stock exchange, the fair market value shall be the average of the opening price and closing price of the share on that date on the said stock exchange.

If shares are listed on more than one recognized stock exchange - Where, on the date of exercising of the option, the share is listed on more than one recognized stock exchanges, the fair market value shall be the average of opening price and closing price of the share on the recognised stock exchange which records the highest volume of trading in the share.

If no trading in share on recognized stock exchange - Where on the date of exercising of the option, there is no trading in the share on any recognized stock exchange, the fair market value shall be -

- (a)** the closing price of the share on any recognised stock exchange on a date closest to the date of exercising of the option and immediately preceding such date; or
- (b)** the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of exercising of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

“Closing price” of a share on a recognised stock exchange on a date shall be the price of the last settlement on such date on such stock exchange.

However, where the stock exchange quotes both “buy” and “sell” prices, the closing price shall be the “sell” price of the last settlement.

“Opening price” of a share on a recognised stock exchange on a date shall be the price of the first settlement on such date on such stock exchange.

However, where the stock exchange quotes both “buy” and “sell” prices, the opening price shall be the “sell” price of the first settlement.

(2) If shares are not listed on recognized stock exchange - In a case where, on the date of exercising of the option, the share in the company is not listed on a recognised stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the specified date.

For this purpose, **“specified date”** means,—

- (i)** the date of exercising of the option; or
- (ii)** any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising.

Note: Where any amount has been recovered from the employee, the same shall be deducted to arrive at the value of perquisites.

ILLUSTRATION 22 :

AB Co. Ltd. allotted 1000 sweat equity shares to Sri Chand in June 2023. The shares were allotted at ₹ 200 per share as against the fair market value of ₹ 300 per share on the date of exercise of option by the allottee viz. Sri Chand. The fair market value was computed in accordance with the method prescribed under the Act.

- (i) What is the perquisite value of sweat equity shares allotted to Sri Chand?
- (ii) In the case of subsequent sale of those shares by Sri Chand, what would be the cost of acquisition of those sweat equity shares?

SOLUTION :

- (i) As per section 17(2)(vi), the value of sweat equity shares chargeable to tax as perquisite shall be the fair market value of such shares on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from, the assessee in respect of such shares.

Particulars	₹
Fair market value of 1000 sweat equity shares @ ₹ 300 each	3,00,000
Less: Amount recovered from Sri Chand 1000 shares @ ₹ 200 each	2,00,000
Value of perquisite of sweat equity shares allotted to Sri Chand	1,00,000

- (ii) As per section 49(2AA), where capital gain arises from transfer of sweat equity shares, the cost of acquisition of such shares shall be the fair market value which has been taken into account for perquisite valuation under section 17(2)(vi). *(The provisions of section 49 are discussed in Unit 4: Capital Gains of this chapter)*

Therefore, in case of subsequent sale of sweat equity shares by Sri Chand, the cost of acquisition would be ₹ 3,00,000.

(I) Valuation of specified security, not being an equity share in a company for the purpose of section 17(2)(vi) [Sub-rule (9)]

- The fair market value of any specified security, not being an equity share in a company, on the date on which the option is exercised by the employee, shall be such value as determined by a merchant banker on the specified date.
- For this purpose, “**specified date**” means,—
 - (i) the date of exercising of the option; or
 - (ii) any date earlier than the date of the exercising of the option, not being a date which is more than 180 days earlier than the date of the exercising.
- Tax on perquisite of specified securities and sweat equity shares is required to be paid in the year of exercising of option. However, where such shares or securities are allotted by the current employer, being an eligible start-up**, the perquisite is taxable in the year
 - after the expiry of 48 months from the end of the relevant assessment year
 - in which sale of such security or share are made by the assessee
 - in which the assessee ceases to be the employee of the employer, whichever is earlier.

Definitions for the purpose of perquisite rules :

The following definitions are relevant for applying the perquisite valuation rules -

Term	Meaning
Member of household	shall include- (a) spouse(s), (b) children and their spouses, (c) parents, and (d) servants and dependants;
Salary	includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called from one or more employers, as the case may be, but does not include the following, namely:- (a) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned; (b) employer's contribution to the provident fund account of the employee; (c) allowances which are exempted from payment of tax; (d) the value of perquisites specified in clause (2) of section 17 of the Income-tax Act; (e) any payment or expenditure specifically excluded under proviso to clause (2) of section 17; (f) lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments;

ILLUSTRATION 23 :

X Ltd. provided the following perquisites to its employee Mr. Y for the P.Y. 2023-24 –

- (1) Accommodation taken on lease by X Ltd. for ₹ 15,000 p.m. ₹ 5,000 p.m. is recovered from the salary of Mr. Y.
- (2) Furniture, for which the hire charges paid by X Ltd. is ₹ 3,000 p.m. No amount is recovered from the employee in respect of the same.
- (3) A car of 1,200 cc which is owned by X Ltd. and given to Mr. Y to be used both for official and personal purposes. All running and maintenance expenses are fully met by the employer. He is also provided with a chauffeur.
- (4) A gift voucher of ₹ 10,000 on his birthday.

Compute the value of perquisites chargeable to tax for the A.Y.2024-25, assuming his salary for perquisite valuation to be ₹ 10 lakh.

SOLUTION :**Computation of the value of perquisites chargeable to tax in the hands of Mr. Y for the A.Y.2024-25**

	Particulars	Amount in ₹		
(1)	Value of accommodation at concessional rate Actual amount of lease rental paid by X Ltd.	1,80,000		
	15% of salary i.e., 15% of ₹ 10,00,000 Lower of the above Less: Rent paid by Mr. Y (₹ 5,000 × 12)	1,50,000	1,50,000 60,000	
	Add: Hire charges paid by X Ltd. for furniture provided for the use of Mr. Y (₹ 3,000 × 12)		36,000	1,26,000
(2)	Perquisite value of Santro car owned by X Ltd. and provided to Mr. Y for his personal and official use (₹1,800 + ₹ 900) × 12]			32,400
(3)	Value of gift voucher*			10,000
	Value of perquisites chargeable to tax			1,68,400

* An alternate view possible is that only the sum in excess of ₹ 5,000 is taxable. In such a case, the value of perquisite would be ₹ 5,000.

1.4 DEDUCTIONS FROM SALARY

The income chargeable under the head 'Salaries' is computed after making the following deductions :

- (1) Standard deduction [Section 16(ia)]
- (2) Entertainment allowance [Section 16(ii)]
- (3) Professional tax [Section 16(iii)]

Income under the head "Salaries"	Amount (₹)	Amount (₹)
Salary/Bonus/Commission etc.	A	
Taxable Allowance Value of	B	
Taxable Perquisites	C	
Gross Salary (A+B+C)		D
Less: Deductions under Section 16		
Standard deduction of upto ₹ 50,000	xxx	
Entertainment Allowance to Government employee, if the assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)	xxx	
Professional Tax paid, if the assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)	xxx	E
Net taxable income from Salary (D-E)		F

1.4.1 Standard Deduction

A standard deduction of ₹ 50,000 be provided to the employees. or the amount of salary, whichever is lower, is to be provided to the employees.

Standard deduction of upto ₹ 50,000 is available to an assessee irrespective of the regime under which he pays tax.

1.4.2 Entertainment Allowance :

- Entertainment allowance received is fully taxable and is first to be included in the salary and thereafter the following deduction is to be made from gross salary:
- However, deduction in respect of entertainment allowance is available in case of Government employees only. The amount of deduction will be lower of:
 - One-fifth of his basic salary or
 - ₹ 5,000 or
 - Entertainment allowance received.
- Amount actually spent by the employee towards entertainment out of the entertainment allowance received by him is not a relevant consideration at all.

Deduction in respect of entertainment allowance would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). The deduction would not be available under the default tax regime i.e., under section 115BAC

1.4.3 Professional Tax on Employment

- Professional tax or taxes on employment levied by a State under Article 276 of the Constitution is allowed as deduction only when it is actually paid by the employee during the previous year. The total amount by way of professional tax payable in respect of any one person shall not exceed ₹ 2,500 per annum. However, the amount paid during the previous year can be more than ₹ 2,500 as the employee may have paid the professional tax of an earlier year during the previous year.

- If professional tax is reimbursed or directly paid by the employer on behalf of the employee, the amount so paid is first included as salary income and then allowed as a deduction u/s 16.
- Deduction in respect of professional tax would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). The deduction would not be available under the default tax regime i.e., under section 115BAC.

ILLUSTRATION 24 :

Mr. Goyal receives the following emoluments during the previous year ending 31.03.2024.

Basic pay	₹ 4,00,000
Dearness Allowance	₹ 1,50,000
Commission	₹ 1,00,000
Entertainment allowance	₹ 40,000
Medical expenses reimbursed	₹ 25,000
Professional tax paid	₹ 2,000 (₹ 1,000 was paid by his employer)

Mr. Goyal contributes ₹ 5,000 towards recognized provident fund. He has no other income. Determine the income from salary for A.Y. 2024-25, if Mr. Goyal is a State Government employee.

SOLUTION :

Computation of salary of Mr. Goyal for the A.Y.2024-25 under default tax regime under section 115BAC

Particulars	₹
Basic Salary	4,00,000
Dearness Allowance	1,50,000
Commission	1,00,000
Entertainment Allowance received	40,000
Employee's contribution to RPF [Note]	-
Medical expenses reimbursed	25,000
Professional tax paid by the employer	1,000
Gross Salary	7,16,000
Less: Deductions under section 16(ia) - Standard deduction of upto ₹ 50,000	50,000
Income from Salary	6,66,000

Note : Employee's contribution to RPF is not taxable. It is eligible for deduction u/s 80C. However, such deduction shall not be available under the default tax regime under section 115BAC.

Computation of salary of Mr. Goyal for the A.Y.2024-25 under the optional tax regime (normal provisions of the Act)

Particulars	₹	₹
Basic Salary		4,00,000
Dearness Allowance		1,50,000
Commission		1,00,000
Entertainment Allowance received		40,000
Employee's contribution to RPF [Note]		-
Medical expenses reimbursed		25,000
Professional tax paid by the employer		1,000
Gross Salary		7,16,000
Less: Deductions under section 16 under section 16(ia) - Standard deduction of upto ₹ 50,000		50,000

Particulars	₹	₹
under section 16(ii) - Entertainment allowance being lowest of :		
(a) Allowance received	40,000	
(b) One fifth of basic salary [$1/5 \times ₹ 4,00,000$]	80,000	
(c) Statutory amount	5,000	5,000
under section 16(iii) - Professional tax paid		2,000
Income from Salary		6,59,000

Note : Employee's contribution to RPF is not taxable. It is eligible for deduction u/s 80C.

1.5 RELIEF UNDER SECTION 89

- (1) **On account of arrears of salary or advance salary :** Where by reason of any portion of an assessee's salary being paid in arrears or in advance or by reason of his having received in any one financial year, salary for more than twelve months or a payment of profit in lieu of salary under section 17(3), his income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as prescribed. The procedure for computing the relief is given in Rule 21A.
- (2) **On account of family pension:** Similar tax relief is extended to assessee who receive arrears of family pension as defined in the Explanation to clause (iia) of section 57.
 "Family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death.
- (3) **No relief at the time of Voluntary retirement or termination of service :** No relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or a scheme of voluntary separation (in the case of a public sector company), if exemption under section 10(10C) in respect of such compensation received on voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee in respect of the same assessment year or any other assessment year.

ILLUSTRATION 25

In the case of Mr. Hari, who turned 71 years on 28.3.2024, you are informed that the salary (computed) for the previous year 2023-24 is ₹ 10,20,000 and arrears of salary received is ₹ 3,45,000. Further, you are given the following details relating to the earlier years to which the arrears of salary received is attributable to:

Previous year	Taxable Salary (₹)	Arrears now received (₹)
2010 – 2011	7,10,000 ₹	1,03,000 ₹
2011 – 2012	8,25,000	1,17,000
2012 – 2013	9,50,000	1,25,000

Compute the relief available under section 89 and the tax payable for the A.Y. 2024-25. Assume that Mr. Hari exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

Note : Rates of Taxes:

Assessment Year	Slab rates of income-tax			
	For resident individuals of the age of 60 years or more at any time during the previous year		For other resident individuals	
	Slabs	Rate	Slabs	Rate
2011-12	Upto ₹ 2,40,000	Nil	Upto ₹ 1,60,000	Nil
	₹ 2,40,001 - ₹ 5,00,000	10%	₹ 1,60,001 - ₹ 5,00,000	10%
	₹ 5,00,001 - ₹ 8,00,000	20%	₹ 5,00,001 - ₹ 8,00,000	20%
	Above ₹ 8,00,000	30%	Above ₹ 8,00,000	30%
2012-13	Upto ₹ 2,50,000	Nil	Upto ₹ 1,80,000	Nil
	₹ 2,50,001 - ₹ 5,00,000	10%	₹ 1,80,001 - ₹ 5,00,000	10%
	₹ 5,00,001 - ₹ 8,00,000	20%	₹ 5,00,001 - ₹ 8,00,000	20%
	Above ₹ 8,00,000	30%	Above ₹ 8,00,000	30%
2013-14	Upto ₹ 2,50,000	Nil	Upto ₹ 2,00,000	Nil
	₹ 2,50,001 - ₹ 5,00,000	10%	₹ 2,00,001 - ₹ 5,00,000	10%
	₹ 5,00,001 - ₹ 10,00,000	20%	₹ 5,00,001 - ₹ 10,00,000	20%
	Above ₹ 10,00,000	30%	Above ₹ 10,00,000	30%

Note – Education cess@2% and secondary and higher education cess@1% was attracted on the income-tax for all above preceding years.

SOLUTION :

Computation of tax payable by Mr. Hari for the A.Y.2024-25

Particulars	Incl. arrears of salary ₹	Excl. arrears of salary ₹
Current year salary (computed)	10,20,000	10,20,000
Add: Arrears of salary	3,45,000	-
Taxable Salary	13,65,000	10,20,000
Income-tax thereon	2,19,500	1,16,000
Add: Health and education cess @4%	8,780	4,640
Total payable	2,28,280	1,20,640

Computation of tax payable on arrears of salary if charged to tax in the respective AYs

Particulars	A.Y. 2011-12			A.Y. 2012-13		A.Y. 2013-14	
	Incl. arrears (₹)	Excl. arrears (₹)	Incl. arrears (₹)	Excl. arrears (₹)	Incl. arrears (₹)	Excl. arrears (₹)	
Taxable salary	7,10,000	7,10,000	8,25,000	8,25,000	9,50,000	9,50,000	
Add: Arrears of salary	1,03,000	-	1,17,000	-	1,25,000	-	
Taxable salary	8,13,000	7,10,000	9,42,000	8,25,000	10,75,000	9,50,000	
Tax on the above	97,900	76,000	1,34,600	99,500	1,47,500	1,15,000	
Add: Cess@3%	2,937	2,280	4,038	2,985	4,425	3,450	
Tax payable	1,00,837	78,280	1,38,638	1,02,485	1,51,925	1,18,450	

Computation of relief under section 89

Particulars	₹	₹
i Tax payable in A.Y.2024-25 on arrears:		
Tax on income including arrears	2,28,280	
Less : Tax on income excluding arrears	1,20,640	1,07,640
ii Tax payable in respective years on arrears :		
Tax on income including arrears (₹ 1,00,837 + ₹ 1,38,638 + ₹ 1,51,925)	3,91,400	
Less: Tax on income excluding arrears (₹ 78,280 + ₹ 1,02,485 + ₹ 1,18,450)	2,99,215	92,185
Relief under section 89 - difference between tax on arrears in A.Y. 2024-25 and tax on arrears in the respective years		15,455

Tax payable for A.Y.2024-25 after relief under section 89 :

Particulars	₹ ₹
Income-tax payable on total income including arrears of salary	2,28,280
Less : Relief under section 89 as computed above	15,455
Tax payable after claiming relief	2,12,825

LET US RECAPITULATE

Basis of Charge [Section 15]

- Salary is chargeable to tax either on 'due' basis or on 'receipt' basis, whichever is earlier.
- However, where any salary, paid in advance, is assessed in the year of payment, it cannot be subsequently brought to tax in the year in which it becomes due.
- If the salary paid in arrears has already been assessed on due basis, the same cannot be taxed again when it is paid.

If an employee works with more than one employer, salaries received from all the employers would be clubbed and brought to charge for the relevant previous year.

Taxability/Exemption of certain Allowances

Section	Allowance	Exemption
10(13A)	House Rent Allowance	<p>Least of the following is exempt:</p> <p>(a) HRA actually received</p> <p>(b) Rent paid <i>less</i> 10% of salary</p> <p>(c) 50% of salary, if accommodation is located in Mumbai, Kolkata, Delhi or Chennai 40% of salary, if the accommodation is located in any other city.</p> <p>Note - Exemption would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).</p>
10(14)(ii)	Children education allowance	<p>₹ 100 per month per child upto maximum of two children</p> <p>Note - Exemption would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).</p>
	Transport allowance for commuting between the place of residence and the place of duty Hostel expenditure of employee's children	<p>₹ 3,200 per month for an employee who is blind or deaf and dumb or orthopedically handicapped</p> <p>Note - Exemption in respect of transport allowance would be available to an assessee irrespective of the regime under which he pays tax. ₹ 300 per month per child up to a maximum of two children</p> <p>Note - Exemption would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).</p>

Exemption of Terminal Benefits [Exemption would be available to an assessee irrespective of the tax regime under which he pays tax]

Section	Component of salary	Category of employee	Particulars [Taxability / Exemption under section 10]
10(10)	Gratuity	Central Government employees/ Members of Civil Services/ local authority employees etc.	Fully exempt u/s 10(10)(i)
		Other employees	<p>Least of the following is exempt :</p> <p>(i) Gratuity actually received</p> <p>In case of employees covered by the Payment of Gratuity Act, 1972</p> <p>(ii) $15/26 \times$ last drawn salary \times number of completed years or part in excess of six months</p> <p>(iii) ₹ 20,00,000</p> <p>In case of employees not covered by the Payment of Gratuity Act, 1972</p>

Exemption of Terminal Benefits [Exemption would be available to an assessee irrespective of the tax regime under which he pays tax]

Section	Component of salary	Category of employee	Particulars [Taxability / Exemption under section 10]
			(ii) $\frac{1}{2} \times$ average salary of last 10 months \times number of completed years of service (fraction to be ignored). (iii) ₹ 20,00,000
10(10A)	Pension		
	Uncommuted pension Commutated pension	Government & Non- Government employees of Central Government/ local authorities/ Statutory corporation/ members of Civil services/ All-India services/ Defence Services	Fully taxable Fully exempt under section 10(10A)(i)
		Other Employees	If the employee is in receipt of gratuity $\frac{1}{3} \times$ (commuted pension received \div commutation %) \times 100 If the employee is not in receipt of gratuity $\frac{1}{2} \times$ (commuted pension received \div commutation %) \times 100
10(10AA)	Leave Salary		
	Received during service	Government & Non-Government	Fully taxable
	Received at the time of retirement, (whether on superannuation or otherwise)	Government Non- Government	Fully exempt u/s 10(10AA)(i) Least of the following is exempt : (i) ₹ 25,00,000 (ii) Leave salary actually received (iii) Cash equivalent of leave standing at the credit of the employee [based on average salary of last 10 months] (maximum 30 days for every year of service) (iv) 10 months' salary (based on average salary of last 10 months preceding retirement)
10(10B)	Retrenchment Compensation		Least of the following is exempt :
			(i) Compensation actually received (ii) ₹ 5,00,000 (iii) 15 days average pay \times Completed years of service and part thereof in excess of 6 months

Exemption of Terminal Benefits [Exemption would be available to an assessee irrespective of the tax regime under which he pays tax]

Section	Component of salary	Category of employee	Particulars [Taxability / Exemption under section 10]
10(10C)	Voluntary Retirement Compensation	Central and State Government, Public sector company, any other company, local authority, co- operative society, IIT etc.	Least of the following is exempt : (i) Compensation actually received (ii) ₹ 5,00,000 (iii) 3 months' salary x completed years of service Last drawn salary x remaining months of services left

Section 10(5) [Leave Travel Concession]

Exemption is available for 2 trips in a block of 4 calendar years. Exemption would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

S. No.	Journey performed by	Exemption
1	Air	Amount not exceeding air economy fare by the shortest route.
2	Any other mode : (i) Where rail service is available (ii) Where rail service is not available (a) and public transport does not exist (b) but public transport exists.	Amount not exceeding air-conditioned first- class rail fare by the shortest route to the place of destination Amount equivalent to air conditioned first class rail fares by the shortest route, as if the journey had been performed by rail Amount not exceeding the first class or deluxe class fare by the shortest route to the place of destination

Provident Funds - Exemption & Taxability provisions

Particulars	Recognized PF	Unrecognized PF	Statutory PF	Public PF
Employer's Contribution	Contribution in excess of 12% of salary is taxable as "salary" u/s 17(1)	Not taxable at the time of contribution	Fully exempt	N.A. (as there is only assessee's own contribution)
Employee's Contribution	Eligible for deduction u/s 80C, where an employee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)	Not eligible for deduction	Eligible for deduction u/s 80C, where an employee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)	Eligible for deduction u/s 80C, where an employee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)

Provident Funds - Exemption & Taxability provisions

Particulars	Recognized PF	Unrecognized PF	Statutory PF	Public PF
Interest Credited on Employer's Contribution	Amount in excess of 9.5% p.a. is taxable as "salary" u/s 17(1)	Not taxable at the time of credit of interest	Fully exempt	N.A.
Interest Credited on Employee's Contribution	Amount in excess of 9.5% p.a. is taxable as "salary" u/s 17(1) [See Note below]	Not taxable at the time of credit of interest	Exempt upto certain limit of contribution [See Note below]	Fully exempt
Amount withdrawn on retirement/ termination	Exempt from tax if (i) employee served a continuous period of 5 years or more; or (ii) retires before rendering 5 years of service because of ill health, contraction or discontinuance of employer's business or reason beyond the control of the employee; or (iii) on cessation of employment, the employee obtains employment with any other employer, to the extent the accumulated balance in RPF is transferred to his RPF account maintained by the new employer. (iv) The entire balance standing to the credit of the employee is transferred to his NPS account referred to in section 80CCD and notified by the Central Government In other cases, it will be taxable.	Employer's contribution and interest thereon is taxable as salary. Employee's contribution is not taxable. Interest on employee's contribution is taxable under income from other source.	Fully exempt u/s 10(11)	Fully exempt u/s 10(11)

As per section 10(11), any payment from a Provident Fund (PF) to which Provident Fund Act, 1925, applies or from Public Provident Fund would be exempt.

Accumulated balance due and becoming payable to an employee participating in a Recognized Provident Fund (RPF) would be exempt under section 10(12).

However, the exemption under section 10(11) or 10(12) would not be available in respect of income by way of interest accrued during the previous year to the extent it relates to the amount or the aggregate of amounts of contribution made by that person/employee exceeding ₹ 2,50,000 in any previous year in that fund, on or after 1st April, 2021.

If the contribution by such person/employee is in a fund in which there is no employer's contribution, then, a higher limit of ₹ 5,00,000 would be applicable for such contribution, and interest accrued in any previous year in that fund, on or after 1st April, 2021 would be exempt upto that limit.

It may be noted that interest accrued on contribution to such funds upto 31st March, 2021 would be exempt without any limit, even if the accrual of income is after that date.

Valuation of Perquisites [Section 17(2) read with Rule 3]

(I) Rent-free residential accommodation/ Accommodation provided to an employee at concessional rate

S. No. (A)	Category of Employee (B)	Unfurnished accommodation (C)	Furnished accommodation (D)						
1	Government employee	License fee determined as per Government rules as reduced by the rent actually paid by the employee.	Value determined under column (C) Add : 10% p.a. of the furniture cost. However, if the furniture is hired, Then hire charges payable/paid should be added to the value determined under column (C), as reduced by charges recovered from employee.						
2	Non- government employee	Where accommodation is owned by employer <table border="1"> <thead> <tr> <th>Location</th> <th>Perquisite value</th> </tr> </thead> <tbody> <tr> <td>In cities having a population > 25 lacs as per 2001 census</td> <td>15% of salary</td> </tr> <tr> <td>In cities having a population > 10 lacs ≤ 25 lacs as per 2001 census</td> <td>10% of salary</td> </tr> </tbody> </table>	Location	Perquisite value	In cities having a population > 25 lacs as per 2001 census	15% of salary	In cities having a population > 10 lacs ≤ 25 lacs as per 2001 census	10% of salary	Value determined under column (C) Add: 10% p.a. of the furniture cost. However, if the furniture is hired, Then hire charges payable/paid should be added to the value determined under column (C), as reduced by charges recovered from employee.
Location	Perquisite value								
In cities having a population > 25 lacs as per 2001 census	15% of salary								
In cities having a population > 10 lacs ≤ 25 lacs as per 2001 census	10% of salary								
		The perquisite value should be arrived at by reducing the rent, if any, actually paid by the employee, from the above value							

Where the accommodation is taken on lease or rent by employer

Lower of the following is taxable :

- (a) actual amount of lease rent paid or payable by employer or
(b) 15% of salary

The lower of the above should be reduced by the rent, actually paid by the employee, to arrive at the perquisite value.

Value determined under column (C)

Add: 10% p.a. of the furniture cost. However, if the furniture is hired, then hire charges payable/paid should be added to the value determined under column (C), **as reduced by** charges recovered from employee.

(II) Interest free or concessional loan

In respect of any loan given by employer to employee or any member of his household (excluding for medical treatment for specified ailments or where loans amount in aggregate does not exceed ₹ 20,000), the interest at the rate charged by SBI as on the first day of the relevant previous year at maximum outstanding monthly balance (aggregate outstanding balance for each loan as on the last day of each month) as reduced by the interest, if any, actually paid by him or any member of his household.

(III) Use of movable assets by employee/ any member of his household

Asset given	Value of benefit
(a) Use of laptops and computers	Nil
(b) Movable assets, other than – (i) Laptops and computers; and (ii) Assets already specified	10% p.a. of the actual cost of such asset, or the amount of rent or charge paid, or payable by the employer, as the case may be (-) Amount paid by/ recovered from an employee

(IV) Transfer of movable assets

Actual cost of asset to employer (-) cost of normal wear and tear (-) amount paid or recovered from employee

Assets transferred	Value of perquisite
Computers and electronic items	@50% on WDV for each completed year of usage
Motor cars	@20% on WDV for each completed year of usage
Any other asset	@10% of actual cost of such asset to employer for each completed year of usage [on SLM basis]

(V) Motor car

S. No.	Car owned/hired by	Expenses met by	Wholly official use	Partly personal use (c)						
1	Employer	Employer	Not a perquisite*	<table border="1"> <thead> <tr> <th>cc of engine</th> <th>Perquisite value</th> </tr> </thead> <tbody> <tr> <td>upto 1.6 litres</td> <td>₹ 1,800 p.m.</td> </tr> <tr> <td>above 1.6 litres</td> <td>₹ 2,400 p.m.</td> </tr> </tbody> </table> <p>If chauffeur is also provided, ₹ 900 p.m. should be added to the above value.</p>	cc of engine	Perquisite value	upto 1.6 litres	₹ 1,800 p.m.	above 1.6 litres	₹ 2,400 p.m.
cc of engine	Perquisite value									
upto 1.6 litres	₹ 1,800 p.m.									
above 1.6 litres	₹ 2,400 p.m.									
2	Employee	Employer	Not a perquisite*	Actual amount of expenditure incurred by the employer as reduced by the perquisite value arrived at in (1) above.						
3	Employer	Employee	-	<table border="1"> <thead> <tr> <th>cc of engine</th> <th>Perquisite value</th> </tr> </thead> <tbody> <tr> <td>upto 1.6 litres</td> <td>₹ 600 p.m.</td> </tr> <tr> <td>above 1.6 litres</td> <td>₹ 900 p.m.</td> </tr> </tbody> </table> <p>If chauffeur is also provided, ₹ 900 p.m. should be added to the above value.</p>	cc of engine	Perquisite value	upto 1.6 litres	₹ 600 p.m.	above 1.6 litres	₹ 900 p.m.
cc of engine	Perquisite value									
upto 1.6 litres	₹ 600 p.m.									
above 1.6 litres	₹ 900 p.m.									

* Provided employer maintains the complete details of such journey and expenditure thereon and gives a certificate that such expenditure are incurred wholly for official use.

Note: Where car is owned by employer and expenses are also met by the employer, the taxable perquisites in case such car is used wholly for personal purposes of the employee would be equal to the actual expenditure incurred by the employer on running and maintenance expenses and normal wear and tear (calculated @10% p.a. of actual cost of motor car) less amount charged from the employee for such use.

Meaning of Salary:

S. No.	Calculation of exemption of Allowance/Terminal benefit/Valuation of perquisite	Meaning of salary
1	Gratuity (in case of non-Government employees covered by the Payment of Gratuity Act, 1972)	Basic salary and dearness allowance.
2	a) Gratuity (in case of non-Government employee not covered by Payment of Gratuity Act, 1972) b) Leave Salary c) House Rent Allowance d) Recognized Provident Fund e) Voluntary Retirement Compensation	Basic salary and dearness allowance, if provided in terms of employment, and commission calculated as a fixed percentage of turnover.

Meaning of Salary:

S. No.	Calculation of exemption of Allowance/Terminal benefit/Valuation of perquisite	Meaning of salary
3	Rent free accommodation and Accommodation provided to an employee at a concessional rate	<p>All pay, allowance, bonus or commission or any monetary payment by whatever name called but excludes-</p> <ol style="list-style-type: none"> (1) Dearness allowance not forming part of computation of superannuation or retirement benefit (2) employer's contribution to the provident fund account of the employee; (3) allowances which are exempted from the payment of tax; (4) value of the perquisites specified in section 17(2); (5) any payment or expenditure specifically excluded under the proviso to section 17(2) i.e., payment of medical insurance premium specified therein. (6) lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, leave encashment, voluntary retirement benefits, commutation of pension and similar payments.

Deductions from gross salary [Section 16]

(1)	Standard deduction [Section 16(ia)] Standard deduction of upto ₹ 50,000. Note - Deduction would be available to an assessee irrespective of the regime under which he pays tax.
(2)	Entertainment allowance (allowable only in the case of government employees) [Section 16(ii)] Least of the following is allowed as deduction :
(1)	₹ 5,000
(2)	1/5 th of basic salary
(3)	Actual entertainment allowance received
Note - Deduction would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).	

(3) Professional tax [Section 16(iii)]

Any sum paid by the assessee on account of tax on employment is allowable as deduction.

In case professional tax is paid by employer on behalf of employee, the amount paid shall be included in gross salary as a perquisite and then deduction can be claimed.

Note - Deduction would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

Relief when salary is paid in arrears or in advance [Section 89]

Step 1	Calculate tax payable of the previous year in which the arrears/advance salary is received by considering:	
	(a)	Total Income inclusive of additional salary
	(b)	Total Income exclusive of additional salary
Step 2	Compute the difference the tax calculated in Step 1 and Step 2 [i.e., (a) – (b)]	
Step 3	Calculate the tax payable of every previous year to which the additional salary relates:	
	(a)	On total income including additional salary of that particular previous year
	(b)	On total income excluding additional salary.
Step 4	Calculate the difference between (a) and (b) in Step 3 for every previous year to which the additional salary relates and aggregate the same.	
Step 5	Relief under section 89(1) = Amount calculated in Step 2 – Amount calculated in Step 4	

TEST YOUR KNOWLEDGE

- Mr. Mohit is employed with XY Ltd. on a basic salary of ₹ 10,000 p.m. He is also entitled to dearness allowance @100% of basic salary, 50% of which is included in salary as per terms of employment. The company gives him house rent allowance of ₹ 6,000 p.m. which was increased to ₹ 7,000 p.m. with effect from 01.01.2024. He also got an increment of ₹ 1,000 p.m. in his basic salary with effect from 01.02.2024. Rent paid by him during the P.Y.2023-24 is as under:
 April and May, 2023- Nil, as he stayed with his parents
 June to October, 2023 - ₹ 6,000 p.m. for an accommodation in Ghaziabad
 November, 2023 to March, 2024 - ₹ 8,000 p.m. for an accommodation in Delhi
 Compute his gross salary for A.Y.2024-25, assuming he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).
- Ms. Rakhi is an employee in a private company. She receives the following medical benefits from the company during the previous year 2023-24:

	Particulars	₹
1	Reimbursement of following medical expenses incurred by Ms. Rakhi	
	(a) On treatment of her self-employed daughter in a private clinic	4,000
	(b) On treatment of herself by family doctor	8,000
	(c) On treatment of her mother-in-law dependent on her, in a nursing Home	5,000
2	Payment of premium on Mediclaim Policy taken on her health	7,500
3	Medical Allowance	2,000 p.m.
4	Medical expenses reimbursed on her son's treatment in a government hospital	5,000
5	Expenses incurred by company on the treatment of her minor son abroad including stay expenses	1,05,000
6	Expenses in relation to foreign travel of Rakhi and her son for medical treatment	1,20,000
	Note - Limit prescribed by RBI for expenditure on medical treatment and stay abroad is USD 2,50,000 per financial year under liberalized remittance scheme.	

Examine the taxability of the above benefits and allowances in the hands of Rakhi.

3. Mr. X is employed with AB Ltd. on a monthly salary of ₹ 25,000 per month and an entertainment allowance and commission of ₹ 1,000 p.m. each. The company provides him with the following benefits:
- A company owned accommodation is provided to him in Delhi. Furniture costing ₹ 2,40,000 was provided on 1.8.2023.
 - A personal loan of ₹ 5,00,000 on 1.7.2023 on which it charges interest @ 6.75% p.a. The entire loan is still outstanding (Assume SBI rate of interest on 1.4.2023 was 12.75% p.a.)
 - His son is allowed to use a motor cycle belonging to the company. The company had purchased this motor cycle for ₹ 60,000 on 1.5.2020. The motor cycle was finally sold to him on 1.8.2023 for ₹ 30,000.
 - Professional tax paid by Mr. X is ₹ 2,000.

Compute the income from salary of Mr. X for the A.Y. 2024-25 assuming Mr. X exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

4. Mr. Balaji, employed as Production Manager in Beta Ltd., furnishes you the following information for the year ended 31.03.2024:
- Basic salary upto 31.10.2023 ₹ 50,000 p.m.
Basic salary from 01.11.2023 ₹ 60,000 p.m.
Note - Salary is due and paid on the last day of every month.
 - Dearness allowance @ 40% of basic salary.
 - Bonus equal to one month salary. Paid in October 2023 on basic salary plus dearness allowance applicable for that month.
 - Contribution of employer to recognized provident fund account of the employee @ 16% of basic salary.

- (v) Professional tax paid ₹ 2,500 of which ₹ 2,000 was paid by the employer.
- (vi) Facility of laptop and computer was provided to Balaji for both official and personal use. Cost of laptop ₹ 45,000 and computer ₹ 35,000 were acquired by the company on 01.12.2023.
- (vii) Motor car owned by the employer (cubic capacity of engine exceeds 1.60 litres) provided to the employee from 01.11.2023 meant for both official and personal use. Repair and running expenses of ₹ 45,000 from 01.11.2023 to 31.03.2024, were fully met by the employer. The motor car was self-driven by the employee.
- (viii) Leave travel concession given to employee, his wife and three children (one daughter aged 7 and twin sons aged 3). Cost of air tickets (economy class) reimbursed by the employer ₹ 30,000 for adults and ₹ 45,000 for three children. Balaji is eligible for availing exemption this year to the extent it is permissible in law.

Compute the salary income chargeable to tax in the hands of Mr. Balaji for the A.Y. 2024-25 assuming he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

5. From the following details, find out the salary chargeable to tax for the A.Y.2024-25 assuming he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A) -

Mr. X is a regular employee of Rama & Co., in Gurgaon. He was appointed on 1.1.2023 in the scale of ₹ 20,000 - ₹ 1,000 - ₹ 30,000. He is paid 10% D.A. & Bonus equivalent to one month pay based on salary of March every year. He contributes 15% of his pay and D.A. towards his recognized provident fund and the company contributes the same amount. DA forms part of pay for retirement benefits.

He is provided free housing facility which has been taken on rent by the company at ₹ 10,000 per month. He is also provided with following facilities:

- (i) Facility of laptop costing ₹ 50,000.
- (ii) Company reimbursed the medical treatment bill of his brother of ₹ 25,000, who is dependent on him.
- (iii) The monthly salary of ₹ 1,000 of a house keeper is reimbursed by the company.
- (iv) A gift voucher of ₹ 10,000 on the occasion of his marriage anniversary.
- (v) Conveyance allowance of ₹ 1,000 per month is given by the company towards actual reimbursement of conveyance spent on official duty.
- (vi) He is provided personal accident policy for which premium of ₹ 5,000 is paid by the company.
- (vii) He is getting telephone allowance @₹ 500 per month.

6. You are required to compute the income from salary of Mr. Raja under default tax regime from the following particulars for the year ended 31-03-2024:

- (i) He retired on 31-12-2023 at the age of 60, after putting in 25 years and 9 months of service, from a private company at Delhi.
- (ii) He was paid a salary of ₹ 25,000 p.m. and house rent allowance of ₹ 6,000 p.m. He paid rent of ₹ 6,500 p.m., during his tenure of service.
- (iii) On retirement, he was paid a gratuity of ₹ 3,50,000. He was covered by the payment of Gratuity Act, 1972. He had not received any other gratuity at any point of time earlier, other than this gratuity.
- (iv) He had accumulated leave of 15 days per annum during the period of his service; this was encashed by him at the time of his retirement. A sum of ₹ 3,15,000 was received by him in this regard. Employer allowed 30 days leave per annum.
- (v) He is receiving ₹ 5,000 as pension. On 1.2.2024, he commuted 60% of his pension and received ₹ 3,00,000 as commuted pension.

(vi) The company presented him with a gift voucher of ₹ 5,000 on his retirement. His colleagues also gifted him a mobile phone worth ₹ 50,000 from their own contribution.

7. Ms. Akansha, a salaried employee, furnishes the following details for the financial year 2023-24 :

Particulars	₹
Basic salary	6,20,000
Dearness allowance	4,20,000
Commission	75,000
Entertainment allowance	9,000
Medical expenses reimbursed by the employer	18,000
Profession tax (of this, 50% paid by employer)	4,000
Health insurance premium paid by employer	8,000
Gift voucher given by employer on her birthday	10,000
Life insurance premium of Akansha paid by employer	26,000
Laptop provided for use at home. Actual cost of Laptop to employer	45,000
Children of the assessee are also using the Laptop at home] Employer company owns a Maruti Suzuki Swift car, which was provided to the assessee, both for official and personal use. Driver was also provided. (Engine cubic capacity more than 1.6 litres). All expenses are met by the employer	
Annual credit card fees paid by employer [Credit card is not exclusively used for official purposes; details of usage are not available]	7,000

You are required to compute the income chargeable under the head Salaries for the assessment year 2024-25 if she pays tax under default tax regime.

ANSWERS

1. **Computation of gross salary of Mr. Mohit for A.Y. 2024-25**

Particulars	₹
Basic salary [(₹ 10,000 × 10) + (₹ 11,000 × 2)]	1,22,000
Dearness Allowance (100% of basic salary)	1,22,000
House Rent Allowance (See Note below)	21,300
Gross Salary	2,65,300

Note : Computation of Taxable House Rent Allowance (HRA)

Particulars	April-May (₹)	June-Oct (₹)	Nov-Dec (₹)	Jan (₹)	Feb-March (₹)
Basic salary per month	10,000	10,000	10,000	10,000	11,000
Dearness allowance (included in salary as per terms of employment) (50% of basic salary)	5,000	5,000	5,000	5,000	5,500
Salary per month for the purpose of computation of house rent allowance	15,000	15,000	15,000	15,000	16,500
Relevant period (in months)	2	5	2	1	2
Salary for the relevant Period (Salary per month × relevant period)	30,000	75,000	30,000	15,000	33,000
Rent paid for the relevant period	Nil	30,000 (₹ 6,000×5)	16,000 (₹ 8,000×2)	8,000 (₹ 8,000×1)	16,000 (₹ 8,000×2)
House rent allowance (HRA) received during the relevant period (A)	12,000 (₹ 6,000×2)	30,000 (₹ 6,000×5)	12,000 (₹ 6,000×2)	7,000 (₹ 7,000×1)	14,000 (₹ 7,000×2)
Least of the following is exempt [u/s 10(13A)]	N.A.				
1. Actual HRA received	-	30,000	12,000	7,000	14,000
2. Rent paid (-) 10% of salary	-	22,500	13,000	6,500	12,700
3. 40% of salary (Residence at Ghaziabad - June to Oct, 2023)	-	30,000 (40% × ₹ 75,000)	15,000 (50% × ₹ 30,000)	7,500 (50% × ₹ 15,000)	16,500 (50% × ₹ 33,000)
50% of salary (Residence at Delhi - Nov, 23 - March, 24)					
Exempt HRA (B)	Nil	22,500	12,000	6,500	12,700
Taxable HRA [Actual HRA (-) Exempt HRA] (A-B)	12,000	7,500	Nil	500	1,300

Taxable HRA (total) = ₹ 12,000 + ₹ 7,500 + ₹ 500 + ₹ 1,300 = ₹ 21,300

2. Tax treatment of medical benefits, allowances and mediclaim premium in the hands of Ms. Rakhi for A.Y. 2024-25

Particulars	
1.	<p>Reimbursement of medical expenses incurred by Ms. Rakhi</p> <p>(A) The amount of ₹ 4,000 reimbursed by her employer for treatment of her self-employed daughter in a private clinic is taxable perquisite.</p> <p>(B) The amount of ₹ 8,000 reimbursed by the employer for treatment of Ms. Rakhi by family doctor is taxable perquisite.</p> <p>(C) The amount of ₹ 5,000 reimbursed by her employer for treatment of her dependant mother-in-law in a nursing home is taxable perquisite.</p> <p>The aggregate sum of ₹ 17,000, specified in (A), (B) and (C) above, reimbursed by the employer is taxable perquisite</p>
2.	Medical insurance premium of ₹ 7,500 paid by the employer for insuring health of Ms. Rakhi is a tax free perquisite as per clause (iii) of the first proviso to section 17(2).
3.	Medical allowance of ₹ 2,000 per month i.e., ₹ 24,000 p.a. is a fully taxable allowance.
4.	As per clause (ii)(a) of the first proviso to section 17(2), reimbursement of medical expenses of ₹ 5,000 on her son's treatment in a hospital maintained by the Government is a tax-free perquisite.
5.	As per clause (vi) of the first proviso to section 17(2), the following expenditure incurred by the employer would be excluded from perquisite subject to certain conditions –
6.	<p>(i) Expenditure on medical treatment of the employee, or any member of the family of such employee, outside India including stay expenses [₹ 1,05,000, in this case];</p> <p>(ii) Expenditure on travel of the employee or any member of the family of such employee for medical treatment and one attendant who accompanies the patient in connection with such treatment [₹ 1,20,000, in this case].</p> <p>The conditions subject to which the above expenditure would be exempt are as follows –</p> <p>(i) The expenditure on medical treatment and stay abroad would be excluded from perquisite to the extent permitted by Reserve Bank of India;</p> <p>(ii) The expenditure on travel would be excluded from perquisite only in the case of an employee whose gross total income, as computed before including the said expenditure, does not exceed ₹ 2 lakh.</p> <p>Since the expenditure on medical treatment and stay abroad does not exceed the limit permitted by RBI, they would be fully exempt. However, the foreign travel expenditure of Ms. Rakhi and her minor son borne by the employer would be excluded from perquisite only if the gross total income of Ms. Rakhi, as computed before including the said expenditure, does not exceed ₹ 2 lakh.</p>

3. Computation of Income from Salary of Mr. X for the A.Y. 2024-25

Particulars	₹	₹
Basic salary [₹ 25,000 × 12]		3,00,000
Commission [₹ 1,000 × 12]		12,000
Entertainment allowance [₹ 1,000 × 12]		12,000
Rent free accommodation [Note 1]	48,600	
Add : Value of furniture [₹ 2,40,000 × 10% p.a. for 8 months]	16,000	64,600
Interest on personal loan [Note 2]		22,500
Use of motor cycle [₹ 60,000 × 10% p.a. for 4 months]		2,000

Transfer of motor cycle [Note 3]		12,000
Gross Salary		4,25,100
<i>Less</i> : Deduction under section 16		
Under section 16(ia) – Standard deduction	50,000	
Under section 16(iii) - Professional tax paid	2,000	52,000
Income from Salary		3,73,100

Notes :**1. Value of rent-free unfurnished accommodation**

= 15% of salary for the relevant period

= 15% of (₹ 3,00,000 + ₹ 12,000 + ₹ 12,000) = ₹ 48,600

2. Value of perquisite for interest on personal loan

= [₹ 5,00,000 × (12.75% - 6.75%) for 9 months] = ₹ 22,500

3. Depreciated value of the motor cycle

= Original cost – Depreciation @ 10% p.a. for 3 completed years.

= ₹ 60,000 – (₹ 60,000 × 10% p.a. × 3 years) = ₹ 42,000.

Perquisite = ₹ 42,000 – ₹ 30,000 = ₹ 12,000.

4. Computation of Taxable Salary of Mr. Balaji for A.Y. 2024-25

Particulars	₹
Basic salary [(₹ 50,000 × 7) + (₹ 60,000 × 5)]	6,50,000
Dearness Allowance (40% of basic salary)	2,60,000
Bonus (₹ 50,000 + 40% of ₹ 50,000) (See Note 1)	70,000
Employers contribution to recognised provident fund in excess of 12% of salary = 4% of ₹ 6,50,000 (See Note 2)	26,000
Professional tax paid by employer	2,000
Perquisite of Motor Car (₹ 2,400 for 5 months) (See Note 4)	12,000
Gross Salary	10,20,000
<i>Less</i> : Deduction under section 16	
Standard deduction u/s 16(ia) ₹ 50,000	
Professional tax u/s 16(iii) (See Note 6) ₹ 2,500	52,500
Taxable Salary	9,67,500

Notes :

- Since bonus was paid in the month of October, the basic salary of ₹ 50,000 for the month of October is considered for its calculation.

2. It is assumed that dearness allowance does not form part of salary for computing retirement benefits.
3. As per Rule 3(7)(vii), facility of use of laptop and computer is a tax free perquisite, whether used for official or personal purpose or both.
4. As per the provisions of Rule 3(2), in case a motor car (engine cubic capacity exceeding 1.60 liters) owned by the employer is provided to the employee without chauffeur for personal as well as office use, the value of perquisite shall be ₹ 2,400 per month. The car was provided to the employee from 01.11.2023, therefore the perquisite value has been calculated for 5 months.
5. Mr. Balaji can avail exemption under section 10(5) on the entire amount of ₹ 75,000 reimbursed by the employer towards Leave Travel Concession since the same was availed for himself, his wife and three children and the journey was undertaken by economy class airfare. The restriction imposed for two children is not applicable in case of multiple births which take place after the first child.

It is assumed that the Leave Travel Concession was availed for journey within India.

He is eligible to claim benefit of exemption u/s 10(5) since he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

6. As per section 17(2)(iv), a “perquisite” includes any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee. Therefore, professional tax of ₹ 2,000 paid by the employer is taxable as a perquisite in the hands of Mr. Balaji. As per section 16(iii), a deduction from the salary is provided on account of tax on employment i.e. professional tax paid during the year.

Therefore, in the present case, the professional tax paid by the employer on behalf of the employee ₹ 2,000 is first included in the salary and deduction of the entire professional tax of ₹ 2,500 is provided from salary.

5. Computation of taxable salary of Mr. X for A.Y. 2024-25

Particulars	₹
Basic pay [(₹ 20,000×9) + (₹ 21,000×3)] = ₹ 1,80,000 + ₹ 63,000	2,43,000
Dearness allowance [10% of basic pay]	24,300
Bonus	21,000
Employer’s contribution to Recognized Provident Fund in excess of 12% (15%-12% =3% of ₹ 2,67,300) [See Note 1 below]	8,019
Taxable allowances	
Telephone allowance	6,000
Taxable perquisites	
Rent-free accommodation [See Note 1 & 2 below]	44,145
Medical reimbursement	25,000
Reimbursement of salary of housekeeper	12,000
Gift voucher [See Note 5 below]	10,000
Gross Salary	3,93,464
Less: Deduction under section 16(ia) – Standard deduction	50,000
Salary income chargeable to tax	3,43,464

Notes :

1. Since dearness allowance forms part of salary for retirement benefits, the perquisite value of rent-free accommodation and employer's contribution to recognized provident fund have been accordingly worked out.
2. Where the accommodation is taken on lease or rent by the employer, the value of rent-free accommodation provided to employee would be actual amount of lease rental paid or payable by the employer or 15% of salary, whichever is lower.

For the purposes of valuation of rent free house, salary includes :

Basic salary i.e., ₹ 2,43,000

Dearness allowance i.e. ₹ 24,300

Bonus i.e., ₹ 21,000

Telephone allowance i.e., ₹ 6,000 Therefore, salary works out to

₹ 2,43,000 + ₹ 24,300 + ₹ 21,000 + ₹ 6,000 = ₹ 2,94,300.

15% of salary = ₹ 2,94,300 × 15/100 = ₹ 44,145

Value of rent-free house = Lower of rent paid by the employer (i.e. ₹ 1,20,000) or 15% of salary (i.e., ₹ 44,145). Therefore, the perquisite value is ₹ 44,145.

3. Facility of use of laptop is not a taxable perquisite.
4. Conveyance allowance is exempt since it is based on actual reimbursement for official purposes.
5. The value of any gift or voucher or token in lieu of gift received by the employee or by member of his household below ₹ 5,000 in aggregate during the previous year is exempt. In this case, the gift voucher was received on the occasion of marriage anniversary and the sum exceeds the limit of ₹ 5,000.

Therefore, the entire amount of ₹ 10,000 is liable to tax as perquisite.

Note - An alternate view possible is that only the sum in excess of ₹ 5,000 is taxable. In such a case, the value of perquisite would be ₹ 5,000.

6. Premium of ₹ 5,000 paid by the company for personal accident policy is not liable to tax.

6. Computation of income under the head "Salaries" of Mr. Raja for the A.Y.2024-25 under default tax regime

Particulars	₹	₹
Basic Salary = ₹ 25,000 x 9 months		2,25,000
House Rent Allowance = ₹ 6,000 x 9 months		54,000
[Fully taxable under default tax regime]		
Gratuity	3,50,000	
Less: Least of the following exempt under section 10(10)(ii)	3,50,000	Nil
(i) Actual Gratuity received ₹ 3,50,000		
(ii) 15 days salary for every year of completed service [15/26 x ₹ 25,000 x 26] = ₹ 3,75,000		

Particulars	₹	₹
(iii) Notified limit = ₹ 20,00,000		
Leave encashment	3,15,000	
Less: Least of the following exempt under section 10(10AA)	2,50,000	65,000
(i) ₹ 25,00,000		
(ii) Leave salary actually received ₹ 3,15,000		
(iii) ₹ 2,50,000, being 10 months' salary x ₹ 25,000		
(iv) Cash equivalent of leave standing at the credit of the employee based on the average salary of last 10 months' (max. 30 days per year of service) for every year of actual service rendered for the employer from whose service he has retired $375/30 \times ₹ 25,000 = ₹ 3,12,500$ [Leave Due = Leave allowed - Leave taken] = 750 (30 days per year x 25 years) - 375 days (15 days x 25) = 375 days]		
Uncommuted Pension received [₹ 5,000 x 1] + (₹ 5,000 x 2 x 40%)		9,000
Commuted Pension received	3,00,000	
Less: Exempt under section 10(10A) $1/3 \times ₹ 3,00,000/60\% \times 100\%$	1,66,667	1,33,333
Gift Voucher [As per Rule 3(7)(iv), the value of any gift or voucher or token in lieu of gift received by the employee or by member of his household not exceeding ₹ 5,000 in aggregate during the previous year is exempt]		Nil
Mobile Phone received as gift from colleagues (Neither taxable under the head "Salaries" nor "Income from other sources", since taxability provisions under section 56(2)(x) are not attracted in respect of mobile phone received from colleagues, as mobile phone is not included in the definition of "property" thereunder)		Nil
Gross Salary		4,86,333
Less: Standard deduction u/s 16 [Actual salary or ₹ 50,000, whichever is less] [Allowable under default tax regime]		50,000
Net Salary		4,36,333

7. Computation of income chargeable under the head "Salaries" of Ms. Akansha for A.Y.2024-25 under default tax regime

Particulars	₹
Basic Salary	6,20,000

Dearness allowance	4,20,000
Commission	75,000
Entertainment allowance	9,000
Medical expenses reimbursed by the employer is fully taxable	18,000
Professional tax paid by the employer is a taxable perquisite as per section 17(2)(iv), since it is an obligation of the employee which is paid by the employer	2,000
Health insurance premium of ₹ 8,000 paid by the employer is an exempt perquisite [Clause (iii) of proviso to section 17(2)]	Nil
Gift voucher given by employer on Ms. Akansha birthday (entire amount is taxable since the perquisite value exceeds ₹ 5,000) as per Rule 3(7)(iv)	10,000
Life insurance premium of Ms. Akansha paid by employer is a taxable perquisite as per section 17(2)(v)	26,000
Laptop provided for use at home is an exempt perquisite as per Rule 3(7)(vii)	Nil
Provision of motor car with driver (engine cubic capacity more than 1.6 litres) owned by employer to employee, the perquisite value would be ₹ 39,600 [₹ (2,400+ 900) ×12] as per Rule 3(2)	39,600
Annual credit card fees paid by employer is a taxable perquisite as per Rule 3(7)(v) since the credit card is not exclusively used for official purposes and details of usage are not available	7,000
Gross Salary	12,26,600
Less: Deductions under section 16	
- Standard Deduction as per section 16(ia)	50,000
Income chargeable under the head “Salaries”	11,76,600

Note : As per Rule 3(7)(iv), the value of any gift or voucher received by the employee or by member of his household on ceremonial occasions or otherwise from the employer shall be determined as the sum equal to the amount of such gift. However, the value of any gift or voucher received by the employee or by member of his household below ₹ 5,000 in aggregate during the previous year would be exempt as per the proviso to Rule 3(7)(iv). In this case, the gift voucher of ₹ 10,000 was received by Ms. Akansha from her employer on the occasion of her birthday.

Since the value of the gift voucher exceeds the limit of ₹ 5,000, the entire amount of ₹ 10,000 is liable to tax as perquisite. The above solution has been worked out accordingly.

An alternate view possible is that only the sum in excess of ₹ 5,000 is taxable in view of the language of Circular No.15/2001 dated 12.12.2001, which states that such gifts upto ₹ 5,000 in the aggregate per annum would be exempt, beyond which it would be taxed as a perquisite. As per this view, the value of perquisite would be ₹ 5,000. Accordingly, the gross salary and net salary would be ₹ 12,21,600 and ₹ 11,71,600, respectively.



Determination of value of rent free accommodation [Notification No. 65/2023 dated 18.8.2023 and Notification No. 72/2023 dated 29.08.2023]

Section 17(2) contains an inclusive definition of “perquisite”. Sub-clause (i) and (ii) provides that value of rent-free accommodation or value of accommodation provided to employee at a concessional rate by his employer computed in prescribed manner would be taxable in the hands of employees under the head “Salaries”.

Accommodation would be deemed to have been provided at a concessional rate, if the value of accommodation computed in the prescribed manner exceeds the rent recoverable from, or payable by, the assessee.

Accordingly, the CBDT has, vide these notifications, substituted Rule 3(1) to specify the manner for determining value of residential accommodation provided by the employer during the previous year –

S. No.	Circumstances	In case of unfurnished accommodation	In case of furnished accommodation
(1)	(2)	(3)	(4)
1.	Where the accommodation is provided by the Central Government or any State Government to the employees either holding office or post in connection with the affairs of the Union or of such State.	<ul style="list-style-type: none"> License fee determined by the Central Government or any State Government in respect of accommodation in accordance with the rules framed by such Government as reduced by the rent actually paid by the employee. 	<p>The value of perquisite as determined under column should be increased by</p> <p>(i) If furniture is owned by employer:</p> <p>10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment)</p> <p>(ii) If such furniture is hired from a third party :</p> <ul style="list-style-type: none"> the actual hire charges payable for the same as reduced by any charges paid or payable for the same by the employee during the previous year.
2.	Where the accommodation is provided by any other employer		

	<p>(a) where the accommodation is owned by the employer</p>	<p>(i) 10% of salary in cities having population > 40 lakhs as per 2011 census;</p> <p>(ii) 7.5% of salary in cities having population > 15 lakhs ≤ 40 lakhs as per 2011 census;</p> <p>(iii) 5% of salary in other areas, in respect of the period during which the said accommodation was occupied by the employee during the previous year</p> <p>as reduced by</p> <p>the rent, if any, actually paid by the employee.</p>	<p>The value of perquisite as determined under column should be increased by</p> <p>(i) If furniture is owned by employer :</p> <p>10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets)</p> <p>(ii) If such furniture is hired from a third party :</p> <ul style="list-style-type: none"> • the actual hire charges payable for the same as reduced by • any charges paid or payable for the same by the employee during the previous year.
	<p>(b) where the accommodation is taken on lease or rent by the employer</p>	<ul style="list-style-type: none"> • Actual amount of lease rental paid or payable by the employer or • 10% of salary, whichever is lower, as reduced by • the rent, if any, actually paid by the employee. 	<p>The value of perquisite as determined under column should be increased by</p> <p>(i) If furniture is owned by employer:</p> <p>10% per annum of the cost of furniture (including television sets, radio sets, refrigerators, other household appliances, air-conditioning plant or equipment or other similar appliances or gadgets)</p> <p>(ii) If such furniture is hired from a third party :</p> <ul style="list-style-type: none"> • the actual hire charges payable for the same as reduced by • any charges paid or payable for the same by the employee during the previous year.

3.	Where the accommodation is provided in a hotel by the employer, being Central or State Government or any other employer	Not applicable	<ul style="list-style-type: none"> • 24% of salary paid or payable for the previous year or • the actual charges paid or payable to such hotel, <p>whichever is lower, for the period during which such accommodation is provided as reduced by</p> <ul style="list-style-type: none"> • the rent, if any, actually paid or payable by the employee. <p>However, where the employee is provided such accommodation for a period not exceeding in aggregate 15 days on his transfer from one place to another, there would be no perquisite.</p>
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Notes :

- (1) **Accommodation provided on account of transfer from one place to another :** If an employee is provided with accommodation, on account of his transfer from one place to another, at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be determined with reference to only one such accommodation which has the lower perquisite value, as calculated above, for a period not exceeding 90 days and thereafter, the value of perquisite shall be charged for both such accommodations.
- (2) **Value of perquisite to be restricted to CII :** Where the accommodation is owned or taken on lease or rent by the employer and the same accommodation is continued to be provided to the same employee for more than one previous year, the value of perquisite as calculated in 2. above shall not exceed the amount so calculated for the first previous year, as multiplied by the amount which is a ratio of the CII for the previous year for which the value is calculated and the CII for the previous year in which the accommodation was initially provided to the employee.
- (3) **Employee serving on deputation :** Where the accommodation is provided by the Central Government or any State Government to an employee who is serving on deputation with any body or undertaking under the control of such Government,-
- (i) the employer of such an employee shall be deemed to be that body or undertaking where the employee is serving on deputation; and
 - (ii) the value of perquisite of such an accommodation shall be the amount calculated in accordance with 2.(a) of the above table, as if the accommodation is owned by the employer.
- (4) "First previous year" means the P.Y. 2023-24 or the previous year in which the accommodation was provided to the employee, whichever is later.



CHAPTER - 3

HEADS OF INCOME

UNIT 2 : INCOME FROM HOUSE PROPERTY

2.1 CHARGEABILITY [SECTION 22]

- (i) The process of computation of income under the head “Income from house property” starts with the determination of annual value of the property. The concept of annual value and the method of determination is laid down in section 23.
- (ii) The annual value of any property comprising of buildings or lands appurtenant thereto of which the assessee is the owner is chargeable to tax under the head “Income from house property”.

Exceptions : Annual value of the following properties are chargeable under the head “Profits and gains of business or profession” :

- (i) Portions of property occupied by the assessee for the purpose of any business or profession carried on by him
- (ii) Properties of an assessee engaged in the business of letting out of properties.

Annual value is the amount for which the property might reasonably be expected to let from year to year.

2.2 CONDITIONS FOR CHARGEABILITY :

- (i) **Property should consist of any building or land appurtenant thereto :**
- (a) Buildings include not only residential buildings, but also factory buildings, offices, shops, god owns and other commercial premises.
- (b) Land appurtenant means land connected with the building like garden, garage etc.

Income from letting out of vacant land is, however, taxable under the head “Income from other sources” or “Profits and gains from business or profession”, as the case may be.

- (ii) **Assessee must be the owner of the property**
- (a) Owner is the person who is entitled to receive income from the property in his own right.
- (b) The requirement of registration of the sale deed is not warranted.
- (c) Ownership includes both free-hold and lease-hold rights.

- (d) Ownership includes deemed ownership (discussed later in point 2.11)
- (e) The person who owns the building need not also be the owner of the land upon which it stands.
- (f) The assessee must be the owner of the house property during the previous year. It is not material whether he is the owner in the assessment year.
- (g) If the title of the ownership of the property is under dispute in a court of law, the decision as to who will be the owner chargeable to income-tax under section 22 will be of the Income-tax Department till the court gives its decision to the suit filed in respect of such property.

In case of recovery of unrealized rent and arrears of rent, ownership of that property is not relevant. (discussed later in point 2.9)

(iii) Use of property

The property may be used for any purpose i.e., commercial or residential purpose, but it should not be used by the owner for the purpose of any business or profession carried on by him, the profit of which is chargeable to tax.

The income earned by an assessee engaged in the business of letting out of properties on rent would be taxable as business income¹.

(iv) Property held as stock-in-trade etc.

- Annual value of house property will be charged under the head "Income from house property", where it is held by the assessee as stock-in-trade of a business also.
- However, the annual value of property being held as stock in trade would be treated as NIL for a period of **two** years from the end of the financial year in which certificate of completion of construction of the property is obtained from the competent authority, if such property is not let-out during such period [Section 23(5)].

Where the assessee is a builder/construction company, the house property would be its stock-in-trade and rental income therefrom would be assessable under the head "Income from House Property". However, where the assessee is engaged in the business of letting out of properties, income therefrom would be assessable under the head "Profits and gains of business or profession".

2.3 COMPOSITE RENT

(i) **Meaning of composite rent :** The owner of a property may sometimes receive rent in respect of building as well as :

- (1) other assets like say, furniture, plant and machinery.
- (2) for different services provided in the building, for e.g., -
 - (a) Lifts;
 - (b) Security;
 - (c) Power backup;

The amount so received is known as "**composite rent**".

(ii) **Tax treatment of composite rent :**

Where composite rent includes rent of building and charges for different services (lifts, security etc.), the composite rent is has to be split up in the following manner-

- (i) the sum attributable to use of property is to be assessed under section 22 as income from house property;

- (ii) the sum attributable to use of services is to be charged to tax under the head “Profits and gains of business or profession” or under the head “Income from other sources”, as the case may be.

(iii) Manner of splitting up

If let out building and other assets are inseparable

Where composite rent is received from letting out of building and other assets (like furniture) and the two lettings are not separable i.e. the other party does not accept letting out of building without other assets, then the rent is taxable either as business income or income from other sources, the case may be.

This is applicable even if sum receivable for the two lettings is fixed separately.

If let out building and other assets are separable

Where composite rent is received from letting out of building and other assets and the two lettings are separable i.e. letting out of one is acceptable to the other party without letting out of the other, then

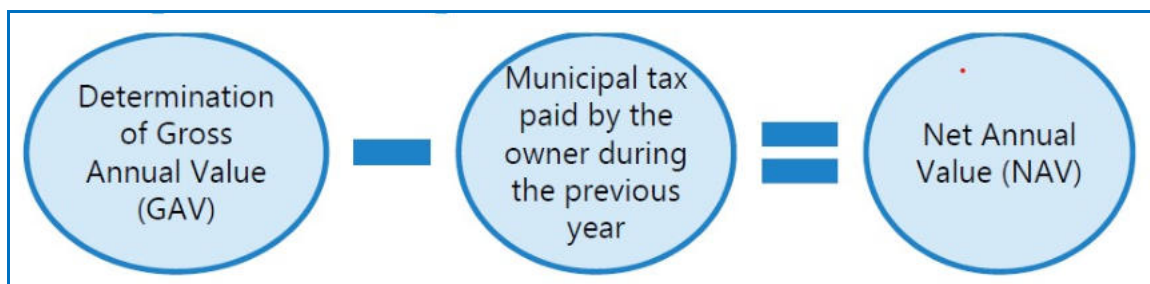
- (a) income from letting out of building is taxable under “Income from house property”;
 (b) Income from letting out of other assets is taxable under “Profits and gains of business or profession” or “Income from other sources”, as the case may be.

This is applicable even if a composite rent is received by the assessee from his tenant for the two lettings.

2.4 INCOME FROM HOUSE PROPERTY SITUATED OUTSIDE INDIA

- (i) In case of a resident in India (resident and ordinarily resident in case of individuals and HUF), income from house property situated outside India is taxable, whether such income is brought into India or not.
 (ii) In case of a non-resident or resident but not ordinarily resident in India, income from a property situated outside India is taxable only if it is received in India.

2.5 DETERMINATION OF ANNUAL VALUE [SECTION 23]



(i) Determination of annual value for different types of house properties

(1) Where the property is let out throughout the previous year [Section 23(1)(a)/(b)]

Where the property is let out for the whole year, then the GAV would be the higher of –

- (a) Expected Rent (ER) and
 (b) Actual rent received or receivable during the year

- The Expected Rent (ER) is the higher of fair rent (FR) and municipal value (MV), but restricted to standard rent (SR).
- For example, let us say the higher of FR and MV is X. Then ER = SR, if X > SR. However, if X < SR, ER = X.

- Expected Rent (ER) as per section 23(1)(a) cannot exceed standard rent (SR) but it can be lower than standard rent, in a case where standard rent is more than the higher of MV and FR.
- Municipal value is the value determined by the municipal authorities for levying municipal taxes on house property.
- Fair rent means rent which similar property in the same locality would fetch.
- The standard rent (SR) is fixed by the Rent Control Act.

From the GAV computed above, municipal taxes paid by the owner during the previous year are to be deducted to arrive at the NAV.

ILLUSTRATION 1 :

Jayashree owns five houses in India, all of which are let-out. Compute the GAV of each house from the information given below

Particulars	House I (₹)	House II (₹)	House III (₹)	House IV (₹)	House V (₹)
Municipal Value	80,000	55,000	65,000	24,000	80,000
Fair Rent	90,000	60,000	65,000	25,000	75,000
Standard Rent	N.A.	75,000	58,000	N.A.	78,000
Actual rent received/ receivable	72,000	72,000	60,000	30,000	72,000

SOLUTION :

As per section 23(1), Gross Annual Value (GAV) is the higher of Expected rent and actual rent received. Expected rent is higher of municipal value and fair rent but restricted to standard rent.

(1) Computation of GAV of each house owned by Jayashree :

	Particulars	House I (₹)	House II (₹)	House III (₹)	House IV (₹)	House V (₹)
(i)	Municipal value	80,000	55,000	65,000	24,000	80,000
(ii)	Fair rent	90,000	60,000	65,000	25,000	75,000
(iii)	Higher of (i) & (ii)	90,000	60,000	65,000	25,000	80,000
(iv)	Standard rent	N.A.	75,000	58,000	N.A.	78,000
(v)	Expected rent	90,000	60,000	58,000	25,000	78,000
	[Lower of (iii) & (iv)]					
(vi)	Actual rent received/receivable	72,000	72,000	60,000	30,000	72,000
	GAV [Higher of (v) & (vi)]	90,000	72,000	60,000	30,000	78,000

(2) Where let out property is vacant for part of the year [Section 23(1)(c)]

Where let out property is vacant for part of the year and owing to vacancy, the actual rent is lower than the ER, then the actual rent received or receivable will be the GAV of the property.

(3) In case of self occupied property or unoccupied property [Section 23(2)]

- (a) Where the property is self-occupied for **own residence** or **unoccupied** throughout the previous year, its Annual Value will be Nil, provided no other benefit is derived by the owner from such property.

The expression "Unoccupied property" refers to a property which cannot be occupied by the owner by reason of his employment, business or profession at a different place and he resides at such other place in a building not belonging to him.

- (b) The benefit of "Nil" Annual Value is available only for upto two self-occupied or unoccupied house properties i.e., for either one house property or two house properties.
- (c) The benefit of "Nil" Annual Value in respect of upto **two** self-occupied house properties is available only to an individual/HUF.
- (d) No deduction for municipal taxes is allowed in respect of such property/ properties as annual value means value determined after deduction of municipal taxes.

(4) Where a house property is let-out for part of the year and self-occupied for part of the year [Section 23(3)]

- (a) If a single unit of a property is self-occupied for part of the year and let-out for the remaining part of the year, then the ER for the whole year shall be taken into account for determining the GAV.
- (b) The ER for the whole year shall be compared with the **actual rent for the let out period** and whichever is higher shall be adopted as the GAV.
- (c) However, municipal tax for the whole year is allowed as deduction provided it is paid by the owner during the previous year.

(5) In case of deemed to be let out property [Section 23(4)]

- (a) Where the assessee owns more than **two** properties for self-occupation, then the income from any **two** properties, at the option of the assessee, shall be computed under the self-occupied property category and their annual value will be nil.
- (b) The other self-occupied/ unoccupied properties shall be treated as "deemed let out properties".
- (c) This option can be changed year after year in a manner beneficial to the assessee.
- (d) In case of deemed let-out property, the ER shall be taken as the GAV.
- (e) The question of considering actual rent received/ receivable does not arise. Consequently, no adjustment is necessary on account of property remaining vacant or unrealized rent.
- (f) Municipal taxes actually paid by the owner during the previous year, in respect of the deemed let out properties, can be claimed as deduction.

(6) In case of a house property held as stock-in-trade [Section 23(5)]

- (a) In some cases, property consisting of any buildings or lands appurtenant thereto may be held as stock-in-trade, and the whole or any part of the property may not be let out during the whole or any

part of the previous year.

- (b) In such cases, the annual value of such property or part of the property shall be Nil.
- (c) This benefit would be available for the period upto **two** years from the end of the financial year in which certificate of completion of construction of the property is obtained from the competent authority.

(7) In case of a house property, a portion let out and a portion self-occupied :

- (a) Income from any portion or part of a property which is let out shall be computed separately under the “let out property” category and the other portion or part which is self-occupied shall be computed under the “self-occupied property” category.
- (b) There is no need to treat the whole property as a single unit for computation of income from house property.
- (c) Municipal valuation/fair rent/standard rent, if not given separately, shall be apportioned between the let-out portion and self-occupied portion either on plinth area or built-up floor space or on such other reasonable basis.
- (d) Property taxes, if given on a consolidated basis, can be bifurcated as attributable to each portion or floor or on a reasonable basis.

The following are the circumstances where notional income is charged to tax instead of real income :

- Where the assessee owns more than two house properties for the purpose of self-occupation, the annual value of any two of those properties, at the option of the assessee, will be nil and the other properties are deemed to be let-out and income has to be computed on a notional basis by taking the Expected Rent (ER) as the GAV.
- In the case of property let-out throughout the previous year, if the Expected Rent (ER) exceeds the actual rent received or receivable, then ER is taken as the GAV.
- In the case of let-out property which is vacant for part of the year, if the actual rent received or receivable for let out period is less than the Expected Rent (ER) for whole year not owing to vacancy, then ER for whole year is taken as the GAV.
- In case of a house property held as stock-in-trade by assessee (which is not let out), income has to be computed on a notional basis by taking the Expected Rent (ER) as the GAV after 2 years from the end of the financial year in which certificate of completion of construction of the property is obtained from the competent authority.

(ii) Treatment of unrealised rent [Explanation below section 23(1)]

- (1) The Actual rent received/receivable should not include any amount of rent which is not capable of being realised.
- (2) However, the conditions prescribed in Rule 4 should be satisfied. They are –
 - (a) the tenancy is *bona fide*;
 - (b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;
 - (c) the defaulting tenant is not in occupation of any other property of the assessee;
 - (d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.

(iii) Property taxes (Municipal taxes)

- (i) Property taxes are allowable as deduction from the GAV subject to the following two conditions :
 - (a) It should be borne by the assessee (owner); and
 - (b) It should be actually paid during the previous year.
- (2) If property taxes levied by a local authority for a particular previous year are not paid during that year, no deduction shall be allowed in the computation of income from house property for that year.
- (3) However, if in any subsequent year, the arrears are paid, then, the amount so paid is allowed as deduction in computation of income from house property for that year.
- (4) Thus, we find that irrespective of the previous year in which the liability to pay such taxes arises according to the method of accounting regularly employed by the owner, the deduction in respect of such taxes will be allowed only in the year of actual payment by the owner.
- (5) In case of property situated outside India, taxes levied by local authority of the country in which the property is situated is deductible².
- (6) In respect of self-occupied/unoccupied house property/properties for which “Nil” Annual Value benefit is claimed, deduction of municipal taxes paid is not allowable.

ILLUSTRATION 2 :

Rajesh, a British national, is a resident and ordinarily resident in India during the P.Y.2023-24. He owns a house in London, which he has let out at £ 10,000 p.m. The municipal taxes paid to the Municipal Corporation of London is £ 8,000 during the P.Y.2023-24. The value of one £ in Indian rupee to be taken at ₹ 95. Compute Rajesh's Net Annual Value of the property for the A.Y. 2024-25.

SOLUTION :

For the P.Y.2023-24, Mr. Rajesh, a British national, is resident and ordinarily resident in India. Therefore, income received by him by way of rent of the house property located in London is to be included in the total income in India. Municipal taxes paid in London is to be allowed as deduction from the gross annual value.

Computation of Net Annual Value of the property of Mr. Rajesh for A.Y.2024-25 :

Particulars	₹
Gross Annual Value ($£ 10,000 \times 12 \times 95$)	1,14,00,000
Less: Municipal taxes paid ($£ 8,000 \times 95$)	7,60,000
Net Annual Value (NAV)	1,06,40,000

2.6 DEDUCTIONS FROM ANNUAL VALUE [SECTION 24]**(i) There are two deductions from annual value. They are :**

- (i) 30% of NAV; and
- (ii) Interest on borrowed capital

Deductions provided under section 24 are exhaustive.

(1) 30% of NAV is allowed as deduction under section 24(a)

- (a) This is a flat deduction and is allowed irrespective of the actual expenditure incurred.

(b) The assessee will not be entitled to deduction of 30%, in the following cases, as the annual value itself is nil.

(i) In case of self-occupied properties or

(ii) In case of property held as stock-in-trade and the whole or any part of the property is not let out during the whole or any part of the previous year, upto **2 years** from the end of the financial year in which certificate of completion of construction of the property is obtained from the competent authority.

(2) Interest on borrowed capital is allowed as deduction u/s 24(b)

- Interest payable on loans borrowed for the purpose of acquisition, construction, repairs, renewal or reconstruction can be claimed as deduction.
- Interest payable on a fresh loan taken to repay the original loan raised earlier for the aforesaid purposes is also admissible as a deduction.

(3) Interest for pre-construction period :

- Pre-construction period is the period prior to the previous year in which property is acquired or construction is completed.
- Interest payable on borrowed capital for the period prior to the previous year in which the property has been acquired or constructed (Pre-construction interest) as reduced by any part thereof allowed as deduction under any other provision of the Act, can be claimed as deduction over a period of 5 years in equal annual instalments commencing from the year of acquisition or completion of construction.

(4) Interest for the year in which construction is completed/ property is acquired:

- Interest relating to the year of completion of construction/ acquisition of property can be **fully claimed** in that year irrespective of the date of completion/ acquisition.

(ii) Deduction in respect of self-occupied or unoccupied property where annual value is nil

(1) Under default tax regime under section 115BAC

- There would be no deduction on account of interest on loan under section 24(b) under default tax regime under section 115BAC in respect of the property referred to in section 23(2) i.e., self-occupied or unoccupied property.

(2) Under optional tax regime (normal provisions of the Act)

(1) *In case assessee has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A), the assessee will be allowed a deduction on account of interest (including 1/5th of the accumulated interest of pre-construction period) as under –*

Conditions	Amount of Deduction
(i) Where the property is acquired or constructed with capital borrowed on or after 1.4.1999 and such acquisition or construction is completed within 5 years from the end of the financial year in which the capital was borrowed.	Actual interest payable in aggregate for one or two self-occupied properties, subject to maximum of ₹ 2,00,000, if certificate mentioned in (2) below is obtained.
(ii) Where the property is repaired, renewed or reconstructed with capital borrowed on or after 1.4.1999.	Actual interest payable in aggregate for one or two self-occupied properties, subject to a maximum of ₹ 30,000.

ILLUSTRATION 3 :

Mr. Manas owns two house properties one at Bombay, wherein his family resides and the other at Delhi, which is unoccupied. He lives in Chandigarh for his employment purposes in a rented house. For acquisition of house property at Bombay, he has taken a loan of ₹ 30 lakh@10% p.a. on 1.4.2022. He has not repaid any amount so far. In respect of house property at Delhi, he has taken a loan of ₹ 5 lakh@11% p.a. on 1.10.2022 towards repairs. Compute the deduction which would be available to him under section 24(b) for A.Y.2024-25 in respect of interest payable on such loan if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION :

- Mr. Manas can claim benefit of Nil Annual Value in respect of his house property at Bombay and Delhi, since no benefit is derived by him from such properties, and he cannot occupy such properties due to reason of his employment at Chandigarh, where he lives in a rented house.
- He is eligible for deduction under section 24(b) since he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

Computation of deduction u/s 24(b) for A.Y.2024-25

Particulars	₹
I) Interest on loan taken for acquisition of residential house property at Bombay 30,00,000 x 10% = ₹ 3,00,000 Restricted to ₹ 2,00,000	2,00,000
II) Interest on loan taken for repair of residential house property at Delhi ₹ 5,00,000 x 11% = ₹ 55,000 Restricted to ₹ 30,000	30,000
Total interest	2,30,000
Deduction under section 24(b) in respect of (I) and (II) above to be restricted to	2,00,000

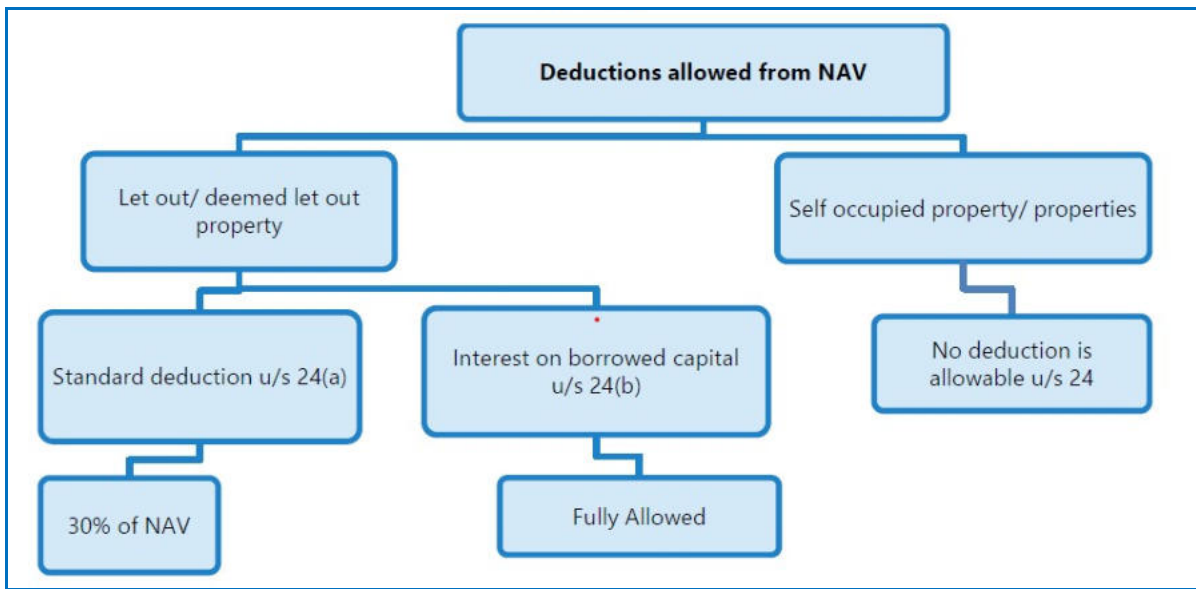
- (2) **Certificate to be furnished:** For the purpose of claiming deduction of ₹ 2,00,000 as per (b)(i) in the table given above, the assessee should furnish a certificate from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property or conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

- **The ceiling limit would not apply to let-out/deemed let-out property :** The ceiling limit prescribed for self-occupied property as above in respect of interest on loan borrowed does not apply to a let out/ deemed let-out property irrespective of the regime under which he pays tax.
- **Interest allowable on accrual basis :** Deduction under section 24(b) for interest is available on accrual basis. Therefore interest accrued but not paid during the year can also be claimed as deduction.

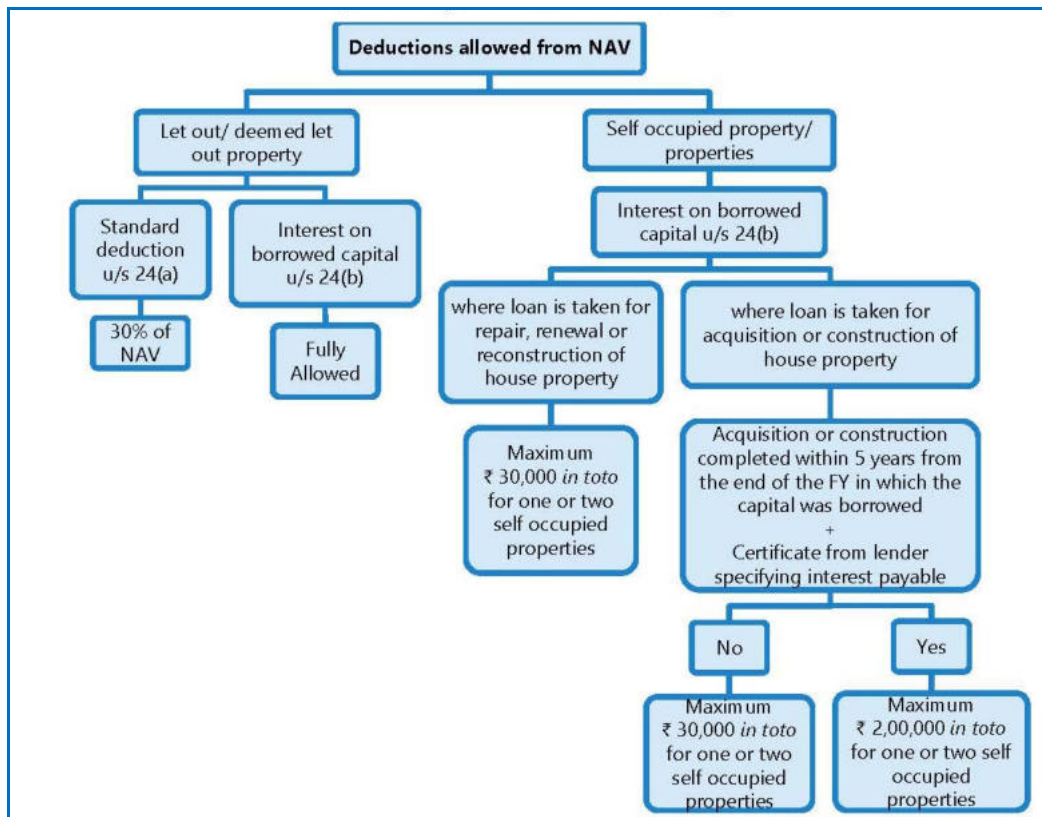
In case of let out/ deemed let out property, interest accrued is allowable as deduction without ceiling limit under both the tax regimes. However, in case of default tax regime u/s 115BAC, the resultant loss from house property cannot be set off against income under any other head, whereas, under the normal provisions of the Act, the resultant loss from house property can be set off against income from any other head to the extent of ₹ 2 lakhs.

- **Unpaid purchase price would be considered as capital borrowed:** Where a buyer enters into an arrangement with a seller to pay the sale price in installments along with interest due thereon, the seller becomes the lender in relation to the unpaid purchase price and the buyer becomes the borrower. In such a case, unpaid purchase price can be treated as capital borrowed for acquiring property and interest paid thereon can be allowed as deduction under section 24.
- **Interest on unpaid interest is not deductible.**

Deductions from Net Annual Value under default tax regime under section 115BAC :



Deductions from Net Annual Value under optional tax regime (normal provisions of the Act) :



2.7 COMPUTATION OF "INCOME FROM HOUSE PROPERTY" FOR DIFFERENT CATEGORIES OF PROPERTY

(i) PROPERTY LET OUT THROUGHOUT THE PREVIOUS YEAR

Particulars		Amount
Computation of GAV		
Step 1	Compute ER ER = Higher of MV and FR, but restricted to SR	
Step 2	Compute Actual rent received/receivable Actual rent received/receivable less unrealized rent as per Rule 4 [See Note below for alternate view]	
Step 3	Compare ER and Actual rent received/receivable	
Step 4	GAV is the higher of ER and Actual rent received/receivable	
Gross Annual Value (GAV)		
Less :	Municipal taxes (paid by the owner during the previous year)	A
		B
Net Annual Value (NAV) = (A-B)		C
Less: Deductions u/s 24		
	(a) 30% of NAV	D
	(b) Interest on borrowed capital (actual without any ceiling limit)	E
		F
Income from house property (C-F)		G

Note - The income-tax returns, however, permit deduction of unrealized rent from gross annual value. If this view is taken, the unrealized rent should be deducted only after computing gross annual value.

ILLUSTRATION 4 :

Anirudh has a property whose municipal valuation is ₹ 1,30,000 p.a. The fair rent is ₹ 1,10,000 p.a. and the standard rent fixed by the Rent Control Act is ₹ 1,20,000 p.a. The property was let out for a rent of ₹ 11,000 p.m. throughout the previous year. Unrealised rent was ₹ 11,000 and all conditions prescribed by Rule 4 are satisfied. He paid municipal taxes @10% of municipal valuation. Interest on borrowed capital was ₹ 40,000 for the year. Compute his income from house property for A.Y.2024-25.

SOLUTION :

Computation of Income from house property of Mr. Anirudh for A.Y.2024-25 :

Particulars		Amount in ₹	
Computation of GAV			
Step 1	Compute ER		
	ER = Higher of MV of ₹ 1,30,000 p.a. and FR of ₹ 1,10,000 p.a., but restricted to SR of ₹ 1,20,000 p.a.	1,20,000	

Step 2	Compute actual rent received/receivable Actual rent received/receivable less unrealized rent as per Rule 4 = ₹ 1,32,000 - ₹ 11,000	1,21,000	
Step 3	Compare ER of ₹ 1,20,000 and Actual rent received / receivable of ₹ 1,21,000		
Step 4 :	GAV is the higher of ER and Actual rent received / receivable	1,21,000	
Gross Annual Value (GAV)			1,21,000
Less :	Municipal taxes (paid by the owner during the previous year) = 10% of ₹ 1,30,000		13,000
Net Annual Value (NAV)			1,08,000
Less: Deductions under section 24			
	(a) 30% of NAV	32,400	
	(b) Interest on borrowed capital (actual without any ceiling limit)	40,000	72,400
Income from house property			35,600

Note : Alternatively, if as per income-tax returns, unrealized rent is deducted from GAV, then GAV would be ₹ 1,32,000, being higher of expected rent of ₹ 1,20,000 and actual rent of ₹ 1,32,000. Thereafter, unrealized rent of ₹ 11,000 and municipal taxes of ₹ 13,000 would be deducted from GAV of ₹ 1,32,000 to arrive at the NAV of ₹ 1,08,000.

(ii) LET OUT PROPERTY VACANT FOR PART OF THE YEAR

Particulars		Amount
Computation of GAV		
Step 1	Compute ER ER = Higher of MV and FR, but restricted to SR	
Step 2	Compute Actual rent received/receivable Actual rent received/receivable for let out period less unrealized rent as per Rule 4 [See Note below for alternate view]	
Step 3	Compare ER and Actual rent received/receivable computed for the let-out period	
Step 4	If Actual rent is lower than ER owing to vacancy, then Actual rent is the GAV. If Actual rent is lower than ER due to other reasons, then ER is the GAV. However, in spite of vacancy, if the actual rent is higher than the ER, then Actual rent is the GAV.	
	Gross Annual Value (GAV)	A
Less:	Municipal taxes (paid by the owner during the previous year)	B

Net Annual Value (NAV) = (A-B)

Less: Deductions under section 24 30% of NAV

Interest on borrowed capital (actual without any ceiling limit)

Income from house property (C-F)

D

E

C

F

G

Note : The income-tax returns, however, permit deduction of unrealized rent from gross annual value. If this view is taken, the unrealized rent should be deducted only after computing gross annual value.

ILLUSTRATION 5 :

Ganesh has a property whose municipal valuation is ₹ 2,50,000 p.a. The fair rent is ₹ 2,00,000 p.a. and the standard rent fixed by the Rent Control Act is ₹ 2,10,000 p.a. The property was let out for a rent of ₹ 20,000 p.m. However, the tenant vacated the property on 31.1.2024. Unrealised rent was ₹ 20,000 and all conditions prescribed by Rule 4 are satisfied. He paid municipal taxes @8% of municipal valuation. Interest on borrowed capital was ₹ 65,000 for the year. Compute the income from house property of Ganesh for A.Y.2024-25.

SOLUTION : Computation of income from house property of Ganesh for A.Y.2024-25

Particulars	Amount in ₹	
Computation of GAV		
Step 1 Compute ER Higher of MV of ₹ 2,50,000 p.a. & FR of ₹ 2,00,000 p.a., but restricted to SR of ₹ 2,10,000 p.a.	2,10,000	
Step 2 Compute Actual rent received/receivable Actual rent received/receivable for let out period less unrealized rent as per Rule 4 = ₹ 2,00,000 – ₹ 20,000	1,80,000	
Step 3 Compare ER & Actual rent received/receivable		
Step 4 In this case the actual rent of ₹ 1,80,000 is lower than ER of ₹ 2,10,000 owing to vacancy, since, had the property not been vacant the actual rent would have been ₹ 2,20,000 (₹ 1,80,000 + ₹ 40,000, being notional rent for February and March 2023). Therefore, actual rent is the GAV.	1,80,000	
Gross Annual Value (GAV)		1,80,000
Less: Municipal taxes (paid by the owner during the previous year) = 8% of ₹ 2,50,000		20,000
Net Annual Value (NAV)		1,60,000
Less : Deductions under section 24		
(a) 30% of NAV = 30% of ₹ 1,60,000	48,000	
(b) Interest on borrowed capital (actual without any ceiling limit)	65,000	1,13,000
Income from house property		47,000

Note : Alternatively, if as per income-tax returns, unrealized rent is deducted from GAV, then GAV would be ₹ 2,00,000, being the actual rent, since the actual rent is lower than the expected rent of ₹ 2,10,000 owing to vacancy. Thereafter, unrealized rent of ₹ 20,000 and municipal taxes of ₹ 20,000 would be deducted from GAV of ₹ 2,00,000 to arrive at the NAV of ₹ 1,60,000.

(ii) SELF-OCCUPIED PROPERTIES OR UNOCCUPIED PROPERTIES :

Particulars	Amount
Annual value under section 23(2)	Nil
Less: Deduction under section 24 Interest on borrowed capital [Allowable only in case the assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)]	E
(i) Interest on loan taken for acquisition or construction of house on or after 1.4.99 and same was completed within 5 years from the end of the financial year in which capital was borrowed, interest paid or payable <i>in toto</i> for one or two self-occupied properties subject to a maximum of ₹ 2,00,000 (including apportioned pre-construction interest).	
(ii) Interest on loan taken for repair, renovation or reconstruction on or after 1.4.99, interest paid or payable <i>in toto</i> for one or two self-occupied properties subject to a maximum of ₹ 30,000.	
Income from house property	-E
However, aggregate interest on borrowed capital allowable under (i) and (ii) cannot exceed ₹ 2,00,000	

ILLUSTRATION 6 :

Poorna has one house property at Indira Nagar in Bangalore. She stays with her family in the house. The rent of similar property in the neighbourhood is ₹ 25,000 p.m. The municipal valuation is ₹ 2,80,000 p.a.. Municipal taxes paid is ₹ 8,000. The house construction began in April 2017 with a loan of ₹ 20,00,000 taken from SBI Housing Finance Ltd. @9% p.a. on 1.4.2017. The construction was completed on 30.11.2019. The accumulated interest up to 31.3.2019 is ₹ 3,60,000. On 31.3.2024, Poorna paid ₹ 2,40,000 which included ₹ 1,80,000 as interest. There was no principal repayment prior to this date. Compute Poorna's income from house property for A.Y. 2024-25 assuming that she has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION : Computation of income from house property of Smt. Poorna for A.Y.2024-25

Particulars	Amount ₹
Annual Value of house used for self-occupation under section 23(2)	Nil
Less: Deduction under section 24 Interest on borrowed capital	
Interest on loan was taken for construction of house on or after 1.4.99 and same was completed within the prescribed time interest paid or payable subject to a maximum of ₹ 2,00,000 (including apportioned pre-construction interest) will be allowed as deduction.	
In this case the total interest is ₹ 1,80,000 + ₹ 72,000 (Being 1/5 th of ₹ 3,60,000) = ₹ 2,52,000. However, the interest deduction is restricted to ₹ 2,00,000.	2,00,000
Loss from house property	(2,00,000)

(iv) HOUSE PROPERTY LET-OUT FOR PART OF THE YEAR AND SELF- OCCUPIED FOR PART OF THE YEAR

Particulars	Amount
Computation of GAV	
Step 1 Compute ER for the whole year ER = Higher of MV and FR, but restricted to SR	
Step 2 Compute Actual rent received/receivable for the period let out <i>less</i> unrealized rent as per Rule 4 [See Note below for alternate view]	
Step 3 Compare ER for the whole year with the actual rent received/receivable for the let out period	
Step 4 GAV is the higher of ER computed for the whole year and Actual rent received/receivable computed for the let-out period	
Gross Annual Value (GAV)	A
Less : Municipal taxes (paid by the owner during the previous year)	B
Net Annual Value (NAV) = (A-B)	C
Less: Deductions under section 24	
(a) 30% of NAV	D
(b) Interest on borrowed capital (actual without any ceiling limit)	E
Income from house property (C-F)	G

Note : The income-tax returns, however, permit deduction of unrealized rent from gross annual value. If this view is taken, the unrealized rent should be deducted only after computing gross annual value.

ILLUSTRATION 7 :

Smt. Rajalakshmi owns a house property at Adyar in Chennai. The municipal value of the property is ₹ 5,00,000, fair rent is ₹ 4,20,000 and standard rent is ₹ 4,80,000. The property was let-out for ₹ 50,000 p.m. up to December 2023. Thereafter, the tenant vacated the property and Smt. Rajalakshmi used the house for self-occupation. Rent for the months of November and December 2023 could not be realised in spite of the owner's efforts. All the conditions prescribed under Rule 4 are satisfied. She paid municipal taxes @12% during the year. She had paid interest of ₹ 25,000 during the year for amount borrowed for repairs for the house property. Compute her income from house property for the A.Y. 2024-25.

SOLUTION :

Computation of income from house property of Smt. Rajalakshmi for A.Y.2024-25 :

Particulars		Amount in c	
Computation of GAV			
Step 1	Compute ER for the whole year	4,80,000	
	ER = Higher of MV of c 5,00,000 and FR of c 4,20,000, but restricted to SR of c 4,80,000	3,50,000	
Step 2	Compute Actual rent received/receivable Actual rent received /receivable for the period let out less unrealized rent as per Rule 4 = (c50,000 × 9) - (c 50,000 × 2) = c 4,50,000 - c 1,00,000		
Step 3	Compare ER for the whole year with the actual rent received/receivable for the let out period i.e. c 4,80,000 and c 3,50,000		
Step 4	GAV is the higher of ER computed for the whole year and Actual rent received/receivable computed for the let-out period Gross Annual Value (GAV)	4,80,000	4,80,000
	Less: Municipal taxes (paid by the owner during the previous year) = 12% of c 5,00,000		60,000
	Net Annual Value (NAV)		4,20,000
	Less: Deductions under section 24		
	(a) 30% of NAV = 30% of c 4,20,000	1,26,000	
	(b) Interest on borrowed capital	25,000	1,51,000
	Income from house property		2,69,000

Note : Alternatively, if as per income-tax returns, unrealized rent is deducted from GAV then, GAV would be c 4,80,000, being higher of expected rent of c 4,80,000 and actual rent of c 4,50,000. Thereafter, unrealized rent of c 1,00,000 and municipal taxes of c 60,000 would be deducted from GAV of c 4,80,000 to arrive at the NAV of c 3,20,000. The deduction u/s 24(a) would be c 96,000, being 30% of c 3,20,000. *The income from house property would, therefore, be c 1,99,000.*

In this case, it may be noted that GAV is the higher of Expected rent and Actual rent, since the Actual rent is lower than the Expected rent due to self-occupation and not vacancy.

(V) DEEMED TO BE LET OUT PROPERTY

Particulars	Amount
Gross Annual Value (GAV)	A
ER is the GAV of house property	
ER = Higher of MV and FR, but restricted to SR	
Less: Municipal taxes (paid by the owner during the previous year)	B

Net Annual Value (NAV) = (A-B)		C
<i>Less:</i> Deductions under section 24		
(a) 30% of NAV	D	
(b) Interest on borrowed capital (actual without any ceiling limit)	E	F
Income from house property (C-F)		G

ILLUSTRATION 8 :

Ganesh has three houses, all of which are self-occupied. The particulars of the houses for the P.Y.2023-24 are as under:

Particulars	House I	House II	House III
Municipal valuation p.a.	₹ 3,00,000	₹ 3,60,000	₹ 3,30,000
Fair rent p.a.	₹ 3,75,000	₹ 2,75,000	₹ 3,80,000
Standard rent p.a.	₹ 3,50,000	₹ 3,70,000	₹ 3,75,000
Date of completion/purchase	31.3.2000	31.3.2002	01.4.2016
Municipal taxes paid during the year	12%	8%	6%
Interest on money borrowed for repair of property during the current year	-	₹ 55,000	
Interest for current year on money Borrowed in April, 2016 for purchase of property			₹ 1,75,000

Compute Ganesh's income from house property for A.Y.2024-25 and suggest which houses should be opted by Ganesh to be assessed as self-occupied so that his tax liability is minimum.

SOLUTION :

Let us first calculate the income from each house property assuming that they are deemed to be let out.

Computation of income from house property of Ganesh for the A.Y. 2024-25

Particulars	Amount in ₹		
	House I	House II	House III
Gross Annual Value (GAV) ER is the GAV of house property ER = Higher of MV and FR, but restricted to SR	3,50,000	3,60,000	3,75,000
Less : Municipal taxes (paid by the owner during the previous year)	36,000	28,800	19,800
Net Annual Value (NAV)	3,14,000	3,31,200	3,55,200
Less : Deductions under section 24			
(a) 30% of NAV	94,200	99,360	1,06,560
(b) Interest on borrowed capital	-	55,000	1,75,000
Income from house property	2,19,800	1,76,840	73,640

Ganesh can opt to treat any two of the above house properties as self-occupied.

Under default tax regime under section 115BAC :

OPTION 1 (House I and II– self-occupied and House III – deemed to be let out)

If House I and II are opted to be self-occupied, the income from house property shall be –

Particulars	Amount in c
House I (Self-occupied)	Nil
House II (Self-occupied) (No interest deduction) House III (Deemed to be let-out)	73,640
Income from house property	73,640

OPTION 2 (House I and III – self-occupied and House II – deemed to be let out)

If House I and III are opted to be self-occupied, the income from house property shall be –

Particulars	Amount in c
House I (Self-occupied)	Nil
House II (Deemed to be let-out)	1,76,840
House III (Self-occupied) (No interest deduction)	Nil
Income from house property	1,76,840

OPTION 3 (House II and III –self-occupied and House I – deemed to be let out)

If House II and III are opted to be self-occupied, the income from house property shall be –

Particulars	Amount in c
House I (Deemed to be let-out)	2,19,800
House II (Self-occupied) (No interest deduction) House III (Self-occupied) (No interest deduction)	-
Income from house property	2,19,800

Since Option 1 is most beneficial, Ganesh should opt to treat House I and II as self-occupied and House III as deemed to be let out. His income from house property would be c 73,640 for the A.Y. 2024-25 under default tax regime under section 115BAC.

If Mr. Ganesh has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)

OPTION 1 (House I and II– self-occupied and House III – deemed to be let out)

If House I and II are opted to be self-occupied, the income from house property shall be –

Particulars	Amount in c
House I (Self-occupied)	Nil
House II (Self-occupied) (Interest deduction restricted to c 30,000) House III (Deemed to be let-out)	(30,000) 73,640
Income from house property	43,640

OPTION 2 (House I and III – self-occupied and House II – deemed to be let out)

If House I and III are opted to be self-occupied, the income from house property shall be –

Particulars	Amount in ₹
House I (Self-occupied)	Nil
House II (Deemed to be let-out)	1,76,840
House III (Self-occupied)	(1,75,000)
Income from house property	1,840

OPTION 3 (House II and III –self-occupied and House I – deemed to be let out)

If House II and III are opted to be self-occupied, the income from house property shall be –

Particulars		Amount in ₹
House I (Deemed to be let-out)		2,19,800
House II (Self-occupied) (Interest deduction restricted to ₹ 30,000)	(30,000)	
House III (Self-occupied) (No interest deduction)	(1,75,000)	
(Total interest deduction restricted to ₹ 2,00,000)		(2,00,000)
Income from house property		19,800

Since Option 2 is most beneficial in this case, Ganesh should opt to treat House I and III as self-occupied and House II as deemed to be let out. His income from house property would be ₹ 1,840 for the A.Y. 2024-25 under the optional tax regime i.e., the normal provisions of the Act.

(vi) HOUSE PROPERTY, A PORTION LET OUT AND A PORTION SELF- OCCUPIED :**ILLUSTRATION 9 :**

Prem owns a house in Madras. During the previous year 2023-24, 2/3rd portion of the house was self-occupied and 1/3rd portion was let out for residential purposes at a rent of ₹ 8,000 p.m. Municipal value of the property is ₹ 3,00,000 p.a., fair rent is ₹ 2,70,000 p.a. and standard rent is ₹ 3,30,000 p.a. He paid municipal taxes @10% of municipal value during the year. A loan of ₹ 25,00,000 was taken by him during the year 2019 for acquiring the property. Interest on loan paid during the previous year 2023-24 was ₹ 1,20,000. Compute Prem's income from house property for the A.Y.2024-25 assuming that he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). What would be Prem's income from house property under the default tax regime ?

SOLUTION :

There are two units of the house. Unit I with 2/3rd area is used by Prem for self- occupation throughout the year and no other benefit is derived from that unit, hence it will be treated as self-occupied and its annual value will be Nil. Unit 2 with 1/3rd area is let-out throughout the previous year and its annual value has to be determined as per section 23(1).

Computation of income from house property of Mr. Prem for A.Y.2024-25 under the optional tax regime (i.e., the normal provisions of the Act)

Particulars	Amount in ₹	
Unit I (2/3rd area – self-occupied)		
Annual Value		Nil
Less: Deduction under section 24(b) 2/3 rd of ₹ 1,20,000		80,000
Income from Unit I (self-occupied) Unit II (1/3rd area – let out)		(80,000)
Computation of GAV		
Step I: Compute ER		
ER = Higher of MV and FR, restricted to SR However, in this case, SR of ₹ 1,10,000 (1/3 rd of ₹ 3,30,000) is more than the higher of MV of ₹ 1,00,000 (1/3 rd of ₹ 3,00,000) and FR of ₹ 90,000 (1/3 rd of ₹ 2,70,000). Hence the higher of MV and FR is the ER. In this case, it is the MV.	1,00,000	
Step 2 Compute actual rent received / receivable ₹ 8,000×12 = ₹ 96,000	96,000	
Step 3 Compare ER and Actual rent received/receivable		
Step 4 GAV is the higher of ER and actual rent received/receivable i.e. higher of ₹ 1,00,000 and ₹ 96,000	1,00,000	
Gross Annual Value(GAV)		1,00,000
Less: Municipal taxes paid by the owner during the previous year relating to let-out portion 1/3 rd of (10% of ₹ 3,00,000) = ₹ 30,000/3 = ₹ 10,000		10,000
Net Annual Value(NAV)		90,000
Less: Deductions under section 24		
(a) 30% of NAV = 30% of ₹ 90,000	27,000	
(b) Interest paid on borrowed capital (relating to let out portion) 1/3 rd of ₹ 1,20,000	40,000	67,000
Income from Unit II (let-out)		23,000
Loss under the head “Income from house property” = (₹ 80,000) + ₹ 23,000 = (₹ 57,000)		

Under the default tax regime, Prem would not be entitled to interest deduction of ₹ 80,000 under section 24(b) in respect of self-occupied portion (Unit 1). Hence, income from house property would be ₹ 23,000, being income from Unit II, which is let out.

2.8 INADMISSIBLE DEDUCTIONS [SECTION 25]

Interest chargeable under this Act which is payable outside India shall not be deducted if –

- tax has not been paid or deducted from such interest and
- in respect of which there is no person in India who may be treated as an agent.

2.9 PROVISION FOR ARREARS OF RENT AND UNREALIZED RENT RECEIVED SUBSEQUENTLY [SECTION 25A]

- (i) As per section 25A(1), the amount of rent received in arrears from a tenant or the amount of unrealised rent realised subsequently from a tenant by an assessee shall be deemed to be income from house property in the financial year in which such rent is received or realised, and shall be included in the total income of the assessee under the head "Income from house property", whether the assessee is the owner of the property or not in that financial year.
- (ii) Section 25A(2) provides a deduction of 30% of arrears of rent or unrealised rent realised subsequently by the assessee.
- (ii) Summary:**

Section 25A Arrears of Rent / Unrealised Rent

- (i) Taxable in the year of receipt/realisation
- (ii) Deduction@30% of rent received/realised
- (iii) Taxable even if assessee is not the owner of the property in the financial year of receipt/realisation.

ILLUSTRATION 10 :

Mr. Anand sold his residential house property in March, 2023. In June, 2023, he recovered rent of ₹ 10,000 from Mr. Gaurav, to whom he had let out his house for two years from April 2017 to March 2019. He could not realise two months rent of ₹ 20,000 from him and to that extent his actual rent was reduced while computing income from house property for A.Y.2019-20.

Further, he had let out his property from April, 2019 to February, 2023 to Mr. Satish. In April, 2021, he had increased the rent from ₹ 12,000 to ₹ 15,000 per month and the same was a subject matter of dispute. In September, 2023, the matter was finally settled and Mr. Anand received ₹ 69,000 as arrears of rent for the period April 2021 to February, 2023. Would the recovery of unrealised rent and arrears of rent be taxable in the hands of Mr. Anand, and if so in which year?

SOLUTION :

Since the unrealised rent was recovered in the P.Y.2023-24, the same would be taxable in the A.Y.2024-25 under section 25A, irrespective of the fact that Mr. Anand was not the owner of the house in that year. Further, the arrears of rent was also received in the P.Y.2023-24, and hence the same would be taxable in the A.Y.2024-25 under section 25A, even though Mr. Anand was not the owner of the house in that year. A deduction of 30% of unrealised rent recovered and arrears of rent would be allowed while computing income from house property of Mr. Anand for A.Y.2024-25.

Computation of income from house property of Mr. Anand for A.Y.2024-25

Particulars	₹
Unrealised rent recovered	10,000
Arrears of rent received	69,000
	79,000
Less: Deduction@30%	23,700
Income from house property	55,300

2.10 TREATMENT OF INCOME FROM CO- OWNED PROPERTY [SECTION 26]

- (i) Where property is owned by two or more persons, whose shares are definite and ascertainable, then the income from such property cannot be taxed as income of an AOP.
- (ii) The share income of each such co-owner should be determined in accordance with sections 22 to 25 and included in his individual assessment.
- (iii) Where the house property owned by co-owners is self occupied by each of the co-owners, the annual value of the property of each co-owner will be Nil and each co-owner shall be entitled to a deduction of ₹ 30,000 / ₹ 2,00,000, as the case may be, under section 24(b) on account of interest on borrowed capital if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A).
However, the aggregate deduction of interest to each co-owner in respect of interest payable on loan taken for co-owned house property and interest, if any, payable on loan taken for another self-occupied property owned by him cannot exceed ₹ 30,000/ ₹ 2,00,000, as the case may be.
- (iv) Where the house property owned by co-owners is let out, the income from such property shall be computed as if the property is owned by one owner and thereafter the income so computed shall be apportioned amongst each co-owner as per their specific share.

(v) Summary :

Co-owned property [Section 26]	
Self-occupied property	Let-out property
<p>The annual value of the property of each co-owner will be Nil and each co-owner shall be entitled to a deduction of ₹ 30,000/ ₹ 2,00,000, as the case may be, on account of interest on borrowed capital if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A). However, if the co-owner owns another self-occupied/ unoccupied property, the aggregate interest from the co-owned property and the other self-occupied property cannot exceed ₹ 30,000/ ₹ 2,00,000, as the case may be.</p> <p>As mentioned earlier, no interest deduction in respect of self-occupied property would be allowable to the co-owners under the default tax regime.</p>	<p>The income from such property shall be computed as if the property is owned by one owner and thereafter the income so computed shall be apportioned amongst each co-owner as per their specific share.</p>

ILLUSTRATION 11 :

Ms. Aparna co-owns a residential house property in Calcutta along with her sister Ms. Dimple, where her sister's family resides. Both of them have equal share in the property and the same is used by them for self-occupation. Interest is payable in respect of loan of ₹ 50,00,000@10% taken on 1.4.2022 for acquisition of such property. In addition, Ms. Aparna owns a flat in Pune in which she and her parents reside. She has taken a loan of ₹ 3,00,000@12% on 1.10.2022 for repairs of this flat. Compute the deduction which would be available to Ms. Aparna and Ms. Dimple under section 24(b) for A.Y.2024-25, if both exercise the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION :**Computation of deduction u/s 24(b) available to Ms. Aparna for A.Y.2024-25**

Particulars	₹
I Interest on loan taken for acquisition of residential house property at Calcutta ₹ 50,00,000 x 10% = ₹ 5,00,000 Ms. Aparna's share = 50% of ₹ 5,00,000 = ₹ 2,50,000 Restricted to ₹ 2,00,000	2,00,000
II Interest on loan taken for repair of flat at Pune ₹ 3,00,000 x 12% = ₹ 36,000 Restricted to ₹ 30,000	30,000
Total interest	2,30,000
Deduction under section 24(b) in respect of (I) and (II) above to be restricted to	2,00,000

Computation of deduction u/s 24(b) available to Ms. Dimple for A.Y.2024-25

Particulars	₹
Interest on loan taken for acquisition of residential house property at Calcutta ₹ 50,00,000 x 10% = ₹ 5,00,000 Ms. Dimple's share = 50% of ₹ 5,00,000 = ₹ 2,50,000 Restricted to ₹ 2,00,000	2,00,000
Deduction under section 24(b)	2,00,000

2.11 DEEMED OWNERSHIP [SECTION 27]

As per section 27, the following persons, though not legal owners of a property, are deemed to be the owners for the purposes of section 22 to 26.

- (i) Transfer to a spouse [Section 27(i)]** – In case of transfer of house property by an individual to his or her spouse otherwise than for adequate consideration, the transferor is deemed to be the owner of the transferred property.

Exception – In case of transfer to spouse in connection with an agreement to live apart, the transferor will not be deemed to be the owner. The transferee will be the owner of the house property.

- (ii) Transfer to a minor child [Section 27(i)]** – In case of transfer of house property by an individual to his or her minor child otherwise than for adequate consideration, the transferor would be deemed to be owner of the house property transferred.

Exception – In case of transfer to a minor married daughter, the transferor is not deemed to be the owner.

Note - Where cash is transferred to spouse/minor child and the transferee acquires property out of such cash, then, the transferor shall not be treated as deemed owner of the property. However, clubbing provisions will be attracted.

(iii) Holder of an impartible estate [Section 27(ii)] – The impartible estate is a property which is not legally divisible. The holder of an impartible estate shall be deemed to be the individual owner of all properties comprised in the estate.

After enactment of the Hindu Succession Act, 1956, all the properties comprised in an impartible estate by custom is to be assessed in the status of a HUF. However, section 27(ii) will continue to be applicable in relation to impartible estates by grant or covenant.

(iv) Member of a co-operative society etc. [Section 27(iii)] – A member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a House Building Scheme of a society/company/association, shall be deemed to be owner of that building or part thereof allotted to him although the co-operative society/company/ association is the legal owner of that building.

(v) Person in possession of a property [Section 27(iia)] – A person who is allowed to take or retain the possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act shall be the deemed owner of that house property. This would include cases where the –

- (1) possession of property has been handed over to the buyer
- (2) sale consideration has been paid or promised to be paid to the seller by the buyer
- (3) sale deed has not been executed in favour of the buyer, although certain other documents like power of attorney/agreement to sell/will etc. have been executed.

In all the above cases, the buyer would be deemed to be the owner of the property although it is not registered in his name.

(vi) Person having right in a property for a period not less than 12 years [Section 27(iiib)] – A person who acquires any rights in or with respect to any building or part thereof, by virtue of any transaction as is referred to in section 269UA(f) i.e. transfer by way of lease for not less than 12 years, shall be deemed to be the owner of that building or part thereof.

Exception – In case the person acquiring any rights by way of lease from month to month or for a period not exceeding one year, such person will not be deemed to be the owner.

LET US RECAPITULATE :

Section Contents 22

22. Basis of Charge

The annual value of any property comprising of buildings or lands appurtenant thereto, of which the assessee is the owner, is chargeable to tax under the head “Income from house property”.

(i) Property should consist of any buildings or lands appurtenant thereto Income from letting out of vacant land is, however, taxable under the head “Income from other sources” or “Profits and gains from business or profession”, as the case may be.

(ii) Assessee must be the owner of the property

(iii) The property may be used for any purpose, but it should not be used by the owner for the purpose of any business or profession carried on by him, the profit of which is chargeable to tax.

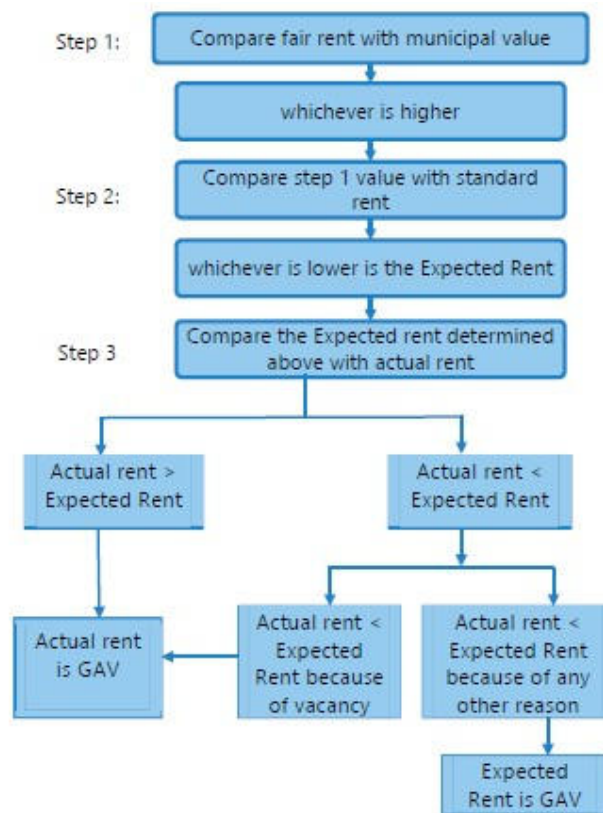
Further, the income earned by an assessee engaged in the business of letting out of properties on rent would be taxable as business income.

(iv) Property held as stock-in-trade etc.

Annual value of house property will be charged under the head “Income from house property”, where it is held by the assessee as stock-in-trade of a business also.

23(1) Annual Value of let-out property

Annual value is the amount arrived after deducting the municipal taxes **actually paid by the owner** during the previous year from the Gross Annual Value (GAV). The GAV of let-out property would be determined in the following manner:



23(2) Annual Value of self-occupied property

Where the property is self-occupied for own residence or unoccupied throughout the previous year owing to his employment, business or profession carried on at any other place and residing at that other place in a building not belonging to him, its Annual Value will be Nil, provided no other benefit is derived by the owner from such property.

An assessee can claim benefit of “Nil” Annual Value in respect of one or two residential house properties self-occupied by him.

23(4) Annual Value of deemed to be let-out property

If more than two properties are so self-occupied/unoccupied, the assessee may claim benefit of Nil annual value in respect of any two properties at his option. The other property(s) would be deemed to be let out, in respect of which Expected Rent would be the GAV.

23(5) Annual value where the property held as stock-in-trade etc.

Where property consisting of any buildings or lands appurtenant thereto is held as stock-in-trade and the whole or any part of the property is not let out during the whole or any part of the previous year, the annual value of such property or part of the property for the period upto **2 years** from the end of the financial year in which certificate of completion of construction of the property is obtained from the competent authority shall be taken as “Nil”.

24 Deductions from Annual Value

1. 30% of Annual Value [Section 24(a)]
2. Interest on borrowed capital [Section 24(b)]: Interest payable on loans borrowed for the purpose of acquisition, construction, repairs, renewal or reconstruction can be claimed as deduction.

Pre-construction interest: Interest for the period prior to the previous year in which property is acquired or construction is completed.

Pre-construction interest is allowable as deduction in 5 equal installments from the previous year of completion of construction or acquisition.

(a) Let out property : Whole of the amount of interest on borrowed capital payable during the previous year and apportioned pre- construction interest without any ceiling limit would be allowed as deduction.

(b) Self-occupied property :

- (i) Interest on loan taken for acquisition or construction of house on or after 1.4.99, where such construction is completed within 5 years from the end of the financial year in which capital was borrowed, aggregate interest paid or payable for one or two self-occupied properties subject to a maximum of ₹ 2,00,000 (including apportioned pre- construction interest).
- (ii) In case of loan taken for repair, renovation or reconstruction at any point of time, aggregate interest paid or payable for one or two self-occupied properties subject to a maximum of ₹ 30,000 (including apportioned pre- construction interest).

Notes :

- (1) Total amount of interest deduction under (i) and (ii) in respect of one or two self-occupied properties owned by the assessee cannot exceed ₹ 2,00,000.
- (2) Interest deduction in respect of self occupied property(ies) would be available only if the assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). If the assessee pays tax under default tax regime under section 115BAC, deduction under section 24(b) in respect of interest on loan for self occupied property is not allowed.

25 Inadmissible deductions

Interest chargeable under this Act which is payable outside India shall not be deducted if –

- (a) tax has not been paid or deducted from such interest and
- (b) in respect of which there is no person in India who may be treated as an agent

25A Taxability of recovery of unrealised rent & arrears of rent received

- (i) Taxable in the year of receipt/ realisation
- (ii) Deduction@30% of rent received/ realised
- (iii) Taxable even if assessee is not the owner of the property in the financial year of receipt/ realization

26 Co-owned property

- (i) **Self-occupied property :** The annual value of the property of each co-owner will be Nil and each co-owner shall be entitled to a deduction of ₹ 30,000/ ₹ 2,00,000, as the case may be, on account of interest on borrowed capital if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A).

However, aggregate deduction of interest to each co-owner in respect of co-owned self-occupied property and any other self-occupied house property, if any, cannot exceed ₹ 30,000/ ₹ 2,00,000, as the case may be.

No deduction would be allowed in respect of interest on loan taken for purchase/ construction/ reconstruction/ repairs of self-occupied property where the assessee pays tax under the default tax regime.

- (ii) **Let-out property:** The income from such property shall be computed as if the property is owned by one owner and thereafter the income so computed shall be apportioned amongst each co-owner as per their specific share.

27 Deemed Ownership :

The following persons, though not legal owners of a property, are deemed to be the owners:

- (i) Transferor of the property, where the property is transferred to the spouse or to minor child except minor married daughter, without adequate consideration
- (ii) Holder of an impartible estate
- (iii) Member of a co-operative society etc.
- (iv) Person in possession of a property
- (v) Person having right in a property for a period not less than 12 years

Other important points :

- (i) The Actual rent received/receivable should not include any amount of rent which is not capable of being realized i.e., unrealized rent while determining gross annual value in case let-out property, provided the conditions specified in Rule 4 are satisfied.

Note - The income-tax returns, however, permit deduction of unrealized rent from gross annual value. If this view is taken, the unrealized rent should be deducted only after computing gross annual value.

- (ii) If a portion of a property is let-out and a portion is self-occupied, then, the income will be computed separately for let out and self-occupied portion.

TEST YOUR KNOWLEDGE

1. Mr. Raman is a co-owner of a house property along with his brother holding equal share in the property.

Particulars	₹
Municipal value of the property	1,60,000
Fair rent	1,50,000
Standard rent under the Rent Control Act	1,70,000
Rent received	15,000 p.m.

The loan for the construction of this property is jointly taken and the interest charged by the bank is ₹ 25,000, out of which ₹ 21,000 has been paid. Interest on the unpaid interest is ₹ 450. To repay this loan, Raman and his brother have taken a fresh loan and interest charged on this loan is ₹ 5,000. The municipal taxes of ₹ 5,100 have been paid by the tenant. *Compute the income from this property chargeable in the hands of Mr. Raman for the A.Y. 2024-25.*

2. Mr. X owns one residential house in Mumbai. The house is having two identical units. First unit of the house is self-occupied by Mr. X and another unit is rented for ₹ 8,000 p.m. The rented unit was vacant for 2 months during the year. The particulars of the house for the previous year 2023-24 are as under:

Standard rent	₹ 1,62,000 p.a.
Municipal valuation	₹ 1,90,000 p.a.
Fair rent	₹ 1,85,000 p.a.
Municipal tax (Paid by Mr. X)	5% of municipal valuation
Light and water charges	₹ 500 p.m.
Interest on borrowed capital	₹ 1,500 p.m.
Lease money	₹ 1,200 p.a.
Insurance charges	₹ 3,000 p.a.
Repairs	₹ 12,000 p.a.

Compute income from house property of Mr. X for the A.Y. 2024-25 if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

3. Mr. Vikas owns a house property whose Municipal Value, Fair Rent and Standard Rent are ₹ 96,000, ₹ 1,26,000 and ₹ 1,08,000 (per annum), respectively. During the F.Y. 2023-24, one-third of the portion of the house was let out for residential purpose at a monthly rent of ₹ 5,000. The remaining two-third portion was self-occupied by him. Municipal tax @11% of municipal value was paid during the year.

The construction of the house began in June, 2016 and was completed on 31-5-2019. Vikas took a loan of ₹ 1,00,000 on 1-7-2016 for the construction of building. He paid interest on loan @ 12% per annum and every month such interest was paid.

Compute income from house property of Mr. Vikas for the A.Y. 2024-25 if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

4. Mrs. Rohini Ravi, a citizen of the U.S.A., is a resident and ordinarily resident in India during the financial year 2023-24. She owns a house property at Los Angeles, U.S.A., which is used as her residence. The annual value of the house is \$20,000. The value of one USD (\$) may be taken as ₹ 75.

She took ownership and possession of a flat in Chennai on 1.7.2023, which is used for self-occupation, while she is in India. The flat was used by her for 7 months only during the year ended 31.3.2024. The municipal valuation is

₹ 3,84,000 p.a. and the fair rent is ₹ 4,20,000 p.a. She paid the following to Corporation of Chennai:

Property Tax ₹ 16,200

Sewerage Tax ₹ 1,800

She had taken a loan from Standard Chartered Bank in June, 2021 for purchasing this flat. Interest on loan was as under:

Particulars	₹
Period prior to 1.4.2023	49,200
1.4.2023 to 30.6.2023	50,800
1.7.2023 to 31.3.2024	1,31,300

She had a house property in Bangalore, which was sold in March, 2020. In respect of this house, she received arrears of rent of ₹ 60,000 in March, 2024. This amount has not been charged to tax earlier. Compute the income chargeable from house property of Mrs. Rohini Ravi for the A.Y. 2024-25 if she has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). Would your answer change if she pays tax under the default tax regime under section 115BAC?

6. Two brothers Arun and Bimal are co-owners of a house property with equal share. The property was constructed during the financial year 2015-2016. The property consists of eight identical units and is situated at Cochin.

During the financial year 2023-24, each co-owner occupied one unit for residence and the balance of six units were let out at a rent of ₹ 12,000 per month per unit. The municipal value of the house property is ₹ 9,00,000 and the municipal taxes are 20% of municipal value, which were paid during the year. The other expenses were as follows :

	<i>₹</i>	
(i) Repairs	40,000	
(ii) Insurance premium (paid)	15,000	
(iii) Interest payable on loan taken for construction of house	3,00,000	

One of the let out units remained vacant for four months during the year.

Arun could not occupy his unit for six months as he was transferred to Chennai. He does not own any other house.

The other income of Mr. Arun and Mr. Bimal are ₹ 2,90,000 and ₹ 1,80,000, respectively, for the financial year 2023-24.

Compute the income under the head 'Income from House Property' and the total income of two brothers for the A.Y. 2024-25 if they pay tax under the default tax regime under section 115BAC.

Also, show the computation of income under this head, if they both exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

ANSWERS

1. **Computation of income from house property of Mr. Raman for A.Y. 2024-25 :**

Particulars	₹	₹
Gross Annual Value (See Note 1 below)		1,80,000
Less: Municipal taxes – paid by the tenant, hence not deductible		Nil
Net Annual Value (NAV)		1,80,000
Less: Deductions under section 24		
(i) 30% of NAV	54,000	
(ii) Interest on housing loan (See Note 2 below)		
- Interest on loan taken from bank	25,000	
- Interest on fresh loan to repay old loan for this property	5,000	84,000
Income from house property		96,000
50% share taxable (See Note 3 below) in the hands of Mr.Raman		48,000

Notes :**1. Computation of Gross Annual Value (GAV)**

GAV is the higher of Expected rent and actual rent received. Expected rent is the higher of municipal value and fair rent, but restricted to standard rent.

Particulars	₹	₹	₹	₹
(a) Municipal value	1,60,000			
(b) Fair rent	1,50,000			
(c) Higher of (a) and (b)		1,60,000		
(d) Standard rent		1,70,000		
(e) Expected rent [lower of (c) and (d)]			1,60,000	
(f) Actual rent [₹ 15,000 x 12]			1,80,000	
(g) Gross Annual Value [higher of (e) and (f)]				1,80,000

- Interest on housing loan is allowable as a deduction under section 24 on accrual basis. Further, interest on fresh loan taken to repay old loan is also allowable as deduction. However, interest on unpaid interest is not allowable as deduction under section 24.
- Section 26 provides that where a house property is owned by two or more persons whose shares are definite and ascertainable, the share of each such person in the income of house property, as computed in accordance with sections 22 to 25, shall be included in his respective total income. Therefore, 50% of the total income from the house property is taxable in the hands of Mr. Raman since he is an equal owner of the property.
- 4. Computation of Income from house property for A.Y. 2024-25**

Particulars	₹	₹
(A) Rented unit (50% of total area - See Note below)		
Step I - Computation of Expected Rent		
Municipal valuation (₹ 1,90,000 x ½)	95,000	
Fair rent (₹ 1,85,000 x ½)	92,500	
Standard rent (₹ 1,62,000 x ½)	81,000	
Expected Rent is higher of municipal valuation and fair rent, but restricted to standard rent	81,000	
Step II - Actual Rent		
Rent received/receivable for the let out period (₹ 8,000 × 10)	80,000	

Step III - Computation of Gross Annual Value		
The actual rent of ₹ 80,000 is lower than ER of ₹ 81,000 owing to vacancy, since, had the property not been vacant the actual rent would have been ₹ 96,000 (₹ 80,000 + ₹ 16,000, being notional rent for two months. Therefore, actual rent is the GAV.	80,000	80,000
Gross Annual Value		4,750
Municipal taxes (5% of ₹ 95,000)		
Net Annual value		75,250
<i>Less</i> : Deductions under section 24 -		
30% of net annual value	22,575	
Interest on borrowed capital (₹ 750 × 12)	9,000	31,575
Taxable income from let out portion		43,675
(B) Self occupied unit (50% of total area - See Note below)		
Annual value	Nil 9,000	
<i>Less</i> : Deduction under section 24 - Interest on borrowed capital (₹ 750 × 12)		9,000
Loss from self occupied portion		(9,000)
Income from house property		34,675

Note : No deduction will be allowed separately for light and water charges, lease money paid, insurance charges and repairs.

4. Computation of income from house property of Mr. Vikas for the A.Y. 2024-25

Particulars	₹	₹
Income from house property		
I. Self-occupied portion (Two third)		
Net Annual value		Nil
<i>Less</i> : Deduction under section 24(b) Interest on loan (See Note below) (₹ 18,600 × 2/3) [Allowable since he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)]		12,400
II. Loss from self occupied property		(12,400)
Let-out portion (One third)		
Gross Annual Value		
Actual rent received (₹ 5,000 × 12)	₹ 60,000	
Expected rent	₹ 36,000	
[higher of municipal valuation (i.e., ₹ 96,000) and fair rent (i.e., ₹ 1,26,000) but restricted to standard rent (i.e., ₹ 1,08,000)] = ₹ 1,08,000 × 1/3		

Higher of (a) or (b)	60,000	
Less : Municipal taxes ($\text{c } 96,000 \times 11\% \times 1/3$)	3,520	
Net Annual Value	56,480	
Less: Deductions under section 24	16,944	
(a) 30% of NAV	6,200	33,336
(b) Interest on loan (See Note below) ($\text{c } 18,600 \times 1/3$)		
Income from house property		20,936

Note : Interest on loan taken for construction of building

Interest for the year (1.4.2023 to 31.3.2024) = 12% of $\text{c } 1,00,000 = \text{c } 12,000$

Pre-construction period interest = 12% of $\text{c } 1,00,000$ for 33 months (from 1.07.2016 to 31.3.2019) = $\text{c } 33,000$

Pre-construction period interest to be allowed in 5 equal annual installments of $\text{c } 6,600$ from the year of completion of construction i.e., from F.Y. 2019-20 till F.Y. 2023-24.

Therefore, total interest deduction under section 24 = $\text{c } 12,000 + \text{c } 6,600 = \text{c } 18,600$.

- 4.
- (i) Since the assessee is a resident and ordinarily resident in India, her global income would form part of her total income i.e., income earned in India as well as outside India will form part of her total income. She possesses a self-occupied house at Los Angeles as well as at Chennai. She can take the benefit of "Nil" Annual Value in respect of both the house properties.

As regards the Bangalore house, arrears of rent will be chargeable to tax as income from house property in the year of receipt under section 25A. It is not essential that the assessee should continue to be the owner. 30% of the arrears of rent shall be allowed as deduction.

Accordingly, the income from house property of Mrs. Rohini Ravi for A.Y.2024-25 will be calculated as under:

Particulars	₹	₹
1. Self-occupied house at Los Angeles		
Annual value		Nil
Less : Deduction under section 24		Nil
Chargeable income from this house property		Nil
2. Self-occupied house property at Chennai		
Annual value		Nil
Less : Deduction under section 24 Interest on borrowed capital (See Note below)		1,91,940
		(1,91,940)
3. Arrears in respect of Bangalore property (Section 25A)		
Arrears of rent received	60,000	
Less: Deduction @ 30% u/s 25A(2)	18,000	42,000
Loss under the head "Income from house property"		(1,49,940)

Note : Interest on borrowed capital

Particulars	₹
Interest for the current year (₹ 50,800 + ₹ 1,31,300)	1,82,100
Add: 1/5th of pre-construction interest (₹ 49,200 x 1/5)	9,840
Interest deduction allowable under section 24	1,91,940

Interest deduction under section 24(b) is allowable since she has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

- (ii) Yes, the answer would change if she pays tax under the default tax regime under section 115BAC. Under the default tax regime, deduction under section 24(b) for interest is not available. Hence, she cannot claim deduction of ₹ 1,91,940 in respect of the Chennai house. Accordingly, income from house property would be ₹ 42,000.

5. (i) If Arun and Bimal pay tax under the default tax regime under section 115BAC
Computation of total income for the A.Y. 2024-25

Particulars	Arun (₹)	Bimal(₹)
Income from house property		
I. Self-occupied portion (25%)		
Annual value	Nil	Nil
Less: Deduction under section 24(b)	Nil	Nil
Loss from self occupied property	Nil	Nil
II. Let-out portion (75%) – See Working Note below	1,25,850	1,25,850
Income from house property	1,25,850	1,25,850
Other Income	2,90,000	1,80,000
Total Income	4,15,850	3,05,850

Working Note – Computation of Income from Let-Out Portion of House Property

Particulars	₹	₹
Let-out portion (75%)		
Gross Annual Value		
(a) Municipal value (75% of ₹ 9 lakh)	6,75,000	
(b) Actual rent [(₹ 12,000 × 6 × 12) – (₹ 12,000 × 1 × 4)]	8,16,000	
= ₹ 8,64,000 - ₹ 48,000		
- whichever is higher		8,16,000
Less: Municipal taxes 75% of ₹ 1,80,000 (20% of ₹ 9 lakh)		1,35,000
Net Annual Value (NAV)		6,81,000
Less: Deduction under section 24		
(a) 30% of NAV	2,04,300	
(b) Interest on loan taken for the house [75% of ₹ 3 lakh]	2,25,000	4,29,300
Income from let-out portion of house property		2,51,700
Share of each co-owner (50%)		1,25,850

(ii) If Arun and Bimal have exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)

amputation of total income for the A.Y. 2024-25

Particulars	Arun (₹)	Bimal(₹)
Income from house property		
I. Self-occupied portion (25%)		
Annual value	Nil	Nil
<i>Less:</i> Deduction under section 24(b)		
Interest on loan taken for construction ₹ 37,500 (being 25% of ₹ 1.5 lakh) [Allowable since they have exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)]	37,500	37,500
Loss from self occupied property	(37,500)	(37,500)
II. Let-out portion (75%) – See Working Note above	1,25,850	1,25,850
Income from house property	88,350	88,350
Other Income	2,90,000	1,80,000
Total Income	3,78,350	2,68,350

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CHAPTER - 3

HEADS OF INCOME

UNIT 3 : PROFITS AND GAINS OF BUSINESS OR PROFESSION

Proforma for computation of income under the head "Profits and gains of business or profession" under default tax regime under section 115BAC

Particulars	Amount (₹)	Amount (₹)
Net profit as per statement of profit and loss		A
Add: Expenses debited to statement of profit and loss but not allowable		
• Depreciation as per books of account	xxx	
• Income-tax [disallowed u/s 40(a)(ii)]	xxx	
• 30% of sum payable to residents on which tax is not deducted at source or has not been remitted on or before the due date u/s 139(1), after deduction, disallowed under section 40(a)(ia) [The same is allowable in the year in which the tax is deducted and remitted]	xxx	
• Any expenditure incurred, in respect of which payment is made for goods, services or facilities to a related person, to the extent the same is excessive or unreasonable, in the opinion of the A.O, having regard to its FMV [disallowed u/s 40A(2)]	xxx	
• Any expenditure incurred in respect of which payment or aggregate of payments to a person exceeding ₹ 10,000 in a single day is made otherwise than by way of A/c payee cheque/bank draft/ use of ECS through bank A/c or through such other prescribed electronic mode (debit card, credit card, Net banking, RTGS, NEFT, IMPS, BHIM Aadhar Pay) [disallowed u/s 40A(3)]	xxx	
• Certain sums payable by the assessee which have not been paid during the relevant P.Y. in which the liability was incurred on or before the due date for filing return u/s 139(1) in respect of that P.Y. [disallowed u/s 43B]	xxx	
• Sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of MSME Development Act, 2006 [disallowed u/s 43B]	xxx	

Particulars	Amount (₹)	Amount (₹)
• Personal expenses [not allowable as per section 37]	xxx	
• Capital expenditure [not allowable as per section 37]	xxx	
• Repairs of capital nature [not allowable as per Sections 30 & 31]	xxx	
• Amortization of preliminary expenditure u/s 35D/ expenditure incurred under voluntary retirement scheme u/s 35DDA [4/5th of such expenditure to be added back]	xxx	
• Family planning expenses not allowable in the case of a person other than a company	xxx	
• Fine or penalty paid for infringement or breach of law [However, penalty in the nature of damages for delay in completion of a contract, being compensatory in nature, is allowable]	xxx	
• All expenses related to income which is not taxable under this head e.g. municipal taxes in respect of residential house property	xxx	
• Any sum paid by the assessee as an employer by way of contribution to pension scheme u/s 80CCD exceeding 10% of the salary of the employee	xxx	B
(A + B)		C
Less: Expenditure allowable as deduction but not debited to statement of profit and loss		
• Depreciation computed as per Rule 5 of Income-tax Rules, 1962	xxx	
• 30% of expenditure disallowed in an earlier P.Y. due to non-deduction of tax at source/ non-remittance before due date u/s 139(1) of that year, allowed this year on remittance (This item of adjustment is generally given under "Additional information" in the question)	xxx	
• Amount disallowed in an earlier P.Y. as per section 43B, due to non-payment on or before due date u/s 139(1), allowed as deduction in this year on actual payment (This item of adjustment is generally given under "Additional information" in the question)	xxx	D
(C - D)		E
Less: Income credited in statement of profit and loss but not taxable/taxable under any other head		
• Dividend income	xxx	
• Agricultural income exempt under section 10(1)		xxx
• Interest on securities/savings bank account/FD taxable under the head "Income from other sources"		xxx
• Profit on sale of capital asset taxable under the head "Capital Gains"		xxx
• Rent from house property taxable under the head "Income from house property"		xxx

Particulars	Amount (₹)	Amount (₹)
<ul style="list-style-type: none"> Winnings from lotteries, horse races, games etc. taxable under the head "Income from other sources" Gifts exempt or taxable under the head "Income from other sources" Income-tax refund not taxable Interest on income-tax refund taxable under the head "Income from other sources" 	xxx xxx xxx	F
	(E - F)	G
Add: Income chargeable under this head/Deemed Income [If the same is given as additional information and has not already been credited to Statement of Profit & Loss]		
<ul style="list-style-type: none"> Salary, remuneration, interest received by a partner from the firm, to the extent the same is deductible in the hands of the firm as per section 40(b) Bad debt allowed as deduction u/s 36(1)(vii) in an earlier P.Y., now recovered [deemed as income u/s 41(4)] Remission or cessation of a trading liability [deemed as income u/s 41(1)] 	xxx xxx	H
Profits and gains from business or profession (G + H)	xxx	I

Proforma for computation of income under the head "Profits and gains of business or profession" under optional tax regime taking business income computed under default tax regime under section 115BAC as the starting point

Particulars	Amount (₹)	Amount (₹)
Profits and gains from business or profession as per section 115BAC		A
Less: Expenditure allowable as deduction		
<ul style="list-style-type: none"> Additional depreciation@20% of actual cost of new P & M acquired by an assessee engaged in the business of manufacture or production of any article or thing or generation, transmission or distribution of power (10% of actual cost, if put to use for less than 180 days in the year of acquisition) [Balance additional depreciation can be claimed in the next year i.e., P.Y.2024-25] Balance additional depreciation @10% of actual cost of P & M acquired and installed during the P.Y. 2022- 23 and put to use for less than 180 days in that year 	xxx xxx	B
Profits and gains from business or profession as per normal provisions of the Act (A - B)		C

Note - An assessee carrying on specified business and exercising the option to shift out of the default tax regime provided under section 115BAC(1A), is eligible for deduction u/s 35AD in respect of capital expenditure (other than land, goodwill and financial instruments) incurred for such business, subject to fulfillment of specified conditions. However, if he pays tax under default tax regime under section 115BAC, he would **not** be eligible for deduction u/s 35AD.

The table in the next page depicts the allowability of deduction for expenditure incurred for in-house scientific research related to the business of the assessee and contribution to outsiders for scientific research/social science/statistical research under the default tax regime and optional tax regime.

Deduction for expenditure incurred for in-house scientific research related to business and contribution to outsiders for scientific research/social science/statistical research

Nature of Expenditure/ contribution for scientific research/social science/ statistical research	Under the default tax regime u/s 115BAC		Under the optional tax regime as per thenormal provisions of the Act			
	Allowability of deduction	Treatment while computing income underthe head “PGBP”		Allowability of deduction	Treatment while computing income underthe head “PGBP”	
		If debited toProfit & Loss A/c	If given as additional information		If debited to Profit & Loss A/c	If given as additional information

I. In house research expenditure on scientific research related to assessee’s business

35(1)(i)	Revenue expenditure	Allowable as deduction	No adjustment require, since it is already debited to profit and loss A/c	To be deducted while computing income under the head -PGBP	Allowable as deduction	No adjustment required, since it is already debited to profit and loss A/c	To be deducted while computing income under the head -PGBP
35(1)(iv) r.w.s. 35(2)	Any capital expenditure (other than cost of acquisition of land)						

II. Contribution to outsiders

(1)(ii) Notified approved research association/university/college/other institution for scientific research	Not allowable as deduction	To be added back while computing income under the head -PGBP	No adjustment required	Allowable as deduction	No adjustment required, since it is already debited to profit and loss A/c	To be deducted while computing income under the head -PGBP
35(1)(iia) Approved notified Company for scientific research						
35(1)(iii) Notified approved research association/university/college/other institution for research in social science or statistical research						
35(2AA) Approved National Laboratory/University/IIT/specified person to be used for scientific research undertaken under an approved programme						

3.1 MEANING OF ‘BUSINESS’ AND ‘PROFESSION’

The tax payable by an assessee on his income under this head is in respect of the profits and gains of any business or profession, carried on by him or on his behalf during the previous year.

Business	Profession
The term “business” has been defined in section 2(13) to “include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture”.	The term “profession” has not been Defined in the Act. It means an occupation requiring some degree of learning. The term ‘profession’ includes vocation as well [Section 2(36)].

- A painter, a sculptor, an author, an auditor, a lawyer, a doctor, an architect and even an astrologer are persons who can be said to be carrying on a profession but not business.

- It is, however, not material whether a person is carrying on a 'business' or 'profession' or 'vocation' since for purposes of assessment, profits from all these sources are treated and taxed alike (except in case of tax audit and presumptive income provisions, where the rates and threshold limits are different for business and profession).
- Business necessarily means a continuous exercise of an activity with a profit motive; nevertheless, profit from a single venture in the nature of trade may also be treated as business.

Meaning of 'Profits'

- (i) **Profits in cash or in kind:** Profits may be realised in money or in money's worth, i.e., in cash or in kind. Where profit is realised in any form other than cash, the cash equivalent of the receipt on the date of receipt must be taken as the value of the income received in kind.
- (ii) **Capital receipts:** Capital receipts are not generally to be taken into account while computing profits under this head.
- (iii) **Voluntary receipts:** Payment voluntarily made by persons who were under no obligation to pay anything at all would be income in the hands of the recipient, if they were received in the course of a business or by the exercise of a profession or vocation. Thus, any amount paid to a lawyer by a person who was not a client, but who has been benefited by the lawyer's professional service to another would be assessable as the lawyer's income.
- (iv) **Application of the gains of trade is immaterial:** Gains made even for the benefit of the community by a public body would be liable to tax. To attract the provisions of section 28, it is necessary that the business, profession or vocation should be carried on at least for some time during the accounting year but not necessarily throughout that year and not necessarily by the assessee-owner personally, but it should be under his direction and control.
- (v) **Income from distinct businesses:** The profits of each distinct business must be computed separately but the tax chargeable under this section is not on the separate income of every distinct business but on the aggregate profits of all the businesses carried on by the assessee.
- (vi) **Computation of profits:** Profits should be computed after deducting the losses and expenses incurred for earning the income in the regular course of the business, profession, or vocation unless the loss or expenses is expressly or by necessary implication, disallowed by the Act. The charge is not on the gross receipts but on the profits and gains.
- (vii) **Legality of income:** The illegality of a business, profession or vocation does not exempt its profits from tax. The revenue is not concerned with the taint of illegality in the income or its source. Thus, income tax is not restricted in its application to lawful business only.

However, expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law would not be allowable as deduction while computing profits of such business.

3.2 METHOD OF ACCOUNTING

Under section 145(1), income chargeable under the heads "Profits and gains of business or profession" or "Income from other sources" shall be computed in accordance with either the cash or mercantile system of accounting regularly employed by the assessee.

However, as per section 145B, certain income would be taxable in the following manner:

- (i) interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received [Such income is taxable under the head "Income from other sources"]

- (ii) income referred to in section 2(24)(xviii) i.e., assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement, by whatever name called, by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

Under section 145(2), the Central Government is empowered to notify in the Official Gazette from time to time, income computation and disclosure standards (ICDSs) to be followed by any class of assessee or in respect of any class of income.

Accordingly, the Central Government has, vide Notification No. S.O.3079(E) dated 29.9.2016, notified ten ICDSs to be applicable from A.Y.2017-18.

The notified ICDSs have to be followed by all assesseees (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head "Profits and gains of business or profession" or "Income from other sources".

The ten notified ICDSs are:

ICDS I : Accounting Policies

ICDS II : Valuation of Inventories

ICDS III : Construction Contracts

ICDS IV : Revenue Recognition

ICDS V : Tangible Fixed Assets

ICDS VI : The Effects of Changes in Foreign Exchange Rates

ICDS VII : Government Grants

ICDS VIII : Securities

ICDS IX : Borrowing Costs

ICDS X : Provisions, Contingent Liabilities and Contingent Assets

Note: ICDSs would be dealt with in detail at Final Level.

3.3 INCOME CHARGEABLE UNDER THIS HEAD [SECTION 28]

The various items of income chargeable to tax as income under the head 'profits and gains of business or profession' are as under:

- (i) **Income from business or profession:** Income arising to any person by way of profits and gains from the business or profession carried on by him at any time during the previous year.
- (ii) **Any compensation or other payment due to or received by:**
- (a) any person, by whatever name called, managing the whole or substantially the whole of -
- (i) the affairs of an Indian company or
- (ii) the affairs in India of any other company
- at or in connection with the termination of his management or office or the modification of any of the terms and conditions relating thereto;
- (b) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of any of the terms and conditions relating thereto;

- (c) any person, for or in connection with the vesting in the Government or in any corporation owned or controlled by the Government under any law for the time being in force, of the management of any property or business;
- (d) any person, by whatever name called, at or in connection with the termination or modification of the terms and conditions, of any contract relating to his business.

(iii) Income from specific services performed for its members by a trade, professional or business: Income derived by any trade, professional or similar associations from specific services rendered by them to their members. It may be noted that this forms an exception to the general principle governing the assessment of income of mutual associations such as chambers of commerce, stock brokers' associations etc.

As a result, a trade, professional or similar association performing specific services for its members is to be deemed as carrying on business in respect of these services and on that assumption the income arising therefrom is to be subjected to tax. For this purpose, it is not necessary that the income received by the association should definitely or directly be related to these services.

(iv) Incentives received or receivable by assessee carrying on export business:

- (a) Profit on sale of import entitlements:** Profits on sale of a licence granted under the Imports (Control) Order, 19551 made under the Imports and Exports (Control) Act, 19472.
- (b) Cash assistance against exports under any scheme of GoI:** Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India.
- (c) Customs duty or excise re-paid or repayable as drawback:** Any Customs duty or Excise duty drawback repaid or repayable to any person against export under the Customs and Central Excise Duties Drawback Rules, 19713.
- (d) Profit on transfer of Duty Entitlement Pass Book Scheme or Duty Free Replenishment Certificate:** Any profit on the transfer of the Duty Entitlement Pass Book Scheme⁴ or Duty Free Replenishment Certificate, being Duty Remission Scheme, under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992.
- (v) Value of any benefit or perquisite:** The value of any benefit or perquisite arising from business or the exercise of any profession, whether –
 - convertible into money or not or
 - in cash or in kind or partly in cash and partly in kind.

Example : If a company provides rent free residential accommodation to a lawyer in consideration of professional services rendered by him to the company, the value of such accommodation would be assessable in the hands of the said lawyer as his income under the head "Profits and gains or business or profession".

(vi) Sum due to, or received by, a partner of a firm: Any interest, salary, bonus, commission or remuneration, by whatever name called, due to or received by a partner of a firm from such firm will be deemed to be income from business. However, where any interest, salary, bonus, commission or remuneration by whatever name called, or any part thereof has not been allowed to be deducted under section 40(b), in the computation of the income of the firm the income to be taxed shall be adjusted to the extent of the amount disallowed.

Example: A firm pays interest to a partner at 20% simple interest p.a. The allowable rate of interest is 12% p.a. Hence, the excess 8% paid will be disallowed in the hands of the firm. Since the excess interest has suffered tax in the hands of the firm, the same will not be taxed in the hands of the partner.

Exemption of share income of a partner [Section 10(2A)]

Section 10(2A) exempts from tax a partner's share in the total income of the firm. In other words, the partner's share in the total income of the firm determined in accordance with the profit-sharing ratio will be exempt from tax.

(vii) Any sum whether received or receivable, in cash or kind, under an agreement:

(a) for not carrying out any activity in relation to any business or profession; or

However, the following sums received or receivable would not be chargeable to tax under the head "profits and gains from business or profession":

- (i) any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business or profession, which is chargeable under the head "Capital gains".
- (ii) any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations Environment Programme, in accordance with the terms of agreement entered into with the Government of India.

(b) for not sharing any know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services.

(viii) Any sum received under a Keyman insurance policy: Any sum received by the assessee, as an employer, under a Keyman insurance policy including the sum allocated by way of bonus on such policy will be taxable as income from business.

(ix) Fair market value of inventory on its conversion/treatment as capital asset: Fair market value of inventory on the date of its conversion or treatment as capital asset, determined in the prescribed manner, would be chargeable to tax as business income.

(x) Sum received on account of capital asset referred under section 35AD:

Any sum received or receivable, in cash or kind, on account of any capital asset (in respect of which whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD) being demolished, destroyed, discarded or transferred.

3.4 SPECULATION BUSINESS

Explanation 2 to section 28 specifically provides that where an assessee carries on speculation business, that business of the assessee must be deemed as distinct and separate from any other business. This becomes necessary because section 73 provides that losses in speculation business unlike other business cannot be set-off against the profits of any business other than a speculation business.

Likewise, a loss in speculation business carried forward to a subsequent year can be set-off only against the profit and gains of any speculation business in the subsequent year. Profits and losses resulting from speculative transaction must, therefore, be treated as separate and distinct from profits and gains of business and profession from any other business.

Meaning of Speculative Transaction

“**Speculative transaction**” means a transaction in which a contract for the purchase or sales of any commodity including stocks and shares is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips [Section 43(5)].

Where any part of the business of a company consists in the purchase and sale of the shares of other companies, such a company shall be deemed to be carrying on speculation business to the extent to which the business consists of the purchase and sale of such shares.

However, this deeming provision does **not** apply to the following companies –

- (1) A company whose gross total income consists of mainly income chargeable under the heads “Interest on securities”, “Income from house property”, “Capital gains” and “Income from other sources”;
- (2) A company, the principal business of which is –
 - (i) the business of trading in shares; or
 - (ii) the business of banking; or
 - (iii) the granting of loans and advances.

Accordingly, if these companies carry on the business of purchase and sale of shares of other companies, they would not be deemed to be carrying on speculation business. [Explanation to section 73]

Transactions not deemed to be speculative transactions

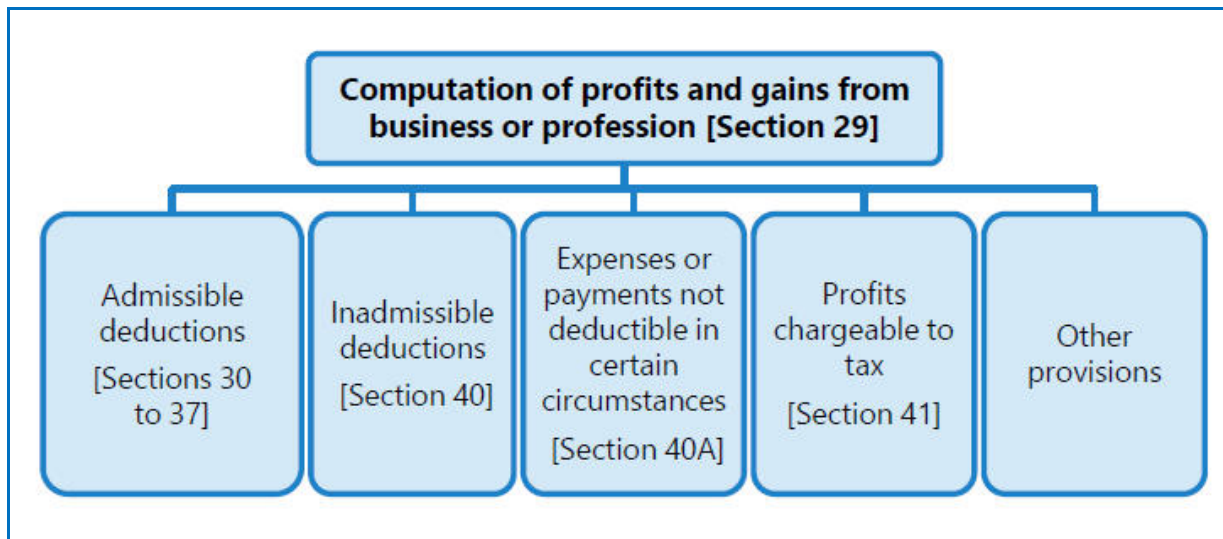
The following forms of transactions shall not be deemed to be speculative transaction:

- (i) **Hedging contract in respect of raw materials or merchandise:** A contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchandising business to guard against loss through future price fluctuations in respect of his contracts for the actual delivery of goods manufactured by him or merchandise sold by him; or
- (ii) **Hedging contract in respect of stocks and shares:** A contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuation; or
- (iii) **Forward contract:** A contract entered into by a member of a forward market or stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against any loss which may arise in the ordinary course of his business as a member; or
- (iv) **Trading in derivatives:** An eligible transaction (transaction carried out electronically through SEBI registered stockbroker or sub broker or intermediary) carried out in respect of trading in derivatives in a recognized stock exchange.
- (v) **Trading in commodity derivatives:** An eligible transaction (transaction carried out electronically through a member or intermediary registered under the bye-laws, rules and regulations of the recognized stock exchange) in respect of trading in commodity derivatives carried out in a recognised stock exchange, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013.

However, the requirement of chargeability of commodities transaction tax is not applicable in respect of trading in agricultural commodity derivatives.

3.5 COMPUTATION OF PROFITS AND GAINS FROM BUSINESS OR PROFESSION [SECTION 29]

According to section 29, the profits and gains of any business or profession are to be computed in accordance with the provisions contained in sections 30 to 43D. It must, however, be remembered that in addition to the specific allowances and deductions stated in sections 30 to 36, the Act further permits allowance of items of expenses under the residuary section 37(1), which extends the allowance to items of business expenditure not covered by sections 30 to 36, where these are allowable according to accepted commercial practices.



3.6 ADMISSIBLE DEDUCTIONS [SECTIONS 30 TO 37]

(i) Rent, rates, taxes, repairs and insurance for buildings [Section 30]

Section 30 allows deduction in respect of the rent, rates, taxes, repairs and insurance of buildings used by the assessee for the purposes of his business or profession.

- **Where the premises are occupied by the assessee as a tenant**, the rent paid for such premises and the amount paid on account of cost of repairs, if the assessee has undertaken to bear such repairs to the premises.
- **Occupation of premises by the assessee being the owner:** Where the assessee himself is owner of the premises and occupies them for his business purposes, no notional rent would be allowed under this section.

However, where a firm runs its business in the premises owned by one of its partners, the rent payable to the partner will be an allowable deduction to the extent it is reasonable and is not excessive.

- **Repairs of the premises:** Apart from rent, this section allows deductions in respect of expenses incurred on account of repairs to building in case where
 - the assessee is the owner of the building or
 - the assessee is a tenant who has undertaken to bear the cost of repairs to the premises.
 - Even if the assessee occupies the premises otherwise than as a tenant or owner, i.e., as a lessee, licensee or mortgagee with possession, he is entitled to a deduction under the section in respect of current repairs to the premises.
- **Cost of repairs and current repairs of capital nature not to be allowed as deduction [Explanation to section 30]:** Amount paid on account of the cost of repairs to the premises occupied by the assessee as a tenant and the amount paid on account of current repairs to the premises occupied by the assessee, otherwise than as a tenant, shall not include any capital nature expenditure. In other words, cost of repairs and current repairs other than of capital nature is allowed as deduction while computing business income.
- **Other expenses:** In addition, deductions are allowed in respect of expenses by way of land revenue, local rates, municipal taxes and insurance in respect of the premises used for the purposes of the business or profession. Cesses, rates and taxes levied by a foreign Government are also allowed.
- **Premises used partly for business and partly for other purposes:** Where the premises are used partly for business and partly for other purposes, only a proportionate part of the expenses attributable to that part of the premises used for purposes of business will be allowed as a deduction [Section 38(1)].

(ii) Repairs and insurance of machinery, plant and furniture [Section 31]

Section 31 allows deduction in respect of the expenses on current repairs and insurance of machinery, plant and furniture in computing the income from business or profession.

- **Usage of the asset for business:** In order to claim this deduction, the assets must have been used for purposes of the assessee's own business, the profits of which are being taxed.

The word 'used' has to be read in a wide sense so as to include active as well as passive use. However, insurance and repair charges of assets which are owned by the assessee but have not been used for the business during the previous year would not be allowed as a deduction.

Even if an asset is used for a part of the previous year, the assessee is entitled to the deduction of the full amount of expenses on repair and insurance charges and not merely an amount proportionate to the period of use.

- **Repairs exclude replacement or reconstruction:** The term 'repairs' will include renewal or renovation of an asset but not its replacement or reconstruction.

The deduction allowable under this section is only of current repairs but not arrears of repairs for earlier years even though they may still rank for a deduction under section 37(1).

- **Insurance premium:** The deduction allowable in respect of premia paid for insuring the machinery, plant or furniture is subject to the following conditions:
 - The insurance must be against the risk of damage or destruction of the machinery, plant or furniture.
 - The assets must be used by the assessee for the purposes of his business or profession during the accounting year.
 - The premium should have been actually paid (or payable under the mercantile system of accounting).

The premium may even take the form of contribution to a trade association which undertakes to indemnify and insure its members against loss; such premium or contribution would be deductible as an allowance under this section even if a part of it is returnable to the insured in certain circumstances.

It does not matter if the payment of the claim will enure to the benefit of someone other than the owner.

- **Current repairs of capital nature not to be allowed [Explanation to section 31]:** Amount paid on account of current repairs of machinery, plant or furniture shall not include any capital nature expenditure. In other words, current repairs other than of capital nature expenditure is allowed as deduction in the computation of income under the head "profits and gains of business or profession".

(iii) Depreciation [Section 32]

- (1) Charge of depreciation mandatory:** Section 32 allows a deduction in respect of depreciation resulting from the diminution or exhaustion in the value of certain capital assets.

Explanation 5 to this section provides that deduction on account of depreciation shall be made compulsorily, whether or not the assessee has claimed the deduction in computing his total income.

- (2) Conditions to be satisfied for allowance of depreciation:** The allowance of depreciation which is regulated by Rule 5 of the Income-tax Rules, 1962, is subject to the following conditions which are cumulative in their application.

(a) The assets in respect of which depreciation is claimed must belong to either of the following categories, namely -

- (i) buildings, machinery, plant or furniture, being tangible assets;
- (ii) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after 1st April, 1998, not being goodwill of a business or profession.
 - The depreciation in the value of any other capital assets cannot be claimed as a deduction from the business income.
 - No depreciation is allowable on the cost of the land on which the building is erected because the term 'building' refers only to superstructure but not the land on which it has been erected.
 - The term 'plant' as defined in section 43(3) includes ships, books, vehicles, scientific apparatus and surgical equipment used for the purposes of the business or profession but does not include tea bushes or livestock or buildings or furniture and fittings.
 - The word 'plant' does not include an animal, human body or stock-in-trade. Thus, plant includes all goods and chattels, fixed or movable, which a businessman keeps for employment in his business with some degree of durability.
 - The expression 'plant' includes part of a plant (e.g., the engine of a vehicle); machinery includes part of machinery and building includes a part of the building.
 - Similarly, the term 'buildings' includes within its scope roads, bridges, culverts, wells and tubewells.

(b) The assets should be actually used by the assessee for purposes of his business during the previous year - The asset must be put to use at any time during the previous year. The amount of depreciation allowance is not proportionate to the period of use during the previous year.

Asset used for less than 180 days - It has been provided that where any asset is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than 180 days, depreciation shall be allowed at 50% of the allowable depreciation according to the percentage prescribed in respect of the block of assets comprising such asset. It is significant to note that this restriction applies only to the year of acquisition and not for subsequent years.

If the assets are not used exclusively for the business or profession of the assessee but for other purposes as well, the depreciation allowable would be a proportionate part of the depreciation allowance to which the assessee would be otherwise entitled. This is provided in section 38.

Depreciation would be allowable to the owner even in respect of assets which are actually utilized by another person e.g., a lessee or licensee. The deduction on account of depreciation would be allowed under this section to the owner who has let on hire his building, machinery, plant or furniture provided that letting out of such assets is the business of the assessee. In other cases where the letting out of such assets does not constitute the business of the assessee, the deduction on account of depreciation would still be allowable under section 57(ii).

Use includes passive use in certain circumstances: One of the conditions for claim of depreciation is that the asset must be "used for the purpose of business or profession". Courts have held that, in certain circumstances, an asset can be said to be in use even when it is "kept ready for use".

For example, stand by equipment and fire extinguishers can be capitalized if they are ‘ready for use’.

Likewise, machinery spares which can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, has to be capitalised. Hence, in such cases, the term “use” embraces both active use and passive use. However, such passive use should also be for business purposes.

- (c) **The assessee must own the assets, wholly or partly** - In the case of buildings, the assessee must own the superstructure and not necessarily the land on which the building is constructed. In such cases, the assessee should be a lessee of the land on which the building stands and the lease deed must provide that the building will belong to the lessor of the land upon the expiry of the period of lease. Thus, no depreciation will be allowed to an assessee in respect of an asset which he does not own but only uses or hires for purposes of his business.

In this connection, students may note that Explanation 1 to section 32 provides that where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy, and any capital expenditure is incurred by the assessee for the purposes of the business or profession or the construction of any structure or doing of any work by way of renovation, extension or improvement to the building, then depreciation will be allowed as if the said structure or work is a building owned by the assessee.

Depreciation is allowable not only in respect of assets “wholly” owned by the assessee but also in respect of assets “partly” owned by him and used for the purposes of his business or profession.

- (3) **Computation of Depreciation Allowance** - Depreciation allowance will be calculated on the following basis:

- (i) **Power generation undertakings:** In the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost to the assessee as prescribed by Rule 5(1A).

Rule 5(1A) - As per this rule, the depreciation on the abovementioned assets shall be calculated at the percentage of the actual cost at rates specified in Appendix IA of these rules. However, the aggregate depreciation allowed in respect of any asset for different assessment years shall not exceed the actual cost of the asset. It is further provided that such an undertaking as mentioned above has the option of being allowed depreciation on the written down value of such block of assets as are used for its business at rates specified in Appendix I to these rules.

However, such option must be exercised before the due date for furnishing return under section 139(1) for the assessment year relevant to the previous year in which it begins to generate power. It is further provided that any such option once exercised shall be final and shall apply to all subsequent assessment years.

- (ii) **Block of assets:** In the case of any block of assets, at such percentage of the written down value of the block, as may be prescribed by Rule 5(1).

Block of Assets: A “block of assets” is defined in section 2(11), as a group of assets falling within a class of assets comprising –

- (a) tangible assets, being buildings, machinery, plant or furniture;
- (b) intangible assets, being know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, not being goodwill of a business or profession, in respect of which the same percentage of depreciation is prescribed.

Know-how - In this context, 'know-how' means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil-well or other sources of mineral deposits (including searching for discovery or testing of deposits for the winning of access thereto).

(iii) Additional depreciation on Plant or Machinery acquired: In case of an assessee exercising the option of shifting out of the default tax regime provided under section 115BAC(1A) and paying tax as per the optional tax regime under the regular provisions of the Act, additional depreciation is allowed on any new machinery or plant (other than ships and aircraft) acquired and installed by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power at the rate of **20%** of the actual cost of such machinery or plant.

Asset put to use for less than 180 days: Additional depreciation @10% (i.e., 50% of additional depreciation of 20%) to be allowed, where the plant or machinery is put to use for less than 180 days during the previous year in which such asset is acquired.

Further, the balance additional depreciation@10% (i.e., remaining 50% of the additional depreciation of 20%) on new plant or machinery acquired and used for less than 180 days, which has not been allowed in the year of acquisition and installation of such plant or machinery, shall be allowed in the immediately succeeding previous year if the assessee exercises the option of shifting out of the default tax regime provided u/s 115BAC(1A) in the immediately succeeding previous year.

Plant and Machinery not qualifying for additional depreciation

Such additional depreciation will not be available in respect of:

- (i) any machinery or plant which, before its installation by the assessee, was used within or outside India by any other person; or
- (ii) any machinery or plant installed in office premises, residential accommodation, or in any guest house; or
- (iii) office appliances or road transport vehicles; or
- (iv) any machinery or plant, the whole or part of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and Gains of Business or Profession" of any one previous year.

Eligibility for grant of additional depreciation under section 32(1)(iia) in the case of an assessee engaged in printing or printing and publishing [Circular No. 15/2016, dated 19-5-2016]

An assessee, engaged in the business of manufacture or production of an article or thing, is eligible to claim additional depreciation under section 32(1)(iia) in addition to the normal depreciation under section 32(1).

The CBDT has, vide this Circular, clarified that the business of printing or printing and publishing amounts to manufacture or production of an article or thing and is, therefore, eligible for additional depreciation under section 32(1)(iia).

Additional depreciation would be allowed to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). It is not allowable when the assessee pays concessional rates of tax under the default tax regime u/s 115BAC.

(iv) Terminal depreciation: In case of a power concern as covered under clause (i) above, if any asset is sold, discarded, demolished or otherwise destroyed in the previous year (other than the previous year in which it is first brought into use) the depreciation amount will be the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, falls short of the written down value thereof. The depreciation will be available only if the deficiency is actually written off in the books of the assessee.

Meaning of certain term

Term	Meaning
Moneys payable	In respect of any building, machinery, plant or furniture includes — (a) any insurance, salvage or compensation moneys payable in respect thereof; (b) where the building, machinery, plant or furniture is sold, the price for which it is sold.

(4) Rates of depreciation – All assets have been divided into four main categories and rates of depreciation as prescribed by Rule 5(1) are given below:

PART A TANGIBLE ASSETS

I	Buildings	
Block 1.	Buildings which are used mainly for residential purposes except hotels and boarding houses	5%
Block 2.	Buildings which are not used mainly for residential purposes and not covered by Block (1) above and (3) below	10%
Block 3.	Buildings acquired on or after 1st September, 2002 for installing machinery and plant forming part of water supply project or water treatment system and which is put to use for the purpose of business of providing infrastructure facilities	40%
Block 4.	Purely temporary erections such as wooden structures	40%
II	Furniture and Fittings	
Block 1.	Furniture and fittings including electrical fittings ["Electrical fittings" include electrical wiring, switches, sockets, other fittings and fans, etc.]	10%
III	Plant & Machinery	
Block 1.	Motor cars other than those used in a business of running them on hire, acquired during the period from 23.8.2019 to 31.03.2020 and put to use on or before 31.03.2020	30%
Block 2.	Motor cars other than those used in a business of running them on hire, acquired or put to use on or after 1-4-1990 [Other than motor cars mentioned in Block 1 above]	15%
Block 3.	Motors buses, motor lorries, motor taxis used in a business of running them on hire, acquired during the period from 23.8.2019 to 31.03.2020 and put to use on or before 31.03.2020	45%
Block 4.	Motors buses, motor lorries, motor taxis used in the business of running them on hire [Other than mentioned in Block 3 above]	30%

Block 5.	Moulds used in rubber and plastic goods factories	30%
Block 6.	Aeroplanes, Aeroengines	40%
Block 7.	Specified air pollution control equipments, water pollution control equipments, solid waste control equipment and solid waste recycling and resource recovery systems	40%
Block 8.	Plant & Machinery used in semi-conductor industry covering all Integrated Circuits (ICs) (other than mentioned in Block 7 Above)	30%
Block 9.	Life-saving medical equipment	40%
Block 10.	Machinery and plant, acquired and installed on or after the 1st September, 2002 in a water supply project or a water treatment system and which is put to use for the purpose of business of providing infrastructure facility	40%
Block 11.	Containers made of glass or plastic used as re-fills	40%
Block 12	Energy Saving Devices (as specified)	40%
Block 13.	Renewable Energy Saving Devices (as specified) including the devices specified in (i) to (iii) below	40%
	(i) Electrically operated vehicles including battery powered or fuel-cell powered vehicles	40%
	(ii) Windmills and any specially designed devices which run on windmills installed on or after 1.4.2014	40%
	(iii) Any special devices including electric generators and pumps running on wind energy installed on or after 1.4.2014	40%
Block 14.	Windmills and any specially designed devices running on windmills installed on or before 31.3.2014 and any special devices including electric generators and pumps running on wind energy installed on or before 31.3.2014	15%
Block 15.	Computers including computer software	40%
Block 16.	Books (annual publications or other than annual publications) owned by assessee carrying on a profession	40%
Block 17.	Books owned by assessee carrying on business in running lending libraries	40%
Block 18.	Plant & machinery (General rate)	15%
IV	Ships	
Block 1.	Ocean-going ships	20%
Block 2.	Vessels ordinarily operating on inland waters not covered by Block (3) below	20%
Block 3.	Speed boats operating on inland water	20%
PART B INTANGIBLE ASSETS		
	Know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, not being goodwill of a business or profession	25%

Note: Students should refer to Income-tax Rules, 1962 for the detailed classification of assets under Rule 5(1) and the rates applicable thereto.

ILLUSTRATION 1

Mr. X, a proprietor engaged in manufacturing business, furnishes the following particulars:

	Particulars	₹
(1)	Opening balance of plant and machinery as on 1.4.2023 (i.e., WDV as on 31.3.2023 after reducing depreciation for P.Y. 2022-23)	30,00,000
(2)	New plant and machinery purchased and put to use on 8.06.2023	20,00,000
(3)	New plant and machinery acquired and put to use on 15.12.2023	8,00,000
(4)	Computer acquired and installed in the office premises on 2.1.2024	3,00,000

Compute the amount of depreciation and additional depreciation for the A.Y. 2024-25, if Mr. X has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). Assume that all the assets were purchased by way of account payee cheque.

SOLUTION

Computation of depreciation and additional depreciation for A.Y. 2024-25

Particulars	Plant & Machinery (15%)	Computer (40%)
Normal depreciation		
@15% on ₹ 50,00,000 [See Working Notes 1 & 2]	7,50,000	-
@7.5% (50% of 15%, since put to use for less than 180 days) on ₹ 8,00,000	60,000	-
@20% (50% of 40%, since put to use for less than 180 days) on ₹ 3,00,000	-	60,000
Additional Depreciation		
@20% on ₹ 20,00,000 (new plant and machinery put to use for more than 180 days)	4,00,000	-
@10% (50% of 20%, since put to use for less than 180 days) on ₹ 8,00,000	80,000	-
Total depreciation	12,90,000	60,000

Working Notes:**(1) Computation of written down value of Plant & Machinery**

Particulars	Plant & Machinery (₹)	Computer (₹)
Opening balance as on 1.4.2023	30,00,000	-
Add: Plant & Machinery purchased on 08.6.2023	20,00,000	-
Add: Plant & Machinery acquired on 15.12.2023	8,00,000	-
Computer acquired and installed in the office premises	-	3,00,000
Written down value as on 31.03.2024	58,00,000	3,00,000

(2) Composition of plant and machinery included in the WDV

Particulars	Plant & Machinery (₹)	Computer (₹)
Plant and machinery put to use for 180 days or more [₹ 30,00,000 (WDV) + ₹ 20,00,000 (purchased on 8.6.2023)]	50,00,000	-
Plant and machinery put to use for < 180 days	8,00,000	-
Computers put to use for < 180 days	-	3,00,000
	58,00,000	3,00,000

Notes:

- (1) Where an asset acquired during the previous year is put to use for less than 180 days in that previous year, the amount of deduction allowable as normal depreciation and additional depreciation would be restricted to 50% of amount computed in accordance with the prescribed percentage.

Therefore, normal depreciation on plant and machinery acquired and put to use on 15.12.2023 and computer acquired and installed on 02.01.2024, is restricted to 50% of 15% and 40%, respectively. The additional depreciation on the said plant and machinery is restricted to ₹ 80,000, being 10% (i.e., 50% of 20%) of ₹ 8 lakh.

Mr. X is eligible for additional depreciation since he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

- (2) As per third proviso to section 32(1)(ii), the balance additional depreciation of ₹ 80,000 being 50% of ₹ 1,60,000 (20% of ₹ 8,00,000) would be allowed as deduction in the A.Y.2025-26.
- (3) As per section 32(1)(ia), additional depreciation is allowable in the case of any new machinery or plant acquired and installed after 31.3.2005 by an assessee engaged, inter alia, in the business of manufacture or production of any article or thing, @20% of the actual cost of such machinery or plant.

However, additional depreciation shall not be allowed in respect of, inter alia, any machinery or plant installed in office premises, residential accommodation or in any guest house.

Accordingly, additional depreciation is not allowable on computer installed in the office premises.

(5) Actual Cost [Section 43(1)]

The expression “actual cost” means the actual cost of the asset to the assessee as reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority.

However, where an assessee incurs any expenditure for acquisition of any asset or part thereof in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic mode, exceeds ₹ 10,000, such expenditure shall not form part of actual cost of such asset [Second proviso to section 43(1)].

The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2020 dated 29.01.2020].

Actual cost in certain special situations [Explanations to section 43(1)]

(i) Asset used for business after it ceases to be used for scientific research: Where an asset is used for the purposes of business after it ceases to be used for scientific research related to that business, the actual cost to the assessee for depreciation purposes shall be the actual cost to the assessee as reduced by any deduction allowed under section 35(1)(iv) [Explanation 1].

(ii) Inventory converted into capital asset and used for business or profession: Where inventory is converted or treated as a capital asset and is used for the purpose of business or profession, the fair market value of such inventory as on the date of its conversion into capital asset determined in the prescribed manner, shall be the actual cost of such capital asset to the assessee [Explanation 1A].

(iii) Asset is acquired by way of gift or inheritance: Where an asset is acquired by way of gift or inheritance, its actual cost shall be the actual cost to the previous owner minus depreciation allowable to the assessee as if asset was the only asset in the relevant block of assets [Explanation 2].

Further, any expenditure incurred by the assessee such as expenditure on freight, installation etc. of such asset would also be includible in the actual cost.

(iv) Second hand asset: Where, before the date of its acquisition by the assessee, the asset was at any time used by any other person for the purposes of his business or profession, and the Assessing Officer is satisfied that the main purpose of the transfer of the asset directly or indirectly to the assessee was the reduction of liability of income-tax directly or indirectly to the assessee (by claiming depreciation with reference to an enhanced cost) the actual cost to the assessee shall be taken to be such an amount which the Assessing Officer may, with the previous approval of the Joint Commissioner, determine, having regard to all the circumstances of the case [Explanation 3].

(v) Re-acquisition of asset: Where any asset which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, is re-acquired by him, the actual cost to the assessee shall be —

(a) the actual cost when he first acquired the asset minus depreciation allowable to the assessee as if asset was the only asset in the relevant block of assets; or

(b) the actual price for which the asset is re-acquired by him

whichever is less [Explanation 4].

(vi) Acquisition of asset previously owned by any person to whom such asset is given on lease, hire or otherwise: Where before the date of acquisition by the assessee say, Mr. A, the assets were at any time used by any other person, say Mr. B, for the purposes of his business or profession and depreciation allowance has been claimed in respect of such assets in the case of Mr. B and such person acquires on lease, hire or otherwise, assets from Mr. A, then, the actual cost of the transferred assets, in the case of Mr. A, shall be the same as the written down value of the said assets at the time of transfer thereof by Mr. B [Explanation 4A].

Example: We can explain the above as follows—

A person (say "A") owns an asset and uses it for the purposes of his business or profession. A has claimed depreciation in respect of such asset. The said asset is transferred by A to another person (say "B"). A then acquires the same asset back from B on lease, hire or otherwise. B being the new owner will be entitled to depreciation. In the above situation, the cost of acquisition of the transferred assets in the hands of B shall be the same as the written down value of the said assets at the time of transfer.

Explanation 4A overrides Explanation 3

Explanation 3 to section 43(1) deals with a situation where a transfer of any asset is made with the main purpose of reduction of tax liability (by claiming depreciation on enhanced cost), and the Assessing Officer, having satisfied himself about such purpose of transfer with the prior approval of the joint commissioner, may determine the actual cost having regard to all the circumstances of the case.

In the Explanation 4A, a non-obstante clause has been included to the effect that Explanation 4A will have an overriding effect over Explanation 3. The result of this is that there is no necessity of finding out whether the main purpose of the transaction is reduction of tax liability. Explanation 4A is activated in every situation described above without inquiring about the main purpose.

(vii) Building previously the property of the assessee: Where a building which was previously the property of the assessee is brought into use for the purposes of the business or profession, its actual cost to the assessee shall be the actual cost of the building to the assessee, as reduced by an amount equal to the depreciation calculated at the rates in force on that date that would have been allowable had the building been used for the purposes of the business or profession since the date of its acquisition by the assessee [Explanation 5].

ILLUSTRATION 2

A car purchased by Dr. Soman on 10.08.2020 for ₹ 5,25,000 for personal use is brought into professional use on 1.07.2023 by him, when its market value was ₹ 2,50,000.

Compute the actual cost of the car and the amount of depreciation for the A.Y. 2024-25 assuming the rate of depreciation to be 15%.

SOLUTION

As per section 43(1), the expression "actual cost" would mean the actual cost of asset to the assessee.

The purchase price of ₹ 5,25,000 is, therefore, the actual cost of the car to Dr. Soman. Market value (i.e. ₹ 2,50,000) on the date when the asset is brought into professional use is not relevant.

Therefore, amount of depreciation on car as per section 32 for the A.Y.2024-25 would be ₹ 78,750, being ₹ 5,25,000 x 15%.

Note: Explanation 5 to section 43(1) providing for reduction of notional depreciation from the date of acquisition of asset for personal use to determine actual cost of the asset is applicable only in case of building which is initially acquired for personal use and later brought into professional use. It is not applicable in respect of other assets.

(viii) Capitalization of interest paid or payable in connection with acquisition of an asset: Certain taxpayers have, with a view to obtain more tax benefits and reduce the tax outflow, resorted to the method of capitalising interest paid or payable in connection with acquisition of an asset relating to the period after such asset is first put to use.

This capitalisation implies inclusion of such interest in the 'Actual Cost' of the asset for the purposes of claiming depreciation, investment allowance etc. under the Income-tax Act, 1961. This was never the legislative intent nor was it in accordance with recognised accounting practices. Therefore, with a view to counteracting tax avoidance through this method and placing the matter beyond doubt, Explanation 8 to section 43(1) provides that any amount paid or payable as interest in connection with the acquisition of an asset and relating to period after asset is first put to use shall not be included and shall be deemed to have never been included in the actual cost of the asset [Explanation 8].

(ix) Amount of duty of excise or additional duty leviable shall be reduced if credit is claimed: Where an asset is or has been acquired by an assessee, the actual cost of asset shall be reduced by the amount of duty of excise or the additional duty leviable under section 3 of the Customs Tariff Act, 1975 in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1944 [Explanation 9].

(x) Subsidy or grant or reimbursement: Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relating to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee.

However, where such subsidy or grant or reimbursement is of such nature that it cannot be directly relating to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee [Explanation 10].

(xi) Asset is acquired outside India by an assessee, being a nonresident and such asset is brought by him to India: Where an asset is acquired outside India by an assessee, being a non-resident and such asset is brought by him to India and used for the purposes of his business or profession, the actual cost of asset to the assessee shall be the actual cost of the asset to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date of its acquisition by the assessee [Explanation 11].

(xii) Capital asset on which deduction is allowable under section 35AD: Explanation 13 to section 43(1) provides that the actual cost of any capital asset, on which deduction has been allowed or is allowable to the assessee under section 35AD, shall be Nil.

This would be applicable in the case of transfer of asset by the assessee where -

- (1) the assessee himself has claimed deduction under section 35AD; or
- (2) the previous owner has claimed deduction under section 35AD.

This would be applicable where the capital asset is acquired by the assessee by way of -

- (a) gift, will or an irrevocable trust;
- (b) any distribution on liquidation of the company;
- (c) any distribution of capital assets on total or partial partition of a HUF;
- (d) any transfer of a capital asset by a holding company to its 100% subsidiary company, being an Indian company;
- (e) any transfer of a capital asset by a subsidiary company to its 100% holding company, being an Indian company;
- (f) any transfer of a capital asset by the amalgamating company to an amalgamated company in a scheme of amalgamation, if the amalgamated company is an Indian company;
- (g) any transfer of a capital asset by the demerged company to the resulting company in a scheme of demerger, if the resulting company is an Indian company;
- (h) any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to a company in the course of demutualization or corporatisation of a recognized stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company (fulfilling the conditions specified);
- (i) any transfer of a capital asset or intangible asset by a sole proprietary concern to a company, where the sole proprietary concern is succeeded by a company (fulfilling the conditions specified).
- (j) any transfer of a capital asset or intangible asset by a private company or unlisted public company to an LLP as a result of conversion of the such company into LLP (fulfilling the conditions prescribed).

However, where an asset, in respect of which deduction is claimed and allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of section 35AD(7B) (on account of asset, being used for a purpose other than specified business under section 35AD), the actual cost of the asset to the assessee shall be actual cost to assessee **as reduced** by the amount of depreciation allowable had the asset been used for the purpose of business, calculated at the rate in force, since the date of its acquisition [Proviso to Explanation 13 to section 43(1)].

(6) Written down value [Section 43(6)]

- (i) **Assets acquired by the assessee during the previous year:** In the case of assets acquired by the assessee during the previous year, the written down value means the actual cost to the assessee.
- (ii) **Assets acquired before the previous year:** In the case of assets acquired before the previous year, the written down value would be the actual cost to the assessee less the aggregate of all deductions actually allowed in respect of depreciation.

For this purpose, any depreciation carried forward is deemed to be depreciation actually allowed [Section 43(6)(c)(i) read with Explanation 3].

- (iii) **In case of any block of assets:** The written down value of any block of assets shall be worked out as under in accordance with section 43(6)(c):

(1)	W.D.V. of the block of assets in immediately preceding previous year	xxx
(2)	Less: Depreciation actually allowed in respect of that block of assets in said preceding previous year	xxx
	Opening balance as on 1st April of the current P.Y. Increased by	xxx
(3)	Actual cost of assets acquired during the previous year, not being on account of acquisition of goodwill of a business or profession	xxx
(4)	Total (1) - (2) + (3)	xxx
	Reduced by	
(5)	Money receivable in respect of any asset falling within the block which is sold, discarded, demolished or destroyed during that previous year together with scrap value. However, such amount cannot exceed the amount in (4).	xxx
(6)	In case of slump sale, actual cost of the asset (-) amount of depreciation that would have been allowable to the assessee for any assessment year as if the asset was the only asset in the block. However, such amount of reduction cannot exceed the WDV.	xxx
(7)	W.D.V at the end of the year (on which depreciation is allowable) [(4) - (5) - (6)]	xxx
(8)	Depreciation at the prescribed rate (Rate of Depreciation × WDV arrived at in (7) above)	xxx

(iv) Depreciation provided in the books of account deemed to be depreciation actually allowed:

Section 32(1)(ii) provides that depreciation shall be allowed at the prescribed percentage on the written down value (WDV) of any block of assets. Section 43(6)(b) provides that written down value in the case of assets acquired before the previous year means the actual cost to the assessee less all depreciation actually allowed to him under the Income-tax Act, 1961.

Persons who were exempt from tax were not required to compute their income under the head "Profits and gains of business or profession". However, when the exemption is withdrawn subsequently, such persons became liable to income-tax and hence, were required to compute their income for income-tax purposes. In this regard, a question arises as to the basis on which depreciation is to be allowed under the Income-tax Act, 1961 in respect of assets acquired during the years when the person was exempt from tax.

Explanation 6 to section 43(6) provides that,-

- the actual cost of an asset has to be adjusted by the amount attributable to the revaluation of such asset, if any, in the books of account;
- the total amount of depreciation on such asset provided in the books of account of the assessee in respect of such previous year or years preceding the previous year relevant to the assessment year under consideration shall be deemed to be the depreciation actually allowed under the Income-tax Act, 1961 for the purposes of section 43(6);
- the depreciation actually allowed as above has to be adjusted by the amount of depreciation attributable to such revaluation.

(v) Composite Income: Explanation 7 provides that in cases of 'composite income', for the purpose of computing written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire composite income of the assessee is chargeable under the head "Profits and Gains of business or profession". The depreciation so computed shall be

deemed to have been “actually allowed” to the assessee.

Rule 8 prescribes the taxability of income from the manufacture of tea. Under the said rule, income derived from the sale of tea grown and manufactured by seller shall be computed as if it were income derived from business and 40% of such income shall be deemed to be income liable to tax.

Example: If the turnover is, say, ₹ 20 lakh, the depreciation ₹ 1 lakh and other expenses ₹ 4 lakh, then the income would be ₹ 15 lakh. Business income would be ₹ 6 lakh (being 40% of ₹ 15 lakh). In this case, ₹ 1 lakh, being the amount of depreciation would be deemed to have been actually allowed.

Accordingly, the WDV is required to be computed by deducting the full depreciation attributable to composite income i.e., ₹ 1 lakh.

(vi) Cases where the Written Down Value reduced to nil: The written down value of any block of assets, may be reduced to nil for any of the following reasons:

- (a) The moneys receivable by the assessee in regard to the assets sold or otherwise transferred during the previous year together with the amount of scrap value may exceed the written down value at the beginning of the year as increased by the actual cost of any new asset acquired, or
- (b) All the assets in the relevant block may be transferred during the year.

(7) Carry forward and set off of depreciation [Section 32(2)]

Section 32(2) provides for carry forward of unabsorbed depreciation. Where, in any previous year the profits or gains chargeable are not sufficient to give full effect to the depreciation allowance, the unabsorbed depreciation shall be added to the depreciation allowance for the following previous year and shall be deemed to be part of that allowance. If no depreciation allowance is available for that previous year, the unabsorbed depreciation of the earlier previous year shall become the depreciation allowance of that year. The effect of this provision is that the unabsorbed depreciation shall be carried forward indefinitely till it is fully set off.

In a case where the assessee is paying tax under default tax regime under section 115BAC and there is a depreciation allowance in respect of a block of asset from an earlier assessment year attributable to additional depreciation u/s 32(1)(iia), which has not been given full effect to prior to A.Y. 2024-25 and which is not allowed to be set-off in the A.Y.2024-25, corresponding adjustment shall be made to the WDV of such block of assets as on 1.4.2023 in the prescribed manner i.e., the WDV as on 1.4.2023 will be increased by the unabsorbed additional depreciation not allowed to be set-off.

Example: Let us consider the case of Mr. X, who carries on business of manufacturing of steel. He has unabsorbed depreciation as on 1.4.2023, which includes amount attributable to additional depreciation u/s 32(1)(iia) of P.Y.2022-23 or any earlier previous year in respect of block of plant and machinery. If he is paying tax under default tax regime under section 115BAC for P.Y.2023-24 relevant to A.Y.2024-25, the amount so attributable to additional depreciation of earlier years remaining unabsorbed as on 1.4.2023 would not be eligible for set-off against current year income. Accordingly, the WDV of the block as on 1.4.2023 has to be increased by the said amount not allowed to be set-off.

Order of set-off

In the order of set-off of losses under different heads of income, effect shall first be given to business losses and then to unabsorbed depreciation.

The provisions in effect are as follows:

- Since the unabsorbed depreciation forms part of the current year's depreciation, it can be set off against any other head of income except "Salaries".
- The unabsorbed depreciation can be carried forward for indefinite number of previous years.
- Set off will be allowed even if the same business to which it relates is no longer in existence in the year in which the set off takes place.

Current depreciation to be deducted first - The Supreme Court, in CIT v. Mother India Refrigeration (P.) Ltd. [1985] 23 Taxman 8, has categorically held that current depreciation must be deducted first before deducting the unabsorbed carried forward business losses of the earlier years in giving set off while computing the total income of any particular year.

**ILLUSTRATION 3**

A newly qualified Chartered Accountant Mr. Dhaval, commenced practice and has acquired the following assets in his office during F.Y. 2023-24 at the cost shown against each item. Calculate the amount of depreciation that can be claimed from his professional income for A.Y.2024-25. Assume that all the assets were purchased by way of account payee cheque.

Sl. No.	Description	Date of acquisition	Date when put to use	Amount`
1.	Computer including computer software	27 Sept., 23	1 Oct., 23	35,000
2.	Computer UPS	2 Oct., 23	8 Oct., 23	8,500
3.	Computer printer	1 Oct., 23	1 Oct., 23	12,500
4.	Books (other than annual publications are of ` 12,000)	1 Apr., 23	1 Apr., 23	13,000
5.	Office furniture (Acquired from a practicing C.A.)	1 Apr., 23	1 Apr., 23	3,00,000
6.	Laptop	26 Sep., 23	8 Oct., 23	43,000

SOLUTION :**Computation of depreciation allowable for A.Y.2024-25**

Asset	Rate	Depreciation (₹)
Block 1 Furniture [See working note below]	10%	30,000
Block 2 Plant (Computer including computer software, Computer UPS, Laptop, Printers and Books) [See working note below]	40%	34,500
Total depreciation allowable		64,500

Working Note:**Computation of depreciation**

Block of Assets	₹
Block 1: Furniture - [Rate of depreciation - 10%]	
Put to use for more than 180 days [₹ 3,00,000@10%]	30,000
Block 2: Plant [Rate of depreciation- 40%]	
(a) Computer including computer software (put to use for more than 180 days) [₹ 35,000 @ 40%]	14,000
(b) Computer UPS (put to use for less than 180 days) [₹ 8,500 @20%] [See note below]	1,700
(c) Computer Printer (put to use for more than 180 days) [₹ 12,500 @40%]	5,000
(d) Laptop (put to use for less than 180 days) [₹ 43,000 @20%] [See note below]	8,600
(e) Books (being annual publications or other than annual publications) (Put to use for more than 180 days) [₹ 13,000 @40%]	5,200
	34,500

Note - Where an asset is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than 180 days, the deduction on account of depreciation would be restricted to 50% of the prescribed rate. In this case, since Mr. Dhaval commenced his practice in the P.Y. 2023-24 and acquired the assets during the same year, the restriction of depreciation to 50% of the prescribed rate would apply to those assets which have been put to use for less than 180 days in that year, namely, laptop and computer UPS.

ILLUSTRATION 4

Mr. Gamma, a proprietor started a business of manufacture of tyres and tubes for motor vehicles on 1.1.2023. The manufacturing unit was set up on 1.5.2023. He commenced his manufacturing operations on 1.6.2023. The total cost of the plant and machinery installed in the unit is ₹ 120 crore. The said plant and machinery included second hand plant and machinery bought for ₹ 20 crore and new plant and machinery for scientific research relating to the business of the assessee acquired at a cost of ₹ 15 crore.

Compute the amount of depreciation allowable under section 32 of the Income-tax Act, 1961 in respect of the assessment year 2024-25. Assume that all the assets were purchased by way of account payee cheque and Mr. Gamma has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION**Computation of depreciation allowable for the A.Y. 2024-25 in the hands of Mr. Gamma**

Particulars	₹ in crore	
Total cost of plant and machinery	120.00	
Less: Used for Scientific Research (Note 1)	15.00	
	105.00	
Normal Depreciation at 15% on ₹ 105 crore		15.75

Particulars	₹ in crore	
Additional Depreciation:		
Cost of plant and machinery	120.00	
Less: Second-hand plant and machinery (Note 2)	20.00	
Plant and machinery used for scientific research, the whole of the actual cost of which is allowable as deduction u/s 35(1)(iv) read with section 35(2)(ia) (Note 2)	15.00	
	85.00	
Additional Depreciation at 20%		17.00
Depreciation allowable for A.Y.2024-25		32.75

Notes:

- As per section 35(2)(iv), no depreciation shall be allowed in respect of plant and machinery purchased for scientific research relating to assessee's business, since deduction is allowable under section 35 in respect of such capital expenditure.
- Mr. Gamma is entitled to additional depreciation since he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). As per section 32(1)(ia), additional depreciation is allowable in the case of any new machinery or plant acquired and installed after 31.3.2005 by an assessee engaged in, inter alia, the business of manufacture or production of any article or thing, at the rate of 20% of the actual cost of such machinery or plant.

However, additional depreciation shall not be allowed in respect of, inter alia, –

- any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;
- any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profit and gains of business or profession" of any one previous year.

In view of the above provisions, additional depreciation cannot be claimed in respect of -

- Second hand plant and machinery;
- New plant and machinery purchased for scientific research relating to assessee's business in respect of which the whole of the capital expenditure can be claimed as deduction under section 35(1)(iv) read with section 35(2)(ia) & (iv).

(8) Building, machinery, plant and furniture not exclusively used for business purpose [Section 38(2)]

Where any building, plant and machinery, furniture is not exclusively used for the purposes of business or profession, the deduction on account of expenses on account of current repairs to the premises, insurance premium of the premises, current repairs and insurance premium of machinery, plant and furniture and depreciation in respect of these assets shall be restricted to a fair proportionate part thereof, which the Assessing Officer may determine having regard to the user of such asset for the purposes of the business or profession.

(9) Balancing Charge

Section 41(2) provides for the manner of calculation of the amount which shall be chargeable to income-tax as income of the business of the previous year in which the monies payable for the building, machinery, plant or furniture on which depreciation has been claimed under section 32(1)(i), i.e. in the case of power undertakings, is sold, discarded, demolished or destroyed. The balancing charge will be the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, exceeds the written down value.

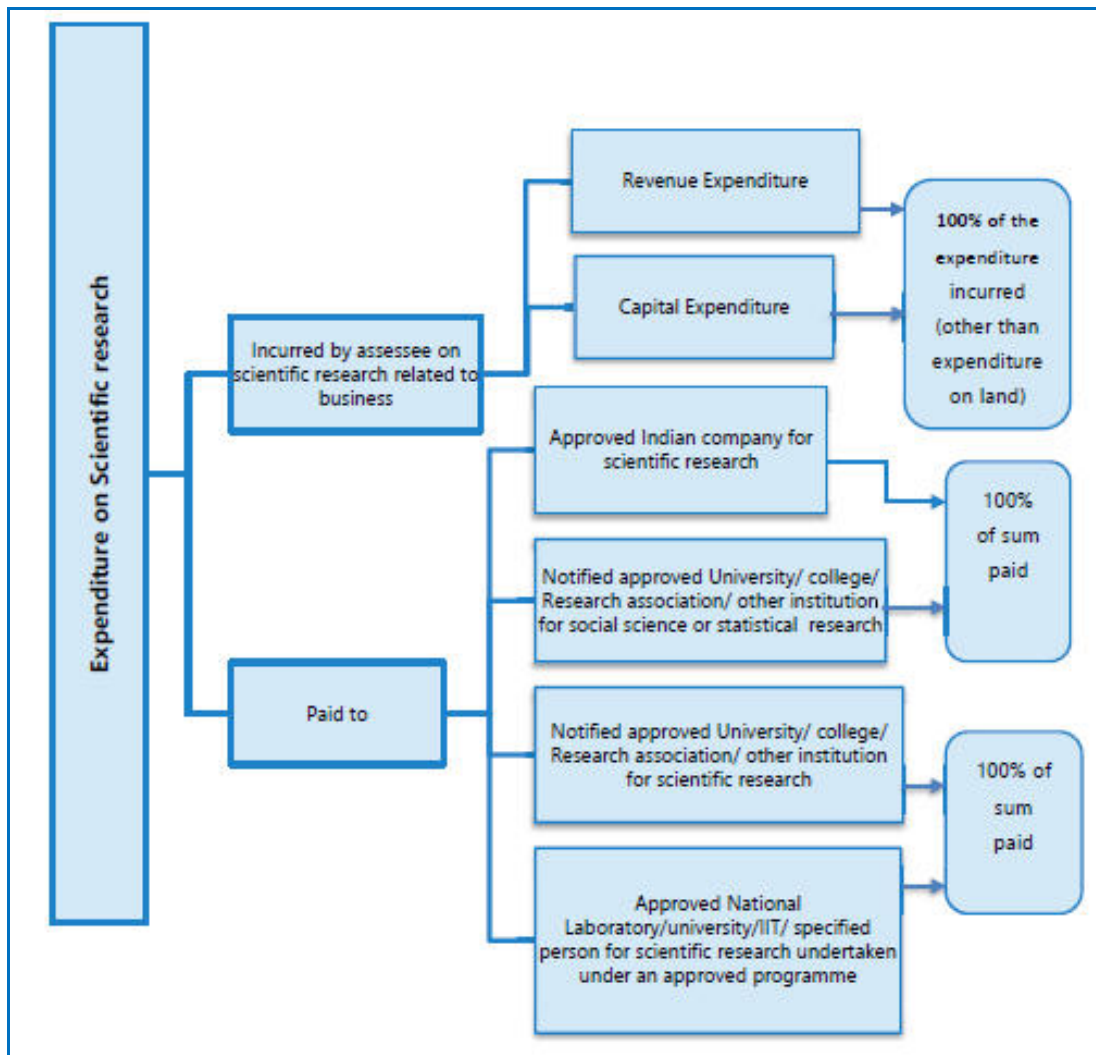
However, the amount of balancing charge should not exceed the difference between the actual cost and the WDV. The tax shall be levied in the year in which the moneys payable become due.

The Explanation below section 41(2) makes it clear that where the moneys payable in respect of the building, machinery, plant or furniture referred to in section 41(2) becomes due in a previous year in which the business, for the purpose of which the building, machinery, plant or furniture was being used, is no longer in existence, these provisions will apply as if the business is in existence in that previous year.

(iv) Expenditure on Scientific Research [Section 35]

This section allows a deduction in respect of any expenditure on scientific research (activities for extension of knowledge in the fields of natural or applied science, including agriculture, animal husbandry or fisheries) incurred in relation to the business of the assessee or contribution by the assessee for scientific research or social science or statistical research. However, it does include expenditure incurred in acquisition of rights in or arising out of scientific research.

The deduction allowable under this section is depicted in the diagram below –



(I) Incurred by assessee:

- (i) Revenue Expenditure:** Any revenue expenditure incurred by the assessee on scientific research **related to his business** would be allowed as deduction in the year in which it was incurred. Expenditure incurred within 3 years immediately preceding the commencement of the business on payment of salary to research personnel engaged in scientific research related to his business carried on by the taxpayer or on purchase of material inputs for such scientific research will be allowed as deduction in the year in which the business is commenced.

The deduction will be limited to the amount certified by the prescribed authority [Section 35(1)(i)].

- (ii) Capital Expenditure:** Any expenditure of a capital nature on scientific research related to the business carried on by the assessee would be deductible in full in the previous year in which it is incurred [Section 35(1)(iv)].

(a) Capital expenditure prior to commencement of business

The Explanation 1 to section 35(2)(ia) specifically provides that where any capital expenditure has been incurred prior to the commencement of the business, the aggregate of the expenditure so incurred within the three years immediately preceding the commencement of the business shall be deemed to have been incurred in the previous year in which the business is commenced and will rank for deduction as expenditure for scientific research incurred during the previous year.

Expenditure on land disallowed

No deduction will be allowed in respect of capital expenditure incurred on the acquisition of any land whether the land is acquired as such or as part of any property.

(b) Carry forward of unabsorbed capital expenditure on scientific research

Capital expenditure incurred on scientific research which cannot be absorbed by the business profits of the relevant previous year can be carried forward to the immediately succeeding previous year and shall be treated as the allowance for that year. In effect, this means that there is no time bar on the period of carry forward. It shall be accordingly allowable for that previous year against any head of income other than salaries [Section 35(4)].

(c) Depreciation not admissible

Section 35(2)(iv) clarifies that no depreciation will be admissible on any capital asset represented by expenditure which has been allowed as a deduction under section 35 whether in the year in which deduction under section 35 was allowed or in any other previous year.

(d) Sale of asset representing expenditure of capital nature on scientific research

Section 41, inter alia, seeks to tax the profits arising on the sale of an asset representing expenditure of a capital nature on scientific research.

Where the asset representing expenditure of a capital nature on scientific research is sold without having been used for other purposes, the provisions of section 41(3) would be attracted. If the proceeds of sale together with the total amount of the deductions made under section 35(1)(iv) exceed the amount of capital expenditure, the excess or the amount of deduction so made, whichever is less, will be charged to tax as income of the business of the previous year in which the sale took place.

In simple words, since amount of deduction under section 35(1)(iv) is equal to the amount of expenditure, lower of amount of sale proceeds or deduction allowed under section 35(1)(iv) will be the charged to tax as income of the business in the previous year in which the asset is sold.

Deduction under section 35(1)(i) and 35(1)(iv) read with section 35(2) would be available to an assessee under both regimes, subject to fulfillment of stipulated conditions.

(II) Amount contributed or paid to:

(i) Notified approved research association, university, college or other institution: A sum equal to any amount paid to –

- a research association which has as its object the undertaking of scientific research or
- to a university, college or other institution to be used for scientific research

provided that such university, college, institution or association is approved for this purpose and notified by the Central Government. [Section 35(1)(ii)]

Deduction u/s 35(1)(ii) would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

(ii) Approved Indian company for scientific research: A sum equal to any amount paid to a company to be used by it for scientific research [Section 35(1)(iia)]

However, such deduction would be available only if :

- the company is registered in India and
- has as its main object the scientific research and development.

Further, it should be approved by the prescribed authority and should fulfill the other prescribed conditions.

Deduction u/s 35(1)(iia) would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

(iii) Approved notified research association, university, college or other institution: A sum equal to any amount paid to

- a research association which has as its object the undertaking of research in social science or statistical research or
- to a university, college or other institution to be used for research in a social science or statistical research

provided that they are approved for this purpose and notified by the Central Government [Section 35(1)(iii)].

Further, it has been clarified that the deduction to which an assessee (i.e. donor) is entitled on account of payment of any sum to a research association or university or college or other institution for scientific research or research in a social science or statistical research or to a company for scientific research, shall not be denied merely on the ground that subsequent to payment of such sum by the assessee, the approval granted to any of the aforesaid entities is withdrawn.

Deduction u/s 35(1)(iii) would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

(iv) Sum paid to National Laboratory, etc. [Section 35(2AA)]: Section 35(2AA) provides that any sum paid by an assessee to a National Laboratory or University or Indian Institute of Technology or a specified person for carrying out approved programmes of scientific research approved by the prescribed authority will be eligible for deduction of the amount so paid.

No other deduction under the Act: No contribution which qualifies for deduction under this clause will be entitled to deduction under any other provision of the Act.

It has been clarified that the deduction to which an assessee is entitled on account of payment of any sum by him to an approved National Laboratory, University, Indian Institute of Technology or a specified person for the approved programme shall not be denied to the donor-assessee merely on the ground that after payment of such sum by him, the approval granted to any of the aforesaid donee-entities or the programme has been withdrawn.

Term	Meaning
Specified person	A person who is approved by the prescribed authority

Deduction u/s 35(2AA) would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

ILLUSTRATION 5

Mr. A, furnishes the following particulars for the P.Y.2023-24. Compute the deduction allowable under section 35 for A.Y.2024-25, while computing his income under the head "Profits and gains of business or profession", if.

- he is paying tax under default tax regime under section 115BAC
- he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)

	Particulars	₹
1.	Amount paid to notified approved Indian Institute of Science, Bangalore, for scientific research	1,00,000
2.	Amount paid to IIT, Delhi for an approved scientific research programme	2,50,000
3.	Amount paid to X Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority	4,00,000
4.	Expenditure incurred on in-house scientific research and development facility as approved by the prescribed authority related to his business	
	(a) Revenue expenditure on scientific research	3,00,000
	(b) Capital expenditure (including cost of acquisition of land ₹ 5,00,000) on scientific research	7,50,000

SOLUTION

- If Mr. A is paying tax under default tax regime under section 115BAC

Computation of deduction under section 35 for the A.Y.2024-25

Particulars	₹	Section	Allowability	Amount of deduction (₹)
Payment for scientific research				
Indian Institute of Science, Bangalore	1,00,000	35(1)(ii)	Not allowable under default tax regime	Nil
IIT, Delhi	2,50,000	35(2AA)		Nil
X Ltd.	4,00,000	35(1)(iia)		Nil

Particulars	₹	Section	Allowability	Amount of deduction (₹)
Expenditure incurred on in-house research and development facility				
Revenue expenditure	3,00,000	35(1)(i)	Allowable under default tax regime	3,00,000
Capital expenditure (excluding cost of acquisition of land ₹ 5,00,000)	2,50,000	35(1)(iv) read with 35(2)(ia)		2,50,000
Deduction allowable under section 35				5,50,000

(ii) If Mr. A has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)

Computation of deduction under section 35 for the A.Y.2024-25

Particulars	₹	Section	% of deduction	Amount of deduction (₹)
Payment for scientific research				
Indian Institute of Science	1,00,000	35(1)(ii)	100%	1,00,000
IIT, Delhi	2,50,000	35(2AA)	100%	2,50,000
X Ltd.	4,00,000	35(1)(iia)	100%	4,00,000
Expenditure incurred on in-house research and development facility				
Revenue expenditure	3,00,000	35(1)(i)	100%	3,00,000
Capital expenditure (excluding cost of acquisition of land ₹ 5,00,000)	2,50,000	35(1)(iv) read with 35(2)(ia)	100%	2,50,000
Deduction allowable under section 35				13,00,000

(v) **“Investment-linked tax incentives” for specified businesses [Section 35AD]**

(1) List of specified businesses: Although there are a plethora of tax incentives available under the Income-tax Act, 1961 they do not fulfill the intended purpose of creating infrastructure since these incentives are linked to profits and consequently, have the effect of diverting profits from the taxable sector to the tax-free sector.

With the specific objective of creating rural infrastructure and environment friendly alternate means for transportation of bulk goods, investment-linked tax incentives have been introduced for specified businesses, namely –

- setting-up and operating ‘cold chain’ facilities for specified products;
- setting-up and operating warehousing facilities for storing agricultural produce;
- laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;
- building and operating a hotel of two-star or above category, anywhere in India;
- building and operating a hospital, anywhere in India, with at least 100 beds for patients;

- developing and building a housing project under a notified scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government.
- developing and building a housing project under a notified scheme for affordable housing framed by the Central Government or State Government;
- production of fertilizer in India;
- setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;
- bee-keeping and production of honey and beeswax;
- setting up and operating a warehousing facility for storage of sugar;
- laying and operating a slurry pipeline for the transportation of iron ore;
- setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines;
- developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility.

(2) Deduction for Capital Expenditure: 100% of the capital expenditure incurred during the previous year, wholly and exclusively for the above businesses would be allowed as deduction from the business income to the assessee opting for deduction under section 35AD.

However, expenditure incurred on acquisition of any **land, goodwill or financial instrument** would not be eligible for deduction.

Further, any expenditure in respect of which payment or aggregate of payment made to a person of an amount exceeding **₹ 10,000 in a day** otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic mode would not be eligible for deduction. The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [Notification No. 8/2020 dated 29.01.2020]

In case of an individual/HUF/AoP/BoI carrying on specified business, deduction u/s 35AD would be available only if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A). If such assessee is paying concessional rates of tax under the default tax regime u/s 115BAC, deduction u/s 35AD would not be available.

A company would not be eligible for deduction under section 35AD, if it opts for the special provisions of section 115BAA/115BAB.

(3) Expenditure prior to commencement of operation: Further, the expenditure incurred, wholly and exclusively, for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business.

The amount incurred prior to commencement should be capitalized in the books of account of the assessee on the date of commencement of its operations.

(4) Conditions to be fulfilled: For claiming deduction under section 35AD, the specified business should fulfill the following conditions –

- (i) it should not be set up by splitting up, or the reconstruction, of a business already in existence;

- (ii) it should not be set up by the transfer to the specified business of machinery or plant previously used for any purpose;

In order to satisfy this condition, the total value of the plant or machinery so transferred should not exceed 20% of the value of the total plant or machinery used in such specified business.

For the purpose of this condition, machinery or plant would not be regarded as previously used if it had been used outside India by any person other than the assessee provided the following conditions are satisfied:

- (a) such plant or machinery was not, at any time prior to the date of its installation by the assessee, used in India;
- (b) the plant or machinery was imported into India from a foreign Country; and
- (c) no deduction on account of depreciation in respect of such plant or machinery has been allowed to any person at any time prior to the date of installation by the assessee.

- (5) No deduction under section 10AA or Chapter VI-A under the heading "C - Deductions in respect of certain incomes":** Where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, no deduction under the provisions of Chapter VI-A under the heading "C - Deductions in respect of certain incomes" or section 10AA is permissible in relation to such specified business for the same or any other assessment year.

Correspondingly, section 80A has been amended to provide that where a deduction under any provision of this Chapter under the heading "C - Deductions in respect of certain incomes" is claimed and allowed in respect of the profits of such specified business for any assessment year, no deduction under section 35AD is permissible in relation to such specified business for the same or any other assessment year.

In short, once the assessee has claimed the benefit of deduction under section 35AD for a particular year in respect of a specified business, he cannot claim benefit under Chapter VI-A under the heading "C -

Deductions in respect of certain incomes" or section 10AA **for the same or any other year and vice versa.**

- (6) No deduction allowable under the Act in respect of expenditure for which deduction allowed under this section:** The assessee cannot claim deduction in respect of such expenditure incurred for specified business under any other provision of the Income-tax Act, 1961 in the current year or under this section for any other year, if the deduction has been claimed or opted by him and allowed to him under section 35AD.

- (7) Date of Commencement of specified businesses:**

S. No.	Specified business	Date of commencement of operations
1.	Laying and operating a cross country natural gas pipeline network for distribution, including storage facilities being an integral part of such network	on or after 1 st April, 2007
2.	(a) building and operating anywhere in India, a hotel of two-star or above category as specified by the Central Government (b) building and operating a hospital with at least 100 beds for patients (c) notified scheme for slum redevelopment or rehabilitation housing projects	on or after 1 st April, 2010
3.	(a) notified scheme for affordable housing projects and	on or after 1 st April,

S. No.	Specified business	Date of commencement of operations
	(b) production of fertilizer in a new plant or in a newly installed capacity in an existing plant	2011
4.	(a) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962, (b) bee-keeping and production of honey and beeswax and (c) setting up and operating a warehousing facility for storage of sugar	on or after 1 st April, 2012
5.	(a) laying and operating a slurry pipeline for the transportation of iron ore or (b) setting up and operating a semi-conductor wafer fabrication manufacturing unit	on or after 1 st April, 2014
6.	developing or operating and maintaining or developing, operating and maintaining, any infrastructure facility	on or after 1 st April, 2017
7.	In any other case, namely, setting and operating - (a) "cold-chain" facilities for specified products or (b) warehousing facilities for storing agricultural produce	on or after 1 st April, 2009

(8) Meaning of certain terms

Term	Meaning
Cold chain facility	A chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.
Associated person	In relation to the assessee means a person— (i) who participates directly or indirectly or through one or more intermediaries in the management or control or capital of the assessee; (ii) who holds, directly or indirectly, shares carrying not less than 26% of the voting power in the capital of the assessee; (iii) who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or (iv) who guarantees not less than 10% of the total borrowings of the assessee.
Infrastructure facility	(i) A road including toll road, a bridge or a rail system. (ii) A highway project including housing or other activities being an integral part of the highway project. (iii) A water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system. (iv) A port, airport, inland waterway, inland port or navigational channel in the sea.

(9) Set-off or carry forward and set-off of loss from specified business:

The loss of an assessee claiming deduction u/s 35AD in respect of a specified business can be set-off against the profit of another specified business u/s 73A, irrespective of whether the latter is eligible for deduction u/s 35AD.

Example: A assessee, exercising the option of shifting out of the default tax regime provided under section 115BAC(1A), can therefore, set-off the losses of a hospital or hotel which begins to operate after 1st April, 2010 and which is eligible for deduction section 35AD, against the profits of the existing business of operating a hospital (with atleast 100 beds for patients) or a hotel (of twostar or above category), even if the latter is not eligible for deduction under section 35AD.

ILLUSTRATION 6

Mr. A commenced operations of the businesses of setting up a warehousing facility for storage of food grains, sugar and edible oil on 1.4.2023. He incurred capital expenditure of ₹ 80 lakh, ₹ 60 lakh and ₹ 50 lakh, respectively, on purchase of land and building during the period January, 2023 to March, 2023 exclusively for the above businesses, and capitalized the same in its books of account as on 1st April, 2023. The cost of land included in the above figures is ₹ 50 lakh, ₹ 40 lakh and ₹ 30 lakh, respectively. During the P.Y. 2023-24, he incurred capital expenditure of ₹ 20 lakh, ₹ 15 lakh & ₹ 10 lakh, respectively, for extension/reconstruction of the building purchased and used exclusively for the above businesses.

Compute the income under the head "Profits and gains of business or profession" for the A.Y.2024-25 and the loss to be carried forward, assuming that Mr. A is exercising the option of shifting out of the default tax regime provided under section 115BAC(1A) and has fulfilled all the conditions specified under section 35AD and wants to claim deduction under section 35AD and has not claimed any deduction under Chapter VI-A under the heading "C – Deductions in respect of certain incomes".

The profits from the business of setting up a warehousing facility for storage of food grains, sugar and edible oil (before claiming deduction under section 35AD and section 32) for the A.Y. 2024-25 is ₹ 16 lakhs, ₹ 14 lakhs and ₹ 31 lakhs, respectively. Also, assume in respect of expenditure incurred, the payments are made by account payee cheque or use of ECS through bank account.

SOLUTION :

Computation of profits and gains of business or profession for A.Y.2024-25

Particulars	₹ (in lakhs)
Profit from business of setting up of warehouse for storage of edible oil (before providing for depreciation under section 32)	31
Less: Depreciation under section 32	
10% of ₹ 30 lakh, being (₹ 50 lakh – ₹ 30 lakh + ₹ 10 lakh)	3
Income chargeable under "Profits and gains from business or profession"	28

Computation of income/loss from specified business under section 35AD

	Particulars	Food Grains	Sugar	Total
		₹ (in lakhs)		
(A)	Profits from the specified business of setting up a warehousing facility (before providing deduction u/s 35AD) Less: Deduction under section 35AD	16	14	30
(B)	Capital expenditure incurred prior to 1.4.2023 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2023 (excluding the expenditure incurred on acquisition of land) = ₹ 30 lakh (₹ 80 lakh – ₹ 50 lakh) and ₹ 20 lakh (₹ 60 lakh – ₹ 40 lakh)	30	20	50
(C)	Capital expenditure incurred during the P.Y. 2023-24	20	15	35
(D)	Total capital expenditure (B + C)	50	35	85
(E)	Deduction under section 35AD 100% of capital expenditure (food grains/ sugar)	50	35	85
	Total deduction u/s 35AD for A.Y.2024-25	50	35	85
(F)	Loss from the specified business of setting up and operating a warehousing facility (after providing for deduction under section 35AD) to be carried forward as per section 73A (A-E)	(34)	(21)	(55)

Notes:

- (i) Deduction of 100% of the capital expenditure is available under section 35AD for A.Y.2024-25 in respect of specified business of setting up and operating a warehousing facility for storage of sugar and setting up and operating a warehousing facility for storage of agricultural produce where operations are commenced on or after 1.4.2012 or on or after 1.4.2009, respectively.
- (ii) However, since setting up and operating a warehousing facility for storage of edible oils is not a specified business, Mr. A is not eligible for deduction under section 35AD in respect of capital expenditure incurred in respect of such business.
- (iii) Mr. A can, however, claim depreciation@10% under section 32 in respect of the capital expenditure incurred on buildings. It is presumed that the buildings were put to use for more than 180 days during the P.Y.2023-24.
- (iv) Loss from a specified business can be set-off only against profits from another specified business. Therefore, the loss of ₹ 55 lakh from the specified businesses of setting up and operating a warehousing facility for storage of food grains and sugar cannot be set-off against the profits of ₹ 28 lakh from the business of setting and operating a warehousing facility for storage of edible oils, since the same is not a specified business. Such loss can, however, be carried forward indefinitely for set-off against profits of the same or any other specified business.

ILLUSTRATION 7

Mr. Suraj, a proprietor, commenced operations of the business of a new three-star hotel in Madurai, Tamil Nadu on 1.4.2023. He incurred capital expenditure of ₹ 50 lakh during the period January, 2023 to March, 2023 exclusively for the above business, and capitalized the same in his books of account as on 1st April, 2023.

Further, during the P.Y. 2023-24, he incurred capital expenditure of ₹ 2 crore (out of which ₹ 1.50 crore was for acquisition of land) exclusively for the above business.

Compute the income under the head "Profits and gains of business or profession" for the A.Y.2024-25, assuming that he has fulfilled all the conditions specified under section 35AD and opted for claiming deduction under section 35AD; and he has not claimed any deduction under Chapter VI-A under the heading "C – Deductions in respect of certain incomes". He has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

The profits from the business of running this hotel (before claiming deduction under section 35AD) for the A.Y.2024-25 is ₹ 25 lakhs. Assume that he also has another existing business of running a four-star hotel in Coimbatore, which commenced operations fifteen years back, the profits from which are ₹ 120 lakhs for the A.Y.2024-25. Also, assume that payments for capital expenditure were made by net banking.

SOLUTION**Computation of profits and gains of business or profession for A.Y. 2024-25**

Particulars	₹
Profits from the specified business of new hotel in Madurai (before providing deduction under section 35AD)	25 lakh
Less: Deduction under section 35AD	
Capital expenditure incurred during the P.Y.2023-24 (excluding the expenditure incurred on acquisition of land) = ₹ 200 lakh – ₹ 150 lakh	50 lakh
Capital expenditure incurred prior to 1.4.2023 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2023	50 lakh
Total deduction under section 35AD for A.Y.2024-25	100 lakh
Loss from the specified business of new hotel in Madurai	(75 lakh)
Profit from the existing business of running a hotel in Coimbatore	120 lakh
Net profit from business after set-off of loss of specified business against profits of another specified business under section 73A	45 lakh

(10) Other conditions contained under section 35AD

S. No.	Particulars	Condition
1.	Audit of accounts	The deduction shall be allowed to the assessee only if the accounts of the assessee for the relevant P.Y. have been audited by a chartered accountant and the assessee furnishes the audit report in the prescribed form, duly signed and verified by such accountant.
2.	Asset to be used for specified business for eight	Section 35AD(7A) provides that any asset in respect of which a deduction is claimed and allowed u/s 35AD shall be used only for the

S. No.	Particulars	Condition
	years	specified business for a period of eight years beginning with the previous year in which such asset is acquired or constructed.
3.	(i) Asset demolished, destroyed, discarded or transferred for which a deduction has been allowed	If any asset on which a deduction u/s 35AD has been claimed and allowed, is demolished, destroyed, discarded or transferred, the sum received or receivable for the same is chargeable to tax u/s 28(vii). This does not take into account a case where asset on which deduction u/s 35AD has been claimed is used for any purpose other than the specified business by way of a mode other than that specified above.
	(ii) Asset used for any other business other than specified business during 8 years	As per section 35AD(7B), if asset is used for any purpose other than the specified business during 8 years beginning with the previous year in which such asset is acquired, the total amount of deduction so claimed and allowed in any previous year(s) in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed u/s 35AD, shall be deemed to be income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the asset is so used. In such a case, as per the proviso to Explanation 13 to Section 43(1), the actual cost of such asset for the assessee shall be the actual cost as reduced by amount of depreciation would have been allowable had the asset been used for the purpose of business since the date of its acquisition.

ILLUSTRATION 8

Mr. Arnav is a proprietor having two units – Unit A carries on specified business of setting up and operating a warehousing facility for storage of sugar; Unit B carries on non-specified business of operating a warehousing facility for storage of edible oil.

Unit A commenced operations on 1.4.2022 and it claimed deduction of ₹ 100 lacs incurred on purchase of two buildings for ₹ 50 lacs each (for operating a warehousing facility for storage of sugar) under section 35AD for A.Y.2023-24. However, in February, 2024, Unit A transferred one of its buildings to Unit B.

Examine the tax implications of such transfer in the hands of Mr. Arnav.

SOLUTION

Since the capital asset, in respect of which deduction of ₹ 50 lacs was claimed u/s 35AD, has been transferred by Unit A carrying on specified business to Unit B carrying on non-specified business in the P.Y.2023-24, the deeming provision u/s 35AD(7B) is attracted during the A.Y.2024-25.

Particulars	₹
Deduction allowed u/s 35AD for A.Y.2023-24	50,00,000
Less: Depreciation allowable u/s 32 for A.Y.2023-24 [10% of ₹ 50 lacs]	5,00,000
Deemed income under section 35AD(7B)	45,00,000

Mr. Arnav, however, by virtue of proviso to Explanation 13 to section 43(1), can claim depreciation u/s 32 on the building in Unit B for A.Y.2024-25. For the purpose of claiming depreciation on building in Unit B, the actual cost of the building would be:

Particulars	₹
Actual cost to the assessee	50,00,000
Less: Depreciation allowable u/s 32 for A.Y.2023-24 [10% of ₹ 50 lacs]	5,00,000
Actual cost in the hands of Mr. Arnav in respect of building in its Unit B	45,00,000

(vi) Amortisation of Preliminary Expenses [Section 35D]

(1) Nature of expenditure: Section 35D provides for the amortisation of preliminary expenses incurred by Indian companies and other resident noncorporate taxpayers for the establishment of business concerns or the expansion of the business of existing concerns .

(2) Applicable: This section applies

- (a) only to Indian companies and resident non-corporate assesseees;
- (b) in the case of new companies to expenses incurred before the commencement of the business;
- (c) in the case of extension of an existing undertaking to expenses incurred till the extension is completed, i.e., in the case of the setting up of a new unit - expenses incurred till the new unit commences production or operation.

(3) Amount eligible for deduction: Such preliminary expenditure incurred shall be amortised over a period of 5 years. In other words, 1/5th of such expenditure is allowable as a deduction for each of the five successive previous years beginning with the previous year in which the business commences or, the previous year in which the extension of the undertaking is completed or the new unit commences production or operation, as the case may be.

(4) Eligible expenses - The following expenditure are eligible for amortisation:

- (i) Expenditure in connection with–
 - (a) the preparation of feasibility report
 - (b) the preparation of project report;
 - (c) conducting market survey or any other survey necessary for the business of the assessee;
 - (d) engineering services relating to the assessee's business;

The assessee has to furnish a statement containing the particulars of above expenditure within prescribed period to the prescribed incometax authority in the prescribed form and manner.

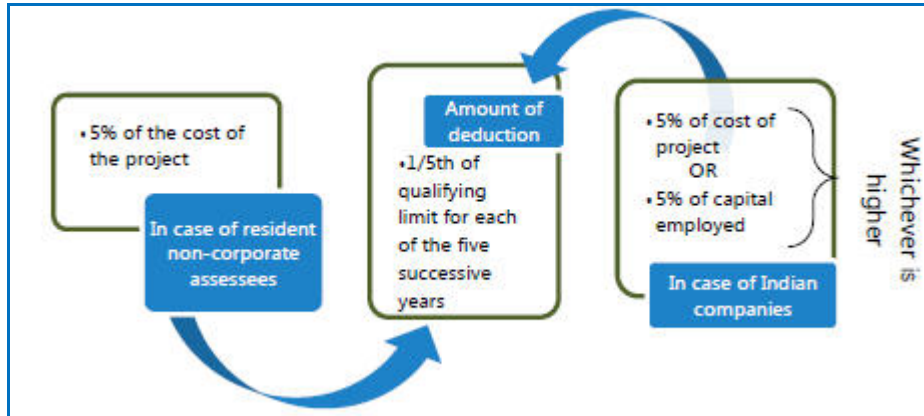
(ii) legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up to conduct the business of assessee.

(iii) Where the assessee is a company, in addition to the above, expenditure incurred –

- (a) by way of legal charges for drafting the Memorandum and Articles of Association of the company;
- (b) on printing the Memorandum and Articles of Association;
- (c) by way of fees for registering the company under the Companies Act; 19566,
- (d) in connection with the issue, for public subscription, of the shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, printing and advertisement of the prospectus; and

(iv) Such other items of expenditure (not being expenditure qualifying for any allowance or deduction under any other provision of the Act) as may be prescribed by the Board for the purpose of amortisation. However, the Board, so far, has not prescribed any specific item of expense as qualifying for amortisation under this clause.

(5) **Overall Limits** - The maximum aggregate amount of the qualifying expenses that can be amortised has been fixed at 5% of the cost of the project or in the case of an Indian company, at the option of the company, 5% of the capital employed in the business of the company, whichever is higher. The excess, if any, of the qualifying expenses shall be ignored.



(6) **Meaning of certain terms:**

Terms	Meaning
Cost of the project	<p>(i) Expenses incurred before the commencement of business: the actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings, railway sidings (including expenditure on the development of land, buildings) which are shown in the books of the assessee as on the last day of the previous year in which the business of the assessee commences;</p> <p>(ii) Expenses incurred for extension of the business or setting up of a new unit: the cost of the fixed assets being land, buildings, leaseholds, plant, machinery, furniture, fittings, and railway sidings (including expenditure on the development of land and buildings) which are shown in the books of the assessee as on the last day of the previous year in which the extension of the undertaking is completed or, as the case may be, the new unit commences production or operation, in so far as such assets have been acquired or developed in connection with the extension of the undertaking or the setting up of the new unit.</p>
Capital employed in the business of the company	<p>(i) In the case of new company: the aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the business of the company commences;</p> <p>(ii) in the case of extension of the business or the setting up of a new unit: the aggregate of the issued share capital, debentures, and long-term borrowings as on the last day of the previous year in which the extension of the undertaking is completed or, as the case may be, the unit commences production or operation in so far as such capital, debentures and longterm borrowings have been issued or obtained in connection with the extension of the undertaking or the setting up of the new undertaking or the setting up of the new unit of the company.</p>

- (7) Audit of accounts:** In cases where the assessee is a person other than a company or a co-operative society, the deduction would be allowable only if the accounts of the assessee for the year or years in which the expenditure is incurred have been audited by a Chartered Accountant before the date specified in section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1); and the assessee has, by that date, furnished for the first year in which the deduction is claimed, the report of such audit in the prescribed form duly signed and verified by the auditor and setting forth such other particulars as may be prescribed.

Particulars	Due date of filing of return	Specified Date
Assessees (other than a company) subject to tax audit	31 st October of the relevant A.Y.	30 th September of the relevant A.Y.
	For A.Y.2024-25, on or before 31 st October, 2024	For A.Y.2024-25, on or before 30 th September, 2024

- (8) No other deduction under any provision of the Act:** It has been clarified that in case where a deduction under this section is claimed and allowed for any assessment year in respect of any item of expenditure, the expenditure in respect of which deduction is so allowed shall not qualify for deduction under any other provision of the Act for the same or any other assessment year.

(vii) Amortisation of expenditure incurred under voluntary retirement scheme [Section 35DDA]:

- (1) Nature of expenditure:** This section applies to an assessee who has incurred expenditure in any previous year in the form of payment to any employee in connection with his voluntary retirement, in accordance with any scheme or schemes of voluntary retirement.
- (2) Amount of deduction:** The amount of deduction allowable is one-fifth of the amount paid for that previous year, and the balance in four equal installments in the four immediately succeeding previous years.
- (3) No deduction under any other provision of the Act:** No deduction shall be allowed in respect of the above expenditure under any other provision of the Act.

(viii) Other Deductions [Section 36]

This section authorises deduction of certain specific expenses. The items of expenditure and the conditions under which such expenditures are deductible are:

- (1) Insurance premia paid [Section 36(1)(i)]** - If insurance policy has been taken out against risk, damage or destruction of the stock or stores used for the business or profession, the premia paid is deductible. But the premium in respect of any insurance undertaken for any other purpose is not allowable under the clause.
- (2) Premia paid by employer for health insurance of employees [Section 36(1)(ib)]** - This clause seeks to allow a deduction to an employer in respect of premia paid by him by any mode of payment other than cash to effect or to keep in force an insurance on the health of his employees in accordance with a scheme framed by
- the General Insurance Corporation of India and approved by the Central Government; or
 - any other insurer and approved by the IRDA.
- (3) Bonus and Commission [Section 36(1)(ii)]** - These are deductible in full provided the sum paid to the employees as bonus or commission shall not be payable to them as profits or dividends if it had not been paid as bonus or commission.

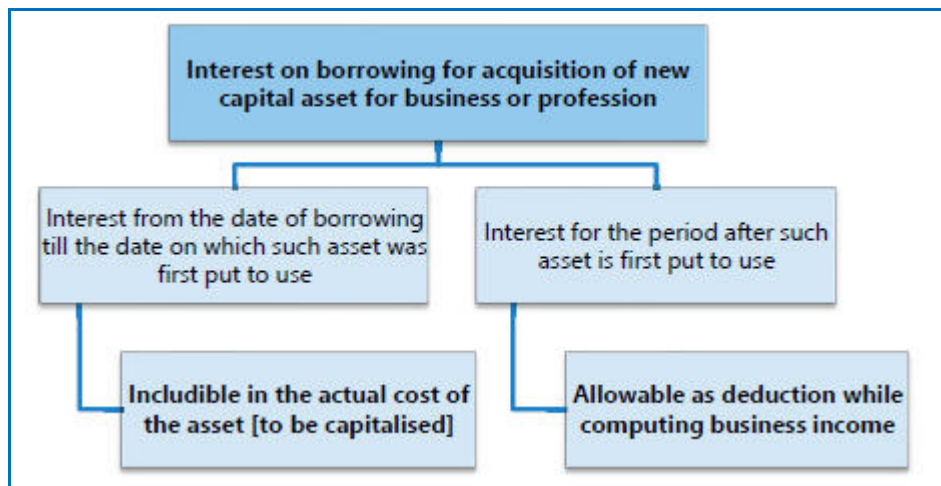
It is a provision intended to safeguard against a private company or an association escaping tax by distributing a part of its profits by way of bonus amongst the members, or employees of their own concern instead of distributing the money as dividends or profits.

(4) Interest on borrowed capital [Section 36(1)(iii)] - Deduction of interest is allowed in respect of capital borrowed for the purposes of business or profession in the computation of income under the head "Profits and gains of business or profession".

Capital may be borrowed for several purposes like for acquiring a capital asset, or to pay off a trading debt or loss etc. The scope of the expression 'for the purposes of business' is very wide. Capital may be borrowed in the course of the existing business as well as for acquiring assets for extension of existing business.

As per proviso to section 36(1)(iii), deduction in respect of any amount of interest paid, in respect of capital borrowed for acquisition of new asset (whether capitalised in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use shall not be allowed.

Explanation 8 to section 43(1) clarifies that interest relating to a period after the asset is first put to use cannot be capitalised. Interest in respect of capital borrowed for any period from the date of borrowing to the date on which the asset was first put to use should, therefore, be capitalised.



(5) Discount on Zero Coupon Bonds (ZCBs) [Section 36(1)(iiia)] - Section 36(1)(iiia) provides deduction for the discount on ZCB on pro rata basis having regard to the period of life of the bond to be calculated in the manner prescribed.

Term	Meaning
Discount	Difference of the amount received or receivable by an infrastructure capital company/ infrastructure capital fund/ public sector company/ scheduled bank on issue of the bond and the amount payable by such company or fund or bank on maturity or redemption of the bond.
Period of life of the bond	The period commencing from the date of issue of the bond and ending on the date of the maturity or redemption.

(6) Contributions to provident and other funds [Section 36(1)(iv) and (v)] -

Contribution to the employees' recognised provident fund/approved superannuation fund is allowable subject to the limits laid down for the purpose of recognizing the provident fund or approving superannuation fund.

Contribution to an approved gratuity fund is allowable subject to the condition that the gratuity fund should be for exclusive benefit of the employees under an irrevocable trust.

(7) Employer's contribution to the account of the employee under a Pension Scheme referred to in section 80CCD [Section 36(1)(iva)]

- (i) Section 36(1)(iva) to provide that the employer's contribution to the account of an employee under a Pension Scheme as referred to in section 80CCD would be allowed as deduction while computing business income.
- (ii) However, deduction would be restricted to 10% of salary of the employee in the previous year.
- (iii) Salary, for this purpose, includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

(8) Amount received by an assessee-employer as contribution from his employees towards their welfare fund to be allowed only if such amount is credited on or before due date under the relevant Act, Rule etc. – Section 36(1)(va) and section 57(ia) provide that deduction in respect of any sum received by the taxpayer as contribution from his employees towards any welfare fund of such employees will be allowed only if such sum is credited by the taxpayer to the employee's account in the relevant fund on or before the due date.

Due date	The date by which the assessee is required as an employer to credit such contribution to the employee's account in the relevant fund under the provisions of any law on term of contract of service or otherwise.
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As per the Employees Provident Funds Scheme, 1952, the amounts under consideration in respect of wages of the employees for any particular month shall be paid within 15 days of the close of every month.

Note - It is clarified that the provisions of section 43B regarding allowability of certain expenditure in a previous year only on actual payment basis on or before due date of filing of return of income for relevant assessment year, does not apply and would deemed never to be applied on employee's contribution received by employer towards any welfare fund of such employee. In effect, the extended time upto due date of filing of return for is not available for credit of employees contribution towards any welfare fund received by the employer.

(9) Bad debts [Section 36(1)(vii) and section 36(2)] – These can be deducted subject to the following conditions:

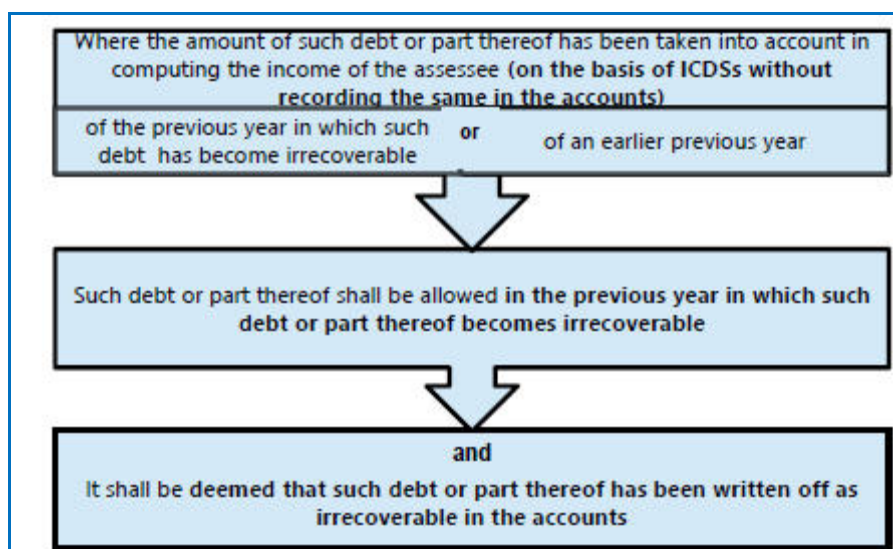
- (a) The debts or loans should be in respect of a business which was carried on by the assessee during the relevant previous year.
- (b) The debt should have been taken into account in computing the income of the assessee of the previous year in which such debt is written off or of an earlier previous year or should represent money lent by the assessee in the ordinary course of his business of banking or money lending.

I. Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs⁷ to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable [Section 36(1)(vii)]

- (i) Under section 36(1)(vii), deduction is allowed in respect of the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year.
- (ii) Therefore, write off in the books of account is an essential condition for claim of bad debts under section 36(1)(vii).
- (iii) Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable.

If a debt, which has not been recognized in the books of account as per the requirement of the accounting standards but has been taken into account in the computation of income as per the notified ICDSs, has

become irrecoverable, it can still be claimed as bad debt under section 36(1)(vii) since **it shall be deemed that the debt has been written off as irrecoverable in the books of account by virtue of the second proviso to section 36(1)(vii)**. This is because some ICDSs require recognition of income at an earlier point of time (prior to the point of time such income is recognised in the books of account). Consequently, if the whole or part of such income recognised at an earlier point of time for tax purposes becomes irrecoverable, it can be claimed as bad debts on account of the second proviso to section 36(1)(vii).



II. Deduction of differential amount of debts due as bad debts in the year of recovery, to the extent of deficiency in recovery

If, on the final settlement, the amount recovered in respect of any debt, where deduction had already been allowed, falls short of the difference between the debt due and the amount of debt allowed, the deficiency can be claimed as a deduction from the income of the previous year in which the ultimate recovery out of the debt is made.

It is permissible for the Assessing Officer to allow deduction in respect of a bad debt or any part thereof in the assessment of a particular year and subsequently to allow the balance of the amount, if any, in the year in which the ultimate recovery is made, that is to say, when the final result of the process of recovery comes to be known.

Recovery of a bad debt subsequently [Section 41(4)] - If a deduction has been allowed in respect of a bad debt under section 36, and subsequently the amount recovered in respect of such debt is more than the amount due after the allowance had been made, the excess shall be deemed to be the profits and gains of business or profession and will be chargeable as income of the previous year in which it is recovered, whether or not the business or profession in respect of which the deduction has been allowed is in existence at the time.

(10) Expenses on family planning by a company [Section 36(1)(ix)] - Any expenditure of revenue nature bona fide incurred by a company for the purpose of promoting family planning amongst its employees will be allowed as a deduction in computing the company's business income:

- Where the expenditure is of a capital nature, one-fifth of such expenditure will be deducted in the previous year in which it was incurred and in each of the four immediately succeeding previous years.
- This deduction is allowable only to companies and not to other assessees.
- The assessee would be entitled to carry forward and set off the unabsorbed part of the allowance in the same way as unabsorbed depreciation.

The capital expenditure on promoting family planning will be treated in the same way as capital expenditure for scientific research for purposes of dealing with the profit or loss on the sale or transfer of the asset including a transfer on amalgamation.

An individual carrying on business or profession will not be allowed deduction of expenses incurred on promoting family planning amongst its employees.

(11) Deduction of securities transaction tax paid [Section 36(1)(xv)] – The amount of securities transaction tax paid by the assessee during the year in respect of taxable securities transactions entered into in the course of business shall be allowed as deduction under section 36 subject to the condition that such income from taxable securities transactions is included under the head ‘Profits and gains of business or profession’.

Thus, securities transaction tax paid would be allowed as a deduction like any other business expenditure.

(12) Deduction for commodities transaction tax paid in respect of taxable commodities transactions [Section 36(1)(xvi)]

- (a) Section 36(1)(xvi) provides that an amount equal to the CTT paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year shall be allowable as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head “Profits and gains of business or profession”.
- (b) A ‘taxable commodities transaction’ means a transaction of sale of commodity derivatives or sale of commodity derivatives based on prices or indices of prices of commodity derivatives or option on commodity derivatives or option in goods in respect of commodities, other than agricultural commodities, traded in recognised stock exchange.
- (c) A “commodity derivative” means –
- (1) A contract for delivery of goods which is not a ready delivery contract
 - (2) A contract for differences which derives its value from prices or indices of prices -
 - (i) of such underlying goods; or
 - (ii) of related services and rights, such as warehousing and freight; or
 - (iii) with reference to weather and similar events and activities having a bearing on the commodity sector.

(ix) Residuary Expenses [Section 37]

(1) Revenue expenditure incurred for purposes of carrying on the business, profession or vocation - This is a residuary section under which only business expenditure is allowable but not the business losses, e.g., those arising out of embezzlement, theft, destruction of assets, misappropriation by employees etc. The deduction is limited only to the amount actually expended and does not extend to a reserve created against a contingent liability.

(2) Conditions for allowance: The following conditions should be fulfilled in order that a particular item of expenditure may be deductible under this section:

- (a) The expenditure should **not** be of the nature described in **sections 30 to 36**.
- (b) It should have been **incurred by the assessee** in the accounting year.
- (c) It should be in respect of a business carried on by the assessee the profits of which are being computed and assessed.
- (d) It must have been incurred after the business was set up.

- (e) It should **not** be in the nature of **any personal expenses** of the assessee.
- (f) It should have been laid out or expended **wholly and exclusively for the purposes of such business**.
- (g) It should **not** be in the nature of **capital expenditure**.
- (h) The expenditure should **not** have been incurred by the assessee for any purpose which is an **offence or is prohibited by law**.

This section is thus limited in scope. It does not permit an assessee to make all deductions which a prudent trader would make in ascertaining his own profit. It might be observed that the section requires that the expenditure should be wholly and exclusively laid out for purpose of the business but not that it should have been necessarily laid out for such purpose.

Therefore, expenses wholly and exclusively laid out for the purpose of trade are, subject to the fulfilment of other conditions, allowed under this section even though the outlay is unnecessary.

- (3) Expenditure incurred on Keyman insurance policy: CBDT Circular no. 762/1998 dated 18.02.1998 clarifies that the premium paid on the Keyman Insurance Policy is allowable as business expenditure.

The Punjab and Haryana High Court held that, “the Keyman Insurance Policy when obtained to secure the life of a partner to safeguard the firm against a disruption of the business is equally for the benefit of the partnership business which may be effected as a result of premature death of a partner.

Thus, the premium on the Keyman Insurance Policy of partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure”.

The CBDT accepted the view of the High Court, accordingly, vide Circular no. 38/2016 has clarified that, in case of a firm, premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37.

- (4) **Explanation 1 to section 37(1)** - This Explanation provides that any expenditure incurred by the assessee for any purpose which is an offence or which is prohibited by law shall not be allowed as a deduction or allowance.

- (5) **Explanation 3 to section 37(1)** - It is clarified that the expression “expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law” in (4) above would include and would be deemed to have always included the expenditure incurred by an assessee, -

- (i) for any purpose which is an offence under any law for the time being in force, in India or outside India or which is prohibited by any law for the time being in force, in India or outside India; or
- (ii) to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person; or
- (iii) to compound an offence under any law for the time being in force, in India or outside India.

For eg: expenses incurred in providing freebies to medical practitioner by pharmaceutical and allied health sector industry are in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations. Hence, such expenditure is considered to be expenses prohibited by the law and not allowed in the hands of such pharmaceutical or allied health sector industry or other assessee which has provided aforesaid freebies.

(6) Disallowance of CSR expenditure [Explanation 2 to Section 37(1)]

- (i) Section 135 of the Companies Act, 2013 read with Schedule VII thereto and Companies (Corporate Social Responsibility) Rules, 2014 are the special provisions under the company law regime imposing mandatory CSR obligations in respect of companies having net worth/turnover/net profit exceeding specified threshold limits. Such companies have to spend a specified percentage of their average net profits on CSR activities.
- (ii) Under section 37(1), only expenditure, not covered under sections 30 to 36, and incurred wholly and exclusively for the purposes of the business is allowed as a deduction while computing taxable business income. The issue under consideration is whether CSR expenditure is allowable as deduction under section 37.
- (iii) It has been clarified that for the purposes of section 37(1), any expenditure incurred by an assessee on the activities relating to CSR referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence, shall not be allowed as deduction under section 37.
- (iv) The rationale behind the disallowance is that CSR expenditure, being an application of income, is **not** incurred wholly and exclusively for the purposes of carrying on business.
- (v) However, the Explanatory Memorandum to the Finance (No.2) Bill, 2014 clarifies that CSR expenditure, which is of the nature described in sections 30 to 36, shall be allowed as deduction under those sections subject to fulfillment of conditions, if any, specified therein.

(7) Advertisements in souvenirs of political parties: Section 37(2B) disallows any deduction on account of advertisement expenses representing contributions made by any person carrying on business or profession in computing the profits and gains of the business or profession. It has specifically been provided that this provision for disallowance would apply notwithstanding anything to the contrary contained in section 37(1).

In other words, the expenditure representing contribution for political purposes would become disallowable even in those cases where the expenditure is otherwise incurred by the assessee in his character as a trader and the amount is wholly and exclusively incurred for the purpose of the business.

Accordingly, a taxpayer would not be entitled to any deduction in respect of expenses incurred by him on advertisement in any souvenir, brochure, tract or the like published by any political party, whether it is registered with the Election Commission of India or not.

3.7 INADMISSIBLE DEDUCTIONS [SECTION 40]

By dividing the assessee into distinct groups, this section places absolute restraint on the deductibility of certain expenses as follows:

In the case of any assessee, the following expenses are not deductible:

(1) Section 40(a)(i)

Any interest, royalty, fees for technical services or other sum chargeable under this Act, which is payable, -

(a) outside India;

(b) in India to a non-resident non-corporate or to a foreign company,

on which tax is deductible at source under Chapter XVIIIB and such tax has not been deducted or, after deduction, has not been paid on or before the due date of filing of return specified under section 139(1).

It is also provided that where in respect of any such sum, where tax has been deducted in any subsequent year, or has been deducted in the previous year but paid after the due date of filing of return under section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

In case, assessee fails to deduct the whole or any part of tax on any such sum but is not deemed as

assessee in default under the first proviso to section 201(1) by reason that such payee –

- (i) has furnished his return of income under section 139;
- (ii) has taken into account such sum for computing income in such return of income; and
- (iii) has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed,

it would be deemed that the assessee has deducted and paid the tax on such sum on the date on which return of income has been furnished by the payee.

Since the date of furnishing the return of income by the payee is taken to be the date on which the payer has deducted tax at source and paid the same, such expenditure/payment in respect of which the payer has failed to deduct tax at source shall be disallowed under section 40(a)(i) in the year in which the said expenditure is incurred. However, such expenditure will be allowed as deduction in the subsequent year in which the return of income is furnished by the payee, since tax is deemed to have been deducted and paid by the payer in that year.

(2) Section 40(a)(ia)

Section 40(a)(ia) provides that **30% of any sum payable to a resident**, on which tax is deductible at source under Chapter XVII-B, shall be disallowed if –

- (i) such tax has not been deducted; or
- (ii) such tax, after deduction, has not been paid on or before the due date specified in section 139(1).

If in respect of such sum, tax has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in section 139(1), 30% of such sum shall be allowed as deduction in computing the income of the previous year in which such tax has been paid.

In case, assessee fails to deduct the whole or any part of tax on any such sum but is not deemed as assessee in default under the first proviso to section 201(1) by reason that such payee –

- (i) has furnished his return of income under section 139;
- (ii) has taken into account such sum for computing income in such return of income; and
- (iii) has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed,

it would be deemed that the assessee has deducted and paid the tax on such sum.

The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the payee.

Since the date of furnishing the return of income by the payee is taken to be the date on which the payer has deducted tax at source and paid the same, 30% of such expenditure/payment in respect of which the payer has failed to deduct tax at source shall be disallowed under section 40(a)(ia) in the year in which the said expenditure is incurred. However, 30% of such expenditure will be allowed as deduction in the subsequent year in which the return of income is furnished by the payee, since tax is deemed to have been deducted and paid by the payer in that year.

Example: Tax on royalty paid to Mr. A, a resident, has been deducted during the previous year 2023-24, the same has to be paid by 31st July/ 31st October, 2024, as the case may be. Otherwise, 30% of royalty paid would be disallowed in computing the income for A.Y.2024-25. If in respect of such royalty, tax deducted during the P.Y.2023-24 has been paid after 31st July/31st October, 2024, 30% of such royalty, disallowed in A.Y.2024-25, would be allowed as deduction in the year of payment, i.e., A.Y.2025-26.

Note - Students are advised to read Chapter 7 on "Advance tax, tax deduction at source and tax collection at source" before solving this illustration.

ILLUSTRATION 9

Delta Ltd. credited the following amounts to the account of resident payees in the month of March, 2024 without deduction of tax at source. What would be the consequence of non-deduction of tax at source by Delta Ltd. on these amounts during the financial year 2023-24, assuming that the resident payees in all the cases mentioned below, have not paid the tax, if any, which was required to be deducted by Delta Ltd.?

	Particulars	Amount in ₹
(1)	Salary to its employee, Mr. X (credited and paid in March, 2024)	12,00,000
(2)	Directors' remuneration (credited in March, 2024 and paid in April, 2024)	28,000

Would your answer change if Delta Ltd. has deducted tax on directors' remuneration in April, 2024 at the time of payment and remitted the same in July, 2024?

SOLUTION

Non-deduction of tax at source on any sum payable to a resident on which tax is deductible at source as per the provisions of Chapter XVII-B would attract disallowance u/s 40(a)(ia).

Therefore, non-deduction of tax at source on any sum paid by way of salary on which tax is deductible u/s 192 or any sum credited or paid by way of directors' remuneration on which tax is deductible u/s 194], would attract disallowance@30% u/s 40(a)(ia). Whereas in case of salary, tax has to be deducted u/s 192 at the time of payment, in case of directors' remuneration, tax has to be deducted at the time of credit of such sum to the account of the payee or at the time of payment, whichever is earlier. Therefore, in both the cases i.e., salary and directors' remuneration, tax is deductible in the P.Y.2023-24, since salary was paid in that year and directors' remuneration was credited in that year. Therefore, the amount to be disallowed u/s 40(a)(ia) while computing business income for A.Y.2024-25 is as follows –

	Particulars	Amount paid in ₹	Disallowance u/s 40(a)(ia) @30%
(1)	Salary [tax is deductible under section 192]	12,00,000	3,60,000
(2)	Directors' remuneration [tax is deductible under section 194] without any threshold limit]	28,000	8,400
	Disallowance under section 40(a)(ia)		3,68,400

If the tax is deducted on directors' remuneration in the next year i.e., P.Y.2024-25 at the time of payment and remitted to the Government, the amount of ₹ 8,400 would be allowed as deduction while computing the business income of A.Y. 2025-26.

Disallowance of any sum paid to a resident at any time during the previous year without deduction of tax under section 40(a)(ia) [Circular No.10/2013, dated 16.12.2013]

There have been conflicting interpretations by judicial authorities regarding the applicability of provisions of section 40(a)(ia), with regard to the amount not deductible in computing the income chargeable under the head 'Profits and gains of business or profession'. Some court rulings have held that the provisions of disallowance under section 40(a)(ia) apply only to the amount which remained payable at the end of the relevant financial year and would not be invoked to disallow the amount which had actually been paid during the previous year without deduction of tax at source.

Departmental View: The CBDT's view is that the provisions of section 40(a)(ia) would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are payable at any time during the year. The statutory provisions are amply clear and in the context of section 40(a)(ia), the term "payable" would include "amounts which are paid during the previous year".

The Circular has further clarified that where any High Court decides an issue contrary to the above "Departmental View", the "Departmental View" shall not be operative in the area falling in the jurisdiction of the relevant High Court.

ILLUSTRATION 10

During the financial year 2023-24, the following payments/expenditure were made/incurred by Mr. Raja, a resident individual (whose turnover during the year ended 31.3.2023 was ₹ 99 lacs):

- (i) Interest of ₹ 45,000 was paid to Rehman & Co., a resident partnership firm, without deduction of tax at source;
- (ii) ₹ 10,00,000 was paid as salary to a resident individual without deduction of tax at source;
- (iii) Commission of ₹ 16,000 was paid to Mr. Vidyasagar, a resident, on 2.7.2023 without deduction of tax at source.

Briefly discuss whether any disallowance arises under the provisions of section 40(a)(ia) assuming that the payees in all the cases mentioned above, have not paid the tax, if any, which was required to be deducted by Mr. Raja?

SOLUTION

Disallowance under section 40(a)(ia) of the Income-tax Act, 1961 is attracted where the assessee fails to deduct tax at source as is required under the Act, or having deducted tax at source, fails to remit the same to the credit of the Central Government within the stipulated time limit.

- (i) The obligation to deduct tax at source from interest paid to a resident arises u/s 194A in the case of an individual, whose total turnover in the immediately preceding P.Y., i.e., P.Y.2022-23 exceeds ₹ 1 crore. Thus, in present case, since the turnover of the assessee is less than ₹ 1 crore, he is not liable to deduct tax at source. Hence, disallowance u/s 40(a)(ia) is not attracted in this case.
- (ii) The disallowance of 30% of the sums payable under section 40(a)(ia) would be attracted in respect of all sums on which tax is deductible under Chapter XVIIIB. Section 192, which requires deduction of tax at source from salary paid, is covered under Chapter XVII-B. The obligation to deduct tax at source under section 192 arises, in the hands all assessee-employer even if the turnover amount does not exceed ₹ 1 crore in the immediately preceding previous year.

Therefore, in the present case, the disallowance under section 40(a)(ia) is attracted for failure to deduct tax at source under section 192 from salary payment. However, only 30% of the amount of salary paid without deduction of tax at source would be disallowed.

- (iii) The obligation to deduct tax at source under section 194H from commission paid in excess of ₹ 15,000 to a resident arises in the case of an individual, whose total turnover in the immediately preceding previous year, i.e., P.Y.2022-23 exceeds ₹ 1 crore. Thus, in present case, since the turnover of the assessee is less than ₹ 1 crore, he is not liable to deduct tax at source u/s 194H. Mr. Raja is not required to deduct tax at source u/s 194M also since the aggregate of such commission to Mr. Vidyasagar does not exceed ₹ 50 lakh during the P.Y. 2023-24. Therefore, disallowance under section 40(a)(ia) is not attracted in this case.

(3) Section 40(a)(ii)

Any sum paid on account of any rate or tax levied on profits on the basis of or in proportion to the profits and gains of any business or profession.

It is clarified that the term “tax” would include and would be deemed to have always included any surcharge or cess on such tax. Hence, tax including surcharge and cess would be disallowed while computing business income [Explanation 3 to section 40(a)(ii)].

(4) Section 40(a)(iii)

Any sum which is chargeable under the head ‘Salaries’ if it is payable outside India or to a non-resident and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B.

(5) Section 40(a)(iv)

Any contribution to a provident fund or the fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to make sure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head ‘Salaries’.

(6) Section 40(a)(v)

Tax paid on perquisites on behalf of employees is not deductible - In case of an employee, deriving income in the nature of perquisites (other than monetary payments), the amount of tax on such income paid by his employer is exempt from tax in the hands of that employee.

Correspondingly, such payment is not allowed as deduction from the income of the employer. Thus, the payment of tax on non-monetary perquisites by an employer on behalf of employee will be exempt from tax in the hands of employee but will not be allowable as deduction in the hands of the employer.

In the case of any firm assessable as such or a limited liability partnership (LLP), the following amounts shall not be deducted in computing the business income

Section 40(b)

(1) Remuneration to non-working partner - Any salary, bonus, commission, remuneration by whatever name called, to any partner who is not a working partner. (In the following discussion, the term ‘remuneration’ is applied to denote payments in the nature of salary, bonus, commission);

(2) Remuneration to a working partner not authorized by deed – Any remuneration paid to the working partner or interest to any partner which is not authorised by or which is inconsistent with the terms of the partnership deed;

(3) Remuneration to a working partner or interest to a partner authorized by deed but relates to an earlier period - It is possible that the current partnership deed may authorise payments of remuneration to any working partner or interest to any partner for a period which is prior to the date of the current partnership deed. The approval by the current partnership deed might have been necessitated due to the fact that such payment was not authorised by or was inconsistent with the earlier partnership deed. Such payments of remuneration or interest will also be disallowed. However, it should be noted that the current partnership deed cannot authorise any payment which relates to a period prior to the date of earlier partnership deed.

Next, by virtue of a further restriction contained in section 40(b)(iii), such remuneration paid to the working partners will be allowed as deduction to the firm from the date of such partnership deed and not for any period prior thereto.

Example : If a firm incorporates the clause relating to payment of remuneration to the working partners, by executing an appropriate deed, say, on July 1, 2023 but effective from April 1, 2023, the firm would get deduction for the remuneration paid to its working partners from July 1, 2023 onwards, but not for the period from April 1 to June 30. It will not be possible to give retrospective effect to oral agreements entered into vis a vis such remuneration prior to putting the same in a written partnership deed.

- (4) **Interest to any partner in excess of 12% p.a.**- Any interest payment authorised by the partnership deed falling after the date of such deed to the extent such interest exceeds 12% simple interest p.a.
- (5) **Remuneration to a working partner in excess of prescribed limits** - Any remuneration paid to a working partner, authorised by a partnership deed and falling after the date of the deed in excess of the following limits:

Book Profit	Quantum of deduction
On the first ₹ 3 lakh of book profit or in case of loss	₹ 1,50,000 or 90% of book profit, whichever is higher
On the balance of book profit	60% of book profit

- (6) **Meaning of certain terms:**

Term	Meaning
Book Profit	The net profit as shown in the profit and loss account for the relevant previous year computed in accordance with the provisions for computing income from profits and gains [Explanation 3 to section 40(b)]. The above amount should be increased by the remuneration paid or payable to all the partners of the firm if the same has been deducted while computing the net profit.
Working partner	An individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner [Explanation 4 to section 40(b)]

ILLUSTRATION 11

A firm has paid ₹ 7,50,000 as remuneration to its partners for the P.Y.2023-24, in accordance with its partnership deed, and it has a book profit of ₹ 10 lakh. What is the remuneration allowable as deduction?

SOLUTION

The allowable remuneration calculated as per the limits specified in section 40(b)(v) would be –

Particulars	₹
On first ₹ 3 lakh of book profit [₹ 3,00,000 × 90%]	2,70,000
On balance ₹ 7 lakh of book profit [₹ 7,00,000 × 60%]	4,20,000
	6,90,000

The excess amount of ₹ 60,000 (i.e., ₹ 7,50,000 – ₹ 6,90,000) would be disallowed as per section 40(b)(v).

- (7) Explanations to section 40(b)

(1) Where an individual is a partner in a firm in a representative capacity:

(i) interest paid by the firm to such individual otherwise than as partner in a representative

capacity shall not be taken into account for the purposes of this clause.

(ii) interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of this clause [Explanation 1 to section 40(b)]

(2) Where an individual is a partner in a firm otherwise than in a representative capacity, interest paid to him by the firm shall not be taken into account if he receives the same on behalf of or for the benefit of any other person [Explanation 2 to section 40(b)].

ILLUSTRATION 12

Rao & Jain, a partnership firm consisting of two partners, reports a net profit of ₹ 7,00,000 before deduction of the following items:

- (1) Salary of ₹ 20,000 each per month payable to two working partners of the firm (as authorized by the deed of partnership).
- (2) Depreciation on plant and machinery under section 32 (computed) ₹ 1,50,000.
- (3) Interest on capital at 15% per annum (as per the deed of partnership). The amount of capital eligible for interest is ₹ 5,00,000.

Compute:

- (i) Book-profit of the firm under section 40(b) of the Income-tax Act, 1961.
- (ii) Allowable working partner salary for the A.Y. 2024-25 as per section 40(b).

SOLUTION

- (i) As per Explanation 3 to section 40(b), "book profit" shall mean the net profit as per the profit and loss account for the relevant previous year computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to the partners of the firm if the same has been already deducted while computing the net profit.

In the present case, the net profit given is before deduction of depreciation on plant and machinery, interest on capital of partners and salary to the working partners. Therefore, the book profit shall be as follows:

Computation of Book Profit of the firm under section 40(b)

Particulars	₹	₹
Net Profit (before deduction of depreciation, salary and interest)		7,00,000
Less: Depreciation under section 32	1,50,000	
Interest @ 12% p.a. [being the maximum allowable as per section 40(b)] (₹ 5,00,000 × 12%)	60,000	2,10,000
Book Profit		4,90,000

- (ii) Salary actually paid to working partners = ₹ 20,000 × 2 × 12 = ₹ 4,80,000.

As per the provisions of section 40(b)(v), the salary paid to the working partners is allowed subject to the following limits -

On the first ₹ 3,00,000 of book profit or in case of loss	₹ 1,50,000 or 90% of book profit, whichever is more
On the balance of book profit	60% of the balance book profit

Therefore, the maximum allowable working partners' salary for the A.Y. 2024-25 in this case would be:

Particulars	₹
On the first ₹ 3,00,000 of book profit [(₹ 1,50,000 or 90% of ₹ 3,00,000) whichever is more]	2,70,000
On the balance of book profit [60% of (₹ 4,90,000 - ₹ 3,00,000)]	1,14,000
Maximum allowable partners' salary	3,84,000

Hence, allowable working partners' salary for the A.Y.2024-25 as per the provisions of section 40(b)(v) is ₹ 3,84,000.

3.8 EXPENSES OR PAYMENT NOT DEDUCTIBLE IN CERTAIN CIRCUMSTANCES [SECTION 40A]

(i) Payments to relatives and associates

Section 40A(2) provides that where the assessee incurs any expenditure in respect of which a payment has been or is to be made to a specified person [See column (2) of Table below] so much of the expenditure as is considered to be excessive or unreasonable shall be disallowed by the Assessing Officer. While doing so he shall have due regard to:

- the fair market value of the goods, service of facilities for which the payment is made; or
- the legitimate needs of the business or profession carried on by the assessee; or
- the benefit derived by or accruing to the assessee from such a payment.

Assessee	Specified Person				
(1)	(2)				
Individual	<ol style="list-style-type: none"> Any relative of the individual assessee Any person who carries on a business or profession, if <ul style="list-style-type: none"> the individual assessee has a substantial interest in the business of that person or any relative of the individual assessee has a substantial interest in the business of that person 				
Company, Firm, HUF or AOP	<ol style="list-style-type: none"> Any director of the company, partner of the firm or member of the family or association or any relative of such director, partner or member or In case of a company assessee, any individual who has substantial interest in the business or profession of the company or any relative of such individual or Any person who carries on a business or profession, in which the Company/ Firm/ HUF/ AOP or director of the company, partner of the firm or member of the family or association or any relative of such director, partner or member has substantial interest in the business of that person. 				
All assesseees	<p>The following are specified persons:</p> <table border="1"> <tbody> <tr> <td>Person who has substantial interest in the assessee's business</td> <td>Other related persons of such person, who has a substantial interest in the assessee's business</td> </tr> <tr> <td>Company/ AOP/ Firm/ HUF</td> <td> <ul style="list-style-type: none"> Any director of such company, partner of such firm or the member of such family or association or </td> </tr> </tbody> </table>	Person who has substantial interest in the assessee's business	Other related persons of such person, who has a substantial interest in the assessee's business	Company/ AOP/ Firm/ HUF	<ul style="list-style-type: none"> Any director of such company, partner of such firm or the member of such family or association or
Person who has substantial interest in the assessee's business	Other related persons of such person, who has a substantial interest in the assessee's business				
Company/ AOP/ Firm/ HUF	<ul style="list-style-type: none"> Any director of such company, partner of such firm or the member of such family or association or 				

	<ul style="list-style-type: none"> any relative of such director, partner or member or Any other company carrying on business or profession in which the first mentioned company has a substantial interest
a director, partner or member	<ul style="list-style-type: none"> Company/ Firm/ AOP/ HUF of which he is a director, partner or member or Any other director/ partner/ member of the such Company/Firm/ AOP/ HUF or Any relative of such director, partner or member

Relative, in relation to an “individual”, means the spouse, brother or sister or any lineal ascendant or descendant of that individual [Section 2(41)].

Substantial interest in a business or profession

A person shall be deemed to have a substantial interest in a business or profession if -

- in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of equity shares carrying not less than 20% of the voting power and
- in any other case, such person is, at any time during the previous year, beneficially entitled to not less than 20% of the profits of such business or profession.

(ii) Payments in excess of ₹ 10,000 made otherwise than through prescribed modes

According to section 40A(3), where the assessee incurs any expenditure, in respect of which payment or aggregate of **payments made to a person in a day otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft or use of electronic system through bank account or through such other prescribed electronic modes exceeds ₹ 10,000, such expenditure shall not be allowed as a deduction.**

The prescribed electronic modes are credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2020 dated 29.01.2020].

The provision applies to all categories of expenditure involving payments for goods or services which are deductible in computing the taxable income.

Example: If, in respect of an expenditure of ₹ 32,000 incurred by X Ltd., 4 cash payments of ₹ 8,000 are made on a particular day to one Mr. Y – one in the morning at 10 a.m., one at 12 noon, one at 3 p.m. and one at 6 p.m., the entire expenditure of ₹ 32,000 would be disallowed under section 40A(3), since the aggregate of cash payments made during a day to Mr. Y exceeds ₹ 10,000.

Payments in excess of ₹ 10,000 made otherwise than through prescribed modes deemed to be the income of the subsequent year, if expenditure has been allowed as deduction in any previous year on due basis:

In case of an assessee following mercantile system of accounting, if an expenditure has been allowed as deduction in any previous year on due basis, and payment has been made in a subsequent year otherwise than by account payee cheque or account payee bank draft or use of electronic clearing system through a bank

account or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement),

NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay, then the payment so made shall be deemed to be the income of the subsequent year if such payment or aggregate of payments made to a person in a day exceeds ₹ 10,000 [Section 40A(3A)].

Increased limit of ₹ 35,000 applicable, where payment is made to transport operator: The limit would be ₹ 35,000 in case of payment made to transport operators for plying, hiring or leasing goods carriages, otherwise than through prescribed modes. Therefore, payment or aggregate of payments up to ₹ 35,000 in a day can be made to a transport operator **otherwise than by** way of account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay. In all other cases, the limit would continue to be ₹ 10,000.

Cases where disallowances would not be attracted:

(i) Loan transactions: It does not apply to loan transactions because advancing of loans or repayments of the principal amount of loan does not constitute an expenditure deductible in computing the taxable income.

However, interest payments of amounts exceeding ₹ 10,000 at a time are required to be made by account payee cheques or drafts or electronic clearing system or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay as interest is a deductible expenditure.

(ii) Payment made by commission agents: This requirement does not apply to payment made by commission agents for goods received by them for sale on commission or consignment basis because such a payment is not an expenditure deductible in computing the taxable income of the commission agent.

For the same reason, this requirement does not apply to advance payment made by the commission agent to the party concerned against supply of goods.

However, where commission agent purchases goods on his own account but not on commission basis, the requirement will apply. The provisions regarding payments by account payee cheque or draft or electronic clearing system or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay apply equally to payments made for goods purchased on credit.

Cases and circumstances in which a payment or aggregate of payments exceeding ten thousand rupees may be made to a person in a day, otherwise than by an account payee cheque/ account payee bank draft/ use of ECS through a bank account or through such other electronic modes prescribed in Rule 6ABBA [Rule 6DD]:

As per this rule, no disallowance under section 40A(3) shall be made and no payment shall be deemed to be the profits and gains of business or profession under section 40A(3A) where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay, exceeds ₹ 10,000 in the cases and circumstances specified hereunder, namely:

- (a) where the payment is made to
 - (i) the Reserve Bank of India or any banking company;
 - (ii) the State Bank of India or any subsidiary bank;
 - (iii) any co-operative bank or land mortgage bank;
 - (iv) any primary agricultural credit society or any primary credit society;
 - (v) the Life Insurance Corporation of India;
- (b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;
- (c) where the payment is made by
 - (i) any letter of credit arrangements through a bank;
 - (ii) a mail or telegraphic transfer through a bank;
 - (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
 - (iv) a bill of exchange made payable only to a bank;
- (d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;
- (e) where the payment is made for the purchase of -
 - (i) agricultural or forest produce; or
 - (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or
 - (iii) fish or fish products; or
 - (iv) the products of horticulture or apiculture, to the cultivator, grower or producer of such articles, produce or products;

Notes -

- (i) The expression 'fish or fish products' (iii) above would include 'other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster etc.'.
- (ii) The 'producers' of fish or fish products for the purpose of Rule 6DD(e) would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, at the sea shore itself and then sells the fish or fish products to traders, exporters etc.

However, the above exception will not be available on the payment for the purchase of fish or fish products from a person who is not proved to be a 'producer' of these goods and is only a trader, broker or any other middleman, by whatever name called.

- (f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
- (g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
- (h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed ₹ 50,000;

- (i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee-
 - (i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
 - (ii) does not maintain any account in any bank at such place or ship;
- (j) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;
- (k) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travelers cheques in the normal course of his business.

Note: Where any payment in respect of any expenditure is required to be made by an account payee cheque/account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic modes in order that such expenditure may not be disallowed as a deduction under section 40A(3), then the payment may be made by such cheque or draft or electronic clearing system or through such other prescribed electronic modes.

No person is allowed to raise, in any suit or other proceeding, a plea based on the ground that the payment was not made or tendered in cash or in any other manner.

This is notwithstanding anything contained in any other law for the time being in force or in any contract.

(iii) Disallowance of provision for gratuity

Section 40A(7) provides that no deduction would be allowable to any taxpayer carrying on any business or profession in respect of any provision (whether called as provision or by any other names) made by him towards the payment of gratuity to his employers on their retirement or on the termination of their employment for any reason.

The reason for this disallowance is that, under section 36(1)(v), deduction is allowable in computing the profits and gains of the business or profession in respect of any sum paid by a taxpayer in his capacity as an employer in the form of contributions made by him to an approved gratuity fund created for the exclusive benefit of his employees under an irrevocable trust. Further, section 37(1) provides that any expenditure other than the expenditure of the nature described in sections 30 to 36 laid out or expended, wholly and exclusively for the purpose of the business or profession must be allowed as a deduction in computing the taxable income from business.

A reading of these two provisions clearly indicates that the intention of the legislature has always been that the deduction in respect of gratuity be allowable to the employer either in the year in which the gratuity is actually paid or in the year in which contributions to an approved gratuity fund are actually made by employer.

This provision, therefore, makes it clear that any amount claimed by the assessee towards provision for gratuity, by whatever name called would be disallowable in the assessment of employer even if the assessee follows the mercantile system of accounting.

However, no disallowance would be made as per section 40A(7) in the case where any provision is made by the employer for the purpose of payment of sum by way of contribution to an approved gratuity fund during the previous year or for the purpose of making payment of any gratuity that has become payable during the previous year by virtue of the employee's retirement, death, termination of service etc.

Further, where any provision for gratuity for any reason has been allowed as a deduction to the assessee for any assessment year, any sum paid out of such provision by way of contribution towards an approved gratuity fund or by way to gratuity to employee shall not be allowed as deduction to the assessee in the year in which it is paid.

(iv) Contributions by employers to funds, trust etc. [Section 40A(9)]

This sub-section has been introduced to curb the growing practice amongst employers to claim deductions from taxable profits of the business of contributions made apparently to the welfare of employees from which, however, no genuine benefit flows to the employees.

Accordingly, no deduction will be allowed where the assessee pays in his capacity as an employer, any sum towards setting up or formation of or as contribution to any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860 or other institution for any purpose.

However, where such sum is paid in respect of funds covered by sections 36(1)(iv), 36(1)(iva) and 36(1)(v) or any other law, then, the deduction will not be denied.

ILLUSTRATION 13

X Ltd. contributes 20% of basic salary to the account of each employee under a pension scheme referred to in section 80CCD. Dearness Allowance is 40% of basic salary and it forms part of pay of the employees.

Compute the amount of deduction allowable under section 36(1)(iva), if the basic salary of the employees aggregate to ₹ 10 lakh. Would disallowance under section 40A(9) be attracted, and if so, to what extent?

SOLUTION

Computation of deduction u/s 36(1)(iva) and disallowance u/s 40A(9)

Particulars	₹
Basic Salary	10,00,000
Dearness Allowance@40% of basic salary [DA forms part of pay]	4,00,000
Salary for the purpose of section 36(1)(iva) (Basic Salary + DA)	14,00,000
Actual contribution (20% of basic salary i.e., 20% of ₹ 10 lakh)	2,00,000
Less: Permissible deduction under section 36(1)(iva) (10% of basic salary plus dearness pay = 10% of ₹ 14,00,000 = ₹ 1,40,000)	1,40,000
Excess contribution disallowed under section 40A(9)	60,000

3.9 PROFITS CHARGEABLE TO TAX [SECTION 41]

This section enumerates certain receipts which are deemed to be income under the head “business or profession.” Such receipts would attract charge even if the business from which they arise had ceased to exist prior to the year in which the liability under this section arises. The particulars of such receipts are given below:

(i) Remission or cessation of trading liability [Section 41(1)]

Suppose an allowance or deduction has been made in any assessment year in respect of loss, expenditure or trading liability incurred by A. Subsequently, if A has obtained, whether in cash or in any manner whatsoever, any amount in respect of such loss or expenditure of some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by A, or the value of benefit accruing to him shall be taxed

as income of that previous year. It does not matter whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not.

It is possible that after the above allowance in respect of loss, expenditure, or trading liability has been given to A, he could have been succeeded in his business by another person. In such a case, the successor will be liable to be taxed in respect of any such benefit received by him during a subsequent previous year.

Successor in business:

- (i) Where there has been an amalgamation of a company with another company, the successor will be the amalgamated company.
- (ii) Where a firm carrying on a business or profession is succeeded by another firm, the successor will be the other firm.
- (iii) In any other case, where one person is succeeded by any other person in that business or profession, the other person will be the successor.
- (iv) In case of a demerger, the successor will be the resulting company.

Remission or cessation of a trading liability includes remission or cessation of liability by a unilateral act of the assessee by way of writing off such liability in his accounts.

(ii) Balancing charge, Sale of capital asset used for scientific research, Recovery of a bad debt subsequently etc. [Section 41(2),(3) & (4)]

The provisions of section 41(2) relating to balancing charge, of section 41(3) relating to assets acquired for scientific research and of section 41(4) dealing with recovery of bad debts have been dealt with earlier under the respective items.

(iii) Brought forward losses of defunct business [Section 41(5)]

In cases where a receipt is deemed to be profit of a business under section 41 relating to a business that had ceased to exist and there is an unabsorbed loss, not being a speculation loss, which arose in that business during the previous year in which it had ceased to exist and which has not been set off, it would be set off against income that is chargeable under this section even after the expiry of 8 years.

3.10 CHANGES IN THE RATE OF EXCHANGE OF CURRENCY [SECTION 43A]

(1) The section provides that where an assessee has acquired any asset from a foreign country for the purpose of his business or profession, and due to a change thereafter in the exchange rate of the two currencies involved, there is an increase or decrease in the liability (expressed in Indian rupees) of the assessee at the time of making the payment, towards the whole or part of the cost of the asset or towards repayment of the whole or a part of the money borrowed by him from any person, directly or indirectly, in any foreign currency specifically for the purpose of acquiring the asset along with the interest, if any, the following values may be changed accordingly with respect to the increase or decrease in such liability:

- (i) the actual cost of the asset under section 43(1)
- (ii) the amount of capital expenditure incurred on scientific research under section 35(1)(iv)
- (iii) the amount of capital expenditure incurred by a company for promoting family planning amongst its employees under section 36(1)(ix)
- (iv) the cost of acquisition of a non-depreciable capital asset falling under section 48.

The amount arrived at after making the above adjustment shall be taken as the amount of capital expenditure or the cost of acquisition of the capital asset, as the case may be.

- (2) Where the whole or any part of the liability aforesaid is met, not by the assessee, but, directly or indirectly, by any other person or authority, the liability so met shall not be taken into account for the purposes of this section.
- (3) Where the assessee has entered into a contract with authorised dealer as defined in section 2 of the Foreign Exchange Management Act, 1999 for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the liability aforesaid, the amount, if any, for adjustment under this section shall be computed with reference to the rate of exchange specified therein.

3.11 CERTAIN DEDUCTIONS TO BE MADE ONLY ON ACTUAL PAYMENT [SECTION 43B]

The following sums are allowed as deduction only in that previous year in which such sum is actually paid i.e., on actual payment basis.

- (a) Any sum payable by way of **tax, duty, cess or fee**, by whatever name called, under any law for the time being in force, or
- (b) Any sum payable by the assessee as an **employer** by way of **contribution to any provident fund or superannuation fund or gratuity fund or any other fund** for the welfare of employees, or
- (c) **Bonus or Commission** for services rendered payable to employees, or
- (d) Any sum payable by the assessee as **interest on any loan or borrowing** from any **public financial institution or a State Financial Corporation or a State Industrial Investment Corporation**, or
- (da) Any sum payable by the assessee as **interest on any loan or borrowing from notified class of non-banking financial companies**, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or
- (e) **Interest on any loan or advance from a scheduled bank or co-operative bank** other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or
- (f) Any sum paid by the assessee as an **employer in lieu of earned leave of his employee**, or
- (g) Any sum payable by the assessee **to the Indian Railways for use of Railway assets**.

For the purpose of claiming deduction of **the sums referred to above in clauses (a) to (g)** in the relevant previous year in which the expenditure is incurred, the above sums have to be **paid by the assessee on or before the due date for furnishing the return of income under section 139(1)** in respect of the previous year in which the liability to pay such sum was incurred and the evidence of such payment is furnished by the assessee along with such return.

Example: An assessee may collect GST from customers during the month of March, 2024. However, in respect of such collections he may have to discharge the liability only within say 20th April, 2024 under the GST law. The Explanation covers this type of liability also. Consequently, if an assessee following accrual method of accounting has created a provision in respect of such a liability the same is not deductible unless remitted within the due date specified in this section.

Conversion of interest into a loan or borrowing or debenture or any other instrument

Explanation 3C, 3CA & 3D clarifies that if any sum payable by the assessee as interest on any such loan or borrowing or advance referred to in (d), (e) and (f) above, is converted into a loan or borrowing or advance or debenture or any other instrument by which the liability to pay is deferred to a future date, the interest so converted and not "actually paid" shall not be deemed as actual payment, and hence would not be allowed as deduction. The clarificatory explanations only reiterate the rationale that conversion of interest into a loan or

borrowing or advance or debenture or any other instrument by which the liability to pay is deferred to a future date does not amount to actual payment.

The manner in which the converted interest will be allowed as deduction has been clarified in Circular No.7/2006 dated 17.7.2006. The unpaid interest, whenever actually paid to the bank or financial institution, will be in the nature of revenue expenditure deserving deduction in the computation of income. Therefore, irrespective of the nomenclature, the deduction will be allowed in the previous year in which the converted interest is actually paid.

ILLUSTRATION 14

Hari, an individual, carried on the business of purchase and sale of agricultural commodities like paddy, wheat, etc. He borrowed loans from Andhra Pradesh State Financial Corporation (APSFC) and Indian Bank and has not paid interest as detailed hereunder:

		₹
(i)	Andhra Pradesh State Financial Corporation (P.Y. 2022-23 & 2023-24)	15,00,000
(ii)	Indian Bank (P.Y. 2023-24) 30,00,000	45,00,000

Both APSFC and Indian Bank, while restructuring the loan facilities of Hari during the year 2023-24, converted the above interest payable by Hari to them as a loan repayable in 60 equal installments. During the year ended 31.3.2024, Hari paid 5 installments to APSFC and 3 installments to Indian Bank.

Hari claimed the entire interest of ₹ 45,00,000 as an expenditure while computing the income from business of purchase and sale of agricultural commodities. Examine whether his claim is valid and if not what is the amount of interest, if any, allowable.

SOLUTION

According to section 43B, any interest payable on the term loans to specified financial institutions and any interest payable on any loans and advances to, inter alia, scheduled banks shall be allowed only in the year of payment of such interest irrespective of the method of accounting followed by the assessee. Where there is default in the payment of interest by the assessee, such unpaid interest may be converted into loan. Such conversion of unpaid interest into loan shall not be construed as payment of interest for the purpose of section 43B. The amount of unpaid interest so converted as loan shall be allowed as deduction only in the year in which the converted loan is actually paid.

In the given case of Hari, the unpaid interest of ₹ 15,00,000 due to APSFC and of ₹ 30,00,000 due to Indian Bank was converted into loan. Such conversion would not amount to payment of interest and would not, therefore, be eligible for deduction in the year of such conversion. Hence, claim of Hari that the entire interest of ₹ 45,00,000 is to be allowed as deduction in the year of conversion is not tenable. The deduction shall be allowed only to the extent of repayment made during the financial year. Accordingly, the amount of interest eligible for deduction for the A.Y.2024-25 shall be calculated as follows:

	Interest outstanding	Number of Instalments	Amount per instalment	Instalments paid	Interest allowable (₹)
APSFC	15 lakh	60	25,000	5	1,25,000
Indian Bank	30 lakh	60	50,000	3	1,50,000
Total amount eligible for deduction					2,75,000

Clarification on non-applicability of section 43B on employee's Contribution to welfare funds**[Explanation 5 to section 43B]**

As per section 2(24)(x), any sum received by an assessee, being an employer from his employee as contribution to any provident fund or superannuation fund or any fund set up under Employee's State Insurance Act, 1948 or any other fund for the welfare of employees would be considered as the income of an employer.

The deduction in respect of above sum will be allowed to the assessee under section 36(1)(va) only if such sum is credited by the assessee to the employee's account in the relevant fund on or before the due date, being the date specified under the relevant Act, Rule, order or notification issued thereunder.

As per section 43B, any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, would be allowable during any P.Y. if the same has been paid on or before the 'due date' applicable in his case for furnishing the return of income under section 139(1) in respect of that P.Y.

Explanation 5 clarifies that the provisions of section 43B regarding allowability of certain expenditure in a previous year only on actual payment basis (i.e., payment on or before the due date of filing of return of income for relevant assessment year), does not apply and would deemed never to be applied to employee's contribution received by employer towards any welfare fund. In effect, clause (b) of section 43B covers only employer's contribution to provident fund, superannuation fund, gratuity fund or any other fund for welfare of employees, for remittance of which extended time limit upto due date of filing return u/s 139(1) is available; however, it does not include within its scope, employees' contribution to such funds received by the employer, which has to be credited to the employee's account in the relevant fund on or before the due date specified under the relevant Act, Rule etc. Amount credited after the said due date but on or before the due date under section 139(1) would not be eligible for deduction.

Section 43B [Clause (h)]

Any sum payable by the assessee to a micro or small enterprise beyond the timelimit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 would be allowed as deduction only in that previous year in which such sum is actually paid.

Section 15 of the of the Micro, Small and Medium Enterprises Development Act, 2006 mandates payment of goods or services to supplier, being a micro or small enterprises by the buyer on or before the date agreed upon between them in writing i.e., as per the written agreement, which cannot be more than 45 days from the day of acceptance or the day of deemed acceptance of any goods or services by a buyer from a supplier. If there is no such written agreement, the payment shall be made before the appointed day i.e., within 15 days.

If the sum payable by the assessee to a micro or small enterprise is paid as per written agreement (maximum within 45 days) or within 15 days in case of no agreement, the deduction can be claimed on accrual basis if mercantile method of accounting is followed by the assessee.

However, if the sum payable by the assessee to a micro or small enterprise is not paid as per written agreement or within 15 days in case of no agreement, the deduction would be allowed in the previous year in which it is actually paid.

Example: Mr. A has purchased goods of ₹ 10,000 from A & Co., a micro enterprise on 1.3.2024. As per the written agreement between them, the payment has to be made by 5.4.2024. Mr. A follows mercantile method of accounting.

(i) If Mr. A paid the sum on 2.4.2024

Since Mr. A paid the sum on or before 5.4.2024, the deduction would be allowed in P.Y. 2023-24.

(ii) If Mr. A paid the sum on 20.4.2024

Since Mr. A paid the sum beyond the time limit, the deduction would be allowed in the year of actual payment i.e., P.Y. 2024-25.

Meaning of Micro and Small enterprise

S. No.	Meaning	
(1)	In case of enterprises engaged in the manufacture or production of goods pertaining to specified industries	
	Micro enterprise	Small enterprise
	Where the investment in plant and machinery ≤ ₹ 25 lakhs	Where the investment in plant and machinery > ₹ 25 lakhs ≤ ₹ 5 crores
	Note – For calculating investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such notified items shall be excluded.	
(2)	In case of enterprises engaged in providing or rendering services	
	Micro enterprise	Small enterprise
	Where the investment in ≤ ₹ 10 lakhs	Where the investment in equipment > ₹ 10 lakhs ≤ ₹ 2 crores

Any sum payable means a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law.

3.12 STAMP DUTY VALUE OF LAND AND BUILDING TO BE TAKEN AS THE FULL VALUE OF CONSIDERATION IN RESPECT OF TRANSFER, EVEN IF THE SAME ARE HELD BY THE TRANSFEROR AS STOCK-IN-TRADE [SECTION 43CA]

- (i) Section 43CA has been inserted as an anti-avoidance measure to provide that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the value so adopted or assessed or assessable (i.e., the stamp duty value) shall be deemed to be the full value of the consideration for the purposes of computing income under the head “Profits and gains of business of profession”.

However, if the stamp duty value does not exceed 110% of the consideration received or accruing, then, such consideration shall be deemed to be the full value of consideration for the purpose of computing profits and gains from transfer of such asset.

- (ii) Further, where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the stamp duty value may be taken as on the date of the agreement for transfer instead of on the date of registration for such transfer, provided at least a part of the consideration has been received by way of an account payee cheque/account payee bank draft or use of ECS through a bank account or through such other prescribed electronic modes on or before the date of the agreement.

The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2020 dated 29.01.2020].

- (iii) The Assessing Officer may refer the valuation of the asset to a valuation officer in the following cases -
- (1) Where the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the authority for payment of stamp duty exceeds the fair market value of the property as on the date of transfer and
 - (2) the value so adopted or assessed or assessable by such authority has not been disputed in any appeal or revision or no reference has been made before any other authority, court or High Court.
- (iv) Where the value ascertained by the Valuation Officer exceeds the value adopted or assessed or assessable by the Stamp Valuation Authority, the value adopted or assessed or assessable shall be taken as the full value of the consideration received or accruing as a result of the transfer.

The term '**assessable**' has been defined to mean the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

Date of transfer of land/building held as stock-intrade	Actual consideration	Stamp duty value on the date of agreement	Stamp duty value (SDV) on the date of registration	Full value of consideration	Remark
₹ in lakhs					
Example:					
1/9/2023	100 (₹ 10 lakhs received by A/c payee cheque on 1/7/2023)	120 (1/7/2023)	130 (1/9/2023)	120	As part of the consideration is received by A/c payee cheque on the date of agreement, Stamp duty value (SDV) on the date of agreement to be adopted as full value of consideration, since the SDV exceeds 110% of consideration i.e., ₹ 110 lakhs.
Example:					
1/9/2023	100 (₹ 10 lakhs received by cash on 1/7/2023)	109 (1/7/2023)	130 (1/9/2023)	130	SDV on the date of registration to be adopted as full value of consideration and such SDV exceeds 110% of consideration i.e., ₹ 110 lakhs. Since part of consideration is received by cash on the date of agreement, the SDV on the date of agreement cannot be considered visà-vis actual consideration.

Example:

31/1/2024	100 (₹ 10 lakhs received by A/c payee cheque on 1/7/2023)	109 (1/7/2023)	130 (31/1/2024)	100	Actual sales consideration would be the full value of consideration, since SDV on the date of agreement does not exceed 110% of actual consideration. SDV on the date of agreement can be considered vis-à-vis actual consideration, since part of the consideration has been received by account payee cheque on the date of agreement.
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Example:

31/3/2024	100 (Full amount received in cash on the date of registration)	120 (1/5/2023)	130 (31/3/2024)	130	SDV of the date of registration would be the full value of consideration since the SDV exceeds 110% of consideration i.e., ₹ 110 lakhs.
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3.13 COMPULSORY MAINTENANCE OF ACCOUNTS [SECTION 44AA]**(1) Maintenance of books of account and other documents by notified professions [section 44AA(1)]:**

This section provides that every person carrying on the legal, medical, engineering or architectural profession or accountancy or technical consultancy or interior decoration or any other profession as has been notified by the CBDT in the official gazette must statutorily maintain such books of accounts and other documents as may enable the assessing officer to compute his total income in accordance with the provisions of the Income-tax Act, 1961.

Notified professions: The professions notified so far are as the profession of authorised representative; the profession of film artist (actor, camera man, director, music director, art director, editor, singer, lyricist, story writer, screen play writer, dialogue writer and dress designer); the profession of company secretary; and information technology professionals.

Prescribed books of accounts & other documents: The CBDT has been authorised, having due regard to the nature of the business or profession carried on by any class of persons, to **prescribe by rules the books of account and other documents** including inventories, wherever necessary, to be kept and maintained by the taxpayer, the particulars to be contained therein and **the form and manner in which and the place at which they must be kept and maintained.**

Rules pertaining to maintenance of books of accounts & other documents:

Rule 6F of the Income-tax Rules contains the details relating to the books of account and other documents to be maintained by certain professionals under section 44AA(1).

Prescribed class of persons: As per Rule 6F, every person carrying on legal, medical, engineering, or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorized representative or film artist shall keep and maintain the books of account and other documents specified in Rule 6F(2) in the following cases :

- if his **gross receipts exceed ₹ 1,50,000 in all the 3 years immediately preceding the previous year;** or

- if, where the profession has been newly set up in the previous year, his **gross receipts are likely to exceed ₹ 1,50,000 in that year.**

Professionals whose gross receipts are less than the specified limits given above are also required to maintain books of account but these have not been specified in the Rule.

In other words, they are required to maintain such books of account and other documents as may enable the Assessing Officer to compute the total income in accordance with the provisions of this Act.

Prescribed books of accounts and other documents [Sub-rule (2) of Rule 6F]: The following books of account and other documents are required to be maintained.

- a cash book;
- a journal, if accounts are maintained on mercantile basis ;
- a ledger;
- Carbon copies of bills and receipts issued by the person whether machine numbered or otherwise serially numbered, in relation to sums exceeding ₹ 25;
- Original bills and receipts issued to the person in respect of expenditure incurred by the person, or where such bills and receipts are not issued, payment vouchers prepared and signed by the person, provided the amount does not exceed ₹ 50. Where the cash book contains adequate particulars, the preparation and signing of payment vouchers is not required.

In case of a person carrying on medical profession, he will be required to maintain the following in addition to the list given above:

- a daily case register in Form 3C.
- an inventory under broad heads of the stock of drugs, medicines and other consumable accessories as on the first and last day of the previous year used for his profession.

Place at which books to be kept and maintained: The books and documents shall be kept and maintained at the place where the person is carrying on the profession, or where there is more than one place, at the principal place of his profession. However, if he maintains separate set of books for each place of his profession, such books and documents may be kept and maintained at the respective places.

Period for which the books of account and other documents are required to be kept and maintained by notified professions: The Central Board of Direct Taxes has also been empowered to prescribe, by rules, the period for which the books of account and other documents are required to be kept and maintained by the taxpayer.

The above books of account and documents shall be kept and maintained for a minimum of 6 years from the end of the relevant assessment year.

ILLUSTRATION 15

Vinod is a person carrying on profession as film artist. His gross receipts from profession are as under:

Particulars	₹
Financial year 2020-21	1,15,000
Financial year 2021-22	1,80,000
Financial year 2022-23	2,10,000

What is his obligation regarding maintenance of books of accounts for Assessment Year 2024-25 under section

44AA of Income-tax Act, 1961?

SOLUTION

Section 44AA(1) requires every person carrying on any profession, notified by the Board in the Official Gazette (in addition to the professions already specified therein), to maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act, 1961.

As per Rule 6F, a person carrying on a notified profession shall be required to maintain specified books of accounts:

- (i) if his gross receipts in all the three years immediately preceding the relevant previous year has exceeded ₹ 1,50,000; or
- (ii) if it is a new profession which is setup in the relevant previous year, it is likely to exceed ₹ 1,50,000 in that previous year.

In the present case, Vinod is a person carrying on profession as film artist, which is a notified profession. Since his gross receipts have not exceeded ₹ 1,50,000 in financial year 2020-21, the requirement under section 44AA to compulsorily maintain the prescribed books of account is not applicable to him.

Mr. Vinod, however, required to maintain such books of accounts as would enable the Assessing Officer to compute his total income.

(2) Maintenance of books of account and other documents by persons carrying on business or profession [other than notified professions referred to in section 44AA(1)] [Section 44AA(2)]

I. In case of Individual or HUF: An Individual or HUF carrying on any business or profession (other than notified professions specified in section 44AA(1)) must maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance the provisions of the Income-tax Act, 1961 in the following circumstances:

- (i) **Existing business or profession:** In cases where the **income** from the existing business or profession **exceeds ₹ 2,50,000 or the total sales, turnover or gross receipts**, as the case may be, in the business or profession **exceed ₹ 25,00,000 in any one of three years immediately preceding** the accounting year; or
- (ii) **Newly set up business or profession:** In cases where the business or profession is newly set up in any previous year, if his **income** from business or profession **is likely to exceed ₹ 2,50,000** or his **total sales, turnover or gross receipts**, as the case may be, in the business or profession **are likely to exceed ₹ 25,00,000** during the previous year.

II. Person (other than individual or HUF): Every person (other than individual or HUF) carrying on any business or profession [other than the notified professions referred to in section 44AA(1)] must maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance the provisions of the Income-tax Act, 1961 in the following circumstances:

- (i) **Existing business or profession:** In cases where the **income** from the business or profession **exceeds ₹ 1,20,000** or the **total sales, turnover or gross receipts**, as the case may be, in the business or profession **exceed ₹ 10,00,000 in any one of three years** immediately preceding the accounting year; or
- (ii) **Newly set up business or profession:** In cases where the business or profession is newly set up in any previous year, if his **income** from business or profession **is likely to exceed ₹ 1,20,000** or his **total sales, turnover or gross receipts**, as the case may be, in the business or profession **are likely to exceed ₹ 10,00,000** during the previous year;

~~III. Showing lower income as compared to income computed on presumptive basis under section 44AE~~

(or section 44BB or section 44BBB) : Where profits and gains from the business are calculated on a presumptive basis under section 44AE (or section 44BB or section 44BBB) and the assessee has claimed that his income is lower than the profits or gains so deemed to be the profits and gains of his business.

IV. Where the provisions of section 44AD(4) are applicable in his case and his income exceeds the basic exemption limit in any previous year: In cases, where an assessee not eligible to claim the benefit of the provisions of section 44AD(1) for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of 44AD(1) and his income exceeds the basic exemption limit during the previous year.

(2) Penalty for failure to maintain books of account [Section 271A]

If a person fails to keep and maintain any such books of account and other documents as required by section 44AA in respect of any previous year or to retain such books of account and other documents for the specified period, penalty of ₹ 25,000 would be leviable under section 271A.

3.14 AUDIT OF ACCOUNTS OF CERTAIN PERSONS CARRYING ON BUSINESS OR PROFESSION [SECTION 44AB]

(i) Requirement of Tax Audit: It is obligatory for the persons mentioned in column (2) of the table below, carrying on business or profession, to get his accounts audited before the “specified date” by a Chartered Accountant, if the conditions mentioned in the corresponding row of column (3) are satisfied

	Persons	When tax audit is required?
(1)	(2)	(3)
I	In case of a person carrying on business	
(a)	In case of a person carrying on business	If his total sales, turnover or gross receipts in business > ₹ 1 crore in the relevant PY Note - The requirement of audit u/s 44AB does not apply to a person who declares profits and gains for the previous year on presumptive basis u/s 44AD(1).
	If in case of such person carrying on business – (i) Aggregate cash receipts in the relevant PY ≤ 5% of total receipts (incl. receipts for sales, turnover, gross receipts); and (ii) Aggregate cash payments in the relevant PY ≤ 5% of total payments (incl. amount incurred for expenditure)	If his total sales, turnover or gross receipts in business > ₹ 10 crore in the relevant PY
	Note - For this purpose, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, would be deemed to be the payment or receipt, as the case may be, in cash.	
(b)	In case of an assessee covered u/s 44AE i.e., an assessee engaged in the business of plying, hiring or leasing goods carriages who owns not more than 10 goods carriages at any time during the P.Y.	If such assessee claims that the profits and gains from business in the relevant P.Y. are lower than the profits and gains computed on a presumptive basis u/s 44AE [i.e., ₹ 1000 per ton of gross vehicle weight or unladen weight in case of each heavy goods vehicle and ₹ 7,500 for each vehicle, other than heavy goods vehicle, for every month or part of the month for which the vehicle is owned by the assessee].

	Persons	When tax audit is required?
(1)	(2)	(3)
(c)	In case of an eligible assessee carrying on business, whose total turnover, sales, gross receipts \leq ₹ 200 lakhs, and who has opted for section 44AD in any earlier PY (say, P.Y. 2022-23)	If he declares profit for any of the five successive PYs (say, P.Y.2023-24) not in accordance with section 44AD (i.e., he declares profits lower than 8% or 6% of total turnover, sales or gross receipts, as the case may be, in that year), then, he cannot opt for section 44AD for five successive PYs after the year of such default (i.e., from P.Y.2024-25 to P.Y.2028-29). For the year of default (i.e., P.Y.2023-24) and five successive previous years (i.e., P.Y.2024-25 to P.Y.2028-29), he has to maintain books of account u/s 44AA and get them audited u/s 44AB, if his income exceeds the basic exemption limit.
	In case of an eligible assessee carrying on business, whose aggregate cash receipts in the relevant PY \leq 5% of total turnover or gross receipts and whose total turnover, sales, gross receipts \leq ₹ 300 lakhs, and who has opted for section 44AD in any earlier PY (say, P.Y. 2022-23)	
II	In case of persons carrying on profession	
(a)	In case of a person carrying on profession	If his gross receipts in profession $>$ ₹ 50 lakh in the relevant PY. Note – The requirement of audit u/s 44AB does not apply to a person who declares profits and gains for the previous year on presumptive basis u/s 44ADA(1).
(b)	In case of an assessee carrying on a notified profession under section 44AA(1) i.e., legal medical, engineering, accountancy, architecture, interior decoration, technical consultancy, whose gross receipts \leq ₹ 50 lakhs	If such resident assessee claims that the profits and gains from such profession in the relevant PY are lower than the profits and gains computed on a presumptive basis u/s 44ADA (50% of gross receipts) and his income exceeds the basic exemption limit in that PY.
	In case of an assessee carrying on a notified profession under section 44AA(1) i.e., legal medical, engineering, accountancy, architecture, interior decoration, technical consultancy, whose aggregate cash receipts in the relevant PY \leq 5% of total gross receipts and whose gross receipts \leq ₹ 75 lakhs	

(ii) Audit Report: The persons mentioned above would have to furnish by the specified date a report of the audit in the prescribed forms. For this purpose, the Board has prescribed under Rule 6G, Forms 3CA/ 3CB/ 3CD containing forms of audit report and particulars to be furnished therewith.

(iii) Accounts audited under other statutes are considered: In cases where the accounts of a person are required to be audited by or under any other law before the specified date, it will be sufficient if the person gets his accounts audited under such other law before the specified date and also furnish by the said date the report of audit in the prescribed form in addition to the report of audit required under such other law.

Thus, for example, the provision regarding compulsory audit does not imply a second or separate audit of accounts of companies whose accounts are already required to be audited under the Companies Act, 2013.

The provision only requires that companies should get their accounts audited under the Companies Act, 2013 before the specified date and in addition to the report required to be given by the auditor under the Companies Act, 2013 furnish a report for tax purposes in the form to be prescribed in this behalf by the CBDT.

- (iv) Specified date:** The expression “**specified date**” in relation to the accounts of the previous year or years relevant to any assessment year means the date one month prior to the due date for furnishing the return of income under section 139(1).

The due date for filing return of income in case of assessee (other than companies) who are required to get their accounts audited is 31st October of the relevant assessment year. **Hence, the specified date for tax audit would be 30th September of the relevant assessment year.**

- (v) Penalty for failure to get books of account audited:** If any person fails to get his accounts audited in respect of any previous year or furnish the audit report by the specified date, penalty of lower of (a) and (b) mentioned below would be leviable on such person –

- (a) ½% of total sales, turnover or gross receipts, as the case may be, in business or of the gross receipts in profession, in such previous year; or
 (b) ₹ 1,50,000 [Section 271B].

3.15 SPECIAL PROVISIONS FOR COMPUTING PROFITS AND GAINS OF BUSINESS ON PRESUMPTIVE BASIS [SECTIONS 44AD/44ADA/44AE]

	Particulars	Section 44AD	Section 44ADA	Section 44AE
(1)	Eligible Assessee	Resident individual, HUF or Partnership firm (but not LLP) engaged in eligible business and who has not claimed deduction under section 10AA or Chapter VIA under “C – Deductions in respect of certain incomes” Non-applicability of section 44AD in respect of the following persons: <ul style="list-style-type: none"> • A person carrying on profession specified u/s 44AA(1); • A person earning income in the nature of commission or brokerage; • A person carrying on any agency business. 	Resident individual or Partnership firm (but not LLP) engaged in any profession specified u/s 44AA(1), namely, legal, medical, engineering, architectural profession or profession of accountancy or technical consultancy or interior decoration or notified profession (authorized representative, film artist, company secretary, profession of information technology)	An assessee owning not more than 10 goods carriages at any time during the P.Y.
(2)	Eligible business/profession	Any business, other than business referred to in section 44AE, whose total turnover/gross receipts in the P.Y. ≤ ₹ 200 lakhs in the relevant P.Y. Any business, other than	Any profession specified u/s 44AA(1), whose gross receipts ≤ ₹ 50 lakhs in the relevant P.Y. Any profession specified	Business of plying, hiring or leasing goods carriages

	Particulars	Section 44AD	Section 44ADA	Section 44AE
		<p>business referred to in section 44AE, whose total turnover/gross receipts in the P.Y. ≤ ₹ 300 lakhs in the relevant P.Y., if aggregate cash receipts in the relevant PY ≤ 5% of total turnover or gross receipts.</p> <p>In effect, if the turnover of business is > ₹ 200 lakhs ≤ ₹ 300 lakhs, the benefit of section 44AD can be availed only if aggregate cash receipts in relevant P.Y. ≤ 5% of total turnover or gross receipts.</p> <p>Note : For this purpose, the receipt of amount or aggregate of amounts by a cheque drawn on a bank or by a bank draft, which is not account payee, would be deemed to be the receipt in cash.</p>	<p>u/s 44AA(1), whose gross receipts ≤ ₹ 50 lakhs in the relevant P.Y., if aggregate cash receipts in the relevant PY ≤ 5% of total gross receipts.</p> <p>In effect, if the gross receipts from profession is > ₹ 50 lakhs ≤ ₹ 75 lakhs, the benefit of section 44ADA can be availed only if aggregate cash receipts in relevant P.Y. ≤ 5% of total gross receipts.</p>	
(3)	Presumptive income	<p>8% of total turnover/sales/gross receipts or a sum higher than the aforesaid sum claimed to have been earned by the assessee.</p> <p>6% of total turnover/ gross receipts in respect of the amount of total turnover/ sales/gross receipts received by A/c payee cheque/ bank draft/ ECS through a bank account or through such other prescribed electronic modes (credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT, and BHIM Aadhar Pay) during the P.Y. or before due date of filing of return u/s 139(1) in respect of that P.Y. (or) such higher sum claimed to have been earned by the assessee.</p>	<p>50% of gross receipts of such profession or a sum higher than the aforesaid sum claimed to have been earned by the assessee.</p>	<p>For each heavy goods vehicle ₹ 1,000 per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month;</p> <p>For each vehicle, other than heavy goods vehicle: ₹ 7,500 per month or part of a month during which such vehicle is owned by the assessee or an amount claimed to have been actually earned from such vehicle, whichever is higher.</p>

	Particulars	Section 44AD	Section 44ADA	Section 44AE
(4)	Nonallowability of deductions while computing presumptive income	Deductions allowable under sections 30 to 38 shall be deemed to have been given full effect to and no further deduction shall be allowed		
		Even in case of a firm, salary and interest paid to partners is not deductible.	Even in case of a firm, salary and interest paid to partners is not deductible.	In case of a firm, salary and interest paid to partners is deductible subject to the conditions and limits specified in section 40(b)
(5)	Written down value of asset	WDV of any asset of an eligible business/profession shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed depreciation for each of the relevant assessment years		
(6)	Requirement of maintenance of books of account u/s 44AA and audit u/s 44AB	If eligible assessee declares profits and gains in accordance with the provisions of section 44AD, he is not required to maintain books of account u/s 44AA or get them audited u/s 44AB. However, if after declaring profits on presumptive basis u/s 44AD, say, for A.Y.2024-25, nondeclaration of profits on presumptive basis for any of the 5 successive A.Y.s thereafter (i.e., from A.Y.2025-26 to A.Y.2029-30), say, for A.Y. 2026-27, would disentitle the assessee from claiming profits on presumptive basis for five successive AYs subsequent to the AY relevant to the PY of such non-declaration (i.e., from A.Y.2027-28 to A.Y.2031-32). In such a case, the assessee would have to maintain books of account and other documents u/s 44AA(2) and get his accounts audited u/s 44AB, if his total income exceeds the basic exemption limit in those years.	If eligible assessee declares profits and gains in accordance with the provisions of section 44ADA, he is not required to maintain books of account u/s 44AA or get them audited u/s 44AB. However, if the assessee claims his profits to be lower than the profits computed by applying the presumptive rate, he has to maintain books of account and other documents u/s 44AA(1) and get his accounts audited u/s 44AB, if his total income > basic exemption limit for that year.	If eligible assessee declares profits and gains in accordance with the provisions of section 44AE, he is not required to maintain books of account u/s 44AA or get them audited u/s 44AB. However, if the assessee claims his profits to be lower than the profits computed by applying the presumptive rate, he has to maintain books of account u/s 44AA(2) and get his accounts audited u/s 44AB.
(7)	Advance tax obligation	The eligible assessee opting for section 44AD is required to pay advance tax by 15th March of the financial year (F.Y.) .	The eligible assessee opting for section 44ADA is required to pay advance tax by 15th March of the F.Y.	The eligible assessee has to pay advance tax in four installments [See Chapter 7 in Module 3 for details].

Meaning of certain terms for the purpose of section 44AE:

Sr. No	Term	Meaning
(1)	Heavy goods vehicle	any goods carriage, the gross vehicle weight of which exceeds 12,000 kilograms.
(2)	Gross vehicle weight	total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle.
(3)	Unladen weight	the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working but excluding the weight of driver or attendant and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative body or part

Example: Let us consider the following particulars relating to a resident individual, Mr. A, being an eligible assessee carrying on retail trade business whose total turnover do not exceed ₹ 2 crore in any of the previous year relevant to A.Y.2024-25 to A.Y.2026-27-

Particulars	A.Y.2024-25	A.Y.2025-26	A.Y.2026-27
Total turnover (₹)	1,80,00,000	1,90,00,000	2,00,00,000
Amount received through prescribed electronic modes on or before 31 st October of the A.Y.	1,60,00,000	1,45,00,000	1,80,00,000
Income offered for taxation (₹)	11,20,000	12,30,000	10,00,000
% of gross receipts	6% on ₹ 1.60 crore and 8% on ₹ 20 lakhs	6% on ₹ 1.45 crore and 8% on ₹ 45 lakhs	5% on ₹ 2 crore
Offered income as per presumptive taxation scheme u/s 44AD	Yes	Yes	No

In the above case, Mr. A, an eligible assessee, opts for presumptive taxation under section 44AD for A.Y.2024-25 and A.Y.2025-26 and offers income of ₹ 11.20 lakh and ₹ 12.30 lakh on gross receipts of ₹ 1.80 crore and ₹ 1.90 crore, respectively.

However, for A.Y.2026-27, he offers income of only ₹ 10 lakh on turnover of ₹ 2 crore, which amounts to 5% of his gross receipts. He maintains books of account under section 44AA and gets the same audited under section 44AB. Since he has not offered income in accordance with the provisions of section 44AD(1) for five consecutive assessment years, after A.Y. 2024-25, he will not be eligible to claim the benefit of section 44AD for next five assessment years succeeding A.Y.2026-27 i.e., from A.Y.2027-28 to 2031-32.

ILLUSTRATION 16

Mr. Praveen engaged in retail trade, reports a turnover of ₹ 2,98,50,000 for the financial year 2023-24. Amount received in cash during the P.Y. 2023-24 is ₹ 14,00,000 and balance through prescribed electronic modes on or before 31st October 2024. His income from the said business as per books of account is ₹ 15,00,000 computed as per the provisions of Chapter IV-D "Profits and gains from business or Profession" of the Income-tax Act, 1961. Retail trade is the only source of income for Mr. Praveen. A.Y. 2023-24 was the first year for which he declared his

business income in accordance with the provisions of presumptive taxation u/s 44AD.

- (i) Is Mr. Praveen also eligible for presumptive determination of his income chargeable to tax for the assessment year 2024-25?
- (ii) If so, determine his income from retail trade as per the applicable presumptive provision.
- (iii) In case Mr. Praveen wants to declare profits as per books of account from retail trade, what are his obligations under the Income-tax Act, 1961?
- (iii) What is the due date for filing his return of income under both the options?

SOLUTION

- (i) Yes. Since his cash receipts during the P.Y. does not 5% of the total turnover ($14,00,000/2,98,50,000 \times 100$) and his total turnover for the F.Y.2023-24 is below ₹ 300 lakhs, he is eligible for presumptive taxation scheme under section 44AD in respect of his retail trade business.
- (ii) His income from retail trade, applying the presumptive tax provisions under section 44AD, would be ₹ 18,19,000 (₹ 1,12,000, being 8% of ₹ 14,00,000 + ₹ 17,07,000, being 6% of ₹ 2,84,50,000).
- (iii) Mr. Praveen had declared profit for the previous year 2022-23 in accordance with the presumptive provisions and if he wants to declare profits as per books of account which is lower than the presumptive income for any of the five consecutive assessment years i.e., A.Y. 2024-25 to A.Y. 2028-29, he would not be eligible to claim the benefit of presumptive taxation for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance the presumptive provisions i.e. if he declares profits lower than the presumptive income in say P.Y. 2023-24 relevant to A.Y.2024-25, then he would not be eligible to claim the benefit of presumptive taxation for A.Y. 2025-26 to A.Y. 2029-30.

Consequently, Mr. Praveen is required to maintain the books of accounts and get them audited under section 44AB, since his income exceeds the basic exemption limit.

- (iv) In case he declares presumptive income under section 44AD, the due date would be 31st July, 2024.
In case he declares profits as per books of account which is lower than the presumptive income, he is required to get his books of account audited, in which case the due date for filing of return of income would be 31st October, 2024.

ILLUSTRATION 17

Mr. X commenced the business of operating goods vehicles on 1.4.2023. He purchased the following vehicles during the P.Y.2023-24. Compute his income under section 44AE for A.Y.2024-25.

	Gross Vehicle Weight (in kilograms)	Number	Date of purchase
(1)	7,000	2	10.04.2023
(2)	6,500	1	15.03.2024
(3)	10,000	3	16.07.2023
(4)	11,000	1	02.01.2024
(5)	15,000	2	29.08.2023
(6)	15,000	1	23.02.2024

Would your answer change if the goods vehicles purchased in April, 2023 were put to use only in July, 2023?

SOLUTION

Since Mr. X does not own more than 10 vehicles at any time during the previous year 2023-24, he is eligible to opt for presumptive taxation scheme under section 44AE. ₹ 1,000 per ton of gross vehicle weight or unladen weight per month or part of the month for each heavy goods vehicle and ₹ 7,500 per month or part of month for each goods carriage other than heavy goods vehicle, owned by him would be deemed as his profits and gains from such goods carriage.

Heavy goods vehicle means any goods carriage, the gross vehicle weight of which exceeds 12,000 kg.

(1)	(2)	(3)	(4)
Number of Vehicles	Date of purchase	No. of months for which vehicle is owned	No. of months × No. of vehicles [(1) × (3)]
For Heavy goods vehicle			
2	29.08.2023	8	16
1	23.02.2024	2	2
			18
For goods vehicle other than heavy goods vehicle			
2	10.4.2023	12	24
1	15.3.2024	1	1
3	16.7.2023	9	27
1	02.1.2024	3	3
			55

The presumptive income of Mr. X under section 44AE for A.Y.2024-25 would be -

₹ 6,82,500, i.e., $55 \times ₹ 7,500$, being for other than heavy goods vehicle + $18 \times ₹ 1,000 \times 15$ ton being for heavy goods vehicle.

The answer would remain the same even if the two vehicles purchased in April, 2023 were put to use only in July, 2023, since the presumptive income has to be calculated per month or part of the month for which the vehicle is owned by Mr. X.

3.16 COMPUTATION OF BUSINESS INCOME IN CASES WHERE INCOME IS PARTLY AGRICULTURAL AND PARTLY BUSINESS IN NATURE

Taxability in case of composite income

Rule	Nature of composite income	Business income (Taxable)	Agricultural Income (Exempt)
7A	Income from sale of rubber products derived from rubber plants grown by the seller in India	35%	65%
7B	Income from sale of coffee <ul style="list-style-type: none"> grown and cured by the seller in India 	25%	75%

Rule	Nature of composite income	Business income (Taxable)	Agricultural Income (Exempt)
	<ul style="list-style-type: none"> grown, cured, roasted and grounded by the seller in India 	40%	60%
8	Income from sale of tea grown and manufactured by the seller in India	40%	60%

Notes –

- (1) In computing income from sale of tea/sale of rubber/sale of coffee, an allowance shall be made in respect of the cost of planting bushes/rubber plants/coffee plants in replacement of bushes/plants that have died or become permanently useless in an area already planted, if such area has not previously been abandoned. For the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provision of section 10(30) or 10(31), respectively, is not includible in the total income.
- (2) Section 10(30) provides exemption of subsidy received by an assessee carrying on the business of growing and manufacturing tea in India from or through the Tea Board for replantation or replacement of tea bushes or for rejuvenation or consolidation of areas used for cultivation of tea, subject to fulfillment of specified conditions.
- (3) Section 10(31) provides exemption of subsidy received by an assessee carrying on the business of growing and manufacturing rubber, coffee, cardamom or other notified commodity in India from or through concerned Board for replantation or replacement of rubber plants, coffee plants, cardamom plants or plants for the growing of other notified commodity or for rejuvenation or consolidation of areas used for cultivation of rubber, coffee, cardamom or other notified commodity, subject to fulfillment of specified conditions.

ILLUSTRATION 18

Miss Vivitha, a resident and ordinarily resident in India, has derived the following income from various operations (relating to plantations and estates owned by her) during the year ended 31-3-2024:

S. No.	Particulars	₹
(i)	Income from sale of centrifuged latex processed from rubber plants grown in Darjeeling.	3,00,000
(ii)	Income from sale of coffee grown and cured in Yercaud, Tamil Nadu.	1,00,000
(iii)	Income from sale of coffee grown, cured, roasted and grounded, in Colombo. Sale consideration was received at Chennai.	2,50,000
(iv)	Income from sale of tea grown and manufactured in Shimla.	4,00,000
(v)	Income from sapling and seedling grown in a nursery at Cochin. Basic operations were not carried out by her on land.	80,000

You are required to compute the business income and agricultural income of Miss Vivitha for the A.Y. 2024-25.

SOLUTION**Computation of business income and agricultural income of Ms. Vivitha for the A.Y.2024-25**

Sr. No.	Source of income	Gross (₹)	Business income		Agricultural income
			%	₹	₹
(i)	Sale of centrifuged latex from rubber plants grown in India.	3,00,000	35%	1,05,000	1,95,000
(ii)	Sale of coffee grown and cured in India.	1,00,000	25%	25,000	75,000
(iii)	Sale of coffee grown, cured, Roasted and grounded outside India. (See Note 1 below)	2,50,000	100%	2,50,000	-
(iv)	Sale of tea grown and manufactured in India	4,00,000	40%	1,60,000	2,40,000
(v)	Saplings and seedlings grown in nursery in India (See Note 2 below)	80,000		Nil	80,000
Total				5,40,000	5,90,000

Notes:

- Where income is derived from sale of coffee grown, cured, roasted and grounded by the seller in India, 40% of such income is taken as business income and the balance as agricultural income. However, in this question, these operations are done in Colombo, Sri Lanka. Hence, there is no question of such apportionment and the whole income is taxable as business income. Receipt of sale proceeds in India does not make this agricultural income. In the case of an assessee, being a resident and ordinarily resident, the income arising outside India is also chargeable to tax.
- Explanation 3 to section 2(1A) provides that the income derived from saplings or seedlings grown in a nursery would be deemed to be agricultural income whether or not the basic operations were carried out on land. Therefore, such income would be exempt u/s 10(1).

LET US RECAPITULATE**Method of Accounting [Section 145]**

Income chargeable under this head shall be computed in accordance with the method of accounting, either cash or mercantile basis, regularly and consistently employed by the assessee.

Income chargeable under this head [Section 28]

- The profits and gains of any business or profession carried on by the assessee at any time during the previous year.
- Any compensation or other payment due to or received by a person, at or in connection with -
 - Termination of his management or modification of the terms and conditions relating thereto, in case the person is managing the whole or substantially the whole of the affairs of an Indian company.

- (b) Termination of his office or modification of the terms and conditions relating thereto, in case the person is managing the whole or substantially the whole of the affairs in India of any other company.
 - (c) Termination of agency or modification of the terms and conditions relating thereto, in case the person is holding an agency in India for any part of the activities relating to the business of any other person.
 - (d) Vesting in the Government or in any corporation owned and controlled by the Government, under any law for the time being in force, of the management of any property or business.
 - (e) Termination or the modification of the terms and conditions, of any contract relating to his business
- (iii) Income derived by a trade, professional or similar association from specific services performed for its members.
- (iv) In the case of an assessee carrying on export business, the following incentives –
- (a) Profit on sale of import entitlements;
 - (b) Cash assistance against exports under any scheme of GoI;
 - (c) Customs duty or excise re-paid or repayable as drawback;
 - (d) Profit on transfer of Duty Free Replenishment Certificate.
- (v) The value of any benefit or perquisite arising from business or the exercise of profession, whether
- (a) convertible into money or not; or
 - (b) in cash or in kind or partly in cash and partly in kind.
- (vi) Any interest, salary, bonus, commission or remuneration due to, or received by, a partner of a firm from such firm (to the extent allowed as deduction in the hands of the firm).
However, the partner's share in the total income of the firm or LLP is exempt from tax [Section 10(2A)].
- (vii) Any sum, received or receivable, in cash or kind under an agreement for –
- (a) not carrying out any activity in relation to any business or profession; or
 - (b) not sharing any know-how, patent, copyright, trademark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision of services.
- (viii) Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.
- (ix) Fair market value of inventory as on date on which it is converted into or treated as a capital asset.
- (x) Any sum, whether received or receivable, in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, in respect of which the whole of the expenditure had been allowed as deduction under section 35AD.

Computation of income under the head “Profits and gains of business or profession”

As per section 29, the income referred to in section 28 has to be computed in accordance with the provisions contained in sections 30 to 43D.

Admissible Deductions

Section	Deduction
30	Amount paid on account of rent, rates, taxes, repairs (not including expenditure in the nature of capital expenditure) and insurance for buildings used for the purpose of business or profession. In case the premises are occupied by the assessee as a tenant, the amount of repairs would be allowed as deduction only if he has undertaken to bear the cost of repairs to the premises.

Section	Deduction																											
31	Amount paid on account for current repairs and insurance of machinery, plant and furniture used for the purpose of business or profession.																											
32	<p>Depreciation</p> <p>Depreciation is mandatorily allowable as deduction.</p> <p>Conditions for claiming depreciation</p> <ul style="list-style-type: none"> • Asset must be used for the purpose of business or profession at any time during the previous year. <p>Note: If the asset is acquired during the previous year and is put to use for less than 180 days during that previous year then, only 50% of the depreciation calculated at the rates prescribed will be allowed.</p> <ul style="list-style-type: none"> • The asset should be owned (wholly or partly) by the assessee. • The depreciation shall be allowed on the written down value of block of assets at the prescribed rates (except in the case of assets of power generating units, in respect of which depreciation has to be calculated as a percentage of actual cost). <p>As per section 2(11), block of assets means a group of assets falling within a class of assets comprising:</p> <p>(a) tangible assets, being buildings, machinery, plant or furniture,</p> <p>(b) intangible assets, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, not being goodwill of a business or profession;</p> <p>in respect of which, the same rate of depreciation is prescribed.</p>																											
	<p>Written Down Value of Assets (W.D.V.) [Section 43(6)]</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 5%; text-align: center;">(1)</td> <td style="width: 85%;">W.D.V. of the block of assets in immediately preceding previous year</td> <td style="width: 10%; text-align: center;">xxx</td> </tr> <tr> <td style="text-align: center;">(2)</td> <td>Less: Depreciation actually allowed in respect of that block of assets in said preceding previous year</td> <td style="text-align: center;">xxx</td> </tr> <tr> <td></td> <td>Opening balance as on 1st April of the current P.Y.</td> <td style="text-align: center;">xxx</td> </tr> <tr> <td></td> <td>Increased by -</td> <td></td> </tr> <tr> <td style="text-align: center;">(3)</td> <td>Actual cost of assets acquired during the previous year, not being on account of acquisition of goodwill of a business or profession</td> <td style="text-align: center;">xxx</td> </tr> <tr> <td style="text-align: center;">(4)</td> <td>Total (1) - (2) + (3)</td> <td style="text-align: center;">xxx</td> </tr> <tr> <td></td> <td>Reduced by -</td> <td></td> </tr> <tr> <td style="text-align: center;">(5)</td> <td>Money receivable in respect of any asset falling within the block which is sold, discarded, demolished or destroyed during that previous year together with scrap value. However, such amount cannot exceed the amount in (4).</td> <td style="text-align: center;">xxx</td> </tr> <tr> <td style="text-align: center;">(6)</td> <td>In case of slump sale, actual cost of the asset (-) amount of depreciation that would have been allowable to the assessee for any assessment year as if the asset was the only asset in the block. However, such amount of reduction cannot exceed the WDV.</td> <td style="text-align: center;">xxx</td> </tr> </tbody> </table>	(1)	W.D.V. of the block of assets in immediately preceding previous year	xxx	(2)	Less: Depreciation actually allowed in respect of that block of assets in said preceding previous year	xxx		Opening balance as on 1st April of the current P.Y.	xxx		Increased by -		(3)	Actual cost of assets acquired during the previous year, not being on account of acquisition of goodwill of a business or profession	xxx	(4)	Total (1) - (2) + (3)	xxx		Reduced by -		(5)	Money receivable in respect of any asset falling within the block which is sold, discarded, demolished or destroyed during that previous year together with scrap value. However, such amount cannot exceed the amount in (4).	xxx	(6)	In case of slump sale , actual cost of the asset (-) amount of depreciation that would have been allowable to the assessee for any assessment year as if the asset was the only asset in the block. However, such amount of reduction cannot exceed the WDV.	xxx
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Section	Deduction	
	(7) W.D.V at the end of the year (on which depreciation is allowable) [(4) – (5) – (6)]	xxx
	(8) Depreciation at the prescribed rate (Rate of Depreciation × WDV arrived at in (7) above)	xxx
<p>Note – If the actual cost includes cost of asset put to use for less than 180 days in the relevant P.Y. of acquisition, then, depreciation on such cost would be 50% of the prescribed rate.</p>		
32(1)(ia)	<p>In case of an assessee exercising the option of shifting out of the default tax regime provided under section 115BAC(1A), additional depreciation at the rate of 20% of actual cost of plant or machinery acquired and installed by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation, transmission or distribution of power, shall be allowed.</p> <p>If plant and machinery is acquired and put to use for the purpose of business or profession for less than 180 days during the previous year in which it is acquired, additional depreciation will get restricted to 10% of actual cost (i.e., 50% of 20%). The balance additional depreciation@10% of actual cost will be allowed in the immediately succeeding previous year if the assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A) in the immediately succeeding previous year.</p> <p>However, additional depreciation will not be allowed on the following plant or machinery:</p> <ul style="list-style-type: none"> • Ships, aircraft, road transport vehicles, office appliances; • Machinery previously used by any other person; • Machinery installed in any office premises, residential accommodation, or guest house; • Machinery in respect of which, the whole of the actual cost is fully allowed as deduction (whether by way of depreciation or otherwise) of any one previous year. 	
35	<p>Expenditure on Scientific Research</p> <p>Expenditure incurred by assessee [Allowable both under the default tax regime u/s 115BAC and the optional tax regime i.e., normal provisions of the Act]</p> <ul style="list-style-type: none"> • Any revenue and capital expenditure (other than cost of acquisition of land) on scientific research for in-house research related to its business is allowable as deduction [Section 35(1)(i) & Section 35(1)(iv) read with section 35(2)]. • Deduction is also allowed in respect of payment of salary or purchase of material inputs for such scientific research during 3 years immediately preceding the year of commencement of business. Such expenditure is deemed to have been incurred in the year of commencement of business and is, hence, allowed as deduction in that year [Section 35(1)(i)]. • Capital expenditure incurred during 3 years immediately preceding the year of commencement of the business is also deemed to have been incurred in the year in which the business commences, and is hence, allowed as deduction in that year [Section 35(1)(iv) read with section 35(2)]. <p>Unabsorbed capital expenditure on scientific research can be carried forward indefinitely for set-off against any income of the assessee other than Salaries.</p> <p>Contributions to Outsiders [Allowable only if the assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)]</p> <p>In case of an assessee exercises the option of shifting out of the default tax regime provided under</p>	

Section	Deduction										
	<p>section 115BAC(1A) and paying tax as per the optional tax regime under the normal provisions of the Act, contributions made by any assessee to certain specified/ approved institutions shall be entitled to deduction of 100% of contribution made to:</p> <table border="1" data-bbox="220 331 1535 786"> <thead> <tr> <th data-bbox="220 331 379 398">Section</th> <th data-bbox="379 331 1535 398">Association/University/Company/College/IIT</th> </tr> </thead> <tbody> <tr> <td data-bbox="220 398 379 510">35(1)(ii)</td> <td data-bbox="379 398 1535 510">Notified approved research association/university/ college/ other institution for scientific research</td> </tr> <tr> <td data-bbox="220 510 379 577">35(1)(ia)</td> <td data-bbox="379 510 1535 577">Approved notified Company for scientific research</td> </tr> <tr> <td data-bbox="220 577 379 689">35(1)(iii)</td> <td data-bbox="379 577 1535 689">Notified approved research association/university/ college/ other institution for research in social science or statistical research</td> </tr> <tr> <td data-bbox="220 689 379 786">35(2AA)</td> <td data-bbox="379 689 1535 786">Approved National Laboratory/ University/ IIT/ specified person to be used for scientific research undertaken under an approved programme</td> </tr> </tbody> </table> <p>Note - Contribution to outsiders for scientific/ social science/statistical research is not allowable under the default tax regime u/s 115BAC.</p>	Section	Association/University/Company/College/IIT	35(1)(ii)	Notified approved research association/university/ college/ other institution for scientific research	35(1)(ia)	Approved notified Company for scientific research	35(1)(iii)	Notified approved research association/university/ college/ other institution for research in social science or statistical research	35(2AA)	Approved National Laboratory/ University/ IIT/ specified person to be used for scientific research undertaken under an approved programme
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35AD	<p>This section provides for investment-linked tax deduction in respect of the following specified businesses commencing operations on or after the dates specified thereto, if the assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A) -</p> <ul style="list-style-type: none"> • setting-up and operating 'cold chain' facilities for specified products (commencing operations on or after 1.4.2009); • setting-up and operating warehousing facilities for storing agricultural produce (commencing operations on or after 1.4.2009); • laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network (commencing operations on or after 1.4.2007); • building and operating a hotel of two-star or above category, anywhere in India (commencing operations on or after 1.4.2010); • building and operating a hospital, anywhere in India, with at least 100 beds for patients (commencing operations on or after 1.4.2010); • developing and building a housing project under a notified scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government (commencing operations on or after 1.4.2010); • developing and building a housing project under a notified scheme for affordable housing framed by the Central Government or State Government (commencing operations on or after 1.4.2011); • production of fertilizer in India (commencing operations on or after 1.4.2011); • setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962 (commencing operations on or after 1.4.2012); • bee-keeping and production of honey and beeswax (commencing operations on or after 1.4.2012); 										

Section	Deduction
	<ul style="list-style-type: none"> • setting up and operating a warehousing facility for storage of sugar (commencing operations on or after 1.4.2012); • laying and operating a slurry pipeline for transportation of iron-ore (commencing operations on or after 1.4.2014); • setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines (commencing operations on or after 1.4.2014). • developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility (commencing operations on or after 1.4.2017) <p>Quantum of deduction - 100% of the capital expenditure (other than expenditure on acquisition of any land, goodwill or financial instrument) incurred during the previous year, wholly and exclusively for the above specified businesses would be allowed as deduction from the business income of an assessee, if he has opted for the provisions of section 35AD.</p> <p>Further, the expenditure incurred, wholly and exclusively, for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business, provided the amount incurred prior to commencement has been capitalized in the books of account of the assessee on the date of commencement of its operations.</p> <p>Payment exceeding ₹ 10,000 to be made through prescribed electronic modes to qualify for deduction u/s 35AD - Any expenditure in respect of which payment or aggregate of payment made to a person of an amount exceeding ₹ 10,000 in a day otherwise than by account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic modes would not be eligible for deduction.</p> <p>Non-eligibility for deduction u/s 10AA or Chapter VI-A - An assessee availing investment-linked tax deduction u/s 35AD in respect of any specified business in any assessment year, is not eligible for claiming profit-linked deduction under Chapter VI-A or section 10AA for the same or any other A.Y. in respect of such specified business if the assessee has claimed or opted for section 35AD and deduction thereunder has been allowed to him.</p> <p>Asset to be used only for specified business for 8 years - Any asset in respect of which a deduction is claimed and allowed under section 35AD shall be used only for the specified business, for a period of 8 years beginning with the previous year in which such asset is acquired or constructed. If such asset is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed u/s 35AD in any previous year in respect of such asset, as reduced by the depreciation allowable under section 32 as if no deduction had been allowed under section 35AD, shall be deemed to be the business income of the assessee of the previous year in which the asset is so used.</p> <p>Note - This deduction is not allowable under the default tax regime u/s 115BAC.</p>

35D	<p>Preliminary expenditure incurred by Indian companies and other resident non-corporate assessees shall be allowed as deduction over a period of 5 years beginning with the previous year in which business commences or in which extension of the undertaking is completed or the new unit commences operation or production.</p> <p>Examples of Preliminary expenses – expenses on preparation of project report, feasibility report, market survey, engineering services, legal charges for drafting agreement.</p> <p>In case of a Company, preliminary expenses would include, in addition to the above, legal charges for drafting MOA, AOA, printing of MOA and AOA, fee for registration of Co., expenditure in connection with issue of shares or debentures of Co. (i.e. underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus)</p> <p>Qualifying amount - Maximum aggregate amount of the qualifying expenses that can be amortized is 5% of the cost of project (i.e., actual cost of fixed assets in the books of account on the last day of the P.Y.).</p> <p>In case of an Indian company, 5% of the cost of project or at its option, 5% of the capital employed by the company (aggregate of issued share capital, debentures, long-term borrowings as on the last day of the P.Y.), whichever is higher.</p>
35DDA	<p>One-fifth of the expenditure incurred by an assessee-employer in any previous year in the form of payment to any employee in connection with his voluntary retirement in accordance with a scheme of voluntary retirement, shall be allowed as deduction in that previous year and the balance in four equal installments in the immediately four succeeding previous years.</p>
36(1)(iii)	<p>Interest paid in respect of capital borrowed for the purposes of business or profession.</p> <p>However, any interest paid for acquisition of an asset (whether capitalized in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as deduction. Such amount of interest would be added to the actual cost of asset.</p>
36(1)(iv)	<p>Any sum paid by the assessee as an employer by way of contribution towards a recognized provident fund or approved superannuation fund.</p>
36(1)(iva)	<p>Any sum paid by the assessee as an employer by way of contribution towards a pension scheme referred to in section 80CCD, to the extent of 10% of salary of any employee. Salary includes dearness allowance, if the terms of employment so provide. Correspondingly, section 40A(9) disallows the sum paid in excess of 10% of the salary of any employee.</p>
36(1)(v)	<p>Any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust.</p>
36(1)(va)	<p>Amount received by assessee-employer as contribution from his employees towards their welfare fund to be allowed as deduction only if such amount is credited by the assessee to the employee's account in the relevant fund on or before due date under the relevant Act/Rule/order/notification. Amount credited after the said due date but on or before the due date under section 139(1) would not be eligible for deduction.</p>
36(1)(vii)	<p>Any bad debts written off as irrecoverable in the accounts of the assessee for the previous year, provided the debt has been taken into account in computing the income of the previous year or</p>

	<p>any earlier previous year.</p> <p>Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable. If a debt, which has not been recognized in the books of account as per the requirement of the accounting standards but has been taken into account in the computation of income as per the notified ICDSs, has become irrecoverable, it can still be claimed as bad debts under section 36(1)(vii) since it shall be deemed that the debt has been written off as irrecoverable in the books of account by virtue of the second proviso to section 36(1)(vii). This is because some ICDSs require recognition of income at an earlier point of time (prior to the point of time such income is recognised in the books of account). Consequently, if the whole or part of such income recognised at an earlier point of time for tax purposes becomes irrecoverable, it can be claimed as bad debts on account of the second proviso to section 36(1)(vii).</p>
36(1)(ix)	<p>Any bona fide expenditure incurred by a company for the purpose of promoting family planning amongst its employees.</p> <p>In case the expenditure or part thereof is of capital nature, one-fifth of such expenditure shall be deducted for the previous year in which it was incurred; and the balance in four equal installments in four succeeding previous years.</p> <p>Family planning expenses, whether revenue or capital, is not allowable as deduction for non-corporate assesses, like individuals, HUFs, firms, LLPs.</p>
36(1)(xv)	<p>An amount equal to the securities transaction tax (STT) paid by the assessee in respect of taxable securities transactions entered into in the course of his business during the previous year, if the income arising from such taxable securities transactions is included in the income computed under the head "Profits and gains of business or profession".</p>
36(1)(xvi)	<p>An amount equal to commodities transaction tax (CTT) paid in respect of taxable commodities transactions entered into the course of business during the previous year, if the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession".</p>

General

37(1)	<p>An expenditure shall be allowed under section 37, provided:</p> <ul style="list-style-type: none"> • it is not in the nature of expenditure described under sections 30 to 36; • it is not in the nature of capital expenditure; • it is not a personal expenditure of the assessee; • it is laid out and expended wholly and exclusively for the purpose of business/profession; • it is not incurred for any purpose which is an offence or which is prohibited by law; and • it is not an expenditure incurred by the assessee on CSR activities referred to in section 135 of the Companies Act, 2013. <p>Expenditure incurred for any purpose which is an offence or which is prohibited by law" would include and would be deemed to have always included the expenditure incurred by an assessee, -</p> <p>(i) for any purpose which is an offence under any law for the time being in force, in India or outside India or which is prohibited by any law for the time being in force, in India or outside India; or</p> <p>(ii) to provide any benefit or perquisite to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person; or</p> <p>(iii) to compound an offence under any law for the time being in force, in India or outside India.</p>
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37(2B)	Any expenditure incurred for advertisement in any souvenir, brochure, tract, pamphlet etc. published by a political party is not allowable as deduction.	
Amounts not deductible		
Section	Particulars	
In the hands of any assessee		
40(a)(i)	Any interest, royalty, fees for technical services or other sum chargeable under the Act, which is payable outside India or in India to a non corporate non-resident or to a foreign company, on which tax deductible at source has not been deducted or after deduction has not been paid on or before the due date specified u/s 139(1). However, if such tax has been deducted in any subsequent year or has been deducted in the previous year but paid in the subsequent year after the due date specified under section 139(1), such sum shall be allowed as deduction in computing the income of the previous year in which such tax is paid.	
40(a)(ia)	30% of any sum payable to a resident on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction has not been paid on or before the due date for filing of return of income u/s 139(1). However, if such tax has been deducted in any subsequent year or has been deducted in the previous year but paid in the subsequent year after the due date specified under section 139(1), 30% of such sum shall be allowed as deduction in computing the income of the previous year in which such tax is paid.	
40(a)(ii)	Any sum paid on account of income-tax including surcharge or cess	
40(a)(iii)	Any payment chargeable under the head " Salaries ", if it is payable outside India or to a non-resident, if tax has not been paid thereon nor deducted therefrom	
40(a)(v)	Tax paid by the employer on non-monetary perquisites provided to its employees, which is exempt under section 10(10CC) in the hands of the employee.	
In case of partnership firms or LLPs -		
40(b)	(i)	Salary, bonus, commission or remuneration, by whatever name called, paid to any partner who is not a working partner;
	(ii)	Payment of remuneration to a working partner or interest to any partner, which is not - <ul style="list-style-type: none"> • authorized by the partnership deed; or • in accordance with the terms of the partnership deed.
	(iii)	Payment of remuneration to a working partner or interest to any partner authorized by and in accordance with the terms of the partnership deed, but relates to a period falling prior to the date of such partnership and is not authorized by the earlier partnership deed.
	(iv)	Payment of interest to any partner authorised by and in accordance with the terms of the partnership deed and falling after the date of the partnership deed to the extent of the excess of the amount calculated at 12% simple interest per annum.
	(v)	Payment of remuneration to a working partner which is authorized by and in accordance with the partnership deed to the extent the aggregate of such payment to working partners exceed the following limits -

Section	Particulars		
	(a)	On the first ₹ 3,00,000 of the book-profit or in case of a loss	₹ 1,50,000 or 90% of the book-profit, whichever is more.
	(b)	On the balance of book profit	60%
	<p>Meaning of Book profit:</p> <p>Book profit means the net profit as shown in the P & L A/c for the relevant previous year computed in accordance with the provisions for computing income from profits and gains.</p> <p>The above amount should be increased by the remuneration paid or payable to all partners of the firm if the same has been deducted while computing net profit.</p>		

Expenses or payments not deductible in certain circumstances

Section	Particulars												
40A(2)	<p>Any expenditure incurred in respect of which a payment is made to a related person or entity, to the extent it is considered excessive or unreasonable by the Assessing Officer.</p> <p>Few examples of related persons are as under:</p> <table border="1"> <thead> <tr> <th>Assessee</th> <th>Related Person</th> </tr> </thead> <tbody> <tr> <td>Individual</td> <td>Any relative of the individual (husband or wife, brother or sister, any lineal ascendant or descendant of the individual)</td> </tr> <tr> <td>Firm</td> <td>Any partner of the firm or relative of such partner</td> </tr> <tr> <td>HUF or AOP</td> <td>Any member of the AOP or HUF or any relative of such member</td> </tr> <tr> <td>Company</td> <td>Director of the company or any relative of the director</td> </tr> <tr> <td>Any assessee</td> <td>Any individual who has a substantial interest (20% or more voting power or beneficial entitlement to 20% of profits) in the business or profession of the assessee; or A relative of such individual.</td> </tr> </tbody> </table>	Assessee	Related Person	Individual	Any relative of the individual (husband or wife, brother or sister, any lineal ascendant or descendant of the individual)	Firm	Any partner of the firm or relative of such partner	HUF or AOP	Any member of the AOP or HUF or any relative of such member	Company	Director of the company or any relative of the director	Any assessee	Any individual who has a substantial interest (20% or more voting power or beneficial entitlement to 20% of profits) in the business or profession of the assessee; or A relative of such individual.
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Any assessee	Any individual who has a substantial interest (20% or more voting power or beneficial entitlement to 20% of profits) in the business or profession of the assessee; or A relative of such individual.												
40A(3)	<p>Any expenditure, in respect of which a payment or aggregate of payments made to a person in a single day otherwise than by account payee cheque or account payee bank draft or ECS through bank account or through such other prescribed electronic modes exceeds ₹ 10,000.</p> <p>In case of payments made to transport operator for plying, hiring or leasing goods carriages, an enhanced limit of ₹ 35,000 shall apply.</p> <p>If the payment/payments exceed this limit, the entire expenditure would be disallowed.</p> <p>However, disallowance would not be attracted if the cases and circumstances in which payment is made otherwise than by way of an account payee cheque or bank draft are covered in Rule 6DD.</p> <p>Few Examples of exceptions covered in Rule 6DD:</p> <p>Payment to RBI, SBI, Co-operative banks</p> <p>Payment made to Government, which according to its Rules, has to be made in legal tender</p> <p>Payment for purchase of agricultural produce, forest produce, fish and fish products, productions of horticulture or apiculture to the cultivator, grower or producer of such produce or products.</p>												
40A(3A)	Where an expenditure has been allowed as deduction on accrual basis in any previous year, and												

Section	Particulars
	<p>payment is made in a subsequent previous year otherwise than by account payee cheque or account payee bank draft or ECS through bank account or through such other prescribed electronic modes and such payment (or aggregate of payments made to a person in a day is made in a subsequent previous year) is in excess of the limits of ₹ 10,000/ ₹ 35,000 specified above, the payment/aggregate of payments so made shall be deemed as profits and gains of the business or profession and charged to tax as income of the subsequent previous year.</p> <p>However, the deeming provision will not apply in the cases and circumstances covered in Rule 6DD.</p>
40A(7)	<p>Provision for payment of gratuity to employees.</p> <p>However, disallowance would not be attracted if provision is made for contribution to approved gratuity fund or for payment of gratuity that has become payable during the year.</p>
Profits chargeable to tax [Section 41]	
41(1)	<p>Where deduction was allowed in respect of loss, expenditure or trading liability for any year and subsequently, during any previous year, the assessee or successor of the business has obtained any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained or the value of benefit accrued shall be deemed to be income of the P.Y. in which such benefit was obtained.</p>
41(3)	<p>Amount realized on transfer of an asset used for scientific research without being used for other purposes is taxable as business income in the year of sale to the extent of lower of –</p> <ul style="list-style-type: none"> • deduction allowed under section 35(1)(iv); and • sale proceeds
41(4)	<p>Any amount recovered by the assessee against bad debt earlier allowed as deduction shall be taxed as income in the year in which it is received.</p>

Certain Deductions to be allowed only on Actual Payment [Section 43B]

In respect of the following sums payable by an assessee during the P.Y., deduction is allowable **only if the sum is actually paid on or before the due date of filing of return u/s 139(1)** for the said P.Y. Otherwise, the same would be allowed only in the year in which the sum is actually paid.

- (i) **Tax, duty, cess or fee**, under any law for the time being in force; or
- (ii) Contribution to any **provident fund or superannuation fund or gratuity fund or any other fund** for the welfare of employees; or
- (iii) **Bonus or commission** for services rendered by employees, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission; or
- (iv) **Interest on any loan or borrowing** from any **public financial institution or a State Financial Corporation or a State Industrial Investment Corporation**, in accordance with the terms and conditions of the agreement governing such loan or borrowing; or
- (v) **Interest on any loan or borrowing from notified class of nonbanking financial companies**, in accordance with the terms and conditions of the agreement governing such loan or borrowing
- (vi) **Interest on any loan or advance from a scheduled bank or cooperative bank** other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank in accordance with the terms and conditions of the agreement governing such loan or advances; or
- (vii) **Payment in lieu of any leave at the credit of his employee.**

(viii) Any sum payable to the **Indian Railways for use of Railway assets**.

However, any sum payable by the assessee to a micro or small enterprise beyond the time-limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 would be allowed as deduction only in the P.Y. in which the sum is actually paid.

Section 15 of the of the Micro, Small and Medium Enterprises Development Act, 2006 mandates payment of goods or services to supplier, being a micro or small enterprises on or before the date as per the written agreement, which cannot be more than 45 days. If there is no such written agreement, the payment shall be made before the appointed day i.e., within 15 days.

If the sum is paid within the said period, deduction would be allowed in the year of accrual. If it is paid after the said period, then, deduction would be allowed only in the year of actual payment, even if it is paid on or before the due date of filing return of income u/s 139(1).

Other Provisions

Section	Particulars																
43CA	<p>Where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the value so adopted or assessed or assessable (i.e., the stamp duty value) shall be deemed to be the full value of the consideration for the purposes of computing income under the head "Profits and gains of business or profession".</p> <p>However, if the stamp duty value does not exceed 110% of the actual consideration received or accruing then, such consideration shall be deemed to be the full value of consideration for the purpose of computing profits and gains from transfer of such asset.</p> <p>Further, where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the stamp duty value may be taken as on the date of the agreement for transfer instead of on the date of registration for such transfer, provided at least a part of the consideration has been received by way of an account payee cheque/ account payee bank draft or use of ECS through a bank account or through such other prescribed electronic modes on or before the date of the agreement.</p>																
44AB	<p>Mandatory audit of accounts of certain persons</p> <table border="1"> <thead> <tr> <th></th> <th>Category of person</th> <th>Condition for applicability of section 44AB</th> </tr> <tr> <th>(1)</th> <th>(2)</th> <th>(3)</th> </tr> </thead> <tbody> <tr> <td>I</td> <td colspan="2">In case of a person carrying on business</td> </tr> <tr> <td>(a)</td> <td>In case of a person carrying on business</td> <td>If his total sales, turnover or gross receipts in business > ₹ 1 crore in the relevant PY. Note – The requirement of audit u/s 44AB does not apply to a person who declares profits and gains for the previous year on presumptive basis u/s 44AD(1).</td> </tr> <tr> <td></td> <td>If in case of such person carrying on business – (i) Aggregate cash receipts in the relevant PY ≤ 5% of total receipts (incl. receipts for sales, turnover, gross receipts); and (ii) Aggregate cash payments in the relevant PY ≤ 5% of total payments</td> <td>If his total sales, turnover or gross receipts in business > ₹ 10 crore in the relevant PY</td> </tr> </tbody> </table>			Category of person	Condition for applicability of section 44AB	(1)	(2)	(3)	I	In case of a person carrying on business		(a)	In case of a person carrying on business	If his total sales, turnover or gross receipts in business > ₹ 1 crore in the relevant PY. Note – The requirement of audit u/s 44AB does not apply to a person who declares profits and gains for the previous year on presumptive basis u/s 44AD(1).		If in case of such person carrying on business – (i) Aggregate cash receipts in the relevant PY ≤ 5% of total receipts (incl. receipts for sales, turnover, gross receipts); and (ii) Aggregate cash payments in the relevant PY ≤ 5% of total payments	If his total sales, turnover or gross receipts in business > ₹ 10 crore in the relevant PY
	Category of person	Condition for applicability of section 44AB															
(1)	(2)	(3)															
I	In case of a person carrying on business																
(a)	In case of a person carrying on business	If his total sales, turnover or gross receipts in business > ₹ 1 crore in the relevant PY. Note – The requirement of audit u/s 44AB does not apply to a person who declares profits and gains for the previous year on presumptive basis u/s 44AD(1).															
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Section	Particulars	
	(incl. amount incurred for expenditure)	
	Note – For this purpose, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, would be deemed to be the payment or receipt, as the case may be, in cash.	
(b)	In case of an assessee covered u/s 44AE i.e., an assessee engaged in the business of plying, hiring or leasing goods carriages who owns not more than 10 goods carriages at any time during the P.Y.	If such assessee claims that the profits and gains from business in the relevant P.Y. are lower than the profits and gains computed on a presumptive basis u/s 44AE [i.e., ₹ 1000 per ton of gross vehicle weight or unladen weight in case of each heavy goods vehicle and ₹ 7,500 for each vehicle, other than heavy goods vehicle, for every month or part of the month for which the vehicle is owned by the assessee].
(c)	In case of an eligible assessee carrying on business, whose total turnover, sales, gross receipts ≤ ₹ 200 lakhs, and who has opted for section 44AD in any earlier PY (say, P.Y.2022-23)	If he declares profit for any of the five successive PYs (say, P.Y.2023-24) not in accordance with section 44AD (i.e., he declares profits lower than 8% or 6% of total turnover, sales or gross receipts, as the case may be, in that year), then, he cannot opt for section 44AD for five successive PYs after the year of such default (i.e., from P.Y.2024-25 to P.Y.2028-29). For the year of default (i.e., P.Y. 2023-24) and five successive previous years (i.e., P.Y.2024-25 to P.Y.2028-29), he has to maintain books of account u/s 44AA and get them audited u/s 44AB, if his income exceeds the basic exemption limit.
	In case of an eligible assessee carrying on business, whose aggregate cash receipts in the relevant PY ≤ 5% of total turnover or gross receipts and whose total turnover, sales, gross receipts ≤ ₹ 300 lakhs, and who has opted for section 44AD in any earlier PY (say, P.Y.2022-23)	
II	In case of persons carrying on profession	
(a)	In case of a person carrying on profession	If his gross receipts in profession > ₹ 50 lakh in the relevant PY Note – The requirement of audit u/s 44AB does not apply to a person who declares profits and gains for the previous year on presumptive basis u/s 44ADA(1).
(b)	In case of an assessee carrying on a notified profession under section 44AA(1) i.e., legal medical, engineering, accountancy, architecture, interior decoration, technical consultancy, whose gross receipts ≤ ₹ 50 lakhs.	If such resident assessee claims that the profits and gains from such profession in the relevant PY are lower than the profits and gains computed on a presumptive basis u/s 44ADA (50% of gross receipts) and his income exceeds the basic exemption limit in that PY.
	In case of an assessee carrying on a notified	

Section	Particulars	
	profession under section 44AA(1) i.e., legal medical, engineering, accountancy, architecture, interior decoration, technical consultancy, whose aggregate cash receipts in the relevant PY \leq 5% of total gross receipts and whose gross receipts \leq ₹ 75 lakhs.	
Presumptive Income provisions		
Section	Particulars	Deemed profits and gains
44AD	<p>Any individual, HUF or firm who is a resident (other than LLP) who has not claimed deduction under section 10AA or Chapter VI-A under the heading "C - Deductions in respect of certain incomes" engaged in any business (except the business of plying, hiring or leasing goods carriages referred to in section 44AE) and whose total turnover or gross receipts in the previous year does not exceed ₹ 2 crore.</p> <p>If aggregate cash receipts in the relevant PY \leq 5% of total turnover or gross receipts of the assessee, higher turnover threshold of ₹ 3 crore would be applicable.</p> <p>Non-applicability of section 44AD</p> <p>This section will not apply to -</p> <p>(i) a person carrying on specified professions referred to in section 44AA(1),</p> <p>(ii) a person earning income in the nature of commission or brokerage;</p> <p>(iii) a person carrying on agency business.</p>	<p>8% of gross receipts or total turnover or such higher sum claimed to have been earned by him</p> <p>However, the presumptive income would be 6% (instead of 8%) of total turnover or sales, in respect of amount which is received</p> <ul style="list-style-type: none"> • by an account payee cheque or • by an account payee bank draft or • by use of electronic clearing system through a bank account or • through such other prescribed electronic modes <p>during the previous year or before the due date of filing of return u/s 139(1) in respect of that previous year.</p>
44ADA	<p>An assessee, being an individual or a partnership firm (other than LLP) resident in India, who is engaged -</p> <p>in any profession referred to in section 44AA(1) such as legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette; and whose total gross receipts does not exceed ₹ 50 lakhs in a previous year.</p> <p>If aggregate cash receipts in the relevant PY \leq 5% of total turnover or gross receipts of the assessee, a higher gross receipts threshold of ₹ 75 lakhs would be applicable.</p>	50% of the gross receipts or such higher sum claimed to have been earned by him.
44AE	Any assessee who owns not more than ten goods carriages at any time during the previous year and who	For each heavy goods vehicle, ₹ 1,000 per ton of gross vehicle weight or

Section	Particulars	Deemed profits and gains
	is engaged in the business of plying, hiring and leasing goods carriages.	unladen weight, as the case may be, for every month or part of a month during which the vehicle is owned by the assessee. For each vehicle, other than heavy goods vehicle, ₹ 7,500 per month or part of a month during which such vehicle is owned by the assessee (or) an amount claimed to have been actually earned from such vehicle, whichever is higher

Taxability in case of composite income

In cases where income is derived from the sale of rubber manufactured or processed from rubber plants grown by the seller in India, coffee grown and cured/grown, cured, roasted and grounded by the seller in India, or tea grown and manufactured by the seller in India, the income shall be computed as if it were income derived from business, and a specified percentage of such income, as given in the table below, shall be deemed to be income liable to tax –

Rule	Nature of composite income	Business income (Taxable)	Agricultural Income (Exempt)
7A	Income from sale of rubber products derived from rubber plants grown by the seller in India	35%	65%
7B	Income from sale of coffee <ul style="list-style-type: none"> grown and cured by the seller in India grown, cured, roasted and grounded by the seller in India 	25% 40%	75% 60%
8	Income from sale of tea grown and manufactured by the seller in India	40%	60%

TEST YOUR KNOWLEDGE

1. Mr. Venus, engaged in manufacture of pesticides, furnishes the following particulars relating to its manufacturing unit at Chennai, for the year ending 31-3-2024:

	(₹ in lakhs)
WDV of Plant and Machinery on 31.3.2023	30.00
Depreciation including additional depreciation for P.Y. 2022-23	4.75
New machinery purchased on 1-9-2023	10.00

	(₹ in lakhs)
New machinery purchased on 1-12-2023	8.00
Computer purchased on 3-1-2024	4.00

Additional information:

- All assets were purchased by A/c payee cheque.
- All assets were put to use immediately.
- New machinery purchased on 1-12-2023 and computer have been installed in the office.
- During the year ended 31-3-2023, a new machinery had been purchased on 31-10-2022, for ₹ 10 lakhs. Additional depreciation, besides normal depreciation, had been claimed thereon.
- Depreciation rate for machinery may be taken as 15%.
- The assessee has no brought forward business loss or unabsorbed depreciation as on 1.4.2023.

Compute the depreciation available to the assessee as per the provisions of the Income-tax Act, 1961 and the WDV of different blocks of assets as on 31-3-2024 if -

- he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)
- he pays tax under the default tax regime under section 115BAC.

- Mr. Abhimanyu is engaged in the business of generation and distribution of electric power. He opts to claim depreciation on written down value for income-tax purposes. From the following details, compute the depreciation allowable as per the provisions of the Income-tax Act, 1961 for the A.Y. 2024-25, assuming he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A):

	Particulars	(₹ in lacs)
(i)	WDV of block as on 31.3.2023 (15% rate)	50.00
(ii)	Depreciation for P.Y. 2022-23	7.50
(iii)	New machinery purchased on 12-10-2023	10.00
(iv)	Machinery imported from Colombo on 12-4-2023. This machine had been used only in Colombo earlier and the assessee is the first user in India.	9.00
(v)	New computer installed in generation wing unit on 15-7-2023	2.00

All assets were purchased by A/c payee cheque.

- Examine with reasons, the allowability of the following expenses incurred by Mr. Manav, a wholesale dealer of commodities, under the Income-tax Act, 1961 while computing profit and gains from business or profession for the A.Y. 2024-25 if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A) -
 - Construction of school building in compliance with CSR activities amounting to ₹ 5,60,000.
 - Purchase of building for the purpose of specified business of setting up and operating a warehousing facility for storage of food grains amounting to ₹ 4,50,000.
 - Interest on loan paid to Mr. X (a resident) ₹ 50,000 on which tax has not been deducted. The sales for the P.Y. 2022-23 was ₹ 202 lakhs. Mr. X has not paid the tax, if any, on such interest.

- (iv) Commodities transaction tax paid ₹ 20,000 on sale of bullion.
4. Examine with reasons, for the following sub-divisions, whether the following statements are true or false having regard to the provisions of the Income-tax Act, 1961:
- (i) For a dealer in shares and securities, securities transaction tax paid in a recognized stock exchange is permissible business expenditure.
 - (ii) Where a person follows mercantile system of accounting, an expenditure of ₹ 25,000 has been allowed on accrual basis and in a later year, in respect of the said expenditure, assessee makes the payment of ₹ 25,000 through a crossed cheque, ₹ 25,000 can be the profits and gains of business under section 40A(3A) in the year of payment.
 - (iii) It is mandatory to provide for depreciation under section 32 of the Income-tax Act, 1961, while computing income under the head "Profits and Gains from Business and Profession".
 - (iv) The mediclaim premium paid to GIC by Mr. Lomesh for his employees, by an account payee cheque on 27.12.2023 is a deductible expenditure under section 36.
 - (v) Under section 35DDA, amortization of expenditure incurred under eligible Voluntary Retirement Scheme at the time of retirement alone, can be done.
 - (vi) An individual engaged in trading activities and exercising the option of shifting out of the default tax regime provided under section 115BAC(1A) can claim additional depreciation under section 32(1)(iia) in respect of new plant acquired and installed in the trading concern, where the increase in value of such plant as compared to the approved base year is more than 10%.
5. Examine, with reasons, the allowability of the following expenses under the Income-tax Act, 1961 while computing income from business or profession for the A.Y. 2024-25:
- (i) Provision made on the basis of actuarial valuation for payment of gratuity ₹ 5,00,000. However, no payment on account of gratuity was made before due date of filing return.
 - (ii) Purchase of oil seeds of ₹ 50,000 in cash from a farmer on a banking day.
 - (iii) Tax on non-monetary perquisite provided to an employee ₹ 20,000.
 - (iv) Payment of ₹ 50,000 by using credit card for fire insurance.
 - (v) Salary payment of ₹ 10,00,000 to Mr. X outside India by a company without deduction of tax assuming Mr. X has not paid tax on such salary income.
 - (vi) Payment made in cash ₹ 30,000 to a transporter in a day for carriage of goods.
6. Examine with reasons, whether the following statements are true or false, with regard to the provisions of the Income-tax Act, 1961:
- (a) Payment made in respect of a business expenditure incurred on 16th February, 2024 for ₹ 25,000 through a crossed cheque is hit by the provisions of section 40A(3).
 - (b) (i) It is a condition precedent to write off in the books of account, the amount due from debtor to claim deduction for bad debt.
 - (ii) Failure to deduct tax at source in accordance with the provisions of Chapter XVII-B, inter alia, from the amounts payable to a nonresident as rent or royalty, will result in disallowance while computing the business income where the non-resident payee has not paid the tax due on such income.

7. Mr. Sivam, a retail trader of Cochin gives the following Trading and Profit and Loss Account for the year ended 31st March, 2024:

Trading and Profit and Loss Account for the year ended 31.03.2024

Particulars	₹	Particulars	₹
To Opening stock	90,000	By Sales	1,12,11,500
To Purchases	1,10,04,000	By Closing stock	1,86,100
To Gross Profit	3,03,600		-
	1,13,97,600		1,13,97,600
To Salary	60,000	By Gross profit b/d	3,03,600
To Rent and rates	36,000	By Income from UTI	2,400
To Interest on loan	15,000		
To Depreciation	1,05,000		
To Printing & stationery	23,200		
To Postage & telegram	1,640		
To Loss on sale of shares (Short-term)	8,100		
To Other general expenses	7,060		
To Net Profit	50,000		
	3,06,000		3,06,000

Additional Information:

- (i) It was found that some stocks were omitted to be included in both the Opening and Closing Stock, the values of which were:

Opening stock	₹ 9,000
Closing stock	₹ 18,000

- (ii) Salary includes ₹ 10,000 paid to his brother, which is unreasonable to the extent of ₹ 2,000.
- (iii) The whole amount of printing and stationery was paid in cash by way of one-time payment to Mr. Ramesh.
- (iv) The depreciation provided in the Profit and Loss Account ₹ 1,05,000 was based on the following information:

The opening balance of plant and machinery (i.e., the written down value as on 31.3.2023 minus depreciation for P.Y. 2022-23) is ₹ 4,20,000. A new plant falling under the same block of depreciation was bought on 01.7.2023 for ₹ 70,000. Two old plants were sold on 1.10.2023 for ₹ 50,000.

- (v) Rent and rates includes GST liability of ₹ 3,400 paid on 7.4.2024.
- (vi) Other general expenses include ₹ 2,000 paid as donation to a Public Charitable Trust.

You are required to compute the profits and gains of Mr. Sivam under presumptive taxation u/s 44AD and profits and gains as per the regular provisions of the Act assuming he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). Assume that the whole of the amount of turnover received by account payee cheque or use of electronic clearing system through bank account during the previous year.

8. Mr. Sukhvinder is engaged in the business of plying goods carriages. On 1st April, 2023, he owns 10 trucks (out of which 6 are heavy goods vehicles, the gross vehicle weight of such goods vehicle is 15,000 kg each). On 2nd May, 2023, he sold one of the heavy goods vehicles and purchased a light goods vehicle on 6th May, 2023. This new vehicle could, however, be put to use only on 15th June, 2023.

Compute the total income of Mr. Sukhvinder for the A.Y. 2024-25, taking note of the following data:

Particulars	₹	₹
Freight charges collected		12,70,000
Less: Operational expenses	6,25,000	
Depreciation as per section 32	1,85,000	
Other office expenses	15,000	8,25,000
Net Profit		4,45,000
Other business and non-business income		70,000

9. Mr. Raju, a manufacturer at Chennai, gives the following Manufacturing, Trading and Profit & Loss Account for the year ended 31.03.2024:

Manufacturing, Trading and Profit & Loss Account for the year ended 31.03.2024

Particulars	₹	Particulars	₹
To Opening Stock	71,000	By Sales	2,32,00,000
To Purchase of Raw Materials	2,16,99,000	By Closing stock	2,00,000
To Manufacturing Wages & Expenses	5,70,000		
To Gross Profit	10,60,000		
	2,34,00,000		2,34,00,000
To Administrative charges	3,26,000	By Gross Profit	10,60,000
To SGST penalty	5,000	By Dividend from domestic companies	15,000
To GST paid	1,10,000	By Income from agriculture (net)	1,80,000
To General Expenses	54,000		
To Interest to Bank (On machinery term loan)	60,000		
To Depreciation	2,00,000		
To Net Profit	5,00,000		
	12,55,000		12,55,000

Following are the further information relating to the financial year 2023-24:

- (i) Administrative charges include ₹ 46,000 paid as commission to brother of the assessee. The commission amount at the market rate is ₹ 36,000.
- (ii) The assessee paid ₹ 33,000 in cash to a transport carrier on 29.12.2023. This amount is included in manufacturing expenses. (Assume that the provisions relating to TDS are not applicable to this payment)
- (iii) A sum of ₹ 4,000 per month was paid as salary to a staff throughout the year and this has not been recorded in the books of account.
- (iv) Bank term loan interest actually paid upto 31.03.2024 was ₹ 20,000 and the balance was paid in November 2024.
- (v) Housing loan principal repaid during the year was ₹ 50,000 and it relates to residential property acquired by him in P.Y. 2022-23 for self-occupation. Interest on housing loan was ₹ 23,000. Housing loan was taken from Canara Bank. These amounts were not dealt with in the profit and loss account given above.
- (vi) Depreciation allowable under the Act is to be computed on the basis of following information:

Plant & Machinery (Depreciation rate@15%)	₹
WDV as on 31.03.2023 minus Depreciation for P.Y. 2022-23	11,90,000
Additions during the year (used for more than 180 days)	2,00,000
Total additions during the year	4,00,000

Compute the total income of Mr. Raju for the A.Y. 2024-25 assuming he pays tax under default tax regime.

Note: Ignore application of section 14A for disallowance of expenditures in respect of any exempt income.

10. Mr. Tenzingh is engaged in composite business of growing and curing (further processing) coffee in Coorg, Karnataka. The whole of coffee grown in his plantation is cured. Relevant information pertaining to the year ended 31.3.2024 are given below:

Particulars	₹
Opening balance of car (only asset in the block) as on 1.4.2023 (i.e. WDV as on 31.3.2023 (-) depreciation for P.Y. 2022-23)	3,00,000
Opening balance of machinery as on 1.4.2023 (i.e., WDV as on 31.3.2023 (-) depreciation for P.Y. 2022-23)	15,00,000
Expenses incurred for growing coffee	3,10,000
Expenditure for curing coffee	3,00,000
Sale value of cured coffee	22,00,000

Besides being used for agricultural operations, the car is also used for personal use; disallowance for personal use may be taken at 20%. The expenses incurred for car running and maintenance are ₹ 50,000. The machines were used in coffee curing business operations.

Compute the income arising from the above activities for the A.Y. 2024-25.

ANSWERS

1. Computation of written down value of block of assets of Venus Ltd. as on 31.3.2024

Particulars	Plant & Machinery (₹ in lacs)	Computer (₹ in lacs)
Written down value (as on 31.3.2023)	30.00	Nil
Less: Depreciation including additional depreciation for P.Y. 2022-23	4.75	-
Opening balance as on 1.4.2023	25.25	
Add: Actual cost of new assets acquired during the year		
New machinery purchased on 1.9.2023	10.00	-
New machinery purchased on 1.12.2023	8.00	-
Computer purchased on 3.1.2024	-	4.00
	43.25	4.00
Less: Assets sold/discarded/destroyed during the year	Nil	Nil
Written Down Value (as on 31.03.2024)	43.25	4.00

(i) If Mr. Venus exercises the option of shifting out of the default tax regime provided under section 115BAC(1A)

In this case, since his income would be computed under the optional tax regime as per the normal provisions of the Act, he would be entitled for normal depreciation and additional depreciation, subject to fulfilment of conditions.

Computation of depreciation for A.Y. 2024-25

Particulars	Plant & Machinery (₹ in lacs)	Computer (₹ in lacs)
I. Assets put to use for more than 180 days, eligible for 100% depreciation calculated applying the eligible rate of normal depreciation and additional depreciation		
Normal Depreciation		
- WDV of plant and machinery (₹ 25.25 lacs × 15%)	3.79	-
- New Machinery purchased on 1.9.2023 (₹ 10 lacs × 15%)	1.50	-
(A)	5.29	-

	Particulars	Plant & Machinery (₹ in lacs)	Computer (₹ in lacs)
	Additional Depreciation		
	New Machinery purchased on 1.9.2023 (₹ 10 lakhs × 20%)	2.00	-
	Balance additional depreciation in respect of new machinery purchased on 31.10.2022 and put to use for less than 180 days in the P.Y. 2022-23 (₹ 10 lakhs × 20% × 50%)	1.00	
	(B)	3.00	
II.	Assets put to use for less than 180 days, eligible for 50% depreciation calculated applying the eligible rate of normal depreciation and additional depreciation, if any		
	Normal Depreciation		
	New machinery purchased on 1.12.2023 [₹ 8 lacs x 7.5% (i.e., 50% of 15%)]	0.60	-
	Computer purchased on 3.1.2023 [₹ 4 lacs x 20% (50% of 40%)]	-	0.80
	(C)	0.60	0.80
	Total Depreciation (A+B+C)	8.89	0.80

Notes:

(1) As per section 32(1)(ia), additional depreciation is allowable in the case of any new machinery or plant acquired and installed after 31.3.2005, by an assessee engaged, inter alia, in the business of manufacture or production of any article or thing, at the rate of 20% of the actual cost of such machinery or plant.

However, additional depreciation shall not be allowed in respect of, inter alia,–

- (i) any office appliances or road transport vehicles;
- (ii) any machinery or plant installed in, inter alia, office premises.

In view of the above provisions, additional depreciation cannot be claimed in respect of -

- (i) Machinery purchased on 1.12.2023, installed in office and
- (ii) Computer purchased on 3.1.2024, installed in office.

(2) Balance additional depreciation@10% on new plant or machinery acquired and put to use for less than 180 days in the year of acquisition which has not been allowed in that year, shall be allowed in the immediately succeeding previous year.

Hence, in this case, the balance additional depreciation@10% (i.e., ₹ 1 lakhs, being 10% of ₹ 10 lakhs) in respect of new machinery which had been purchased during the previous year 2022-23 and put to use for less than 180 days in that year can be claimed in P.Y. 2023-24 being immediately succeeding previous year.

(i) If Mr. Venus pays tax under default tax regime under section 115BAC

In this case, under the default tax regime as per section 115BAC, he would be entitled only for normal depreciation but not additional depreciation.

Computation of depreciation for A.Y. 2024-25

	Particulars	Plant & Machinery (₹ in lacs)	Computer (₹ in lacs)
I.	Assets put to use for more than 180 days, eligible for 100% depreciation calculated applying the eligible rate of normal depreciation Normal Depreciation		
	- WDV of plant and machinery (₹ 25.25 lacs × 15%)	3.79	-
	- New Machinery purchased on 1.9.2023 (₹ 10 lacs × 15%)	1.50	-
	(A)	5.29	-
II.	Assets put to use for less than 180 days, eligible for 50% depreciation calculated applying the eligible rate of normal depreciation Normal Depreciation		
	New machinery purchased on 1.12.2023 [₹ 8 lacs × 7.5% (i.e., 50% of 15%)]	0.60	-
	Computer purchased on 3.1.2023 [₹ 4 lacs × 20% (50% of 40%)]	-	0.80
	(C)	0.60	0.80
	Total Depreciation (A+B+C)	5.89	0.80

2. Computation of depreciation under section 32 for A.Y.2024-25

Particulars	₹	₹
Normal Depreciation		
Depreciation@15% on ₹ 51,50,000, being machinery put to use for more than 180 days [WDV as on 31.3.2023 of ₹ 50,00,000 – Depreciation for P.Y. 2022-23 of ₹ 7,50,000+ Purchase cost of imported machinery of ₹ 9,00,000]	7,72,500	
Depreciation@7.5% on ₹ 10,00,000, being new machinery put to use for less than 180 days	75,000	
	8,47,500	
Depreciation@40% on computers purchased ₹ 2,00,000	80,000	9,27,500
Additional Depreciation (Refer Note below)		
Additional Depreciation@10% of ₹ 10,00,000 [being actual cost of new machinery purchased on 12-10-2023]	1,00,000	
Additional Depreciation@20% on new computer installed in generation wing of the unit [20% of ₹ 2,00,000]	40,000	1,40,000
Depreciation on Plant and Machinery		10,67,500

Note:-

Mr. Abhimanyu is eligible for additional depreciation since he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). The benefit of additional depreciation is available to new plant and machinery acquired and installed in power sector undertakings.

Accordingly, additional depreciation is allowable in the case of any new machinery or plant acquired and installed by an assessee engaged, inter alia, in the business of generation, transmission or distribution of power, at the rate of 20% of the actual cost of such machinery or plant.

Therefore, new computer installed in generation wing units eligible for additional depreciation@20%.

Since the new machinery was purchased only on 12.10.2023, it was put to use for less than 180 days during the previous year, and hence, only 10%

(i.e., 50% of 20%) is allowable as additional depreciation in the A.Y.2024-25.

The balance additional depreciation would be allowed in the next year. However, additional depreciation shall not be allowed in respect of, inter alia, any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person. Therefore, additional depreciation is not allowable in respect of imported machinery, since it was used in Colombo, before its installation by the assessee.

3. Allowability of the expenses incurred by Mr. Manav, a wholesale dealer in commodities, while computing profits and gains from business or profession

(i) Construction of school building in compliance with CSR activities

Under section 37(1), only expenditure not being in the nature of capital expenditure or personal expense and not covered under sections 30 to 36, and incurred wholly and exclusively for the purposes of the business is allowed as a deduction while computing business income.

However, any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence, shall not be allowed as deduction under section 37.

Accordingly, the amount of ₹ 5,60,000 incurred by Mr. Manav, towards construction of school building in compliance with CSR activities shall not be allowed as deduction under section 37.

(ii) Purchase of building for setting up and operating a warehousing facility for storage of food grains

Mr. Manav, would be eligible for investment-linked tax deduction under section 35AD, since he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). The deduction u/s 35AD would be 100% of ₹ 4,50,000, being the amount invested in purchase of building for setting up and operating a warehousing facility for storage of food grains which commences operation on or after 1st April, 2009 (P.Y.2023-24, in this case).

Therefore, the deduction under section 35AD while computing business income of such specified business would be ₹ 4,50,000, if Mr. Manav opts for section 35AD.

(iii) Interest on loan paid to Mr. X (a resident) ₹ 50,000 on which tax has not been deducted

As per section 194A, Mr. Manav, being an individual is required to deduct tax at source on the amount of interest on loan paid to Mr. X, since his turnover during the previous year 2022-23 exceeds ₹ 100 lakhs.

Therefore, ₹ 15,000, being 30% of ₹ 50,000, would be disallowed under section 40(a)(ia) while computing the business income of Mr. Manav for non-deduction of tax at source under section 194A on interest of ₹ 50,000 paid by it to Mr. X.

The balance ₹ 35,000 would be allowed as deduction under section 36(1)(iii), assuming that the amount was borrowed for the purposes of business.

(iv) Commodities transaction tax of ₹ 20,000 paid on sale of bullion

Commodities transaction tax paid in respect of taxable commodities transactions entered into in the course of business during the previous year is allowable as deduction, provided the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession".

Taking that income from this commodities transaction is included while computing the business income of Mr. Manav, the commodity transaction tax of ₹ 20,000 paid is allowable as deduction under section 36(1)(xvi).

4. (i) **True:** Section 36(1)(xv) allows a deduction of the amount of securities transaction tax paid by the assessee in respect of taxable securities transactions entered into in the course of business during the previous year as deduction from the business income of a dealer in shares and securities.
- (ii) **True:** As per section 40A(3A), in the case of an assessee following mercantile system of accounting, if an expenditure has been allowed as deduction in any previous year on due basis, and payment exceeding ₹ 10,000 has been made in the subsequent year otherwise than by an account payee cheque or an account payee bank draft or use of ECS through a bank account or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT, and BHIM Aadhar Pay, then, the payment so made shall be deemed to be the income of the subsequent year in which such payment has been made.
- (iii) **True:** According to the Explanation 5 to section 32(1), allowance of depreciation is mandatory. Therefore, depreciation has to be provided mandatorily while calculating income from business/profession whether or not the assessee has claimed the same while computing his total income.
- (iv) **True:** Section 36(1)(ib) provides deduction in respect of premium paid by an employer to keep in force an insurance on the health of his employees under a scheme framed in this behalf by GIC or any other insurer. The medical insurance premium can be paid by any mode other than cash, to be eligible for deduction under section 36(1)(ib).
- (v) **False:** Expenditure incurred in making payment to the employee in connection with his voluntary retirement either in the year of retirement or in any subsequent year, will be entitled to deduction in 5 equal annual installments beginning from the year in which each payment is made to the employee.
- (vi) **False:** Additional depreciation can be claimed only in respect of eligible plant and machinery acquired and installed by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or transmission or distribution of power.

In this case, the individual is engaged in trading activities and the new plant has been acquired and installed in a trading concern. Hence, he will not be entitled to claim additional depreciation under section 32(1)(ia), even though he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

5. **(i) Not allowable as deduction:** As per section 40A(7), no deduction is allowed in computing business income in respect of any provision made by the assessee in his books of account for the payment of gratuity to his employees except in the following two cases:

- (1) where any provision is made for the purpose of payment of sum by way of contribution towards an approved gratuity fund; or
- (2) where any provision is made for the purpose of making any payment on account of gratuity that has become payable during the previous year.

Therefore, in the present case, the provision made on the basis of actuarial valuation for payment of gratuity has to be disallowed under section 40A(7), since, no payment has been actually made on account of gratuity.

Note: It is assumed that such provision is not for the purpose of contribution towards an approved gratuity fund.

(ii) Allowable as deduction: As per Rule 6DD, in case the payment is made for purchase of agricultural produce directly to the cultivator, grower or producer of such agricultural produce, no disallowance under section 40A(3) is attracted even though the cash payment for the expense exceeds ₹ 10,000.

Therefore, in the given case, disallowance under section 40A(3) is not attracted since, cash payment for purchase of oil seeds is made directly to the farmer.

(iii) Not allowable as deduction: Income-tax of ₹ 20,000 paid by the employer in respect of non-monetary perquisites provided to its employees is exempt in the hands of the employee under section 10(10CC).

As per section 40(a)(v), such income-tax paid by the employer is not deductible while computing business income.

(iv) Allowable as deduction: Payment for fire insurance is allowable as deduction under section 36(1). Since payment is made by credit card, which is a prescribed electronic mode, disallowance under section 40A(3) is not attracted in this case.

(v) Not allowable as deduction: Disallowance under section 40(a)(iii) is attracted in respect of salary payment of ₹ 10,00,000 outside India by a company without deduction of tax at source.

(vi) Allowable as deduction: The limit for attracting disallowance under section 40A(3) for payment otherwise than by way of account payee cheque or account payee bank draft or use of ECS through a bank account or through such other prescribed electronic mode is ₹ 35,000 in case of payment made for plying, hiring or leasing goods carriage. Therefore, in the present case, disallowance under section 40A(3) is not attracted for payment of ₹ 30,000 made in cash to a transporter for carriage of goods.

6. **(a) True:** In order to escape the disallowance specified in section 40A(3), payment in respect of the business expenditure ought to have been made through an account payee cheque. Payment through a crossed cheque will attract disallowance under section 40A(3).

(b) (i) True: It is mandatory to write off the amount due from a debtor as not receivable in the books of account, in order to claim the same as bad debt under section 36(1)(vii). However, where the debt has been taken into account in computing the income of the assessee on the basis of ICDSs notified under section 145(2), without recording the same in the accounts, then, such debt shall be allowed in the previous year in which such debt becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the said purpose.

- (ii) True: Section 40(a)(i) provides that failure to deduct tax at source from, inter alia, rent or royalty payable to a non-resident, in accordance with the provisions of Chapter XVII-B, will result in disallowance of such expenditure, where the non-resident payee has not paid the tax due on such income.

7. **Computation of business income of Mr. Sivam for the A.Y. 2024-25**

Particulars	₹	₹
Net Profit as per profit and loss account		50,000
Add: Inadmissible expenses/ losses		
Under valuation of closing stock	18,000	
Salary paid to brother – unreasonable [Section 40A(2)]	2,000	
Printing and stationery - whole amount of printing & stationery paid in cash would be disallowed, since such amount exceeds ₹ 10,000 [Section 40A(3)]	23,200	
Depreciation (considered separately)	1,05,000	
Short term capital loss on shares	8,100	
Donation to public charitable trust	2,000	1,58,300
		2,08,300
Less: Items to be deducted:		
Under valuation of opening stock	9,000	
Income from UTI [Chargeable under the head “Income from Other Sources”]	2,400	11,400
Business income before depreciation		1,96,900
Less: Depreciation (See Note 1)		66,000
		1,30,900

Computation of business income as per section 44AD:

As per section 44AD, where the amount of turnover is received, inter alia, by way of account payee cheque or use of electronic clearing system through bank account or through such other prescribed electronic modes, the presumptive business income would be 6% of turnover, i.e., ₹ 1,12,11,500 × 6 /100 = ₹ 6,72,690

Notes:

1. Calculation of depreciation

Particulars	₹
Opening balance of plant & machinery as on 1.4.2023 (i.e. WDV as on 31.3.2023 (-) depreciation for P.Y. 2022-23)	4,20,000
Add: Cost of new plant & machinery	70,000
	4,90,000
Less: Sale proceeds of assets sold	50,000

Particulars	₹
WDV of the block of plant & machinery as on 31.3.2024	4,40,000
Depreciation@15%	66,000
No additional depreciation is allowable as the assessee is not engaged in manufacture or production of any article.	

2. Since GST liability has been paid before the due date of filing return of income under section 139(1), the same is deductible.

8. Section 44AE would apply in the case of Mr. Sukhvinder since he is engaged in the business of plying goods carriages and owns not more than ten goods carriages at any time during the previous year.

Section 44AE provides for computation of business income of such assesses on a presumptive basis. The income shall be deemed to be ₹ 1,000 per ton of gross vehicle weight or unladen weight, as the case may be, per month or part of the month for each heavy goods vehicle and ₹ 7,500 per month or part of month for each goods carriage other than heavy goods vehicle, owned by the assessee in the previous year or such higher sum as declared by the assessee in his return of income.

Mr. Sukhvinder's business income calculated applying the provisions of section 44AE is ₹ 13,72,500 (**See Notes 1 & 2 below**) and his total income would be ₹ 14,42,500.

However, as per section 44AE(7), Mr. Sukhvinder may claim lower profits and gains if he keeps and maintains proper books of account as per section 44AA and gets the same audited and furnishes a report of such audit as required under section 44AB. If he does so, then his income for tax purposes from goods carriages would be ₹ 4,45,000 instead of ₹ 13,72,500 and his total income would be ₹ 5,15,000.

Notes:

1. Computation of total income of Mr. Sukhvinder for A.Y. 2024-25

Particulars	Presumptive income ₹	Where books are maintained ₹
Income from business of plying goods carriages [See Note 2 Below]	13,72,500	4,45,000
Other business and non-business income	70,000	70,000
Total Income	14,42,500	5,15,000

2. Calculation of presumptive income as per section 44AE

Type of carriage	No. of months	Rate per ton per month/ per month	Ton	Amount ₹
(1)	(2)		(3)	(4)
Heavy goods vehicle				
1 goods carriage upto 1st May	2	1,000	15 (15,000/1,000)	30,000
5 goods carriage held throughout the year	12	1,000	15 (15,000/1,000)	9,00,000
Goods vehicle other than heavy goods vehicle				

Type of carriage	No. of months	Rate per ton per month/ per month	Ton	Amount ₹
(1)	(2)		(3)	(4)
1 goods carriage from 6th May	11	7,500	-	82,500
4 goods carriage held throughout the year	12	7,500	-	3,60,000
			Total	13,72,500

9. **Computation of total income of Mr. Raju for the A.Y. 2024-25**

Particulars	₹	₹
Profits and gains of business or profession		
Net profit as per profit and loss account		5,00,000
Add: Excess commission paid to brother disallowed under section 40A(2)	10,000	
Disallowance under section 40A(3) is not attracted since the limit for one time cash payment is ₹ 35,000 in respect of payment to transport operators. Therefore, amount of ₹ 33,000 paid in cash to a transport carrier is allowable as deduction.	Nil	
Salary paid to staff not recorded in the books (Assuming that the expenditure is in the nature of unexplained expenditure and hence, is deemed to be income as per section 69C and would be taxable @ 60% under section 115BBE – no deduction allowable in respect of such expenditure) [See Note 1 below]	48,000	
Bank term loan interest paid after the due date of filing of return under section 139(1) – disallowed as per section 43B	40,000	
State GST penalty paid disallowed [See Note 2 below]	5,000	
Depreciation debited to profit and loss account	2,00,000	3,03,000
		8,03,000
Less: Dividend from domestic companies [Chargeable to tax under the head “Income from Other Sources”]	15,000	
Income from agriculture [Exempt under section 10(1)]	1,80,000	
Depreciation under the Income-tax Act, 1961 (As per working note)	2,23,500	4,18,500
		3,84,500
Income from house property		
Annual value of self-occupied property	Nil	
Less: Deduction u/s 24(b) – interest on housing loan [Not allowable, since Mr. Raju is paying tax as per default tax regime]	Nil	Nil
Income from Other Sources		

Particulars	₹	₹
Dividend from domestic companies		15,000
Gross Total Income		3,99,500
Less: Deduction u/s 80C [Not allowable, since Mr. Raju is paying tax as per default tax regime]		Nil
Total Income		3,99,500

Working Note:**Computation of depreciation under the Income-tax Act, 1961**

Particulars	₹
Depreciation@15% on ₹ 13.90 lakhs (WDV as on 31.3.2023 less depreciation for P.Y. 2022-23 i.e., ₹ 11.90 lakh plus assets purchased during the year and used for more than 180 days ₹ 2 lakh)	2,08,500
Depreciation @7.5% on ₹ 2 lakh (Assets used for < 180 days)	15,000
	2,23,500

Since Mr. Raju is paying tax as per default tax regime, additional depreciation u/s 32(1)(ia) would not be available to him.

Notes (Alternate views):

- It is also possible to take a view that the salary not recorded in the books of account was an erroneous omission and that the assessee has offered satisfactory explanation for the same. In such a case, the same should not be added back as unexplained expenditure, but would be allowable as deduction while computing profits and gains of business and profession.
- Where the imposition of penalty is not for delay in payment of sales tax or VAT or GST but for contravention of provisions of the Sales Tax Act or VAT Act or GST Law, the levy is not compensatory and therefore, not deductible. However, if the levy is compensatory in nature, it would be fully allowable. Where it is a composite levy, the portion which is compensatory is allowable and that portion which is penal is to be disallowed.

Since the question only mentions "GST penalty paid" and the reason for levy of penalty is not given, it has been assumed that the levy is not compensatory and therefore, not deductible. It is, however, possible to assume that such levy is compensatory in nature and hence, allowable as deduction. In such a case, the total income would be ₹ 3,94,500.

- Where an assessee is engaged in the composite business of growing and curing of coffee, the income will be segregated between agricultural income and business income, as per Rule 7B of the Income-tax Rules, 1962.

As per the above Rule, income derived from sale of coffee grown and cured by the seller in India shall be computed as if it were income derived from business, and 25% of such income shall be deemed to be income liable to tax. The balance 75% will be treated as agricultural income.

Particulars	₹	₹
Sale value of cured coffee		22,00,000
Less: Expenses for growing coffee	3,10,000	
Car expenses (80% of ₹ 50,000)	40,000	
Depreciation on car (80% of 15% of ₹ 3,00,000)	36,000	
[See Computation below]		
Total cost of agricultural operations	3,86,000	
Expenditure on coffee curing operations	3,00,000	
Add: Depreciation on machinery (15% of ₹ 15,00,000)	2,25,000	
[See Computation below]		
Total cost of the curing operations	5,25,000	
Total cost of composite operations		9,11,000
Total profits from composite activities		12,89,000
Business income (25% of above)		3,22,250
Agricultural income (75% of above)		9,66,750

Computation of depreciation for P.Y. 2023-24

Particulars	₹	₹
Car		
Opening balance as on 1.4.2023 (i.e., WDV as on 31.3.2023 (-) depreciation for P.Y.2022-23)		3,00,000
Depreciation thereon at 15%	45,000	
Less: Disallowance @20% for personal use	9,000	
Depreciation actually allowed		36,000
Machinery		
Opening balance as on 1.4.2023 (i.e., WDV as on 31.3.2023 (-) depreciation for P.Y.2022-23)		15,00,000
Depreciation @ 15% for P.Y. 2023-24		2,25,000

Explanation 7 to section 43(6) provides that in cases of 'composite income', for the purpose of computing written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire composite income of the assessee (and not just 25%) is chargeable under the head "Profits and gains of business or profession".

The depreciation so computed shall be deemed to have been "actually allowed" to the assessee.

Time limit prescribed for furnishing statement of expenditure eligible for amortisation under section 35D [Notification No. 54/2023 dated 01.8.2023]

Section 35D provides for the amortisation of preliminary expenses incurred by an Indian company or a person other than a company, resident in India for the establishment of business concerns or the expansion of the business of existing concerns.

As per the proviso to section 35D(2)(a), the assessee has to furnish a statement containing the particulars of expenditure in connection with -

- (a) the preparation of feasibility report
- (b) the preparation of project report
- (c) conducting market survey or any other survey necessary for the business of the assessee
- (d) engineering services relating to the assessee's business.

eligible for amortisation within prescribed period to the prescribed income tax authority in the prescribed form and manner.

Accordingly, the CBDT has, vide this notification, inserted Rule 6ABBB to prescribe that the statement containing particulars of above specified expenditure is required to be furnished one month prior to the due date for furnishing the return of income as specified under section 139(1).



	Particulars	Amt (₹)	Amt (₹)
	Less: Indexed cost of improvement (ICOI) $\text{Cost of improvement} \times \frac{\text{CII for the year in which the asset is transferred}}{\text{CII for the year in which the improvement took place}}$	xxx	xxx
	Long-term capital gains (LTCG)		xxx
	Less: Exemption under sections 54/54B/54D/54EC/54F [Refer Table at pages 3.463-3.465]		xxx
	Long-term capital gains chargeable to tax		xxx

Rate of tax on Short-term Capital Gains (STCG)

Section	Rate of tax
111A	<ul style="list-style-type: none"> STCG arising on transfer of listed equity shares, units of equity oriented fund and unit of business trust - 15%, if STT has been paid on such sale. STCG arising from transaction undertaken in foreign currency on a recognized stock exchange located in an International Financial Services Centre (IFSC) would be taxable at a concessional rate of 15%, even though STT is not paid in respect of such transaction.

Note - STCG arising on transfer of **other Short-term Capital Assets** would be chargeable at normal rates of tax.

Rates of tax on Long-term Capital Gains (LTCG)

Section	Rate of tax								
112A	<ul style="list-style-type: none"> Tax @10% on LTCG exceeding ₹ 1,00,000 on the transfer of following long-term capital assets – <ul style="list-style-type: none"> listed equity shares, if STT has been paid on acquisition and transfer of such shares units of equity oriented fund and unit of business trust¹, if STT has been paid on transfer of such units If such transaction is undertaken on a recognized stock exchange located in an IFSC, LTCG would be taxable at a concessional rate of 10% where the consideration for transfer is received or receivable in foreign currency, even though STT is not paid in respect of such transaction. Benefit of indexation and currency fluctuation would not be available. 								
112	<table border="1" style="width: 100%;"> <thead> <tr> <th>Long-term capital asset (LTCA)</th> <th>Rate of tax</th> </tr> </thead> <tbody> <tr> <td>Unlisted securities, or shares of a closely held company</td> <td> Non-corporate non-resident/ foreign company - 10%, without the benefit of indexation and currency fluctuation Other Assesseees - 20%, with indexation benefit </td> </tr> <tr> <td>Listed securities (other than a unit) or a zero coupon bond</td> <td> <ul style="list-style-type: none"> 10%, without the benefit of indexation or 20%, availing the benefit of indexation whichever is more beneficial to the assessee </td> </tr> <tr> <td>Other Assets</td> <td> <ul style="list-style-type: none"> 20% </td> </tr> </tbody> </table>	Long-term capital asset (LTCA)	Rate of tax	Unlisted securities, or shares of a closely held company	Non-corporate non-resident/ foreign company - 10%, without the benefit of indexation and currency fluctuation Other Assesseees - 20%, with indexation benefit	Listed securities (other than a unit) or a zero coupon bond	<ul style="list-style-type: none"> 10%, without the benefit of indexation or 20%, availing the benefit of indexation whichever is more beneficial to the assessee 	Other Assets	<ul style="list-style-type: none"> 20%
Long-term capital asset (LTCA)	Rate of tax								
Unlisted securities, or shares of a closely held company	Non-corporate non-resident/ foreign company - 10%, without the benefit of indexation and currency fluctuation Other Assesseees - 20%, with indexation benefit								
Listed securities (other than a unit) or a zero coupon bond	<ul style="list-style-type: none"> 10%, without the benefit of indexation or 20%, availing the benefit of indexation whichever is more beneficial to the assessee 								
Other Assets	<ul style="list-style-type: none"> 20% 								

Notes:

- In case of a **resident individual or a Hindu Undivided Family (HUF)**, the LTCG taxable u/s 112 or 112A or STCG taxable u/s 111A shall be reduced by the unexhausted basic exemption limit and the balance shall be subject to tax.
- **No deduction under Chapter VI-A** can be claimed in respect of such LTCG chargeable to tax u/s 112 or u/s 112A or STCG chargeable to tax u/s 111A.
- Rebate u/s 87A is **not available** in respect of tax payable@10% on LTCG **u/s 112A**.
- In case the assessee pays tax under default tax regime, enhanced surcharge of 25% would not be levied on dividend income, STCG taxable u/s 111A and LTCG taxable u/s 112 and u/s 112A.
- In case the assessee exercises the option of shifting out of the default tax regime under section 115BAC, enhanced surcharge of 25% or 37% would not be levied on dividend income, STCG taxable u/s 111A and LTCG taxable u/s 112 and u/s 112A.

Period of holding [Section 2(42A)]

STCA, if held for ≤ 12 months	}	<ul style="list-style-type: none"> • Security (other than unit) listed in a recognized stock exchange (<i>other than market linked debentures and units of specified mutual fund</i>) • Unit of equity oriented fund/unit of UTI • Zero Coupon bond
LTCA, if held for > 12 months		
STCA, if held for ≤ 24 months	}	<ul style="list-style-type: none"> • Unlisted shares • Land or building or both
LTCA, if held for > 24 months		
STCA, if held for ≤ 36 months	}	<ul style="list-style-type: none"> • Unlisted securities other than shares • Other capital assets
LTCA, if held for > 36 months		

Note – Capital gains arising from transfer of market linked debentures and units of a specified mutual fund would always be capital gains arising from transfer of short term capital assets irrespective of the period of holding of such assets. This is provided in section 50AA.

4.1 INTRODUCTION

Section 45 provides that any profits or gains arising from the **transfer** of a **capital asset** effected in the previous year will be chargeable to income-tax under the head 'Capital Gains'. Such capital gains will be deemed to be the income of the previous year in which the transfer took place. In this charging section, two terms are important. One is "capital asset" and the other is "transfer".

Hence, in this unit on capital gains, we begin our discussion with the definition of "capital asset" and "transfer". Thereafter, we will proceed to discuss the various circumstances under which capital gains tax is levied. There are certain transactions which are not to be regarded as transfer for the purposes of capital gains.

These transactions have also been discussed in this chapter. For computing long-term capital gains, application of cost inflation index is necessary. Again, there is a separate method of computation of capital gains in respect of depreciable assets. Also, there are exemptions in cases where capital gains are invested in specified assets. All these aspects are being discussed in this unit.

4.2 CAPITAL ASSET

Definition: According to section 2(14), a capital asset means –

- (a) property of any kind held by an assessee, whether or not connected with his business or profession;
- (b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the SEBI regulations.
- (c) any unit linked insurance policy (ULIP) issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply on account of premium payable exceeding ₹ 2,50,000 for any of the previous years during the term of such policy.

In a case where premium is payable by a person for more than one ULIP issued on or after 1.2.2021 and the aggregate of premium payable on such ULIPs exceed ₹ 2,50,000 for any of the previous years during the term of any such ULIP(s), the exemption under section 10(10D) would be available in respect of any of those ULIPs (at the option of the assessee) whose aggregate premium payable does not exceed ₹ 2,50,000 for any of the previous years during their term. All other ULIPs would be capital assets.

Note – Provisions relating to taxability or otherwise of ULIPs issued on or after 1.2.2021 are not being made applicable at Intermediate level. Accordingly, section 45(1B) has been excluded by way of Study Guidelines. Consequently, reference to such ULIPs has not been made in the discussion of section 10(10D) and in the definition of equity oriented fund for the purpose of section 111A and 112A in the Study Material.

However, it does not include—

- (i) **Stock-in trade:** Any stock-in-trade [other than securities referred to in (b) above], consumable stores or raw materials held for the purpose of the business or profession of the assessee;

Whether a particular asset is stock-in-trade or capital asset does not depend upon the nature of the item, but the manner in which the same is held. The item would be stock-in-trade in the hands of the assessee who deals or trades in that item; however, the same item would be capital asset for the assessee who holds it as an investment.

Example: A dealer in real estate holds a piece of land as stock-in-trade. But the same will be capital asset for an assessee who holds it as an investment.

The exclusion of stock-in-trade from the definition of capital asset is only in respect of sub-clause (a) above and not sub-clause (b). This implies that even if the nature of such security in the hands of the Foreign Portfolio Investor is stock in trade, the same would be treated as a capital asset and the profit on transfer would be taxable as capital gains.

Further, the Explanatory Memorandum to the Finance (No.2) Bill, 2014 clarifies that the income arising from transfer of such security by a Foreign Portfolio Investor (FPI) would be in the nature of capital gain, irrespective of the presence or otherwise in India, of the Fund manager managing the investments of the assessee.

- (ii) **Personal effects:** Personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him.

EXCLUSIONS:

- (a) jewellery;
- (b) archaeological collections;
- (c) drawings;
- (d) paintings;
- (e) sculptures; or
- (f) any work of art.

Definition of Jewellery- Jewellery is a capital asset and the profits or gains arising from the transfer of jewellery held for personal use are chargeable to tax under the head "capital gains". For this purpose, the expression 'jewellery' includes the following:

- (i) Ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones and whether or not worked or sewn into any wearing apparel;
- (ii) Precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

(iii) Rural agricultural land in India i.e., agricultural land in India which is not situated in any specified area.

As per the definition, only rural agricultural lands in India are excluded from the purview of the term 'capital asset'. Hence urban agricultural lands constitute capital assets. Accordingly, the agricultural land described in (a) and (b) below, being land situated within the specified urban limits, would fall within the definition of "capital asset", and transfer of such land would attract capital gains tax -

- (a) agricultural land situated in any area within the jurisdiction of a municipality or cantonment board having population of not less than ten thousand, or
- (b) agricultural land situated in any area within such distance, measured aerially, in relation to the range of population as shown hereunder -

	Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a)	Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.
(i)	≤ 2 kms	> 10,000
(ii)	> 2 kms but ≤ 6 kms	> 1,00,000
(iii)	> 6 kms but ≤ 8 kms	> 10,00,000

Example

	Area	Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a)	Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.	Is the land situated in this area a capital asset?
(i)	A	1 km	9,000	No
(ii)	B	1.5 kms	12,000	Yes
(iii)	C	2 kms	11,00,000	Yes

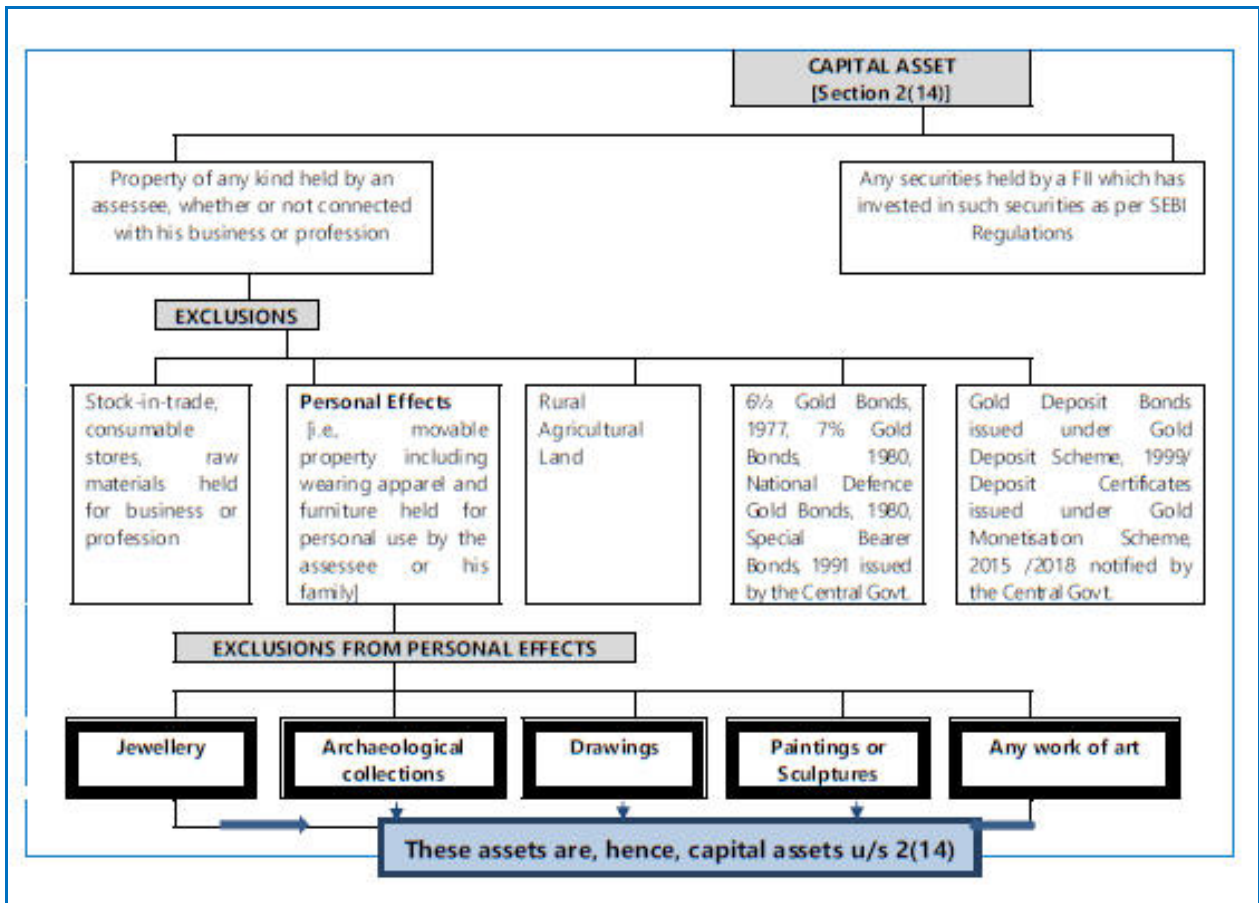
(iv)	D	3 kms	80,000	No
(v)	E	4 kms	3,00,000	Yes
(v)	F	5 kms	12,00,000	Yes
(vi)	G	6 kms	8,000	No
(vii)	H	7 kms	4,00,000	No
(viii)	I	8 kms	10,50,000	Yes
(ix)	J	9 kms	15,00,000	No

Explanation regarding gains arising on the transfer of urban agricultural land - Explanation 1 to section 2(1A) clarifies that capital gains arising from transfer of any agricultural land situated in any non-rural area (as explained above) will not constitute agricultural revenue within the meaning of section 2(1A).

In other words, the capital gains arising from the transfer of such urban agricultural land would not be treated as agricultural income for the purpose of exemption u/s 10(1). Hence, such gains would be subject to u/s 45.

- (iv) **Specified Gold Bonds:** 6½% Gold Bonds, 1977, or 7% Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;
- (v) **Special Bearer Bonds, 1991** issued by the Central Government;
- (vi) **Gold Deposit Bonds** issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 and Gold Monetisation Scheme, 2019 notified by the Central Government.

Note – ‘Property’ includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.



4.3 SHORT TERM AND LONG TERM CAPITAL ASSETS

- **Definition:** As per section 2(42A), **short-term capital asset** means a capital asset held by an assessee **for not more than 36 months** immediately preceding the date of its transfer.

As per section 2(29A), long-term capital asset means a capital asset which is not a short-term capital asset. Thus, a capital asset held by an assessee for **more than 36 months** immediately preceding the date of its transfer is a **long-term capital asset**.

- **Exceptions:** A security (other than a unit) listed in a recognized stock exchange (**other than market linked debenture and unit of a specified mutual fund**), or a unit of an equity-oriented fund or a unit of the Unit Trust of India or a Zero Coupon Bond will, however, be considered as a long-term capital asset if the same is held for more than 12 months immediately preceding the date of its transfer.

Further, a share of a company (not being a share listed in a recognized stock exchange in India) or an immovable property, being land or building or both would be treated as a short-term capital asset if it was held by an assessee for not more than 24 months immediately preceding the date of its transfer.

Thus, the period of holding of unlisted shares or an immovable property, being land or building or both, for being treated as a long-term capital asset would be “more than 24 months” instead of “more than 36 months”.

Note – Capital gains arising from transfer of market linked debentures and units of a specified mutual fund would always be capital gains arising from transfer of short term capital assets irrespective of the period of holding of such assets. This is provided in section 50AA.

- **Meaning of certain terms:**

Term	Meaning
Equity oriented fund	<p>A fund set up under a scheme of a mutual fund and</p> <p>(i) in a case where the fund invested in the units of another fund which is traded on a recognised stock exchange –</p> <p style="padding-left: 20px;">2Specified under section 10(23D)</p> <p style="padding-left: 20px;">I. a minimum of 90% of the total proceeds of such fund is invested in the units of such other fund; and</p> <p style="padding-left: 20px;">II. such other fund also invests a minimum of 90% of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and</p> <p>(ii) in any other case, a minimum of 65% of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange.</p> <p>However, the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures.</p>
Zero Coupon Bond [Section 2(48)]	<p>a bond</p> <ul style="list-style-type: none"> • issued by any infrastructure capital company or infrastructure capital fund or infrastructure debt fund³ or a public sector company or a scheduled bank on or after 1st June, 2005, • in respect of which no payment and benefit is received or receivable before maturity or redemption from such issuing entity and • which the Central Government may notify in this behalf.

Note: The income from transfer of a zero coupon bond (not being held as stock-in-trade) is to be treated as capital gains. Section 2(47)(iva) provides that maturity or redemption of a zero coupon bond shall be treated as a transfer for the purposes of capital gains tax.

Period of holding: A summary

STCA, if held for \leq 12 months LTCA, if held for $>$ 12 months	<ul style="list-style-type: none"> • Security (other than unit) listed in a recognized stock exchange (other than market linked debentures and units of specified mutual fund) • Unit of equity oriented fund/ unit of UTI • Zero Coupon bond
STCA, if held for \leq 24 months LTCA, if held for $>$ 24 months	<ul style="list-style-type: none"> • Unlisted shares • Land or building or both
STCA, if held for \leq 36 months LTCA, if held for $>$ 36 months	<ul style="list-style-type: none"> • Unlisted securities other than shares • Other capital assets

Note – Capital gains arising from transfer of market linked debentures and units of a specified mutual fund would always be capital gains arising from transfer of short term capital assets irrespective of the period of holding of such assets. This is provided in section 50AA.

- **Determination of period of holding [Clause (i) of Explanation 1 to section 2(42A)]:** In determining period of holding of any capital asset by the assessee in the circumstances stated in column (1), the period shall be determined by considering the period specified in Column (2).

Determination of period of holding

S. No.	Circumstances (Column 1)	Period of holding (Column 2)
1	Where shares held in a company in liquidation	The period subsequent to the date of liquidation of company shall be excluded.
2	Where asset becomes the property of an assessee by virtue of section 49(1)	The period for which the capital asset was held by the previous owner shall be included.
3	Where inventory of business is converted into or treated as a capital asset by the assessee	Period from the date of conversion or treatment as a capital asset shall be considered.
4	Where share/s in the Indian company (amalgamated company) , becomes the property of an assessee in lieu of share/s held by him in the amalgamating company at the time of transfer referred under section 47(vii).	The period for which the share(s) was held by the assessee in the amalgamating company shall be included.

S. No.	Circumstances (Column 1)	Period of holding (Column 2)
5	Where the share or any other security is subscribed by the assessee on the basis of right to subscribe to any share or security or by the person in whose favour such right is renounced by the assessee	Period from the date of allotment of such share or security shall be reckoned.
6	Where the right to subscribe to any share or security is renounced in favour of any other person	Period from the date of offer of such right by the company or institution shall be reckoned
7	Where any financial asset is allotted without any payment and on the basis of holding of any other financial asset	Period from the date of allotment of such financial asset shall be reckoned
8	Where share/s in the Indian company being a resulting company becomes the property of an assessee in consideration of demerger	The period for which the share/s were held by the assessee in demerged company shall be included
9	Where equity share in a company becomes the property of the assessee by way of conversion of preference shares into equity shares referred under section 47(xb)	The period for which the preference shares were held by the assessee shall be included
10	(i) Where Electronic Gold Receipt is issued by a Vault Manager in respect of gold deposited [Conversion of gold into Electronic Gold Receipt as referred to in section 47(viid)]	The period for which such gold was held by the assessee prior to conversion into the Electronic Gold Receipt
	(ii) Where gold is released in respect of an Electronic Gold Receipt [Conversion of Electronic Gold Receipt into gold as referred to in section 47(viid)]	The period for which such Electronic Gold Receipt was held by the assessee prior to its conversion into gold
11	Where any specified security or sweat equity shares is allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employees)	Period from the date of allotment or transfer of such specified security or sweat equity shares shall be reckoned
	"Sweat equity shares" means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.	

- **Period of holding in respect of other capital assets** - The period for which any capital asset is held by the assessee shall be determined in accordance with any rules made by the CBDT in this behalf. Accordingly, the CBDT has inserted Rule 8AA in the Income-tax Rules, 1962 to provide for method of determination of period of holding of capital assets, other than the capital assets mentioned in clause (i) of Explanation 1 to section 2(42A).

Specifically, in the case of a capital asset, being a share or debenture of a company, which becomes the property of the assessee in the circumstances mentioned in section 47(x), there shall be included the period for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee prior to the conversion.

Note: Section 47(x) provides that any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company shall not be regarded as transfer for the purposes of levy of capital gains tax.

4.4 TRANSFER: WHAT IT MEANS? [SECTION 2(47)]

Section 2(47) contains an inclusive definition of the term 'transfer'. Accordingly, transfer in relation to a capital asset includes the following types of transactions—

- (i) the sale, exchange or relinquishment of the asset; or
- (ii) the extinguishment of any rights therein; or
- (iii) the compulsory acquisition thereof under any law; or

Example: Acquisition of industrial undertaking under the Industries (Development and Regulation) Act, 1951.

- (iv) the owner of a capital asset may convert the same into the stock-in-trade of a business carried on by him. Such conversion is treated as transfer; or Example: Where an investor in shares starts a business of dealing in shares and treats existing investments as stock-in-trade of the newly set up business, such conversion shall be regarded as transfer for the purpose of capital gains .
- (v) the maturity or redemption of a zero coupon bond; or
- (vi) Part-performance of the contract: Sometimes, possession of an immovable property is given in consideration of part-performance of a contract.

Example: A enters into an agreement for the sale of his house. The purchaser gives the entire sale consideration to A. A hands over complete rights of possession to the purchaser since he has received the entire sale consideration. Under the Income-tax Act, the above transaction is considered as transfer.

- (vii) Lastly, there are certain types of transactions which have the effect of transferring or enabling the enjoyment of an immovable property.

Example: A person may become a member of a co-operative society, company or other association of persons which may be building houses/flats. When he pays an agreed amount, the society etc. hands over possession of the house to the person concerned. No conveyance is registered. For the purpose of incometax, the above transaction is a transfer.

ILLUSTRATION 1

How will you calculate the period of holding in case of the following assets?

- (1) Shares held in a company in liquidation
- (2) Bonus shares
- (3) Flat in a co-operative society

SOLUTION

- (1) **Shares held in a company in liquidation** - The period after the date on which the company goes into liquidation shall be excluded while calculating the period of holding. Therefore, the period of holding shall commence from the date of acquisition and end with the date on which the company goes into liquidation.
- (2) **Bonus shares** - The period of holding shall be reckoned from the date of allotment of bonus shares and will end with the date of transfer.
- (3) **Flat in a co-operative society** - The period of holding shall be reckoned from the date of allotment of shares in the society and will end with the date of transfer.

Note – Any transaction whether by way of becoming a member of, or acquiring shares in, a co-operative society or by way of any agreement or any arrangement or in any other manner whatsoever which has the effect of transferring, or enabling enjoyment of, any immovable property is a transfer as per section 2(47)(vi).

Hence, it is possible to take a view that any date from which such right is obtained may be taken as the date of acquisition.

4.5 SCOPE AND YEAR OF CHARGEABILITY [SECTION 45]**(i) General Provision [Section 45(1)]**

Any profits or gains arising from the transfer of a capital asset effected in the previous year (other than exemptions covered under this chapter) shall be chargeable to income-tax under this head **in the previous year in which the transfer took place.**

Year of chargeability - Capital gains are chargeable as the income of the previous year in which the sale or transfer takes place. In other words, for determining the year of chargeability, the relevant date of transfer is not the date of the agreement to sell, but the actual date of sale i.e., the date on which the effect of transfer of title to the property as contemplated by the parties has taken place.

However, as already noted, Income-tax Act has recognised certain transactions as transfer in spite of the fact that conveyance deed might not have been executed and registered. Power of Attorney sales as explained above or co-operative society transactions for acquisition of house are examples in this regard.

(ii) Insurance Receipts [Section 45(1A)]

Where any person receives any money or other assets under any insurance from an insurer on account of damage to or destruction of any capital asset, as a result of - flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature,

- riot or civil disturbance,
- accidental fire or explosion or
- of action by an enemy or action taken in combating an enemy (whether with or without declaration of war),

then, any profits or gains arising from receipt of such money or other assets shall be chargeable to income-tax under the head “Capital gains” and shall be deemed to be the income of **such person for the previous year in which such money or other asset was received.**

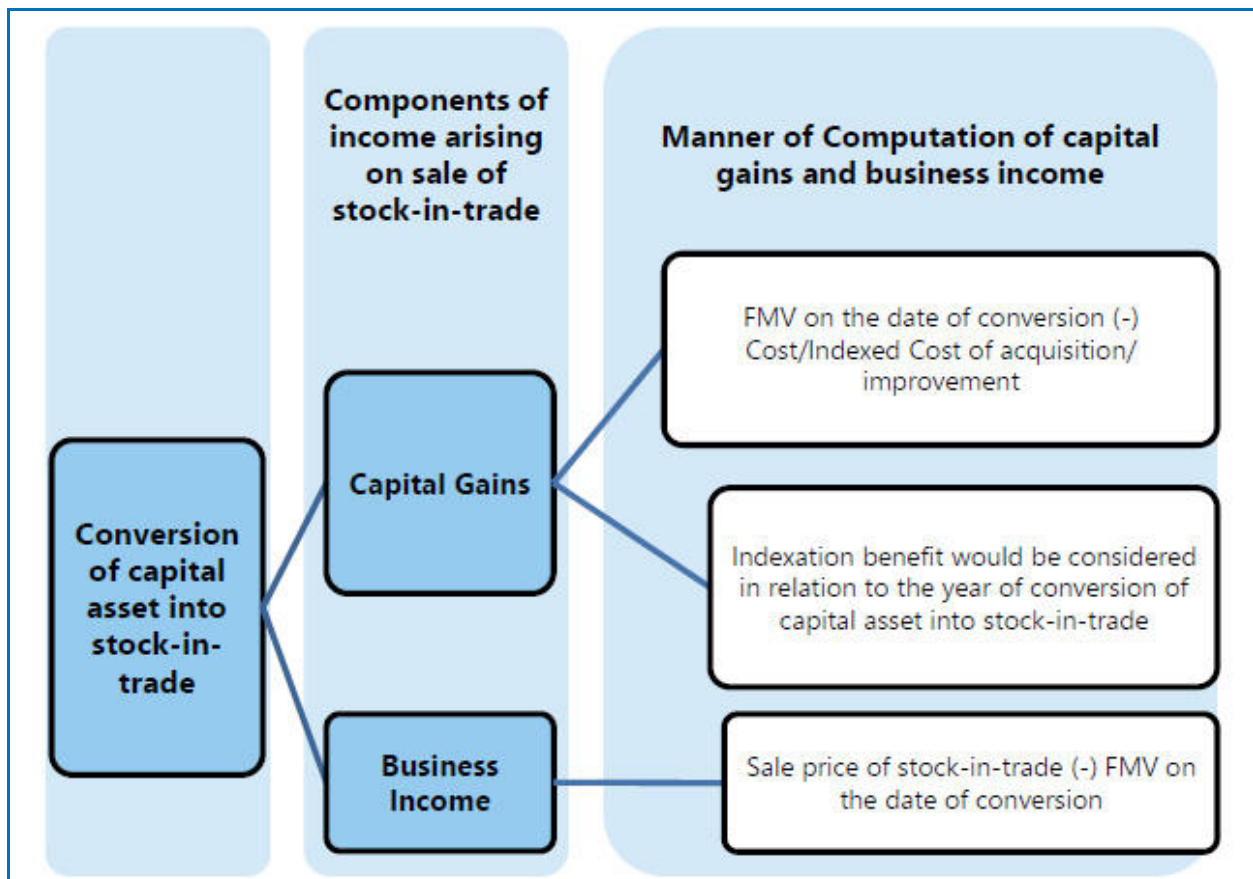
Full value of consideration: In order to compute capital gains, the value of any money or the fair market value of other assets on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital assets.

(iii) Conversion or treatment of a capital asset as stock-in-trade [Section 45(2)]

A person who is the owner of a capital asset may convert the same or treat it as stock-in-trade of the business carried on by him. As noted above, the above transaction is a transfer.

As per section 45(2), notwithstanding anything contained in section 45(1), being the charging section, the profits or gains arising from the above conversion or treatment will be chargeable to income-tax as **his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him.**

Full value of consideration: In order to compute the capital gains, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received as a result of the transfer of the capital asset.



Note – Both Capital Gains and Business income are chargeable to tax in the year in which stock-in-trade is sold or otherwise transferred.

ILLUSTRATION 2

A is the owner of a car. On 1-4-2023, he starts a business of purchase and sale of motor cars. He treats the above car as part of the stock-in-trade of his new business. He sells the same on 31-3-2024 and gets a profit of ₹ 1 lakh. Discuss the tax implication in his hands under the head "Capital gains".

SOLUTION

Since car is a personal asset, conversion or treatment of the same as the stock-in-trade of his business will not be trapped by the provisions of section 45(2). Hence, A is not liable to capital gains tax.

ILLUSTRATION 3

X converts his capital asset (acquired on June 10, 2005 for ₹ 60,000) into stock-in-trade on March 10, 2023. The fair market value on the date of the above conversion was ₹ 5,50,000. He subsequently sells the stock-in-trade so converted for ₹ 6,00,000 on June 10, 2023. Discuss the year of chargeability of capital gain and business income.

SOLUTION

Since the capital asset is converted into stock-in-trade during the previous year 2022-23 relevant to the A.Y. 2023-24, it will be a transfer u/s 2(47) during the P.Y. 2022-23. However, the profits or gains arising from the above conversion will be chargeable to tax during the A.Y. 2024-25, since the stock-in-trade has been sold only on June 10, 2023. For this purpose, the fair market value on the date of such conversion (i.e. 10th March, 2023) will be the full value of consideration for computation of capital gains. The business income of ₹ 50,000 (i.e., ₹ 6,00,000 (-) ₹ 5,50,000, being the fair market value on the date of conversion) would also be taxable in the A.Y.2024-25. Thus, both capital gains and business income would be chargeable to tax in the A.Y.2024-25.

(iv) Compensation on compulsory acquisition [Section 45(5)]

Sometimes, a building or some other capital asset belonging to a person is taken over by the Central Government by way of compulsory acquisition. In that case, the consideration for the transfer is determined by the Central Government of RBI. When the Central Government pays the above compensation, capital gains may arise. Such capital gains are **chargeable as income of the previous year in which such compensation is received.**

Enhanced Compensation - Many times, persons whose capital assets have been taken over by the Central Government and who get compensation from the Government go to the Court of law for enhancement of compensation. If the court awards a compensation which is higher than the original compensation, the difference thereof will be chargeable to capital gains in the year in which the same is received from the government.

Cost of acquisition in case of enhanced compensation - For this purpose, the cost of acquisition and cost of improvement shall be taken to be nil.

Compensation received in pursuance of an interim order deemed as income chargeable to tax in the year of final order - In order to remove the uncertainty regarding the year in which the amount of compensation received in pursuance of an interim order of the Court, Tribunal or other authority is to be charged to tax, it is provided that such compensation shall be deemed to be income chargeable under the head 'Capital gains' in the previous year in which the final order of such Court, Tribunal or other authority is made.

Reduction of enhanced compensation - Where capital gain has been charged on the compensation received by the assessee for the compulsory acquisition of any capital asset or enhanced compensation received by the assessee and subsequently such compensation is reduced by any Court, Tribunal or any authority, the assessed capital gain of that year shall be recomputed by taking into consideration the reduced amount. This re-computation shall be done by way of rectification.

Death of the transferor - It is possible that the transferor may die before he receives the enhanced compensation. In that case, the enhanced compensation will be chargeable to tax in the hands of the person who receives the same.

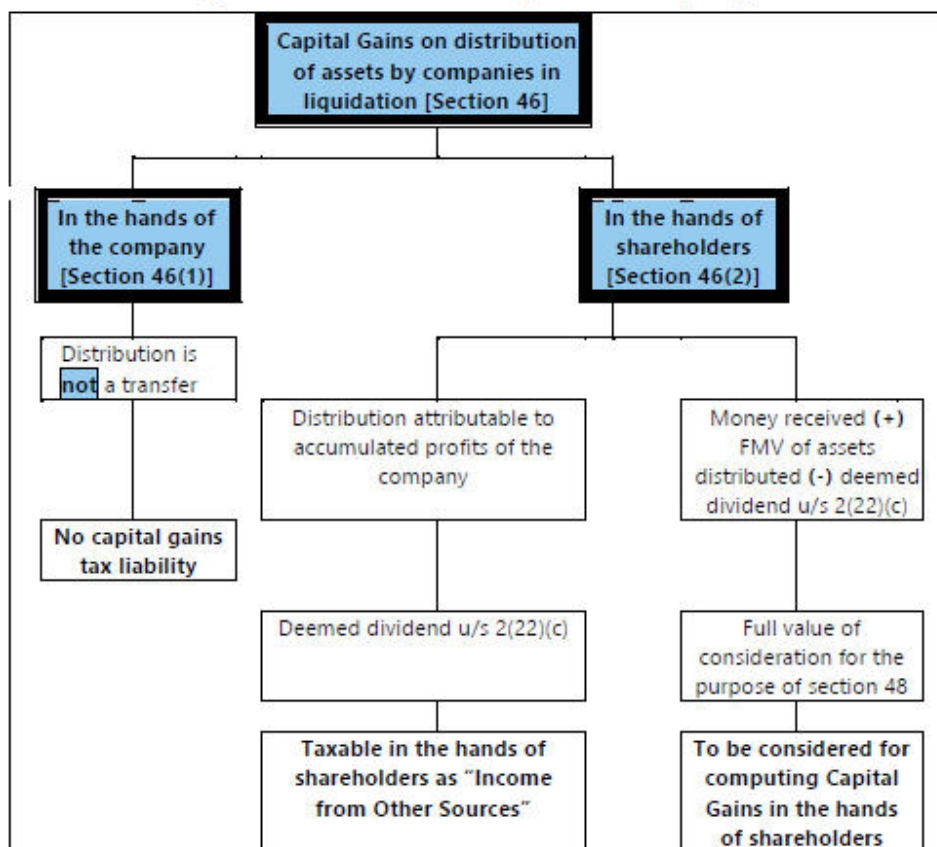
4.6 CAPITAL GAINS ON DISTRIBUTION OF ASSETS BY COMPANIES IN LIQUIDATION [SECTION 46]

(1) In the hands of liquidated company: Where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall **not** be regarded as a transfer by the company for the purposes of section 45 [Section 46(1)].

The above section is restricted in its application to the circumstances mentioned therein i.e., the assets of the company must be distributed in specie to shareholders on the liquidation of the company. If, however, the liquidator sells the assets of the company resulting in a capital gain and distributes the funds so collected, the company will be liable to pay tax on such gains.

- (2) **In the hands of shareholders:** Shareholders receive money or other assets from the company on its liquidation. They will be chargeable to income-tax under the head 'capital gains' in respect of the market value of the assets received on the date of distribution, or the moneys so received by them.

The portion of the distribution which is attributable to the accumulated profits of the company is to be treated as dividend income under section 2(22)(c), which would be taxable in the hands of shareholders. The same will be deducted from the amount received/fair market value for the purpose of determining the consideration for computation of capital gains.



4.7 CAPITAL GAINS ON BUYBACK OF SHARES OR SPECIFIED SECURITIES [SECTION 46A]

- (1) **In case of specified securities other than shares:** Any consideration received by a holder of specified securities (other than shares) from any company on purchase of its specified securities is chargeable to tax in the hands of the holder of specified securities. The difference between the cost of acquisition and the value of consideration received by the holder of securities is chargeable to tax as capital gains in his hands. The computation of capital gains shall be made in accordance with the provisions of section 48.

Such capital gains shall be chargeable in the year in which such securities were purchased by the company. For this purpose, "specified securities" shall have the same meaning as given in Explanation to section 77A of the Companies Act, 1956.

As per Section 68 of the Companies Act, 2013, "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.

Note – As far as shares are concerned, this provision would be attracted in the hands of the shareholder only if the shares are bought back by a company, other than a domestic company.

- (2) **In case of shares (whether listed or unlisted):** In case of buyback of shares (whether listed or unlisted) by domestic companies, additional income-tax@20% (plus surcharge @12% and cess@4%) is leviable in the hands of the company.

Consequently, the income arising to the shareholders in respect of such buyback of shares by the domestic company would be exempt under section 10(34A), since the domestic company is liable to pay additional income-tax on the buyback of shares.

Taxation provisions in respect of buyback

(1)	(2)	(3)	(4)
Taxability in the hands of	Buyback of shares by domestic companies	Buyback of shares by a company, other than a domestic company	Buyback of specified securities by any company
Company	Subject to additional incometax@ 23.296%.	Not subject to tax in the hands of the company.	Not subject to tax in the hands of the company.
Shareholder/holder of specified securities	Income arising to shareholders exempt under section 10(34A)	Income arising to shareholder taxable as capital gains u/s 46A.	Income arising to holder of specified securities taxable as capital gains u/s 46A.

4.8 TRANSACTIONS NOT REGARDED AS TRANSFER [SECTION 47]

Section 47 specifies certain transactions which will not be regarded as transfer for the purpose of capital gains tax:

(1) Total or partial partition of a HUF: Any distribution of capital assets on the total or partial partition of a HUF [Section 47(i)].

(2) A gift or will or an irrevocable trust: Any transfer of a capital asset under a gift or will or an irrevocable trust.

However, this clause shall not include transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company directly or indirectly to its employees under the Employees' Stock Option Plan or Scheme offered to its employees in accordance with the guidelines issued in this behalf by the Central Government [Section 47(iii)].

(3) Transfer of capital asset by holding company to its wholly owned Indian subsidiary company: Any transfer of capital asset by a company to its subsidiary company [Section 47(iv)].

Conditions:

(i) The parent company or its nominee must hold the whole of the shares of the subsidiary company; and

(ii) The subsidiary company must be an Indian company.

(4) Transfer of capital asset by a subsidiary company to its 100% holding company, being an Indian company: Any transfer of capital asset by a subsidiary company to the holding company [Section 47(v)].

Conditions:

(i) The whole of shares of the subsidiary company must be held by the holding company; and

(ii) The holding company must be an Indian company.

Exception - The exemption mentioned in 3 or 4 above will not apply if a capital asset is transferred as stock-in-trade.

(5) Transfer of capital asset by amalgamating company to amalgamated Indian company, in a scheme of amalgamation: Any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company [Section 47(vi)].

- (6) Transfer of capital asset by the demerged company to the resulting Indian company, in a scheme of demerger:** Any transfer in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company [Section 47(vib)].
- (7) Transfer or issue of shares by a resulting company, in a scheme of demerger:** Any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company, if the transfer is made in consideration of the demerger of the undertaking [Section 47(vid)].
- (8) Transfer of shares by a shareholder in a scheme of amalgamation:** Any transfer by a shareholder, in a scheme of amalgamation, of shares held by him in the amalgamating company [Section 47(vii)].

Conditions:

- (i) The transfer is made in consideration of the allotment to him of any share/s in the amalgamated company, except where the shareholder himself is the amalgamated company;
- (ii) The amalgamated company is an Indian company.

Example: Let us take a case where A Ltd., an Indian company, holds 60% of shares in B Ltd. B Ltd. amalgamates with A Ltd. Since A Ltd. itself is the shareholder of B Ltd., A Ltd., being the amalgamated company, cannot issue shares to itself. However, A Ltd. has to issue shares to the other shareholders of B Ltd.

ILLUSTRATION 4

M held 2000 shares in a company ABC Ltd., an Indian company. This company amalgamated with another Indian company XYZ Ltd. during the previous year ending 31-3-2024. Under the scheme of amalgamation, M was allotted 1000 shares in the new company. The market value of shares allotted is higher by ₹ 50,000 than the value of holding in ABC Ltd. The Assessing Officer proposes to treat the transaction as an exchange and to tax ₹ 50,000 as capital gain. Is he justified?

SOLUTION

In the above example, the transaction is squarely covered by the exemption explained above and the proposal of the Assessing Officer to treat the transaction as a transfer is not justified.

- (9) Transfer of Government Security outside India by a non-resident to another non-resident:** Any transfer of a capital asset, being a Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident [Section 47(viib)]
- (10) Redemption of sovereign gold bonds by an Individual:** Redemption by an individual of sovereign gold bonds issued by RBI under the Sovereign Gold Bond Scheme, 2015 [Section 47(viic)]
- (11) Conversion of gold into Electronic Gold Receipt or vice a versa:** Any transfer of a capital asset, being conversion of gold into Electronic Gold Receipt issued by a Vault Manager, or conversion of Electronic Gold Receipt into gold [Section 47(viid)]
- (12) Transfer of specified capital asset to the Government or university etc.:** Any transfer of any of the following capital asset to the Government or to the University or the National Museum, National Art Gallery, National Archives or any other public museum or institution notified by the Central Government to be of national importance or to be of renown throughout any State
- (i) work of art
- (ii) archaeological, scientific or art collection
- (iii) book

- (iv) manuscript
- (v) drawing
- (vi) painting
- (vii) photograph or
- (viii) print [Section 47(ix)].

(13) Transfer on conversion of bonds or debentures etc. into shares or debentures: Any transfer by way of conversion of bonds or debentures, debenture stock or deposit certificates in any form, of a company into shares or debentures of that company [Section 47(x)].

(14) Conversion of preference shares into equity shares: Any transfer by way of conversion of preference shares of a company into equity shares of that company [Section 47(xb)].

(15) Transfer of capital asset under Reverse Mortgage: Any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government [Section 47(xvi)].

The Reverse Mortgage scheme is for the benefit of senior citizens, who own a residential house property. In order to supplement their existing income, they can mortgage their house property with a scheduled bank or housing finance company, in return for a lump-sum amount or for a regular monthly/quarterly/annual income. The senior citizens can continue to live in the house and receive regular income, without the botheration of having to pay back the loan.

The loan will be given up to, say, 60% of the value of residential house property mortgaged. Also, the bank/housing finance company would undertake a revaluation of the property once every 5 years. The borrower can use the loan amount for renovation and extension of residential property, family's medical and emergency expenditure etc., amongst others. However, he cannot use the amount for speculative or trading purposes.

The Reverse Mortgage Scheme, 2008, now includes within its scope, disbursement of loan by an approved lending institution, in part or in full, to the annuity sourcing institution, for the purposes of periodic payments by way of annuity to the reverse mortgagor. This would be an additional mode of disbursement i.e., in addition to direct disbursements by the approved lending institution to the Reverse Mortgagor by way of periodic payments or lump sum payment in one or more tranches.

An annuity sourcing institution has been defined to mean Life Insurance Corporation of India or any other insurer registered with the Insurance Regulatory and Development Authority.

Maximum Period of Reverse Mortgage Loan:

	Mode of disbursement	Maximum period of loan
(a)	Where the loan is disbursed directly to the Reverse Mortgagor	20 years from the date of signing the agreement by the reverse mortgagor and the approved lending institution.
(b)	Where the loan is disbursed, in part or in full, to the annuity sourcing institution for the purposes of periodic payments by way of annuity to the Reverse mortgagor	The residual life time of the borrower.

The bank will recover the loan along with the accumulated interest by selling the house after the death of the borrower. The excess amount will be given to the legal heirs. However, before resorting to sale of the house, preference will be given to the legal heirs to repay the loan and interest and get the mortgaged property released.

Therefore, section 47(xvi) clarifies that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government would not amount to transfer for the purpose of capital gains.

Exemption of income received in a transaction of reverse mortgage [Section 10(43)]: Section 10(43), further, provides that the amount received by the senior citizen as a loan, either in lump sum or in installments, in a transaction of reverse mortgage would be exempt from income-tax.

ILLUSTRATION 5

In which of the following situations capital gains tax liability does not arise?

- (i) Mr. A purchased gold in 1970 for ₹ 25,000. In the P.Y. 2023-24, he gifted it to his son at the time of marriage. Fair market value (FMV) of the gold on the day the gift was made was ₹ 1,00,000.
- (ii) A house property is purchased by a Hindu undivided family in 1945 for ₹ 20,000. It is given to one of the family members in the P.Y. 2023-24 at the time of partition of the family. FMV on the date of partition was ₹ 12,00,000.
- (iii) Mr. B purchased 50 convertible debentures for ₹ 40,000 in 1995 which are converted into 500 shares worth ₹ 85,000 in November 2023 by the company.

SOLUTION

We know that capital gains arises only when we transfer a capital asset. The liability of capital gains tax in the situations given above is discussed as follows:

- (i) As per the provisions of section 47(iii), gift of a capital asset is **not** regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.
- (ii) As per the provisions of section 47(i), distribution of a capital asset (being in kind) on the total or partial partition of Hindu undivided family is **not** regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.
- (iii) As per the provisions of section 47(x), conversion of bonds or debentures, debenture stock or deposit certificates in any form of a company into shares or debentures of that company is **not** regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.

ILLUSTRATION 6

Mr. Abhishek a senior citizen, mortgaged his residential house with a bank, under a notified reverse mortgage scheme. He was getting loan from bank in monthly installments. Mr. Abhishek did not repay the loan on maturity and hence gave possession of the house to the bank, to discharge his loan. How will the treatment of long-term capital gain be on such reverse mortgage transaction?

SOLUTION

Section 47(xvi) provides that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government shall not be considered as a transfer for the purpose of capital gain.

Accordingly, the mortgaging of residential house with bank by Mr. Abhishek will not be regarded as a transfer. Therefore, no capital gain will be charged on such transaction.

Further, section 10(43) provides that the amount received by the senior citizen as a loan, either in lump sum or in installment, in a transaction of reverse mortgage would be exempt from income-tax. Therefore, the monthly installment amounts received by Mr. Abhishek would not be taxable.

ILLUSTRATION 7

Examine, with reasons, whether the following statements are True or False.

- (i) Alienation of a residential house in a transaction of reverse mortgage under a scheme made and notified by the Central Government is treated as "transfer" for the purpose of capital gains.
- (ii) Zero coupon bonds of eligible corporation, held for 14 months, will be longterm capital assets.
- (iii) Zero Coupon Bond means a bond on which no payment and benefits are received or receivable before maturity or redemption.

SOLUTION

- (i) False:** As per section 47(xvi), such alienation in a transaction of reverse mortgage under a scheme made and notified by the Central Government is not regarded as "transfer" for the purpose of capital gains.
- (ii) True:** Section 2(42A) defines the term 'short-term capital asset'. Under the proviso to section 2(42A), zero coupon bond held for not more than 12 months will be treated as a short-term capital asset. Consequently, such bond held for more than 12 months will be a long-term capital asset.
- (iii) True:** As per section 2(48), 'Zero Coupon Bond' means a bond issued by any infrastructure capital company or infrastructure capital fund or infrastructure debt fund or a public sector company, or Scheduled Bank on or after 1st June 2005, in respect of which no payment and benefit is received or receivable before maturity or redemption from such issuing entity and which the Central Government may notify in this behalf.

4.9 IMPORTANT DEFINITIONS

(a) Amalgamation [Section 2(1B)] - "Amalgamation", in relation to companies, means -

- the merger of one or more companies with another company or
- the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that -
 - (i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;
 - (ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;
 - (iii) shareholders holding not less than three-fourth in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation, otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company.

(b) Demerger [Section 2(19AA)] - "Demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 230 to 232 of the Companies Act, 2013, by a demerged company of its one or more undertaking to any resulting company in such a manner that -

- (i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;

- (ii) all the liabilities relating to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;
- (iii) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger; However, this provision does not apply where, in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015, the resulting company records the value of the property and the liabilities of the undertaking or undertakings at a value different from the value appearing in the books of account of the demerged company, immediately before the demerger.

For the purpose of determining the value of the property, any change in the value of assets consequent to their revaluation shall be ignored.

- (iv) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis;

Note - If the resulting company is a shareholder of the demerged company, it cannot issue shares to itself. However, the resulting company has to issue shares to the other shareholders of the demerged company.

- (v) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;
- (vi) the transfer of the undertaking is on a going concern basis;
- (vii) the demerger is in accordance with the conditions, if any, notified by the Central Government in this behalf.

Reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resulting company and the resulting company -

- (a) is a public sector company on the appointed day indicated in such scheme as may be approved by the Central Government or any other body authorized under the Companies Act, 1956 or any other law for the time being in force governing such public sector companies; and
- (b) fulfils such other conditions as may be notified by the Central Government [Explanation 6].
- (c) **Demerged Company** - Demerged company means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company.
- (d) **Resulting Company** - Resulting company means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.

4.10 MODE OF COMPUTATION OF CAPITAL GAINS [SECTION 48]

- (i) **Computation of capital gains:** The income chargeable under the head 'Capital gains' shall be computed by deducting the following items from the full value of the consideration received or accruing as a result of the transfer of the capital asset:

- (1) Expenditure incurred wholly and exclusively in connection with such transfer like, brokerage, stamp duty, registration fee, legal expenses etc.
- (2) The cost of acquisition and cost of any improvement thereto.

However, the cost of acquisition of the asset or the cost of improvement thereto would not include the deductions claimed on interest u/s 24(b) or under the provisions of Chapter VI-A.

Interest on loan taken for acquisition, construction, repairs, reconstruction of house property is allowable as deduction under section 24(b). Sections 80EE and 80EEA in Chapter VI-A provide for deduction of interest payable on loan taken for acquisition of house property, subject to fulfillment of certain conditions.

The interest allowed as deduction under section 24(b) while computing income from house property and interest allowed as deduction under section 80EE or 80EEA of Chapter VI-A would not be included in the cost of acquisition or cost of improvement while computing capital gains on transfer of house property.

- (ii) No deduction in respect of STT:** No deduction shall, however, be allowed in computing the income chargeable under the head “Capital Gains” in respect of any amount paid on account of securities transaction tax (STT) under Chapter VII of the Finance (No.2) Act, 2004.
- (iii) Cost inflation index:** Under section 48, for computation of long-term capital gains, the cost of acquisition and cost of improvement will be increased by applying the cost inflation index (CII). Once the cost inflation index is applied to the cost of acquisition and cost of improvement, it becomes indexed cost of acquisition and indexed cost of improvement.

This means an amount which bears to the cost of acquisition, the same proportion as CII for the year in which the asset is transferred bears to the CII for the first year in which the asset was held by the assessee or for the year beginning on 1st April, 2001, whichever is later.

Similarly, indexed cost of any improvement means an amount which bears to the cost of improvement, the same proportion as CII for the year in which the asset is transferred bears to the CII for the year in which the improvement to the asset took place.

“Cost Inflation Index” in relation to a previous year means such index as may be notified by the Central Government having regard to 75% of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

Note – The benefit of indexation will **not** apply to the long-term capital gains arising from the transfer of bonds or debentures **other than** –

- (1) Capital indexed bonds issued by the Government; or
- (2) Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015.

In case of depreciable assets, unit of a specified mutual fund and marked linked debenture (discussed later), there will be no indexation and the capital gains will always be short-term capital gains.

The cost inflation indices for the financial years so far have been notified as under:

Financial Year	Cost Inflation Index
2001-02	100
2002-03	105
2003-04	109

Financial Year	Cost Inflation Index
2004-05	113
2005-06	117
2006-07	122
2007-08	129
2008-09	137
2009-10	148
2010-11	167
2011-12	184
2012-13	200
2013-14	220
2014-15	240
2015-16	254
2016-17	264
2017-18	272
2018-19	280
2019-20	289
2020-21	301
2021-22	317
2022-23	331
2023-24	348

- (iv) Full value of consideration of shares, debentures or warrants issued under ESOP in case of transfer under a gift etc.** - In case where shares, debentures or warrants allotted by a company directly or indirectly to its employees under the Employees' Stock Option Plan or Scheme in accordance with the guidelines issued in this behalf by the Central Government are transferred under a gift or irrecoverable trust, then the market value on the date of such transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer of such asset.
- (v) Special provision for non-residents** – In case of non-residents who invest foreign exchange to acquire capital assets, capital gains arising from the transfer of shares or debentures of an Indian company is to be computed in the following manner:
- The cost of acquisition, the expenditure incurred wholly and exclusively in connection with the transfer and the full value of the consideration are to be converted into the same foreign currency with which such shares were acquired. The conversion has to be done at the average of Telegraphic Transfer Buying Rate (TTBR) and Telegraphic Transfer Selling Rate (TTSR) on the respective dates.
 - The resulting capital gains shall be reconverted into Indian currency by applying the TTBR on the date of transfer.

The aforesaid manner of computation of capital gains shall be applied for every purchase and sale of shares or debentures in an Indian company. This will provide relief from risk of foreign currency fluctuation to non-residents.

Benefit of indexation will not be available in this case.

Non-residents and foreign companies are subject to tax at a concessional rate of 10% (without indexation benefit or currency conversion) on long-term capital gains arising from transfer of unlisted securities or shares of a company in which public are not substantially interested [Section 112].

Note – The benefit of indexation and currency conversion would not be applicable to the long-term capital gains arising from the transfer of the following assets referred to in section 112A –

- (i) equity share in a company on which STT is paid both at the time of acquisition and transfer
- (ii) unit of equity oriented fund or unit of business trust on which STT is paid at the time of transfer.

4.11 ASCERTAINMENT OF COST IN SPECIFIED CIRCUMSTANCES [SECTION 49]

A person becomes the owner of a capital asset not only by purchase but also by several other methods. Section 49 gives guidelines as to how to compute the cost under different circumstances.

Section	Circumstance	Cost of acquisition
49(1)	<p>Where the capital asset became the property of the assessee:</p> <ul style="list-style-type: none"> (i) on any distribution of assets on the total or partition of a HUF; (ii) under a gift or will; (iii) by succession, inheritance or devolution; (iv) on any distribution of assets on the liquidation of a company; (v) under a transfer to revocable or an irrevocable trust; (vi) under any transfer of capital asset by a holding company to its wholly owned subsidiary Indian company or by a subsidiary company to its 100% holding Indian company, referred to in section 47(iv) and 47(v), respectively; (vii) under any transfer referred to in section 47(vi) of a capital asset by amalgamating company to the amalgamated Indian company, in a scheme of amalgamation; (viii) under any transfer referred to in section 47(vib), of a capital asset by the demerged company to the resulting Indian company, in a scheme of demerger; 	<p>Cost for which the previous owner of the property acquired it.</p> <p>Notes –</p> <p>Cost of improvement – To the cost of acquisition, the cost of improvement to the asset, incurred by the previous owner or the assessee on or after 1.4.2001 must be added.</p> <p>Period of holding - It may be noted that section 2(42A) provides that in all such cases, for determining the period for which the capital asset is held by the transferee, the period of holding of the asset by the previous owner shall also be considered.</p> <p>Benefit of indexation – The Bombay High Court, in CIT v. Manjula J. Shah 16 Taxman 42, held that the indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset.</p> <p>As per the plain reading of the provisions of section 48, however, the indexed cost of acquisition would be determined by taking CII for the year in which asset is first held by the assessee.</p>

Section	Circumstance	Cost of acquisition
	(ix) by conversion by an individual of his separate property into a HUF property, by the mode referred to in section 64(2).	
49(2)	Where shares in an amalgamated company which is an Indian company become the property of the assessee in consideration of the transfer of shares referred to in section 47(vii) held by him in the amalgamating company under a scheme of amalgamation	The cost of acquisition to him of the shares in the amalgamated company shall be taken as the cost of acquisition of the shares in the amalgamating company.
49(2A)	Where a person becomes the owner of shares or debentures in a company during the process of conversion of bonds or debentures, debenture stock or deposit certificates referred under section 47(x).	That part of the cost of debentures, debenture stock, bond or deposit certificate in relation to which such asset (shares or debentures) is acquired by that person.
49(2AA)	Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in section 17(2)(vi)	Fair market value which has been taken into account for perquisite valuation.
49(2AE)	Where equity shares of a company, became the property of the assessee in consideration of transfer by way of conversion of preference shares of the company [Section 47(xb)]	That part of the cost of the preference share in relation to which such equity shares are acquired by the assessee.
49(2C)	In case of demerger	<p>The cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger.</p> <p>Cost of acquisition of shares in the resulting company $= A \times \frac{B}{C}$ A = Cost of acquisition of shares held in the demerged company B = Net book value of the assets transferred in a demerger C = Net worth of the demerged company i.e., the aggregate of the paid up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.</p>

Section	Circumstance	Cost of acquisition
49(2D)	In case of demerger	The cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as so arrived under the sub-section (2C)
49(4)	Where the capital gain arises from the transfer of such property which has been subject to tax under section 56(2)(x)	The value taken into account for the purposes of section 56(2)(x).
49(9)	Where the capital gain arises from the transfer of a capital asset which was used by the assessee as inventory earlier before its conversion into capital asset	The fair market value of the inventory as on the date on such conversion determined in the prescribed manner
49(10)	Where a capital asset, being an Electronic Gold Receipt issued by a Vault Manager became the property of the person as consideration for transfer of gold [Section 47(viid)]	The cost of gold in the hands of the person in whose name Electronic Gold Receipt is issued.
	Where gold is released against an Electronic Gold Receipt, which became the property of the person as consideration for transfer of Electronic Gold Receipt [Section 47(viid)]	The cost of the Electronic Gold Receipt in the hands of such person.

4.12 COST OF ACQUISITION [SECTION 55(2)]

Cost of acquisition is the price that the assessee has paid, or the amount that the assessee has incurred, for acquisition of the asset. Expenses incurred for completing the title are a part of the cost of acquisition. For eg: Stamp duty.

Cost of acquisition in relation to the following assets is as follows:

- (1) **Goodwill of a business or profession or a trademark or brand name associated with a business or profession or any other intangible asset or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, tenancy rights, stage carriage permits and loom hours, or any other right**
- (i) **In case of acquisition from previous owner:** In the case of the above capital assets, if the assessee has purchased them from a previous owner, the cost of acquisition means the amount of the purchase price.

Example: If A purchases a stage carriage permit from B for ₹ 2 lacs, ₹ 2 lacs will be the cost of acquisition for A.

However, in case of a capital asset, being goodwill of a business or profession, in respect of which depreciation under section 32(1) has been obtained by the assessee in any previous year (upto P.Y.2019-20), the cost of acquisition of such goodwill would be the amount of the purchase price as reduced by the total amount of depreciation (upto P.Y.2019-20) obtained by the assessee under section 32(1).

(ii) In case of circumstances mentioned under section 49(1)(i)/(ii)/(iii)/(iv): In cases where the capital asset became the property of the assessee by any of the following modes from the previous owner, and such capital assets were acquired by the previous owner by purchase, cost of acquisition to the assessee will be the amount of the purchase price for such previous owner:-

- (1) On any distribution of assets on the total or partial partition of a Hindu undivided family.
- (2) Under a gift or will.
- (3) By succession, inheritance or devolution.
- (4) On any distribution of assets on the liquidation of a company.
- (5) Under a transfer to a revocable or an irrevocable trust.
- (6) Under any transfer of a capital asset referred to in –
 - (i) section 47(iv)** – transfer by a holding company to its 100% subsidiary Indian company;
 - (ii) section 47(v)** – transfer by a subsidiary company to its 100% holding company, being an Indian company,
 - (iii) section 47(vi)** – transfer in a scheme of amalgamation by the amalgamating company to the amalgamated company, being an Indian company
 - (iv) section 47(vib)** – transfer in a demerger, by the demerged company to the resulting company, being an Indian company.
- (7) Where the assessee is a Hindu undivided family, by the mode referred to in section 64(2) i.e., conversion of self-acquired property of a member of a HUF into the property of the HUF (For details, read Chapter 4).

However, in case of a capital asset, being goodwill of a business or profession, in respect of which depreciation under section 32(1) has been obtained by **the assessee** in any previous year (upto P.Y.2019-20), the cost of acquisition of such goodwill would be the amount of the purchase price for such previous owner as reduced by the total amount of depreciation (upto P.Y.2019-20) obtained by **the assessee** under section 32(1).

(iii) In any other case [i.e., in case of self-generated assets]: In case of self-generated assets, namely, goodwill of a business or profession **or any other intangible asset** or a trademark or brand name associated with a business or profession or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, tenancy rights, stage carriage permits, or loom hours, **or any other right**, the cost of acquisition will be taken to be nil.

(2) Financial assets

Many a time, persons who own shares or other securities become entitled to subscribe to any additional shares or securities. Further, they are also allotted additional shares or securities without any payment. Such shares or securities are referred to as financial assets in Income-tax Act. Section 55 provides the basis for ascertaining the cost of acquisition of such financial assets.

(i) Original shares (which form the basis of entitlement of rights shares): In relation to the original financial asset on the basis of which the assessee becomes entitled to any additional financial assets, cost of acquisition means the amount actually paid for acquiring the original financial assets.

(ii) Rights entitlement (which is renounced by the assessee in favour of a person): In relation to any right to renounce the said entitlement to subscribe to the financial asset, when such a right is renounced by the assessee in favour of any person, cost of acquisition shall be taken to be nil in the case of such assessee.

(iii) Rights shares acquired by the assessee: In relation to the financial asset, to which the assessee has subscribed on the basis of the said entitlement, cost of acquisition means the amount actually paid by him for acquiring such asset.

(iv) Bonus Shares: In relation to the financial asset allotted to the assessee without any payment and on the basis of holding of any other financial assets, cost of acquisition shall be taken to be nil in the case of such assessee.

In other words, where bonus shares are allotted without any payment on the basis of holding of original shares, the cost of such bonus shares will be nil in the hands of the original shareholder.

Bonus shares allotted before 01.04.2001 - In respect of bonus shares allotted before 1.4.2001, although the cost of acquisition of the shares is nil, the assessee may opt for the fair market value as on 1.4.2001 as the cost of acquisition of such bonus shares.

Bonus shares allotted before 1.2.2018, on which STT has been paid at the time of transfer – In case of transfer of bonus shares allotted before 1.2.2018 on which STT has been paid at the time of transfer, the cost would be the higher of –

(i) Actual cost of acquisition (i.e., Nil, in case of bonus shares allotted on or after 1.4.2001; and FMV on 1.4.2001, in case of business shares allotted before 1.4.2001)

(ii) Lower of –

(a) FMV as on 31.1.2018; and

(b) Actual sale consideration

(v) Rights shares which are purchased by the person in whose favour the assessee has renounced the rights entitlement: In the case of any financial asset purchased by the person in whose favour the right to subscribe to such assets has been renounced, cost of acquisition means the aggregate of the amount of the purchase price paid by him to the person renouncing such right and the amount paid by him to the company or institution for acquiring such financial asset.

(3) Long-term capital assets referred to in section 112A

The cost of acquisition in relation to the long-term capital assets being,

- equity shares in a company on which STT is paid both at the time of purchase and transfer or
- unit of equity oriented fund or unit of business trust on which STT is paid at the time of transfer.

acquired before 1st February, 2018 shall be the higher of

(i) cost of acquisition of such asset; and

(ii) lower of

(a) the fair market value of such asset; and

(b) the full value of consideration received or accruing as a result of the transfer of the capital asset.

Meaning of Fair Market value

S.No.	Circumstance	Fair Market Value
(i)	In a case where the capital asset is listed on any recognized stock exchange as on 31.01.2018	If there is trading in such asset on such exchange on 31.01.2018 The highest price of the capital asset quoted on such exchange on the said date If there is no trading in such asset on such

S.No.	Circumstance	Fair Market Value
		exchange on 31.01.2018 The highest price of such asset on such exchange on a date immediately preceding 31.01.2018 when such asset was traded on such exchange.
(ii)	In a case where the capital asset is a unit which is not listed on any recognized stock exchange as on 31.01.2018	The net asset value of such unit as on the said date
(iii)	In a case where the capital asset is an equity share in a company which is <ul style="list-style-type: none"> not listed on a recognized stock exchange as on 31.01.2018 but listed on such exchange on the date of transfer listed on a recognized stock exchange on the date of transfer and which became the property of the assessee in consideration of share which is not listed on such exchange as on 31.01.2018 by way of transaction not regarded as transfer under section 47 	An amount which bears to the cost of acquisition the same proportion as CII for the financial year 2017-18 bears to the CII for the first year in which the asset was held by the assessee or on 01.04.2001, whichever is later.

(4) Any other capital asset

- (i) Where the capital asset become the property of the assessee before 1- 4-2001,** cost of acquisition means the cost of acquisition of the asset to the assessee or the fair market value of the asset on 1-4-2001, at the option of the assessee.

Example: A house property was purchased by Mr. A on 1.1.1992 for ₹ 30,000 and the fair market value of the same was ₹ 1,40,000 as on 1.4.2001. Cost of acquisition of the said property would be ₹ 1,40,000.

However, in case of capital asset, being land or building or both, the fair market value of such asset on 1-4-2001 shall not exceed the stamp duty value, wherever available, of such asset as on 1-4-2001.

Example: In the above example, if the stamp duty value of the property was ₹ 1,20,000 as on 1.4.2001, cost of acquisition of such property would be ₹ 1,20,000, being the stamp value as on 1.4.2001 and not ₹ 1,40,000.

- (ii) Where the capital asset became the property of the assessee by any of the modes specified in section 49(1):** The cost of acquisition to the assessee will be the cost of acquisition to the previous owner. Even in such cases, where the capital asset became the property of the previous owner before 1-4-2001, the assessee can opt the fair market value as on 1-4-2001 as the cost of acquisition.

However, in case of capital asset, being land or building or both, the fair market value of such asset on 1-4-2001 shall not exceed the stamp duty value, wherever available, of such asset as on 1-4-2001.

Note: The provisions contained in (i) & (ii) of (4) above shall also apply to the financial assets mentioned in (i) to (v) of (2) and long term capital assets referred to in section 112A of (3) above.

(iii) Where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation and the assessee has been assessed to capital gains in respect of that asset under section 46, the cost of acquisition means the fair market value of the asset on the date of distribution.

(iv) A share or a stock of a company may become the property of an assessee under the following circumstances:

- (a) the consolidation and division of all or any of the share capital of the company into shares of larger amount than its existing shares.
- (b) the conversion of any shares of the company into stock,
- (c) the re-conversion of any stock of the company into shares,
- (d) the sub-division of any of the shares of the company into shares of smaller amount, or
- (e) the conversion of one kind of shares of the company into another kind.

In the above circumstances the cost of acquisition to the assessee will mean the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived.

(5) Where the cost for which the previous owner acquired the property cannot be ascertained,

the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.

Cost of Acquisition of certain assets: At a Glance

Sl. No.	Nature of asset	Cost of acquisition
1	<p>Goodwill of business or profession, trademark, brand name or any other intangible asset etc.,</p> <ul style="list-style-type: none"> • Self generated • Acquired from previous owner <p>However, in case of capital asset, being goodwill of a business or profession, in respect of which depreciation u/s 32(1) has been obtained by the assessee in any P.Y. (upto P.Y.2019-20)</p> <ul style="list-style-type: none"> • became the property of the assessee by way of distribution of assets on total or partial partition of HUF, under a gift or will, by succession, inheritance, distribution of assets on liquidation of a company, etc. and previous owner has acquired it by purchase <p>However, in case of capital asset, being goodwill of a business or profession which was acquired by the previous owner by purchase and in respect of which depreciation u/s 32(1) has been obtained by the assessee in any P.Y. (upto P.Y.2019-20)</p>	<p>Nil</p> <p>Purchase price</p> <p>Purchase price as reduced by the total amount of depreciation obtained by the assessee under section 32(1).</p> <p>Purchase price for such previous owner</p> <p>Purchase price for such previous owner as reduced by the total amount of depreciation obtained by the assessee u/s 32(1).</p>
2.	<p>Bonus Shares:</p> <p>Allotted before 1.4.2001</p> <p>Allotted on or after 1.4.2001</p>	<p>FMV as on 1.4.2001</p> <p>Nil</p>

Sl. No.	Nature of asset	Cost of acquisition
	Bonus shares allotted before 1.2.2018, on which STT has been paid at the time of transfer	The higher of – (i) Actual cost of acquisition (i.e., Nil, in case of bonus shares allotted on or after 1.4.2001; and FMV on 1.4.2001, in case of bonus shares allotted before 1.4.2001) (ii) Lower of – (a) FMV as on 31.1.2018; and (b) Actual sale consideration
3.	<p>Rights Shares:</p> <p>Original shares (which form the basis of entitlement of rights shares)</p> <p>Rights entitlement (which is renounced by the assessee in favour of a person)</p> <p>Rights shares acquired by the assessee</p> <p>Rights shares which are purchased by the person in whose favour the assessee has renounced the rights entitlement</p>	<p>Amount actually paid for acquiring the original shares</p> <p>Nil</p> <p>Amount actually paid for acquiring the rights shares</p> <p>Purchase price paid to the renouncer of rights entitlement as well as the amount paid to the company which has allotted the rights shares.</p>
4	<p>Long term capital assets being,</p> <ul style="list-style-type: none"> • equity shares in a company on which STT is paid both at the time of purchase and transfer or • unit of equity oriented fund or unit of business trust on which STT is paid at the time of transfer, <p>acquired before 1st February, 2018</p>	<p>Cost of acquisition shall be the higher of</p> <p>(i) actual cost of acquisition of such asset; and</p> <p>(ii) lower of</p> <ul style="list-style-type: none"> ▪ the fair market value of such asset; and ▪ the full value of consideration received or accruing as a result of the transfer of the capital asset.
5	<p>Any other capital asset</p> <p>Where such capital asset became the property of the assessee before 1.4.2001</p>	<p>Cost of the asset to the assessee, or FMV as on 1.4.2001, at the option of the assessee.</p> <p>However, in case of capital asset being land or building, FMV as on 1.4.2001 shall not exceed stamp duty value as on 1.4.2001.</p>

Sl. No.	Nature of asset	Cost of acquisition
	Where capital assets became the property of the assessee by way of distribution of assets on total or partial partition of HUF, under a gift or will, by succession, inheritance, distribution of assets on liquidation of a company, etc. and the capital asset became the property of the previous owner before 1.4.2001.	Cost to the previous owner or FMV as on 1.4.2001, at the option of the assessee. However, in case of capital asset being land or building, FMV as on 1.4.2001 shall not exceed stamp duty value as on 1.4.2001.
	The provisions contained in (5) above shall also apply to the assets mentioned in (3) and (4) above.	
6	Where cost of the property in the hands of previous owner cannot be ascertained	The FMV on the date on which the capital asset become the property of the previous owner would be considered as cost of acquisition.

ILLUSTRATION 8

Mr. A converts his capital asset acquired for an amount of ₹ 50,000 in June, 2003 into stock-in-trade in the month of November, 2022. The fair market value of the asset on the date of conversion is ₹ 4,50,000. The stock-in-trade was sold for an amount of ₹ 6,50,000 in the month of September, 2023. What will be the tax treatment?

Financial year	Cost Inflation Index
2003-04	109
2022-23	331
2023-24	348

SOLUTION

The capital gains on the sale of the capital asset converted to stock-in-trade is taxable in the given case. It arises in the year of conversion (i.e. P.Y. 2022-23) but will be taxable only in the year in which the stock-in-trade is sold (i.e. P.Y. 2023-24). Profits from business will also be taxable in the year of sale of the stock-in-trade (P.Y. 2023-24).

The LTCG and business income for the A.Y.2024-25 are calculated as under:

Particulars	₹	₹
Profits and Gains from Business or Profession		
Sale proceeds of the stock-in-trade	6,50,000	
Less: Cost of the stock-in-trade (FMV on the date of conversion)	4,50,000	2,00,000
Long Term Capital Gains		
Full value of the consideration (FMV on the date of the conversion)	4,50,000	
Less: Indexed cost of acquisition (₹ 50,000 × 331/109)	1,51,835	2,98,165

Note: For the purpose of indexation, the cost inflation index of the year in which the asset is converted into stock-in-trade should be considered.

4.13 COST OF IMPROVEMENT [SECTION 55(1)]

(1) **Goodwill or any other intangible asset of a business, etc. [Section 55(1)(b)(1)]:** In relation to a capital asset being goodwill or any other intangible asset of a business or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession or any other right, the cost of improvement shall be taken to be Nil.

(2) **Any other capital asset [Section 55(1)(b)(2)]:**

	Circumstance	Cost of improvement
(i)	Where the capital asset became the property of the previous owner or the assessee before 1.4.2001	
(a)	In a case covered u/s 49(1) , where the capital asset became the property of the previous owner and the assessee before 1.4.2001	All expenditure of a capital nature incurred in making any addition or alteration to the capital asset on or after 1.4.2001 by the assessee.
(b)	In a case covered u/s 49(1) , where the capital asset became the property of the previous owner before 1.4.2001 but became the property of the assessee on or after 1.4.2001	All expenditure of a capital nature incurred in making any addition or alteration to the capital asset on or after 1.4.2001 by the previous owner and the assessee.
(c)	In a case not covered u/s 49(1)	All expenditure of a capital nature incurred in making any addition or alteration to the capital asset on or after 1.4.2001 by the assessee.
(ii)	here the capital asset became the property of the previous owner and the assessee on or after 1.4.2001	
(a)	In a case covered u/s 49(1)	All expenditure of a capital nature incurred in making any addition or alteration to the capital asset by the previous owner and the assessee.
(b)	In a case not covered u/s 49(1)	All expenditure of a capital nature incurred in making any addition or alteration to the capital asset by the assessee after it became the assessee's property.

In a nutshell, in a case covered under section 49(1), cost of improvement would include expenditure of a capital nature on addition or alteration to the capital asset by the previous owner or the assessee or both on or after 1.4.2001. In a case not covered under section 49(1), cost of improvement would include expenditure of a capital nature on addition or alteration to the capital asset by the assessee on or after 1.4.2001.

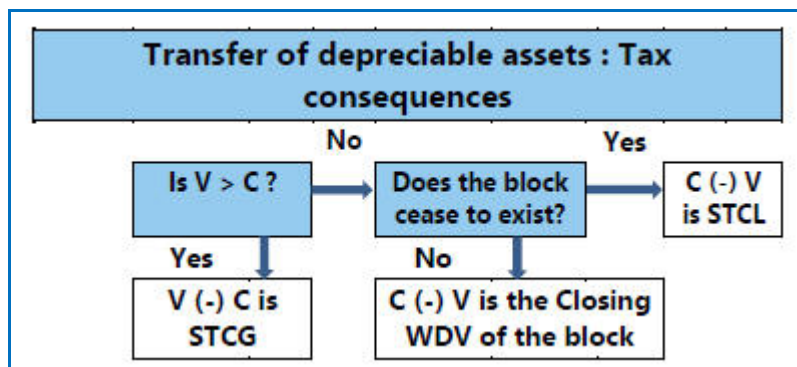
However, cost of improvement does not include any expenditure which is deductible in computing the income chargeable under the head "Income from house property", "Profits and gains of business or profession" or "Income from other sources". Routine expenses on repairs and maintenance do not form part of cost of improvement.

4.14 COMPUTATION OF CAPITAL GAINS IN CASE OF DEPRECIABLE ASSETS [SECTIONS 50 & 50A]

(1) **Transfer of depreciable assets [Section 50]:** Section 50 provides for the computation of capital gains in case of depreciable assets. It may be noted that where the capital asset is a depreciable asset forming part of a block of assets, section 50 will have over-riding effect in spite of anything contained in section 2(42A) which defines a short-term capital asset.

Accordingly, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed, the provisions of sections 48 and 49 shall be subject to the following modification:

- Where the full value of consideration received or accruing for the transfer of the asset plus the full value of such consideration for the transfer of any other capital asset falling with the block of assets during previous year exceeds the aggregate of the following amounts namely:
 - (1) expenditure incurred wholly and exclusively in connection with such transfer;
 - (2) WDV of the block of assets at the beginning of the previous year;
 - (3) the actual cost of any asset falling within the block of assets acquired during the previous year such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.
- Where all assets in a block are transferred during the previous year, the block itself will cease to exist. In such a situation, the difference between the sale value of the assets and the WDV of the block of assets at the beginning of the previous year together with the actual cost of any asset falling within that block of assets acquired by the assessee during the previous year will be deemed to be the capital gains arising from the transfer of short-term capital assets.



Symbol	Description
V	Full value of consideration
C	Opening WDV of Block (+) Actual Cost of Asset acquired in the Block during the P.Y. (+) Expenses in connection with transfer of asset
STCG	Short Term Capital Gain
STCL	Short Term Capital Loss
WDV	Written Down Value

(2) **Cost of acquisition in case of power sector assets [Section 50A]:** With respect to the power sector, in case of depreciable assets referred to in section 32(1)(i), the provisions of sections 48 and 49 shall apply subject to the modification that the WDV of the asset [as defined in section 43(6)], as adjusted, shall be taken to be the cost of acquisition.

ILLUSTRATION 9

Singhania & Co., a sole proprietorship owns six machines, put in use for business in March, 2022. The depreciation on these machines is charged @15%. The opening balance of these machines after providing depreciation for P.Y. 2022-23 was ₹ 8,50,000. Three of the old machines were sold on 10th June, 2023 for ₹ 11,00,000.

A second hand plant was bought for ₹ 8,50,000 on 30th November, 2023.

You are required to:

- (i) determine the claim of depreciation for Assessment Year 2024-25.
- (ii) compute the capital gains liable to tax for Assessment Year 2024-25.
- (iii) If Singhania & Co. had sold the three machines in June, 2023 for ₹ 21,00,000, will there be any difference in your above workings? Explain.

SOLUTION

- (i) Computation of depreciation for A.Y.2024-25

Particulars	₹
Opening balance of the block as on 1.4.2023 [i.e., W.D.V. as on 31.3.2023 after providing depreciation for P.Y. 2022-23]	8,50,000
Add: Purchase of second-hand plant during the year	8,50,000
	17,00,000
Less: Sale consideration of old machinery during the year	11,00,000
W.D.V of the block as on 31.03.2024	6,00,000

Since the value of the block as on 31.3.2024 comprises of a new asset which has been put to use for less than 180 days, depreciation is restricted to 50% of the prescribed percentage of 15% i.e. depreciation is restricted to 7½%. Therefore, the depreciation allowable for the year is ₹ 45,000, being 7½% of ₹ 6,00,000.

- (ii) The provisions under section 50 for computation of capital gains in the case of depreciable assets can be invoked only under the following circumstances:
 - (a) When one or some of the assets in the block are sold for consideration more than the value of the block.
 - (b) When all the assets are transferred for a consideration more than the value of the block.
 - (c) When all the assets are transferred for a consideration less than the value of the block.

Since in the first two cases, the sale consideration is more than the written down value of the block, the computation would result in short term capital gains.

In the third case, since the written down value of the block exceeds the sale consideration, the resultant figure would be a short-term capital loss of the block.

In the given case, capital gains will not arise as the block of asset continues to exist, and some of the assets are sold for a price which is lesser than the written down value of the block.

- (iii) If the three machines are sold in June, 2023 for ₹ 21,00,000, then short term capital gains would arise, since the sale consideration is more than the aggregate of the written down value of the block at the beginning of the year and the additions made during the year.

Particulars	₹	₹
Sale consideration		21,00,000
Less: Opening balance of the block as on 1.4.2023 [i.e., W.D.V. as on 31.3.2023 after providing depreciation for P.Y. 2022-23]	8,50,000	
Purchase of second plant during the year	8,50,000	17,00,000
Short term capital gains		4,00,000

4.15 COMPUTATION OF CAPITAL GAINS IN CASE OF MARKET LINKED DEBENTURES [SECTIONS 50AA]

(1) Transfer of unit of a Specified Mutual Fund or Market Linked Debenture: Section 50AA provides for the computation of capital gains in case of transfer of unit(s) of

- a Specified Mutual Fund acquired on or after 1.4.2023 or
- a Market Linked Debenture.

Section 50AA will have an over-riding effect in spite of anything contained in section 2(42A) which defines a short-term capital asset.

Accordingly, capital gain arising from the transfer or redemption or maturity of unit of a Specified Mutual Fund acquired on or after 1.4.2023 or Market Linked Debenture would be deemed to be short term capital gains and chargeable to tax at normal rate of tax.

(2) Computation of capital gains: The full value of consideration received or accruing as a result of the transfer or redemption or maturity of unit of a Specified Mutual Fund or Market Linked Debenture as reduced by the cost of acquisition of the debenture or unit and the expenditure incurred wholly and exclusively in connection with such transfer or redemption or maturity would be deemed to be the capital gains.

(3) No deduction in respect of STT: No deduction would be allowed in computing the income chargeable under the head "Capital Gains" in respect of any sum paid on account of securities transaction tax (STT) under Chapter VII of the Finance (No.2) Act, 2004.

(4) Meaning of certain terms:

S.No.	Term	Meaning
(i)	Market Linked Debenture	A security (i) which has an underlying principal component in the form of debt security; and (ii) where the returns are linked to market returns on other underlying securities or indices. It includes any security classified or regulated as a market linked debenture by the SEBI.
(ii)	Specified Mutual Fund	A Mutual Fund where not more than 35% of its total proceeds is invested in the equity shares of domestic companies. However, the percentage of equity shareholding held in respect of the Specified Mutual Fund shall be computed with reference to the annual average of the daily closing figures.

4.16 CAPITAL GAINS IN RESPECT OF SLUMP SALE SECTION 50B]

- (1) **Meaning of slump sale [Section 2(42C)]** - Slump sale means transfer of one or more undertakings, by any means, for a lump sum consideration without values being assigned to the individual assets and liabilities in such transfer.

Term	Meaning
Undertaking [Explanation 1]	It includes any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.
Transfer [Explanation 3]	Meaning assigned to it in section 2(47) [It would include sale, exchange, relinquishment of capital asset, extinguishment of any rights therein, compulsory acquisition under any law etc. - See detailed definition in page 3.371]

Note - The determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.

- (2) **Capital gains - Whether long-term or short-term? [Section 50B(1)]** - Any profits or gains arising from the slump sale of one or more undertakings held for more than 36 months, shall be chargeable to income tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

Any profits and gains arising from such transfer of one or more undertakings held by the assessee for not more than 36 months shall be deemed to be short-term capital gains.

- (3) **Deemed cost of acquisition and cost of improvement [Section 50B(2)(i)]** - The net worth of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 in relation to capital assets of such undertaking or division transferred. No indexation benefit would, however, be available, even if the slump sale has taken place of an undertaking held for more than 36 months, resulting in a long-term capital gain.

- (4) **Deemed full value of consideration [Section 50B(2)(ii)]** - Fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.

Accordingly, the CBDT has prescribed that, for the purpose of section 50B(2)(ii), the fair market value (FMV) of capital assets would be the higher of -

- (i) FMV 1, being the fair market value of capital assets transferred by way of slump sale (determined on the date of slump sale); and
- (ii) FMV 2, being the fair market value of the consideration (monetary and non-monetary) received or accruing as a result of transfer by way of slump sale

- (5) **Report of a Chartered Accountant [Section 50B(3)]** - Every assessee, in the case of slump sale, shall furnish in the prescribed form on or before 30th September of the A.Y. [i.e., the specified date referred under section 44AB, being the date one month prior to the due date for filing return of income under section 139(1)], a report of a chartered accountant indicating the computation of net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division has been correctly arrived at in accordance with the provisions of this section.

(6) Meaning of Certain Terms:

Explanation	Term	Particulars
1	Net worth	Aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in the books of account. However, any change in the value of assets on account of revaluation of assets shall not be considered for this purpose
2	Aggregate value of total assets of undertaking or division	<p>In the case of depreciable assets: The written down value of block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of section 43(6)(c);</p> <p>In case of capital asset, being goodwill of a business or profession, which has not been acquired by the assessee by purchase from a previous owner [Self-generated goodwill]: Nil Capital asset in respect of which 100% deduction is claimed: In case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD: Nil;</p> <p>For all other assets: Book value</p>

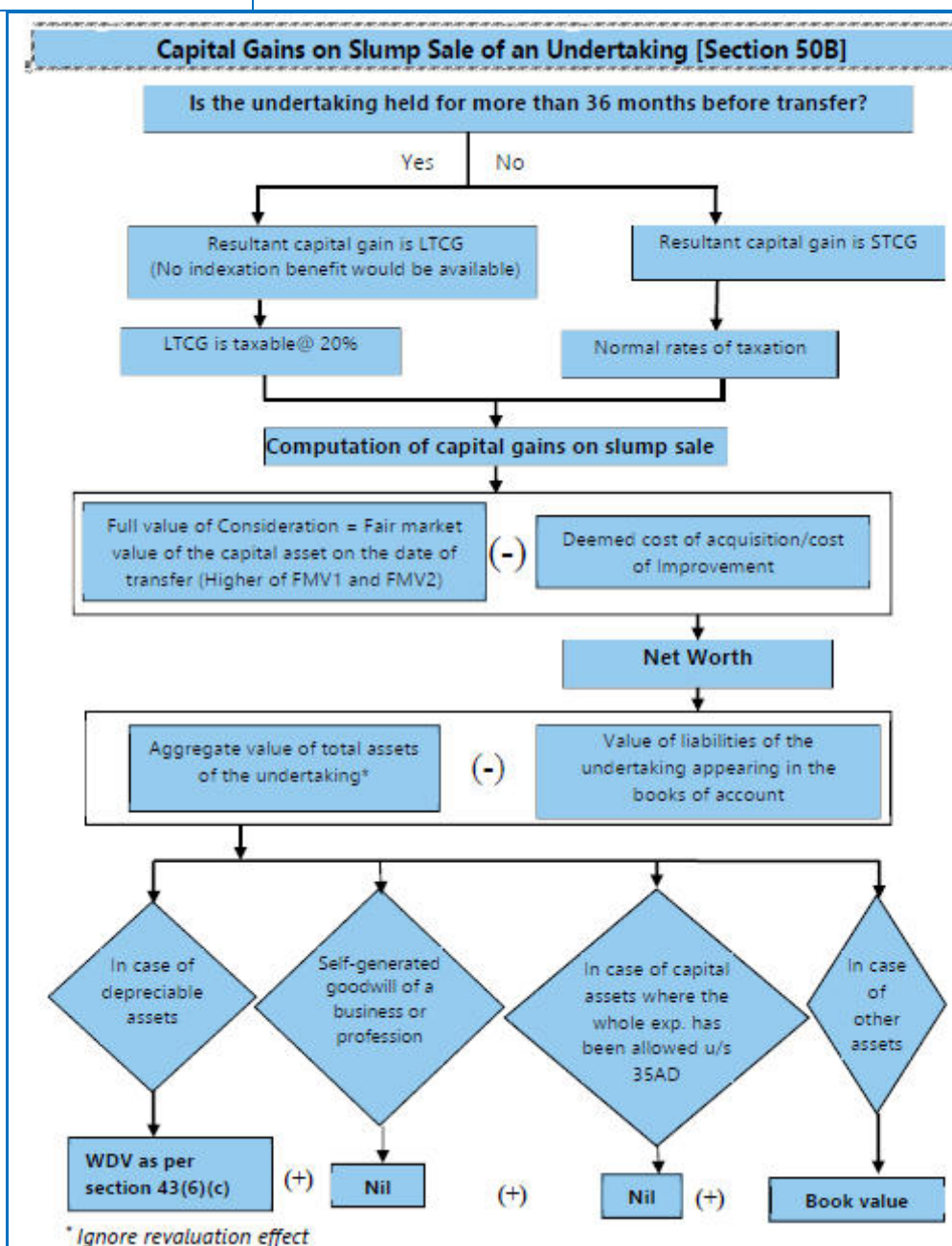


ILLUSTRATION 10

Mr. A is a proprietor of Akash Enterprises having 2 units. He transferred on 1.4.2023 his Unit 1 by way of slump sale for a total consideration of ₹ 25 lacs. The fair market value of capital assets of unit 1 on 1.4.2023 is ₹ 30 lacs. Unit 1 was started in the year 2005-06. The expenses incurred for this transfer were ₹ 28,000. His Balance Sheet as on 31.3.2023 is as under:

Liabilities	Total (₹)	Assets	Unit 1(₹)	Unit 2 (₹)	Total (₹)
Own Capital	15,00,000	Building	12,00,000	2,00,000	14,00,000
Revaluation Reserve (for building of unit 1)	3,00,000	Machinery	3,00,000	1,00,000	4,00,000
Bank loan (70% for unit 1)	2,00,000	Debtors	1,00,000	40,000	1,40,000
Trade creditors (25% for unit 1)	1,50,000	Other assets	1,50,000	60,000	2,10,000
Total	21,50,000	Total	17,50,000	4,00,000	21,50,000

Other information:

- (i) Revaluation reserve is created by revising upward the value of the building of Unit 1.
- (ii) No individual value of any asset is considered in the transfer deed.
- (iii) Other assets of Unit 1 include patents acquired on 1.7.2021 for ₹ 50,000 on which no depreciation has been charged.

Compute the capital gain for the assessment year 2024-25.

SOLUTION**Computation of capital gains on slump sale of Unit 1**

Particulars	₹
Full value of consideration [Higher of FMV of capital assets of Unit 1 on 1.4.2023 or FMV of monetary consideration received]	30,00,000
Less: Expenses for transfer	28,000
	29,72,000
Less: Net worth (See Note 1 below)	12,50,625
Long-term capital gain	17,21,375

Notes:

1. Computation of net worth of Unit 1 of Akash Enterprises

Particulars	₹	₹
Building (excluding ₹ 3 lakhs on account of revaluation)		9,00,000
Machinery		3,00,000
Debtors		1,00,000
Patents (See Note 2 below)		28,125
Other assets (₹ 1,50,000 – ₹ 50,000)		1,00,000

Particulars	₹	₹
Total assets		14,28,125
Less: Creditors (25% of ₹ 1,50,000)	37,500	
Bank Loan (70% of ₹ 2,00,000)	1,40,000	1,77,500
Net worth		12,50,625

2. Written down value of patents as on 1.4.2023

Value of patents:	₹
Cost as on 1.7.2021	50,000
Less: Depreciation @ 25% for Financial Year 2021-22	12,500
Balance as on 1.4.2022	37,500
Less: Depreciation for Financial Year 2022-23	9,375
Balance as on 1.4.2023	28,125

For the purposes of computation of net worth, the written down value determined as per section 43(6) has to be considered in the case of depreciable assets. The problem has been solved assuming that the Balance Sheet values of ₹ 3 lakh and ₹ 9 lakh (₹ 12 lakh – ₹ 3 lakh) represent the written down value of machinery and building, respectively, of Unit 1.

3. Since the Unit is held for more than 36 months, capital gain arising would be long term capital gain. However, indexation benefit is not available in case of slump sale.

4.17 DEEMED FULL VALUE OF CONSIDERATION FOR COMPUTING CAPITAL GAINS [SECTIONS 50C, 50CA & 50D]

S. No.	Capital Asset	Section	Circumstance	Deemed Full Value of consideration for computing Capital Gains
1.	Land or Building or both	50C	<p>(1) If Stamp Duty Value >110% of consideration received or accruing as a result of transfer</p> <p>(a) If date of agreement is different from the date of transfer and whole or part of the consideration is received by way of account payee cheque or account payee bank draft or ECS or through such other prescribed electronic modes (IMPS, UPI, RTGS, NEFT, Net banking, debit card, credit card or BHIM Aadhar Pay) on or before the date of agreement</p> <p>(b) If date of agreement is different from the date of transfer but the whole or part of the consideration has not been received by way of account payee cheque or account payee bank draft or ECS or through such other prescribed electronic mode on or before the date of agreement.</p>	<p>Stamp Duty Value</p> <p>Stamp Duty Value on the date of agreement</p> <p>Stamp Duty Value on the date of transfer</p>

S. No.	Capital Asset	Section	Circumstance	Deemed Full Value of consideration for computing Capital Gains
2.	Unquoted shares	50CA	If consideration received or accruing as a result of transfer < FMV of such share determined in the prescribed manner The provisions of this section would not, however, be applicable to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.	FMV of such share determined in the prescribed manner
3.	Any Capital asset	50D	Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined	FMV of the said asset on the date of transfer

Meaning of certain terms:

S. No.	Term	Section	Meaning
(i)	Stamp Duty Value	50C	The value adopted or assessed or assessable by any authority of a State Government (Stamp Valuation Authority) for the purpose of payment of stamp duty
(ii)	Assessable	50C	The term 'assessable' has been defined to mean the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty. The term "assessable" has been added to cover transfers executed through power of attorney.
(iii)	Quoted Shares	50CA	The share quoted on any recognized stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.

Note – The valuation rules prescribed in Rule 11UA for valuation of unquoted equity shares would be dealt with at the Final level.

4.18 ADVANCE MONEY RECEIVED [SECTION 51]

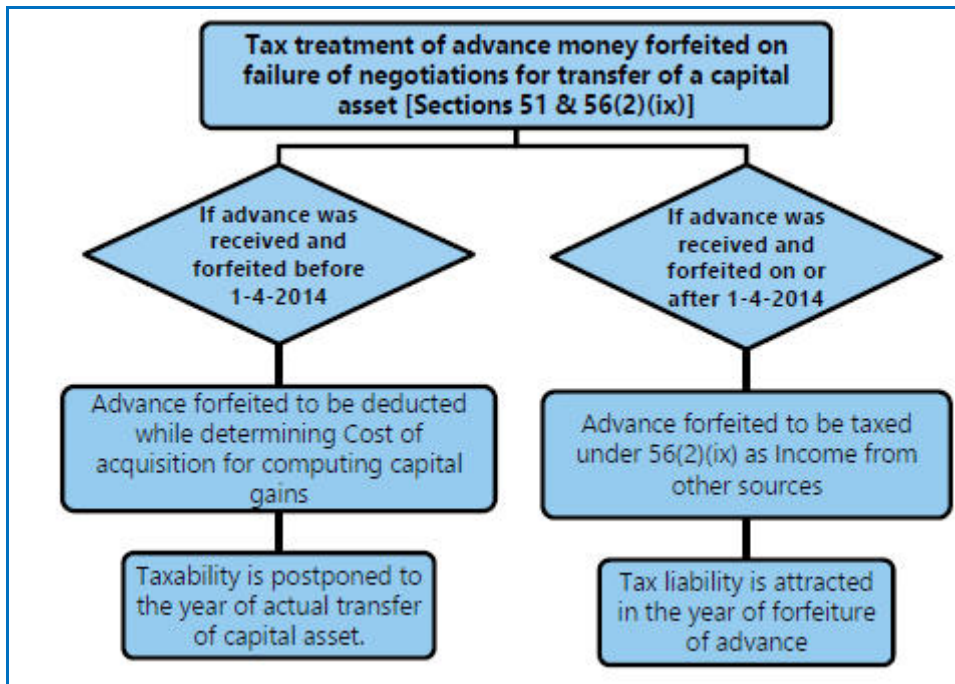
It is possible for an assessee to receive some advance in regard to the transfer of capital asset. Due to the break-down of the negotiation, the assessee may have retained the advance.

Section 51 provides that while calculating capital gains, the above advance retained by the assessee must go to reduce the cost of acquisition. However, if advance has been received and retained by the previous owner and not the assessee himself, then the same will not go to reduce the cost of acquisition of the assessee. Section 56(2)(ix) provides for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset.

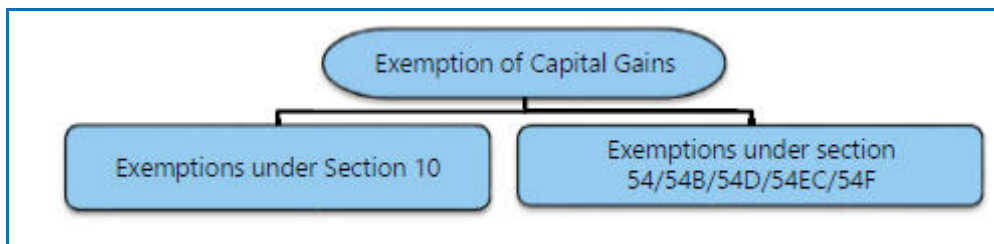
Consequently, such sum shall be chargeable to income-tax under the head 'Income from other sources', if such sum is forfeited on or after 1st April, 2014 and the negotiations do not result in transfer of such capital asset.

In order to avoid double taxation of the advance received and retained, section 51 provides that where any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset has been included in the total income of the assessee for any previous year in accordance with section 56(2)(ix), then, such amount shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

However, any such sum of money forfeited before 1st April, 2014, will be deducted from the cost of acquisition for computing capital gains.



4.19 EXEMPTION OF CAPITAL GAINS



I. Exemptions under section 10

Exemption of capital gains on compulsory acquisition of agricultural land situated within specified urban limits [Section 10(37)]

With a view to mitigate the hardship faced by the farmers whose agricultural land situated in specified urban limits has been compulsorily acquired, clause (37) of section 10 exempts the capital gains arising to an individual or a HUF from transfer of agricultural land by way of compulsory acquisition.

Such exemption is available where the compensation or the enhanced compensation or consideration, as the case may be, is received on or after 1.4.2004.

The exemption is available only when such land has been used for agricultural purposes during the preceding two years immediately preceding the date of transfer by such individual or a parent of his or by such HUF.

II. Exemption of Capital Gains under section 54/54B/54D/54EC/54F

(i) Capital Gains on sale of residential house [Section 54]

Eligible assessee – Individual & HUF

Conditions to be fulfilled

- There should be a transfer of residential house (buildings or lands appurtenant thereto)
- It must be a long-term capital asset
- Income from such house should be chargeable under the head “Income from house property”
- **Where the amount of capital gains exceeds ₹ 2 crore**

Where the amount of capital gain exceeds ₹ 2 crore, **one residential house in India should be –**

- purchased within 1 year before or 2 years after the date of transfer; (or)
- constructed within a period of 3 years after the date of transfer.

Where the amount of capital gains does not exceed ₹ 2 crore

Where the amount of capital gains does not exceed ₹ 2 crore, the assessee i.e., individual or HUF, may at his option,

- purchase **two residential houses in India** within 1 year before or 2 years after the date of transfer (or)
- construct **two residential houses in India** within a period of 3 years after the date of transfer.

Where during any assessment year, the assessee has exercised the option to purchase or construct two residential houses in India, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.

This implies that if an assessee has availed the option of claiming benefit of section 54 in respect of purchase of two residential houses in Jaipur and Jodhpur, say, in respect of capital gains of ₹ 1.50 crores arising from transfer of residential house at Bombay in the P.Y. 2023-24, then, he will not be entitled to avail the benefit of section 54 again in respect of purchase of two residential houses in, say, Pune and Baroda, in respect of capital gains of ₹ 1.20 crores arising from transfer of residential house in Jaipur in the P.Y. 2026-27, even though the capital gains arising on transfer of the residential house at Jaipur does not exceed ₹ 2 crore.

- If such investment is not made before the date of filing of return of income, then, the capital gain has to be deposited under the Capital Gains Account Scheme (CGAS) [Refer points (vi) and (vii) of this subheading]. **However, the capital gain in excess of ₹ 10 crore would not be taken into account for the purpose of deposit in CGAS.**
- Amount utilized by the assessee for purchase or construction of new asset and the amount so deposited shall be deemed to be the cost of new asset. The deemed cost of the new asset would be restricted to ₹ 10 crores for the purpose of exemption under section 54.

Quantum of Exemption

- If cost of new residential house or houses, as the case may be \geq long term capital gains, entire long term capital gains is exempt.
- If cost of new residential house or houses, as the case may be $<$ long term capital gains, long term capital gains to the extent of cost of new residential house is exempt.

However, if the cost of new residential house(s) exceeds ₹ 10 crores, the amount exceeding ₹ 10 crore would not be taken into account for exemption. It means the maximum exemption that can be claimed by the assessee u/s 54 is ₹ 10 crore.

Examples:

1. If the long-term capital gains is ₹ 2.05 crore and the cost of the new house is ₹ 3 crore, then, the entire long-term capital gains of ₹ 2.05 crore is exempt.
2. If long-term capital gains is ₹ 2.05 crore and cost of new house is ₹ 1.55 crore, then, long-term capital gains is exempt only upto ₹ 1.55 crore. Balance ₹ 50 lakhs is taxable @20%.

Example

(1)	(2)	(3)	(4)	(5)
S.No.	LTCG computed	Cost of new residential house	Amount in column (3) or ₹ 10 crore, whichever is lower	Exempt LTCG [Lower of column (2) and column (4)]
(1)	₹ 7 crore	₹ 12 crore	₹ 10 crore	₹ 7 crore
(2)	₹ 12 crore	₹ 14 crore	₹ 10 crore	₹ 10 crore
(3)	₹ 11 crore	₹ 9 crore	₹ 9 crore	₹ 9 crore
(4)	₹ 15 crore	₹ 13 crore	₹ 10 crore	₹ 10 crore

Examples

1. If the LTCG is ₹ 8 crore and the assessee has incurred ₹ 5 crore in construction of new residential house upto the due date u/s 139(1) i.e., 31.7.2024/ 31.10.2024, as the case may be, then, as per section 54(2), he can deposit the amount of ₹ 3 crore not appropriated by him towards construction of house upto 31.7.2024/31.10.2024, as the case may be, in Capital Gains Account Scheme (CGAS) for claiming exemption under section 54. If he deposits, say, ₹ 2 crore, in CGAS on or before the due date u/s 139(1), the deemed cost of the new residential house would be ₹ 7 crore (₹ 5 crore + ₹ 2 crore). The amount exempt u/s 54 would be ₹ 7 crore.
2. If the LTCG is ₹ 14 crore and the assessee has already incurred ₹ 7 crore in construction of new residential house upto 31.7.2024/31.10.2024, as the case may be, then, as per section 54(2), he can deposit the difference of ₹ 3 crore (₹ 10 crore - ₹ 7 crore) in CGAS for claiming exemption u/s 54. If he deposits, say, ₹ 2 crore in CGAS on or before the due date u/s 139(1), the deemed cost of the new residential house would be ₹ 9 crore (₹ 7 crore + ₹ 2 crore). The amount exempt under section 54 would be ₹ 9 crore.

Consequences of transfer of new asset before 3 years

- If the new asset is transferred before 3 years from the date of its acquisition or construction, then cost of the asset will be reduced by capital gains exempted earlier for computing capital gains.
- **Example:** The long-term capital gains is ₹ 2.05 crore and the cost of the new house is ₹ 3 crore, the entire long-term capital gains of ₹ 2.05 crore will be exempt. If the new house was sold after 18 months for ₹ 5 crore, then, short term capital gain chargeable to tax would be –

Particulars	₹
Net Consideration	5,00,00,000
Less: Cost of acquisition minus capital gains exempt earlier (₹ 3,00,00,000 – ₹ 2,05,00,000)	95,00,000
Short term capital gains chargeable to tax	4,05,00,000

ILLUSTRATION 11

Mr. Cee purchased a residential house on July 20, 2021 for ₹ 10,00,000 and made some additions to the house incurring ₹ 2,00,000 in August 2021. He sold the house property in April 2023 for ₹ 20,00,000. Out of the sale proceeds, he spent ₹ 5,00,000 to purchase another house property in September 2023.

What is the amount of capital gains taxable in the hands of Mr. Cee for the A.Y.2024-25?

SOLUTION

The house is sold before 24 months from the date of purchase. Hence, the house is a short-term capital asset and no benefit of indexation would be available.

Particulars	₹
Sale consideration	20,00,000
Less: Cost of acquisition	10,00,000
Cost of improvement	2,00,000
Short-term capital gains	8,00,000

Note - The exemption of capital gains under section 54 is available only in case of long-term capital asset. As the house is short-term capital asset, Mr. Cee cannot claim exemption under section 54. Thus, the amount of taxable short-term capital gains is ₹ 8,00,000.

(ii) Capital gains on transfer of agricultural land [Section 54B]

Eligible assessee – Individual & HUF

Conditions to be fulfilled

- There should be a transfer of urban agricultural land.
- Such land must have been used for agricultural purposes by the assessee, being an individual or his parent, or a HUF in the 2 years immediately preceding the date of transfer.
- He should purchase another agricultural land (urban or rural) within 2 years from the date of transfer.
- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS (Refer points (vi) and (vii) of this sub-heading.). Amount utilized by the assessee for purchase of new asset and the amount so deposited shall be deemed to be the cost of new asset.

Quantum of exemption

- If cost of new agricultural land \geq capital gains, entire capital gains is exempt.
- If cost of new agricultural land $<$ capital gains, capital gains to the extent of cost of new agricultural land is exempt.

Examples:

1. If the capital gains is ₹ 3 lakhs and the cost of the new agricultural land is ₹ 4 lakhs, then, the entire capital gains of ₹ 3 lakhs is exempt.
2. If capital gains is ₹ 3 lakhs and cost of new agricultural land is ₹ 2 lakhs, then, capital gains is exempt only upto ₹ 2 lakhs.

Consequences of transfer of new agricultural land before 3 years

- If the new agricultural land is transferred before 3 years from the date of its acquisition, then cost of the land will be reduced by capital gains exempted earlier for computing capital gains of new agricultural land.
- However, if the new agricultural land is a rural agricultural land, there would be no capital gains on transfer of such land.
- Continuing in the above example 1, if the new agricultural land (urban land) is sold after, say, 1 year for ₹ 6 lakhs, then short term capital gain chargeable to tax would be –

Particulars	₹
Net consideration	6,00,000
Less: Cost of acquisition minus capital gains exempt earlier (₹ 4,00,000 – ₹ 3,00,000)	1,00,000
Short-term capital gains chargeable to tax	5,00,000

(iii) Capital Gains on transfer by way of compulsory acquisition of land and building of an industrial undertaking [Section 54D]

Eligible assessee – Any assessee

Conditions to be fulfilled

- There must be compulsory acquisition of land and building or any right in land or building forming part of an industrial undertaking.
- The land and building should have been used by the assessee for purposes of the business of the industrial undertaking in the 2 years immediately preceding the date of transfer.
- The assessee must purchase any other land or building or construct any building (for shifting or re-establishing the existing undertaking or setting up a new industrial undertaking) within 3 years from the date of transfer.
- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS. (Refer point (vi) and (vii) of this sub-heading). Amount utilized by the assessee for purchase of new asset and the amount so deposited shall be deemed to be the cost of new asset.

Quantum of exemption

- If cost of new asset \geq Capital gains, entire capital gains is exempt.
- If cost of new asset $<$ Capital gains, capital gains to the extent of cost of new asset is exempt.

Note: The exemption in respect of capital gains from transfer of capital asset would be available even in respect of short-term capital asset, being land or building or any right in any land or building, provided such capital asset is used by assessee for the industrial undertaking belonging to him, even if he was not the owner for the said period of 2 years.

Consequences of transfer of new asset before 3 years

- If the new asset is transferred before 3 years from the date of its acquisition, then cost of the asset will be reduced by capital gains exempted earlier for computing capital gains.

(iv) Capital Gains not chargeable on investment in certain bonds [Section 54EC]

Eligible assessee – Any assessee

Conditions to be fulfilled

- There should be transfer of a long-term capital asset being land or building or both.
- Such asset can also be a depreciable asset (in this case, building) held for more than 24 months⁹.
- The capital gains arising from such transfer should be invested in a long-term specified asset within 6 months from the date of transfer.

- **Long-term specified asset** means specified bonds, redeemable after 5 years, issued on or after 1.4.2018 by the National Highways Authority of India (NHAI) or the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf [Bonds of Power Finance Corporation (PFC) and Indian Railways Finance Corporation (IRFC)].
- The assessee should not transfer or convert or avail loan or advance on the security of such bonds for a period of **5 years** from the date of acquisition of such bonds.

Quantum of exemption

- Capital gains or amount invested in specified bonds, whichever is lower.
- The maximum investment which can be made in notified bonds or bonds of NHAI and RECL, out of capital gains arising from transfer of one or more assets, during the previous year in which the original asset is transferred and in the subsequent financial year **cannot exceed ₹ 50 lakhs**.

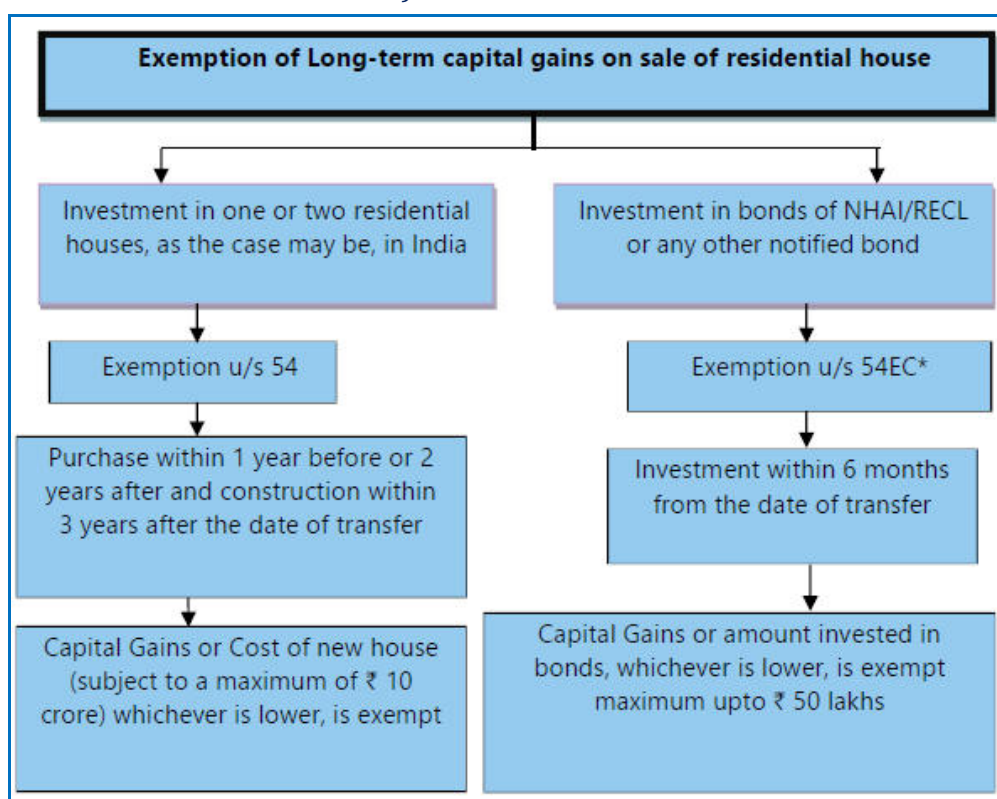
Violation of condition

- In case of transfer or conversion of such bonds or availing loan or advance on security of such bonds before the expiry of 5 years, the capital gain exempted earlier shall be taxed as long-term capital gain in the year of violation of condition.

ILLUSTRATION 12

Long term capital gain of ₹ 75 lakh arising from transfer of building on 1.5.2023 will be exempt from tax if such capital gain is invested in the bonds redeemable after five years, issued by NHAI under section 54EC. Examine with reasons whether the given statement is true or false having regard to the provisions of the Income-tax Act, 1961.

SOLUTION False: The exemption under section 54EC has been restricted, by limiting the maximum investment in long term specified assets (i.e. bonds of NHAI or RECL or any other bond notified by Central Government in this behalf, redeemable after 5 years) to ₹ 50 lakh, whether such investment is made during the relevant previous year or the subsequent previous year, or both. Therefore, in this case, the exemption under section 54EC can be availed only to the extent of ₹ 50 lakh, provided the investment is made before 1.11.2023 (i.e., within six months from the date of transfer).



*The exemption under section 54EC is available in respect of capital gains on transfer of capital asset being land or building or both.

(v) Capital gains in case of investment in residential house [Section 54F]

Eligible assessee: Individuals/ HUF

Conditions to be fulfilled

- There must be transfer of a **long-term capital asset**, not being a residential house.
- Transfer of plot of land is also eligible for exemption
- The assessee should -
 - Purchase **one residential house situated in India** within a period of 1 year before or 2 years after the date of transfer; or
 - **Construct one residential house in India** within 3 years from the date of transfer.
 - If such investment is not made before the date of filing of return of income, then, the net sale consideration has to be deposited under the CGAS. (Refer points (vi) and (vii) of this sub-heading). **However, the net consideration in excess of ₹ 10 crore would not be taken into account for the purpose of deposit in CGAS.**
 - Amount utilized by the assessee for purchase or construction of new asset and the amount so deposited shall be deemed to be the cost of new asset. The deemed cost of new asset would be restricted to ₹ 10 crores for the purpose of exemption under section 54F.
- The assessee should **not** own more than one residential house on the date of transfer.
- The assessee should **not** -
 - purchase any other residential house within a period of 2 years or
 - construct any other residential house within a period of 3 years from the date of transfer of the original asset.

Quantum of exemption

- If cost of new residential house \geq Net sale consideration of original asset, entire capital gains is exempt.
- If cost of new residential house $<$ Net sale consideration of original asset, only proportionate capital gains is exempt i.e.

$$\text{LTCG} \times \frac{\text{Amount invested in new residential house}}{\text{Net sale consideration}}$$

However, if the cost of new residential house/ amount invested in new residential house exceeds ₹ 10 crore, the amount exceeding ₹ 10 crore would not be taken into account for exemption.

Example

	(1)	(2)	(3)	(4)	(5)
	Net Consideration	LTCG computed	Cost of new residential house	Amount in column (3) or ₹ 10 crores, whichever is lower	Exempt LTCG
(1)	₹ 15 crore	₹ 7.5 crore	₹ 12 crore	₹ 10 crore	₹ 7.5 crore \times 10/15 = ₹ 5 crore
(2)	₹ 20 crore	₹ 12 crore	₹ 15 crore	₹ 10 crore	₹ 12 crore \times 10/20 = ₹ 6 crore
(3)	₹ 16 crore	₹ 12 crore	₹ 8 crore	₹ 8 crore	₹ 12 crore \times 8/16 = ₹ 6 crore

	(1)	(2)	(3)	(4)	(5)
	Net Consideration	LTCG computed	Cost of new residential house	Amount in column (3) or ₹ 10 crores, whichever is lower	Exempt LTCG
(4)	₹ 10 crore	₹ 6 crore	₹ 10 crore	₹ 10 crore	₹ 6 crore × 10/10 = ₹ 6 crore
(5)	₹ 12 crore	₹ 6 crore	₹ 12 crore	₹ 10 crore	₹ 6 crore × 10/12 = ₹ 5 crore

Examples

1. If the net consideration is ₹ 9 crore, the capital gain is ₹ 4.50 crore and the amount incurred for construction of new residential house upto 31.7.2024/31.10.2024, as the case may be, is ₹ 5 crore, then, as per section 54F(4), the assessee can deposit the amount of ₹ 4 crore (i.e., ₹ 9 crore – ₹ 5 crore) not appropriated towards construction upto 31.7.2024/ 31.10.2024, as the case may be, in CGAS for claiming exemption u/s 54F.

If the assessee has deposited, say, ₹ 3 crore on or before 31.7.2024/ 31.10.2024, as the case may be, the deemed cost of new residential house would be ₹ 8 crore (₹ 5 crore + ₹ 3 crore). The exemption u/s 54F would be ₹ 4 crore [i.e., ₹ 4.50 crore x ₹ 8 crore/₹ 9 crore].

2. If the net consideration is ₹ 15 crore, the capital gain is ₹ 7.50 crore and the amount incurred for construction of new residential house upto 31.7.2024/31.10.2024, as the case may be, is ₹ 6 crore, the assessee can deposit ₹ 4 crore [i.e., ₹ 10 crore – ₹ 6 crore] on or before 31.7.2024/31.10.2024, as the case may be, in CGAS for claiming exemption u/s 54F. If the assessee has deposited, say, ₹ 3 crore on or before the due date of filing return u/s 139(1), the deemed cost of new residential house would be ₹ 9 crore (₹ 6 crore + ₹ 3 crore). The exemption u/s 54F would be ₹ 4.50 crore [i.e., ₹ 7.50 crore x ₹ 9 crore/ ₹ 15 crore].

Consequences where the assessee purchases any other residential house within a period of 2 years or constructs any other residential house within a period of 3 years from the date of transfer of original asset:

The capital gains exempt earlier under section 54F shall be deemed to be taxable as long-term capital gains in the previous year in which such residential house is purchased or constructed.

Consequences if the new house is transferred within a period of 3 years from the date of its purchase

- Capital gains would arise on transfer of the new house; and
- The capital gains exempt earlier under section 54F would be taxable as long-term capital gains.

Note – In case the new residential house is sold after 2 years, the capital gains would be long-term capital gains and indexation benefit would be available.

(vi) Capital Gains Account Scheme (CGAS)

Under sections 54, 54B, 54D and 54F, capital gains is exempt to the extent of investment of such gains/ net consideration (in the case of section 54F) in specified assets within the specified time. If such investment is not made before the date of filing of return of income, then the capital gain or net consideration (in case of exemption under section 54F) has to be deposited under the CGAS. **However, the capital gain in excess of ₹ 10 crore would not be taken into account for the purpose of deposit in CGAS in case of section 54 and the net consideration in excess of ₹ 10 crore would not be taken into account for the purpose of deposit in CGAS in case of section 54F.**

Time limit

Such deposit in CGAS should be made before filing the return of income or on or before the due date of filing the return of income, whichever is earlier. In such cases, the amount already utilized for purchase or construction of new asset plus the amount deposited under the CGAS on or before due date u/s 139(1) would be deemed to be the cost of new asset. However, for the purpose of sections 54 and 54F, the amount so deemed to be the cost of the new asset cannot exceed ₹ 10 crore.

Proof of such deposit should be attached with the return. The deposit can be withdrawn for utilization for the specified purposes in accordance with the scheme.

Consequences if the amount deposited in CGAS is not utilized within the stipulated time of 2 years / 3 years

If the amount deposited is not utilized for the specified purpose within the stipulated period, then the **unutilized amount shall be charged as capital gain** of the previous year in which the specified period expires. In the case of section 54F, proportionate amount will be taxable.

CBDT Circular No.743 dated 6.5.96 clarifies that in the event of death of an individual before the stipulated period, the unutilized amount is not chargeable to tax in the hands of the legal heirs of the deceased individual. Such unutilized amount is not income but is a part of the estate devolving upon them.

(vii) Extension of time for acquiring new asset or depositing or investing amount of Capital Gain [Section 54H]

In case of compulsory acquisition of the original asset, where the compensation is not received on the date of transfer, the period available for acquiring a new asset or making investment in CGAS under sections 54, 54B, 54D, 54EC and 54F would be considered from the date of receipt of such compensation and not from the date of the transfer.

4.20 REFERENCE TO VALUATION OFFICER [SECTION 55A]

Section 55A provides that the Assessing Officer may refer the valuation of a capital asset to a Valuation Officer in the following circumstances with a view to ascertaining the fair market value of the capital asset for the purposes of capital gains -

- (i) In a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of the opinion that the value so claimed is at variance with its fair market value.

Under this provision, the Assessing Officer can make a reference to the Valuation Officer in cases where the fair market value is taken to be the sale consideration of the asset. An Assessing Officer can also make a reference to the Valuation Officer in a case where the fair market value of the asset as on 01.04.2001 is taken as the cost of the asset, if he is of the view that there is any variation between the value as on 01.04.2001 claimed by the assessee in accordance with the estimate made by a registered valuer and the fair market value of the asset on that date.

- (ii) If the Assessing Officer is of the opinion that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than 15% of the value of asset as claimed or by more than ₹ 25,000 of the value of the asset as claimed by the assessee.
- (iii) The Assessing Officer is of the opinion that, having regard to the nature of asset and other relevant circumstances, it is necessary to make the reference.

4.21 TAX ON SHORT TERM CAPITAL GAINS IN RESPECT OF EQUITY SHARES/ UNITS OF AN EQUITY ORIENTED FUND [SECTION 111A]

- (i) **Concessional rate of tax in respect of STCG on transfer of certain assets:** This section provides for a concessional rate of tax (i.e. 15%) on the shortterm capital gains on transfer of -

- (1) an equity share in a company; or

(2) a unit of a business trust; or

(3) a unit of an equity oriented fund

(ii) Conditions: The conditions for availing the benefit of this concessional rate are –

(1) the transaction of sale of such equity share or unit should be entered into on or after 1.10.2004, being the date on which Chapter VII of the Finance (No. 2) Act, 2004 came into force; and

(2) such transaction should be chargeable to securities transaction tax under the said Chapter.

However, short-term capital gains arising from transactions undertaken in foreign currency on a recognized stock exchange located in an International Financial Services Centre (IFSC) would be taxable at a concessional rate of 15% even though STT is not leviable in respect of such transaction.

(iii) Adjustment of Unexhausted Basic Exemption Limit: In the case of resident individuals or HUF, if the basic exemption is not fully exhausted by any other income, then, such short-term capital gain will be reduced by the unexhausted basic exemption limit and only the balance would be taxed at 15%. However, the benefit of availing the basic exemption limit is not available in the case of non-residents.

(iv) No deduction under Chapter VI-A against STCG taxable under section 111A: Deductions under Chapter VI-A cannot be availed in respect of such short-term capital gains on equity shares of a company or units of an equity oriented mutual fund or unit of a business trust included in the total income of the assessee.

4.22 TAX ON LONG TERM CAPITAL GAINS [SECTION 112]

(i) Concessional rate of tax: Where the total income of an assessee includes long-term capital gains, tax is payable by the assessee @20% on such long-term capital gains. The treatment of long-term capital gains in the hands of different types of assesseees are as follows -

(1) Resident individual or Hindu undivided family: Income-tax payable at normal rates on total income as reduced by long-term capital gains plus 20% on such long-term capital gains.

However, where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax then such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such long-term capital gains will be calculated @20%.

(2) Domestic Company: Long-term capital gains will be charged @20%.

(3) Non-corporate non-resident or foreign company:

(i) Long-term capital gains arising from the transfer of a capital asset, being unlisted securities, or shares of a company not being a company in which public are substantially interested, would be calculated at the rate of 10% on the capital gains in respect of such asset without giving effect to the indexation provision under second proviso to section 48 and currency fluctuation under first proviso to section 48.

(ii) In respect of other long-term capital gains, the applicable rate of tax would be 20%.

(4) Residents (other than those included in (1) above): Long-term capital gains will be charged @20%.

(ii) Lower rate of tax for transfer of listed securities and zero coupon bonds: Where the tax payable in respect of any income arising from the transfer of a listed security (other than a unit) or a zero coupon bond, being a long-term capital asset, exceeds 10% of the amount of capital gains before indexation, then such excess shall be ignored while computing the tax payable by the assessee.

Consequently, long term capital gains on transfer of units and unlisted securities are not eligible for concessional rate of tax@10% (without indexation benefit). Therefore, the long-term capital gains, in such cases, is taxable@20% (with indexation benefit).

However, in case of non-corporate non-residents and foreign companies, long term capital gains arising from transfer of a capital asset, being unlisted securities or shares in a company in which public are not substantially interested are eligible for a concessional rate of tax@10% (without indexation benefit).

(iii) No Chapter VI-A deduction against LTCG: The provisions of section 112 make it clear that the deductions under Chapter VIA cannot be availed in respect of the long-term capital gains included in the total income of the assessee.

Tax on long-term capital gains [Section 112]

	Person	Rate of tax	Particulars
1.	Resident persons, other than companies		
	Resident Individuals and HUF	20%	Unexhausted basic exemption limit can be exhausted against LTCG taxable u/s 112
	Resident AOPs and BOIs	20%	Unexhausted basic exemption limit cannot be adjusted against LTCG taxable u/s 112
	Resident Firms and LLPs	20%	
2.	Domestic companies	20%	
3.	Non-corporate nonresidents and foreign companies	20%	Capital assets, other than unlisted securities or shares of closely held companies
		10%	Unlisted securities or shares of closely held companies (without benefit of indexation or foreign currency fluctuation)

In case of transfer of listed securities (other than units) and Zero Coupon Bonds, LTCG would be taxable at the lower of the following rates – (1) 10% without indexation benefit; and (2) 20% with indexation benefit.

4.23 TAX ON LONG TERM CAPITAL GAINS ON CERTAIN ASSETS [SECTION 112A]

(i) Concessional rate of tax in respect of LTCG on transfer of certain assets:

In order to minimize economic distortions and curb erosion of tax base, section 112A provides that notwithstanding anything contained in section 112, a concessional rate of tax @10% will be leviable on the long-term capital gains exceeding ₹ 1,00,000 on transfer of –

- (a) an equity share in a company; or
- (b) a unit of a business trust; or
- (c) a unit of an equity oriented fund

(ii) Conditions: The conditions for availing the benefit of this concessional rate are –

- (a) In case of equity share in a company, STT has been paid on acquisition and transfer of such capital asset
- (b) In case of unit of an equity oriented fund or unit of business trust, STT has been paid on transfer of such capital asset.

However, the Central Government may, by notification in the Official Gazette, specify the nature of acquisition of equity share in a company on which the condition of payment of STT on acquisition would not be applicable. Further, long-term capital gains arising from transaction undertaken on a recognized stock exchange located in an International Financial Service Centre (IFSC) would be taxable at a concessional rate of 10%, where the consideration for transfer is received or receivable in foreign currency, even though STT is not leviable in respect of such transaction.

(iii) Adjustment of Unexhausted Basic Exemption Limit: In the case of resident individuals or HUF, if the basic exemption is not fully exhausted by any other income, then such long-term capital gain exceeding ₹ 1 lakh will be reduced by the unexhausted basic exemption limit and only the balance would be taxed at 10%.

However, the benefit of adjustment of unexhausted basic exemption limit is not available in the case of non-residents.

(iv) No deduction under Chapter VI-A against LTCG taxable under section 112A: Deductions under Chapter VI-A cannot be availed in respect of such long-term capital gains on equity shares of a company or units of an equity oriented mutual fund or unit of a business trust included in the total income of the assessee.

(v) No benefit of rebate under section 87A against LTCG taxable under section 112A: Rebate under section 87A is not available in respect of tax payable @10% on LTCG under section 112A.

Subsequent to insertion of section 112A, the CBDT has issued clarification F. No. 370149/20/2018-TPL dated 04.02.2018 in the form of a Question and Answer format to clarify certain issues raised in different for a on various issues relating to the new tax regime for taxation of long-term capital gains. The relevant questions raised and answers to such questions as per the said Circular are given hereunder:

Q 1. What is the meaning of long term capital gains under the new tax regime for long term capital gains?

Ans 1.

Long term capital gains mean gains arising from the transfer of long-term capital asset.

It provides for a new long-term capital gains tax regime for the following assets–

- i. Equity Shares in a company listed on a recognised stock exchange;
- ii. Unit of an equity oriented fund; and
- iii. Unit of a business trust.

The new tax regime applies to the above assets, if–

- a. the assets mentioned in (i) and (ii) are held for a minimum period of 12 months from the date of acquisition and the asset mentioned in (iii) is held for a minimum period of 36 months; and
- b. the Securities Transaction Tax (STT) is paid at the time of transfer. However, in the case of equity shares acquired after 1.10.2004, STT is required to be paid even at the time of acquisition (subject to notified exemptions).

Q 2. What is the point of chargeability of the tax?**Ans 2.**

The tax will be levied only upon transfer of the long-term capital asset on or after 1st April, 2018, as defined in clause (47) of section 2 of the Act.

Q 3. What is the method for calculation of long-term capital gains?**Ans 3.**

The long-term capital gains will be computed by deducting the cost of acquisition from the full value of consideration on transfer of the long-term capital asset.

Q 4. How do we determine the cost of acquisition for assets acquired on or before 31st January, 2018?**Ans 4.**

The cost of acquisition for the long-term capital asset acquired on or before 31st of January, 2018 will be the actual cost.

However, if the actual cost is less than the fair market value of such asset as on 31st of January, 2018, the fair market value will be deemed to be the cost of acquisition.

Further, if the full value of consideration on transfer is less than the fair market value, then such full value of consideration or the actual cost, whichever is higher, will be deemed to be the cost of acquisition.

Q 5. Please provide illustrations for computing long-term capital gains in different scenarios, in the light of answers to questions 4.

Ans 5. The computation of long-term capital gains in different scenarios is illustrated as under

Scenario 1 – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April, 2023 at ₹ 250. As the actual cost of acquisition is less than the fair market value as on 31st of January, 2018, the fair market value of ₹ 200 will be taken as the cost of acquisition and the long-term capital gain will be ₹ 50 (₹ 250 – ₹ 200).

Scenario 2 – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April, 2023 at ₹ 150. In this case, the actual cost of acquisition is less than the fair market value as on 31st of January, 2018. However, the sale value is also less than the fair market value as on 31st of January, 2018. Accordingly, the sale value of ₹ 150 will be taken as the cost of acquisition and the longterm capital gain will be NIL (₹ 150 – ₹ 150).

Scenario 3 – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 50 on 31st of January, 2018 and it is sold on 1st of April, 2023 at ₹ 150. In this case, the fair market value as on 31st of January, 2018 is less than the actual cost of acquisition, and therefore, the actual cost of ₹ 100 will be taken as actual cost of acquisition and the long-term capital gain will be ₹ 50 (₹ 150 – ₹ 100).

Scenario 4 – An equity share is acquired on 1st of January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st of January, 2018 and it is sold on 1st of April, 2023 at ₹ 50. In this case, the actual cost of acquisition is less than the fair market value as on 31st January, 2018. The sale value is less than the fair market value as on 31st of January, 2018 and also the actual cost of acquisition. Therefore, the actual cost of ₹ 100 will be taken as the cost of acquisition in this case. Hence, the long-term capital loss will be ₹ 50 (₹ 50 – ₹ 100) in this case.

Q 6. Whether the cost of acquisition will be inflation indexed?

Ans 6. Third proviso to section 48, provides that the long-term capital gain will be computed without giving effect to the provisions of the second provisos of section 48. Accordingly, it is clarified that the benefit of inflation indexation of the cost of acquisition would not be available for computing long-term capital gains under the new tax regime.

Q 7. What will be the tax treatment of transfer made on or after 1st April 2018?**Ans 7.**

The long-term capital gains exceeding ₹ 1 lakh arising from transfer of these assets made on after 1st April, 2018 will be taxed at 10 per cent. However, there will be no tax on gains accrued upto 31st January, 2018.

Q8. What is the date from which the holding period will be counted?**Ans 8.**

The holding period will be counted from the date of acquisition.

Q9. Whether tax will be deducted at source in case of gains by resident tax payer?**Ans 9.**

No. There will be no deduction of tax at source from the payment of longterm capital gains to a resident tax payer.

Q10. What will be the cost of acquisition in the case of bonus shares acquired before 1st February 2018?**Ans 10.**

The cost of acquisition of bonus shares acquired before 31st January, 2018 will be determined as per section 55(2)(ac). Therefore, the fair market value of the bonus shares as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt11.

Q11. What will be the cost of acquisition in the case of right share acquired before 1st February 2018?**Ans 11.**

The cost of acquisition of right share acquired before 31st January, 2018 will be determined as per section 55(2)(ac). Therefore, the fair market value of right share as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt13.

Q12. What will be the treatment of long-term capital loss arising from transfer made on or after 1st April, 2018?**Ans 12.**

Long-term capital loss arising from transfer made on or after 1st April, 2018 will be allowed to be set-off and carried forward in accordance with existing provisions of the Act. Therefore, it can be set-off against any other long-term capital gains and unabsorbed loss can be carried forward to subsequent eight years for set-off against long-term capital gains.

ILLUSTRATION 13

Calculate the income-tax liability for the assessment year 2024-25 in the following cases:

	Mr. A (age 45)	Mrs. B (age 62)	Mr. C (age 81)	Mr. D (age 82)
Status	Resident	Non-resident	Resident	Non-resident
Total income other than long term capital gain	2,40,000	3,10,000	5,90,000	4,80,000
Long-term capital gain	85,000 from sale of vacant site	10,000 from sale of listed equity shares (STT paid on sale and purchase of shares)	60,000 from sale of agricultural land in rural area	Nil

- (i) If Mr. A, Mrs. B, Mr. C and Mr. D pay tax under default tax regime u/s 115BAC.
- (ii) If Mr. A, Mrs. B, Mr. C and Mr. D exercise the option to shift out of the default tax regime and pay tax under the optional tax regime as per the normal provisions of the Act.

SOLUTION

- (i) If Mr. A, Mrs. B, Mr. C and Mr. D pay tax under default tax regime u/s 115BAC.

Computation of income-tax liability for the A.Y.2024-25

Particulars	Mr. A (age 45)	Mrs. B (age 62)	Mr. C (age 81)	Mr. D (age 82)
Residential Status	Resident	Non-resident	Resident	Nonresident
Applicable basic exemption limit	₹ 3,00,000	₹ 3,00,000	₹ 3,00,000	₹ 3,00,000
Asset sold	Vacant site	Listed equity shares (STT paid on both sale and purchase of shares)	Rural agricultural land	-
Long-term capital gain (on sale of above asset)	₹ 85,000 [Taxable @20% u/s 112]	₹ 10,000 [exempt u/s 112A since it is less than ₹ 1,00,000]	₹ 60,000 (Exempt – not a capital asset)	-
Other income	₹ 2,40,000	₹ 3,10,000	₹ 5,90,000	₹ 4,80,000
Tax liability				
On LTCG (after adjusting unexhausted basic exemption limit of ₹ 60,000)	₹ 5,000	-	-	-
On Other income	Nil	₹ 500	₹ 14,500	₹ 9,000
	₹ 5,000	₹ 500	₹ 14,500	₹ 9,000
Less: Rebate u/s 87A	₹ 5,000	-	₹ 14,500	-
	Nil	₹ 500	Nil	₹ 9,000
Add: Health & education cess (HEC) @4%	Nil	₹ 20	Nil	₹ 360
Total tax liability	Nil	₹ 520	Nil	₹ 9,360

Note: Since Mr. A and Mr. C are residents whose total income does not exceed ₹ 7 lakhs, they are eligible for rebate of ₹ 25,000 or the actual tax payable, whichever is lower, under section 87A.

- (ii) If Mr. A, Mrs. B, Mr. C and Mr. D exercise the option to shift out of the default tax regime and pay tax under the optional tax regime as per the normal provisions of the Act

Computation of income-tax liability for the A.Y.2024-25

Particulars	Mr. A (age 45)	Mrs. B (age 62)	Mr. C (age 81)	Mr. D (age 82)
Residential Status	Resident	Non-resident	Resident	Nonresident
Applicable basic exemption limit	₹ 2,50,000	₹ 2,50,000	₹ 5,00,000	₹ 2,50,000
Asset sold	Vacant site	Listed equity shares (STT paid on both sale and purchase of shares)	Rural agricultural land	-

Particulars	Mr. A (age 45)	Mrs. B (age 62)	Mr. C (age 81)	Mr. D (age 82)
Long-term capital gain (on sale of above asset)	₹ 85,000 [Taxable @20% u/s 112]	₹ 10,000 [exempt u/s 112A since it is less than ₹ 1,00,000]	₹ 60,000 (Exempt – not a capital asset)	-
Other income	₹ 2,40,000	₹ 3,10,000	₹ 5,90,000	₹ 4,80,000
Tax liability				
On LTCG (after adjusting unexhausted basic exemption limit of ₹ 10,000)	₹ 15,000	-	-	-
On Other income	Nil	₹ 3,000	₹ 18,000	₹ 11,500
	₹ 15,000	₹ 3,000	₹ 18,000	₹ 11,500
Less: Rebate u/s 87A	₹ 12,500	-	-	-
	2,500	₹ 3,000	₹ 18,000	₹ 11,500
Add: Health & education cess (HEC) @4%	100	₹ 120	₹ 720	₹ 460
Total tax liability	2,600	₹ 3,120	₹ 18,720	₹ 11,960

Notes:

- Since Mrs. B and Mr. D are non-residents, they cannot avail the higher basic exemption limit of ₹ 3,00,000 and ₹ 5,00,000 for persons over the age of 60 years and 80 years, respectively. Also, they are not eligible for rebate under section 87A even though their total income does not exceed ₹ 5 lakh.
- Since Mr. A is a resident whose total income does not exceed ₹ 5 lakh, he is eligible for rebate of ₹ 12,500 or the actual tax payable, whichever is lower, under section 87A.

LET US RECAPITULATE**Scope and year of chargeability [Section 45]**

Any profits or gains arising from the transfer of a capital asset effected in the previous year will be chargeable to tax under the head 'Capital Gains', and shall be deemed to be the income of the previous year in which the transfer took place [Section 45(1)]

Section	Profits and gains arising from the following transactions chargeable as income	P.Y. in which income is chargeable to tax	Deemed Full Value of consideration for computation of capital gains under section 48
45(1A)	Money or other asset received under an insurance from an insurer on account of damage/destruction of any capital asset, as a result of, flood, hurricane, cyclone, earthquake or other convulsion of nature, riot or civil disturbance, accidental fire or explosion, action by an enemy or action taken in combating an enemy	The previous year in which such money or other asset is received.	The value of money or the fair market value of other asset received.

Section	Profits and gains arising from the following transactions chargeable as income	P.Y. in which income is chargeable to tax	Deemed Full Value of consideration for computation of capital gains under section 48
45(2)	Transfer by way of conversion by the owner of a capital asset into stock-in-trade of a business carried on by him.	The previous year in which such stock-in-trade is sold or otherwise transferred by him	The fair market value of the capital asset on the date of such conversion
45(5)	Transfer by way of compulsory acquisition under any law, or a transfer, the consideration for which was determined or approved by the Central Government or RBI	The previous year in which the consideration or part thereof is first received.	Compensation or consideration determined or approved in the first instance by the Central Government or RBI
	If the compensation or consideration is further enhanced by any court, Tribunal or other authority, the enhanced amount will be deemed to be the income. However, any amount of compensation received in pursuance of an interim order of a court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital Gains" of the previous year in which the final order of such court, Tribunal or other authority is made.	The previous year in which the amount was received by the assessee.	Amount by which the compensation or consideration is enhanced or further enhanced. For this purpose cost of acquisition and cost of improvement shall be taken as 'Nil'.

Definitions [Section 2]

Section	Term	Definition
2(14)	Capital Asset	<p>Capital Asset means –</p> <p>(a) property of any kind held by an assessee, whether or not connected with his business or profession;</p> <p>(b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992.</p> <p>Exclusions from the definition of Capital Asset:</p> <ul style="list-style-type: none"> • Stock in trade [other than securities referred to in (b) above], raw materials or consumables held for the purposes of business or profession; • Personal effects except jewellery, archeological collections, drawings, paintings, sculptures or any work of art; • Rural agricultural land in India i.e. agricultural land not situated within specified urban limits. <p>The agricultural land described in (a) and (b) below, being land situated within the specified urban limits, would fall within the definition of "capital asset", and transfer of such land would attract capital gains tax -</p>

Section	Term	Definition	
		(a) agricultural land situated in any area within the jurisdiction of a municipality or cantonment board having population of not less than ten thousand, or (b) agricultural land situated in any area within such distance, measured aerially, in relation to the range of population as shown hereunder –	
		Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a)	Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.
		(i) ≤ 2 kms	> 10,000
		(ii) > 2 kms but ≤ 6 kms	> 1,00,000
		(iii) > 6 kms but ≤ 8 kms	> 10,00,000
		<ul style="list-style-type: none"> • Gold Deposits Bonds issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 and Gold Monetisation Scheme, 2018 notified by the Central Government; • 6½% Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Gold Bonds, 1980, issued by the Central Government; • Special Bearer Bonds, 1991 issued by the Central Government. <p>Note: ‘Property’ includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.</p>	
2(42A)	Short term capital asset	Asset	Period of holding to be treated as STCA
		A security (other than a unit) listed in a recognized stock exchange in India (other than market linked debenture and unit of a specified mutual fund) , a unit of UTI or a unit of an equity oriented fund or a zero coupon bond	not more than 12 months immediately preceding the date of its transfer
		A share of a company (not being a share listed in a recognized stock exchange in India)	not more than 24 months immediately preceding the date of its transfer
		An immovable property, being land or building or both	not more than 24 months immediately preceding the date of its transfer
		Any other capital asset	not more than 36 months immediately preceding the date of its transfer
		<p>Note – Capital gains arising from transfer of market linked debenture and unit of a specified mutual fund would always be capital gains arising from transfer of short-term capital assets, irrespective of the period of holding of such assets. This is provided in section 50AA.</p>	

Section	Term	Definition	
2(29A)	Long-term capital asset	Capital asset which is not a short-term capital asset is a long-term capital asset .	
		Asset	Period of holding to be treated as LTCA
		A security (other than a unit) listed in a recognized stock exchange in India (other than market linked debenture and unit of a specified mutual fund), a unit of UTI or a unit of an equity oriented fund or a zero coupon bond	More than 12 months immediately preceding the date of its transfer
		A share of a company (not being a share listed in a recognized stock exchange in India)	More than 24 months immediately preceding the date of its transfer
		An immovable property, being land or building or both	More than 24 months immediately preceding the date of its transfer
Any other capital asset	More than 36 months immediately preceding the date of its transfer		
<p>Note – Capital gains arising from transfer of market linked debenture and unit of a specified mutual fund would always be capital gains arising from transfer of short-term capital assets, irrespective of the period of holding of such assets. This is provided in section 50AA.</p>			

Transactions not regarded as transfer [Section 47]: Some Examples

- Any distribution of capital assets on the **total or partial partition of a HUF**
- Any transfer of capital asset under a **gift or will or an irrevocable trust**
- Any transfer of capital asset by a **holding company to its 100% subsidiary Indian company or by a subsidiary company to its 100% holding Indian company**
- Any transfer or **issue of shares by the resulting company, in a scheme of demerger** to the shareholders of the demerged company
- Any transfer **by a shareholder in a scheme of amalgamation** of shares held by him in the amalgamating company
- Any transfer by an individual of **sovereign gold bonds issued by RBI by way of redemption**
- Any transfer of a capital asset, being **conversion of gold into Electronic Gold Receipt issued by a Vault Manager, or conversion of Electronic Gold Receipt into gold.**
- Any transfer by way of **conversion of bonds, debentures, debenture stock, deposit certificates of a company, into shares or debentures of that company.**
- Any transfer by way of **conversion of preference shares of a company into equity shares** of that company
- Any transfer of a capital asset in a **transaction of reverse mortgage** under a scheme made and notified by the Central Government

Mode of computation of Capital Gains [Section 48]**Computation of long-term capital gains**

Full value of consideration received or accruing as a result of transfer	XX
Less: Expenditure incurred wholly and exclusively in connection with such transfer (e.g. brokerage on sale)	XX
However, the cost of acquisition of the asset or the cost of improvement thereto would not include the deductions claimed in respect of interest u/s 24(b) or under the provisions of Chapter VI-A [i.e., under sections 80EE/ 80EEA]	
(Note: Deduction on account of STT paid will not be allowed)	
Net Sale Consideration	XX
Less: Indexed cost of acquisition and indexed cost of improvement	XX
Less: Exemption under sections 54/54B/54D/54EC/54F	XX
Long-term capital gains	XX

Notes:

- (i) Deduction on account of securities transaction tax paid will not be allowed.
- (ii) Indexed Cost of Acquisition =

$$\text{Cost of acquisition} \times \frac{\text{CII for the year in which the asset is transferred}}{\text{CII for the year in which the asset was first held by the assessee or 2001-02, whichever is later}}$$
- (iii) Indexed Cost of Improvement =

$$\text{Cost of improvement} \times \frac{\text{CII for the year in which the asset is transferred}}{\text{CII for the year in which the improvement took place}}$$
- (iv) Benefit of indexation will, however, not be available in respect of long term capital gains from transfer of bonds or debentures other than capital indexed bonds issued by the Government and sovereign gold bonds issued by RBI and in respect of long-term capital gains chargeable to tax under section 112A.

Computation of short-term capital gains

Full value of consideration received or accruing as a result of transfer	XXX
Less: Expenditure incurred wholly and exclusively in connection with such transfer (e.g. brokerage on sale)	XXX
However, the cost of acquisition of the asset or the cost of improvement thereto would not include the deductions claimed on account of interest u/s 24(b) or under the provisions of Chapter VI-A [i.e., under the provisions of sections 80EE/80EEA]	
(Note: Deduction on account of STT paid will not be allowed)	
Net Sale Consideration	XXX
Less: Cost of acquisition and cost of improvement	XXX
Less: Exemption under sections 54B/54D	XXX
Short-term capital gains	XXX

Capital Gains: Special Provisions

Section	Particulars															
50	Any income from transfer of depreciable assets is deemed to be capital gains arising from transfer of short-term capital assets, irrespective of the period of holding (i.e., indexation benefit would not be available even if the period of holding of such assets is more than 36 months).															
50AA	Any income from transfer of unit of a Specified Mutual Fund or Market Linked Debenture is deemed to be capital gains arising from transfer of short-term capital assets.															
50B	<p>Capital Gains on Slump Sale Any profits and gains arising from slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place. Where the undertaking being transferred under slump sale is held for more than 36 months, the resultant gain is long-term; However, no indexation benefit would be available. If the undertaking is held for less than 36 months, the resultant gain is short-term.</p> <p>Net worth is deemed to be the cost of acquisition and the cost of improvement - 'Net worth' shall be aggregate value of total assets minus value of liabilities of such undertaking as per books of account.</p> <p>Fair market value is deemed to be the full value of consideration - Fair market value of the capital asset as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.</p> <p>Accordingly, the CBDT has prescribed that, for the purpose of section 50B(2)(ii), the fair market value (FMV) of capital assets would be the higher of –</p> <p>(i) FMV 1, being the fair market value of capital assets transferred by way of slump sale (determined on the date of slump sale); and</p> <p>(ii) FMV 2, being the fair market value of the consideration (monetary and non-monetary) received or accruing as a result of transfer by way of slump sale</p> <p>Capital gains = Fair market value – Net Worth</p> <p>Aggregate value of total assets would be the aggregate of the following :</p> <p>i) Written Down Value of depreciable assets;</p> <p>ii) Nil, in case of self generated goodwill</p> <p>iii) Nil, in case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as deduction under section 35AD; and</p> <p>iv) Book value for other assets.</p> <p>Revaluation of assets shall be ignored for computing Net Worth.</p>															
50C	<p>Computation of capital gains on sale of land or building or both</p> <table border="1"> <thead> <tr> <th>Sl. No.</th> <th>Condition</th> <th>Deemed Sale Consideration</th> </tr> </thead> <tbody> <tr> <td>1.</td> <td>Stamp Duty Value > Actual Consideration If Stamp Duty Value > 110% of actual consideration If Stamp Duty Value ≤ 110% of actual sale consideration</td> <td>Stamp Duty Value Actual sale consideration</td> </tr> <tr> <td>2.</td> <td>Actual Consideration > Stamp Duty Value</td> <td>Actual Sale Consideration</td> </tr> <tr> <td>3.</td> <td>Value ascertained by Valuation Officer > Stamp Duty Value</td> <td>Stamp Duty Value</td> </tr> <tr> <td>4.</td> <td>Value ascertained by Valuation Officer < Stamp Duty Value</td> <td>Value ascertained by Valuation Officer</td> </tr> </tbody> </table>	Sl. No.	Condition	Deemed Sale Consideration	1.	Stamp Duty Value > Actual Consideration If Stamp Duty Value > 110% of actual consideration If Stamp Duty Value ≤ 110% of actual sale consideration	Stamp Duty Value Actual sale consideration	2.	Actual Consideration > Stamp Duty Value	Actual Sale Consideration	3.	Value ascertained by Valuation Officer > Stamp Duty Value	Stamp Duty Value	4.	Value ascertained by Valuation Officer < Stamp Duty Value	Value ascertained by Valuation Officer
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4.	Value ascertained by Valuation Officer < Stamp Duty Value	Value ascertained by Valuation Officer														

Section	Particulars		
	<p>Note – If the date of agreement is different from the date of transfer, stamp duty value on the date of agreement can be considered, if whole or part of the consideration is received by way of account payee cheque/bank draft or ECS or prescribed electronic modes (IMPS, UPI, RTGS, NEFT, Net banking, debit card, credit card or BHIM Aadhar Pay) on or before the date of agreement. Otherwise, stamp duty value on the date of transfer has to be considered.</p>		
50CA	<p>Fair Market Value deemed to be full value of consideration in case of transfer of unlisted shares in certain cases</p> <table border="1" data-bbox="193 495 1533 734"> <tr> <td data-bbox="193 495 1107 734">If consideration received or accruing as a result of transfer of unquoted share < FMV of such share determined in the prescribed manner The provisions of this section would not, however, be applicable to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.</td> <td data-bbox="1107 495 1533 734">FMV of such share determined in the prescribed manner would be deemed as the full value of consideration</td> </tr> </table>	If consideration received or accruing as a result of transfer of unquoted share < FMV of such share determined in the prescribed manner The provisions of this section would not, however, be applicable to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.	FMV of such share determined in the prescribed manner would be deemed as the full value of consideration
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50D	<p>Fair Market Value deemed to be full value of consideration in certain cases</p> <table border="1" data-bbox="193 813 1533 943"> <tr> <td data-bbox="193 813 979 943">Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined</td> <td data-bbox="979 813 1533 943">FMV of the said asset on the date of transfer would be deemed as the full value of consideration</td> </tr> </table>	Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined	FMV of the said asset on the date of transfer would be deemed as the full value of consideration
Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined	FMV of the said asset on the date of transfer would be deemed as the full value of consideration		
51	<p>Advance money received and forfeited upto 31.3.2014</p> <p>Where the assessee has received advance money on an earlier occasion for transfer of capital asset, but the transfer could not be effected due to failure of negotiations, then, the advance money forfeited by the assessee has to be reduced from the cost of acquisition (and indexation would be calculated on the cost so reduced) while computing capital gains, when the capital asset is transferred or sold.</p> <p>Advance money received and forfeited on or after 1.4.2014</p> <p>Such advance money received on or after 1.4.2014 would be taxable under section 56(2) under the head “Income from other sources”. Therefore, advance money received and forfeited on or after 1.4.2014 should not be deducted from the cost for determining the indexed cost of acquisition while computing capital gains arising on transfer of the asset.</p>		
111A	<p>Tax on short-term capital gains on transfer of equity shares and units of equity oriented fund on which STT is chargeable</p> <ul data-bbox="193 1485 1533 1809" style="list-style-type: none"> • Any short-term capital gains on transfer of equity shares or units of an equity oriented fund shall be liable to tax @15%, if securities transaction tax has been paid on such sale. • In case of resident individuals and HUF, the short-term capital gain shall be reduced by the unexhausted basic exemption limit and the balance shall be taxed at 15%. • No deduction under Chapter VI-A can be claimed in respect of such short-term capital gain. • Short-term capital gains arising from transaction undertaken in foreign currency on a recognized stock exchange located in an International Financial Services Centre (IFSC) would be taxable at a concessional rate of 15% even when STT is not paid in respect of such transaction. 		
112	<p>Tax on long-term capital gains</p> <ul data-bbox="193 1888 1533 2123" style="list-style-type: none"> • Any long-term capital gains, other than long term capital gains taxable under section 112A, shall be liable to tax@20%. • In case of resident individuals and HUFs, the long-term capital gain shall be reduced by the unexhausted basic exemption limit, and the balance shall be subject to tax at 20%. • In case of non-corporate non-resident or foreign company, capital gains arising from the transfer of a capital asset, being unlisted securities, or shares of a closely held company shall be 		

Section	Particulars
	<p>chargeable to tax @10% without giving effect to the indexation provision under second proviso to section 48 and currency conversion under first proviso to section 48.</p> <ul style="list-style-type: none"> Capital gains on transfer of listed securities (other than units) or zero coupon bonds shall be chargeable to tax@10% computed without the benefit of indexation or @20% availing the benefit of indexation, whichever is more beneficial to the assessee. No deduction under Chapter VI-A can be claimed in respect of long-term capital gains.
112A	<p>Tax on long-term capital gains on certain assets</p> <ul style="list-style-type: none"> Any long-term capital gains exceeding ₹ 1,00,000 on transfer of equity shares or units of an equity oriented fund shall be liable to tax @10% on such capital gain, if securities transaction tax has been paid on acquisition and such sale in case of equity share, and on such sale in case of units of an equity oriented mutual fund. In case of resident individuals and HUF, the long-term capital gain shall be reduced by the unexhausted basic exemption limit and the balance shall be taxed at 10%. No deduction under Chapter VI-A or rebate under section 87A can be claimed in respect of such long-term capital gain. <p>Long-term capital gains (in excess of ₹ 1,00,000) arising from transaction undertaken on a recognized stock exchange located in an International Financial Services Centre (IFSC) would be taxable at a concessional rate of 10%, where the consideration for transfer is received or receivable in foreign currency, even when STT is not paid in respect of such transaction.</p>

Cost of Acquisition [Section 55]

Sl. No.	Nature of asset	Cost of acquisition
1	<p>Goodwill of business or profession, trademark, brand name or any other intangible asset etc.,</p> <ul style="list-style-type: none"> Self generated Acquired from previous owner <p>However, in case of capital asset, being goodwill of a business or profession, in respect of which depreciation u/s 32(1) has been obtained by the assessee in any P.Y. (upto P.Y.2019-20)</p> <ul style="list-style-type: none"> became the property of the assessee by way of distribution of assets on total or partial partition of HUF, under a gift or will, by succession, inheritance, distribution of assets on liquidation of a company, etc. and previous owner has acquired it by purchase <p>However, in case of capital asset, being goodwill of a business or profession which was acquired by the previous owner by purchase and in respect of which depreciation u/s 32(1) has been obtained by the assessee in any P.Y. (upto P.Y.2019-20) The cost of improvement of such assets would be Nil.</p>	<p>Nil</p> <p>Purchase price</p> <p>Purchase price as reduced by the total amount of depreciation obtained by the assessee under section 32(1).</p> <p>Purchase price for such previous owner</p> <p>Purchase price as reduced by the total amount of depreciation obtained by the assessee under section 32(1).</p>
2.	Bonus shares	
	If bonus shares are allotted before 1.4.2001	FMV on 1.4.2001

Sl. No.	Nature of asset	Cost of acquisition
	If bonus shares are allotted on or after 1.4.2001	Nil
	Bonus shares allotted before 1.2.2018, on which STT has been paid at the time of transfer	The higher of –
		(i) Actual cost of acquisition (i.e., Nil, in case of bonus shares allotted on or after 1.4.2001; and FMV on 1.4.2001, in case of bonus shares allotted before 1.4.2001) (ii) Lower of – (a) FMV as on 31.1.2018; and (b) Actual sale consideration
3.	Rights Shares	
	Original shares (which forms the basis of entitlement of rights shares)	Amount actually paid for acquiring the original shares
	Rights shares subscribed for by the assessee	Amount actually paid for acquiring the rights shares
	Rights entitlement (which is renounced by the assessee in favour of a person)	Nil
	Rights shares which are purchased by the person in whose favour the assessee has renounced the rights entitlement	Purchase price paid to the renouncer of rights entitlement as well as the amount paid to the Co. which has allotted the rights shares.
	Long term capital assets being,	Cost of acquisition shall be the higher of -
	<ul style="list-style-type: none"> equity shares in a company on which STT is paid both at the time of purchase and transfer or 	(i) cost of acquisition of such asset; and
	<ul style="list-style-type: none"> unit of equity oriented fund on which STT is paid at the time of transfer. acquired before 1st February, 2018 	(ii) lower of <ul style="list-style-type: none"> the FMV of such asset on 31.1.2018; and the full value of consideration recd or accruing as a result of the transfer of the capital asset.
	Any other capital asset Where such capital asset became the property of the assessee before 1.4.2001	Cost of the asset to the assessee, or FMV as on 1.4.2001, at the option of the assessee. However, in case of capital asset being land or building, FMV as on 1.4.2001 shall not exceed stamp duty value as on 1.4.2001.
	Where capital assets became the property of the assessee by way of distribution of assets on total or partial partition of HUF, under a gift or will, by	Cost to the previous owner or FMV as on 1.4.2001, at the option of the assessee. However, in case of capital asset being land or building, FMV as on

Sl. No.	Nature of asset	Cost of acquisition
	succession, inheritance, distribution of assets on liquidation of a company, etc and the capital asset became the property of the previous owner before 1.4.2001.	1.4.2001 shall not exceed stamp duty value as on 1.4.2001.
	The provisions contained in (5) above shall also apply to the assets mentioned in (3) and (4) above.	
	Cost of the property in the hands of previous owner cannot be ascertained	The FMV on the date on which the capital asset become the property of the previous owner would be considered as cost of acquisition.

Cost of improvement of certain assets [Section 55]

Sl. No.	Nature of asset	Cost of improvement
1	Goodwill or any other intangible asset of a business, right to manufacture, produce or process any article or thing, right to carry on any business or profession or any other right.	Nil
2	Where the capital asset became the property of the previous owner or the assessee before 1-4-2001	All expenditure of a capital nature incurred in making any addition or alteration to the capital asset on or after 1.4.2001 by the previous owner or the assessee.
3	In relation to any other capital asset	All capital expenditure incurred in making additions or alterations to the capital asset on or after 1.4.2001 – <ul style="list-style-type: none"> • by the assessee after it became his property; and • by the previous owner [in a case where the assessee acquired the property by modes specified in section 49(1)].

Capital Gains: Exemptions under section 10

Section	Particulars
10(37)	Where any individual or HUF owns urban agricultural land which has been used for agricultural purposes for a period of two years immediately preceding the date of transfer by such individual or a parent of his or by such HUF and the same is compulsorily acquired under any law or the consideration for such transfer is determined or approved by the Central Government or the RBI, resultant capital gain will be exempt provided the compensation or consideration for such transfer is received on or after 1.4.2004.
10(43)	The amount received by the senior citizen as a loan, either in lump sum or in installments, in a transaction of reverse mortgage would be exempt from income-tax.

Exemption of Capital Gains [Sections 54 to 54F]

S. No.	Particulars	Section 54	Section 54B	Section 54D	Section 54EC	Section 54F
1	Eligible Assessee	Individual/ HUF	Individual/ HUF	Any assessee	Any assessee	Individual/ HUF
2	Asset transferred	Residential House (LTCA)	Urban Agricultural Land	Land & building forming part of an industrial undertaking	Land or building or both (LTCA)	Any LTCA other than Residential House.
3	Other Conditions	Income from such house should be chargeable under the head "Income from house property"	Land should be used for agricultural purposes by assessee or his parents or HUF for 2 years immediately preceding the date of transfer	Land & building have been used for business of undertaking for at least 2 years immediately preceding the date of transfer. The transfer should be by way of compulsory acquisition of the industrial undertaking	-	Assessee should not own more than one residential house on the date of transfer. He should not purchase within 2 years or construct within 3 years after the date of transfer, another residential house.
4	Qualifying asset i.e., asset in which capital gains has to be invested	One Residential House situated in India/Two residential houses in India, at the option of the assessee, where capital gains does not exceed ₹ 2 crore	Land for being used for agricultural purpose (Urban/ Rural)	Land or Building or right in land or building	Bonds of NHAI or RECL or any other bond notified by C.G. (Redeemable after 5 years)	One Residential House situated in India
5	Time limit for purchase/ construction	Purchase within 1 year before or 2 years after the date of transfer (or) construct within 3 years after the date of transfer	Purchase within a period of 2 years after the date of transfer	Purchase/ construct within 3 years after the date of transfer, for shifting or reestablishing the existing undertaking or setting up a new industrial undertaking.	Purchase within a period of 6 months after the date of transfer	Purchase within 1 year before or 2 years after the date of transfer (or) Construct within 3 years after the date of transfer
6	Amount of Exemption	Cost of new Residential House or two houses, as the case may be or Capital Gain, whichever is lower, is exempt. However, if the cost of new residential house exceeds ₹ 10 crore, the amount	Cost of new Agricultural Land or Capital Gain, whichever is lower, is exempt	Cost of new asset or Capital Gain, whichever is lower.	Capital Gain or amount invested in specified bonds, whichever is lower. Maximum permissible investment out of capital gains arising in any financial year is ₹ 50 lakhs, whether such	Cost of new Residential House \geq Net sale consideration of original asset, entire Capital gain is exempt. Cost of new Residential House $<$ Net sale consideration of original asset, proportionate capital gain is exempt. However, if the cost of new residential

S. No.	Particulars	Section 54	Section 54B	Section 54D	Section 54EC	Section 54F
		exceeding ₹ 10 crore would not be taken into account for exemption. The maximum exemption that can be claimed by the assessee is ₹ 10 crore.			investment is made in the current FY or subsequent FY or both.	house exceeds ₹ 10 crore, the amount exceeding ₹ 10 a crore would not be taken into account for exemption.

TEST YOUR KNOWLEDGE

- Mr. Mithun purchased 100 equity shares of M/s Goodmoney Co. Ltd. on 01-04-2007 at rate of ₹ 1,000 per share in public issue of the company by paying securities transaction tax.

Company allotted bonus shares in the ratio of 1:1 on 01.12.2022. He has also received dividend of ₹ 10 per share on 01.05.2023.

He has sold all the shares on 01.10.2023 at the rate of ₹ 4,000 per share through a recognized stock exchange and paid brokerage of 1% and securities transaction tax of 0.02%.

Compute his total income and tax liability for A.Y. 2024-25 if Mr. Mithun pays tax under default tax regime, assuming that he is having no income other than given above. Fair market value of shares of M/s Goodmoney Co. Ltd. on 31.1.2018 is ₹ 2,000.
- Aarav converts his plot of land purchased in July, 2004 for ₹ 80,000 into stock-in-trade on 31st March, 2023. The fair market value as on 31.3.2023 was ₹ 3,00,000. The stock-in-trade was sold for ₹ 3,25,000 in the month of January, 2024.

Find out the taxable income, if any, and if so under which head of income and for which Assessment Year?

Cost Inflation Index: F.Y. 2004-05:113; F.Y. 2022-23: 331; F.Y. 2023-24: 348.
- Mrs. Harshita purchased a land at a cost of ₹ 35 lakhs in the F.Y. 2004-05 and held the same as her capital asset till 20th March, 2023.

She started her real estate business on 21st March, 2023 and converted the said land into stock-in-trade of her business on the said date, when the fair market value of the land was ₹ 210 lakhs.

She constructed 15 flats of equal size, quality and dimension. Cost of construction of each flat is ₹ 10 lakhs. Construction was completed in February, 2024. She sold 10 flats at ₹ 30 lakhs per flat in March, 2024. The remaining 5 flats were held in stock as on 31st March, 2024.

She invested ₹ 50 lakhs in bonds issued by National Highways Authority of India on 31st March, 2024 and another ₹ 50 lakhs in bonds of Rural Electrification Corporation Ltd. in April, 2024.

Compute the amount of chargeable capital gain and business income in the hands of Mrs. Harshita arising from the above transactions for A.Y. 2024-25 indicating clearly the reasons for treatment for each item.

[Cost Inflation Index: F.Y. 2004-05: 113; F.Y. 2022-23: 331; F.Y. 2023-24: 348].
- Mr. A is an individual carrying on business. His stock and machinery were damaged and destroyed in a fire accident.

The value of stock lost (total damaged) was ₹ 6,50,000. Certain portion of the machinery could be salvaged. The opening balance of the block as on 1.4.2023 (i.e., WDV as on 31.3.2023 after providing depreciation for P.Y. 2022-23) was ₹ 10,80,000.

During the process of safeguarding machinery and in the fire fighting operations, Mr. A lost his gold chain and a diamond ring, which he had purchased in April, 2005 for ₹ 1,20,000. The market value of these two items as on the date of fire accident was ₹ 1,80,000.

Mr. A received the following amounts from the insurance company:

- (i) Towards loss of stock ₹ 4,80,000
- (ii) Towards damage of machinery ₹ 6,00,000
- (iii) Towards gold chain and diamond ring ₹ 1,80,000

You are requested to briefly comment on the tax treatment of the above three items under the provisions of the Income-tax Act, 1961.

5. Mr. Sarthak entered into an agreement with Mr. Jaikumar to sell his residential house located at Kanpur on 16.08.2023 for ₹ 1,50,00,000.

The sale proceeds were to be paid in the following manner:

- (i) 20% through account payee bank draft on the date of agreement.
- (ii) 60% on the date of the possession of the property.
- (iii) Balance after the completion of the registration of the title to the property.

Mr. Jaikumar was handed over the possession of the property on 15.12.2023 and the registration process was completed on 14.01.2024. He paid the sale proceeds as per the sale agreement.

The value determined by the Stamp Duty Authority-

- (a) on 16.08.2023 was ₹ 1,70,00,000;
- (b) on 15.12.2023 was ₹ 1,71,00,000; and
- (c) on 14.01.2024 was ₹ 1,71,50,000.

Mr. Sarthak had acquired the residential house at Kanpur on 01.04.2001 for ₹ 30,00,000. After recovering the sale proceeds from Jaikumar, he purchased two residential house properties, one in Kanpur for ₹ 20,00,000 on 24.3.2024 and another in Delhi for ₹ 35,00,000 on 28.5.2024.

Compute the income chargeable under the head "Capital Gains" of Mr. Sarthak for the Assessment Year 2024-25.

Cost Inflation Index for Financial Year(s): 2001-02 - 100; 2023-24 - 348

6. Mrs. Yuvika bought a vacant land for ₹ 80 lakhs in May 2005. Registration and other expenses were 10% of the cost of land. She constructed a residential building on the said land for ₹ 100 lakhs during the financial year 2007-08.

She entered into an agreement for sale of the above said residential house with Mr. Johar (not a relative) in April 2015. The sale consideration was fixed at ₹ 700 lakhs and on 23-4-2015, Mrs. Yuvika received ₹ 20 lakhs as advance in cash by executing an agreement. However, due to failure on part of Mr. Johar, the said negotiation could not materialise and hence, the said amount of advance was forfeited by Mrs. Yuvika.

Mrs. Yuvika, again entered into an agreement on 01.08.2023 for sale of this house at ₹ 810 lakhs. She received ₹ 80 lakhs as advance by RTGS. The stamp duty value on the date of agreement was ₹ 890 lakhs. The sale deed was executed and registered on 14-1-2024 for the agreed consideration. However, the State stamp valuation authority had revised the values, hence, the value of property for stamp duty purposes was ₹ 900 lakhs. Mrs. Yuvika paid 1% as brokerage on sale consideration received.

Subsequent to sale, Mrs. Yuvika made following acquisition/investments:

- (i) Acquired two residential houses at Delhi and Chandigarh for ₹ 130 lakhs and ₹ 50 lakhs, respectively, on 31.1.2024 and 15.5.2024
- (ii) Acquired a residential house at UK for ₹ 180 lakhs on 23.3.2024.
- (iii) Subscribed to NHAI capital gains bond (approved under section 54EC) for ₹ 50 lakhs on 29-3-2024 and for ₹ 40 lakhs on 12-5-2024.

Compute the income chargeable under the head 'Capital Gains' of Mrs. Yuvika for A.Y.2024-25. The choice of exemption must be in the manner most beneficial to the assessee.

Cost Inflation Index: F.Y. 2005-06 – 117; F.Y. 2007-08 – 129; F.Y. 2023-24 - 348.

7. Mr. Shiva purchased a house property on February 15, 1979 for ₹ 3,24,000. In addition, he has also paid stamp duty value @10% on the stamp duty value of ₹ 3,50,000.

In April, 2008, Mr. Shiva entered into an agreement with Mr. Mohan for sale of such property for ₹ 14,35,000 and received an amount of ₹ 1,11,000 as advance. However, the sale consideration did not materialize and Mr. Shiva forfeited the advance. In May 2015, he again entered into an agreement for sale of said house for ₹ 20,25,000 to Ms. Deepshikha and received ₹ 1,51,000 as advance. However, as Ms. Deepshikha did not pay the balance amount, Mr. Shiva forfeited the advance. In August, 2015, Mr. Shiva constructed the first floor by incurring a cost of ₹ 3,90,000.

On November 15, 2023, Mr. Shiva entered into an agreement with Mr. Manish for sale of such house for ₹ 30,50,000 and received an amount of ₹ 1,50,000 as advance through an account payee cheque. Mr. Manish paid the balance entire sum and Mr. Shiva transferred the house to Mr. Manish on February 20, 2024. Mr. Shiva has paid the brokerage @1% of sale consideration to the broker.

On April 1, 2001, fair market value of the house property was ₹ 11,85,000 and Stamp duty value was ₹ 10,70,000. Further, the Valuation as per Stamp duty Authority of such house on 15th November, 2023 was ₹ 39,00,000 and on 20th February, 2024 was ₹ 41,00,000.

Compute the capital gains in the hands of Mr. Shiva for A.Y.2024-25.

CII for F.Y. 2001-02: 100; F.Y. 2008-09: 137; F.Y. 2015-16: 254; F.Y. 2023-24: 348

ANSWERS

1. Computation of total income & tax liability of Mr. Mithun for A.Y. 2024-25

Particulars	₹
Long term capital gains on sale of original shares	
Gross sale consideration (100 x ₹ 4,000)	4,00,000
Less: Brokerage@1%	4,000
Net sale consideration	3,96,000
Less: Cost of acquisition (100 x ₹ 2,000) (Refer Note 2)	2,00,000
Long term capital gains	1,96,000
Short term capital gains on sale of bonus shares	
Gross sale consideration (100 x ₹ 4,000)	4,00,000
Less: Brokerage@1%	4,000
Net sale consideration	3,96,000

Particulars	₹
Less: Cost of acquisition of bonus shares	NIL
Short term capital gains	3,96,000
Income from other sources	
Dividend received from M/s Goodmoney Co. Ltd. is taxable in the hands of shareholders [200 shares x 10 per share]	2,000
Total Income	5,94,000
Tax Liability	
Tax on dividend (since it is lower than the basic exemption limit)	Nil
Tax on STCG u/s 11A	
15% of (₹ 3,96,000 - ₹ 2,98,000, being unexhausted basic exemption limit)	14,700
Tax on LTCG u/s 112A	
10% of (₹ 1,96,000 - ₹ 1,00,000)	9,600
	24,300
Less: Rebate u/s 87A	14,700
	9,600
Add: Health and education cess @4%	384
Tax liability	9,984
Tax liability (rounded off)	9,980

Notes:

- (1) Long-term capital gains exceeding ₹ 1 lakh on sale of original shares through a recognized stock exchange (STT paid at the time of acquisition and sale) is taxable under section 112A at a concessional rate of 10%, without indexation benefit.
- (2) Cost of acquisition of such equity shares acquired before 1.2.2018 is higher of
 - Cost of acquisition i.e., ₹ 1,000 per share and
 - lower of
 - Fair market value of such asset i.e., ₹ 2,000 per share and
 - Full value of consideration i.e., ₹ 4,000 per share.

Therefore, the cost of acquisition of original share is ₹ 2,000 per share.
- (3) Since bonus shares are held for less than 12 months before sale, the gain arising therefrom is a short-term capital gain chargeable to tax@15% as per section 111A after adjusting the unexhausted basic exemption limit (₹ 3,00,000 less ₹ 2,000, being the amount of dividend). Since Mr. Mithun is paying tax under default tax regime, he is entitled for a basic exemption limit of ₹ 3,00,000 for A.Y. 2024-25.
- (4) Brokerage paid is allowable since it is an expenditure incurred wholly and exclusively in connection with the transfer. Hence, it qualifies for deduction under section 48(i).

(5) Cost of bonus shares will be Nil as such shares are allotted after 1.04.2001.

(6) Securities transaction tax is not allowable as deduction.

2. Conversion of a capital asset into stock-in-trade is a transfer within the meaning of section 2(47) in the previous year in which the asset is so converted. However, the capital gains will be charged to tax only in the year in which the stock-in-trade is sold.

The cost inflation index of the financial year in which the conversion took place should be considered for computing indexed cost of acquisition.

Further, the fair market value on the date of conversion would be deemed to be the full value of consideration for transfer of the asset as per section 45(2). The sale price less the fair market value on the date of conversion would be treated as the business income of the year in which the stock-intrade is sold.

Therefore, in this problem, both capital gains and business income would be charged to tax in the A.Y. 2024-25.

Particulars	₹
Capital Gains	
Full value of consideration (Fair market value on the date of conversion)	3,00,000
Less: Indexed cost of acquisition (₹ 80,000 × 331/113)	2,34,336
Long-term capital gain	65,664
Profits & Gains of Business or Profession	
Sale price of stock-in-trade	3,25,000
Less: Fair market value on the date of conversion	3,00,000
	25,000

Computation of taxable income of Mr. Aarav for A.Y.2024-25

Particulars	₹
Profits and gains from business or profession	25,000
Long term capital gains	65,664
Taxable Income	90,664

3. **Computation of capital gains and business income of Harshita for A.Y. 2024-25**

Particulars	₹
Capital Gains	
Fair market value of land on the date of conversion deemed as the full value of consideration for the purposes of section 45(2)	2,10,00,000
Less: Indexed cost of acquisition [₹ 35,00,000 × 331/113]	1,02,52,212
	1,07,47,788
Proportionate capital gains arising during A.Y. 2024-25 [₹ 1,07,47,788 × 2/3]	71,65,192
Less: Exemption under section 54EC 50,00,000	

Particulars	₹
Capital gains chargeable to tax for A.Y.2024-25	21,65,192
Business Income	
Sale price of flats [10 × ₹ 30 lakhs]	3,00,00,000
Less: Cost of flats	
Fair market value of land on the date of conversion [₹ 210 lacs × 2/3]	1,40,00,000
Cost of construction of flats [10 × ₹ 10 lakhs]	1,00,00,000
Business income chargeable to tax for A.Y.2024-25	60,00,000

Notes:

- (1) The conversion of a capital asset into stock-in-trade is treated as a transfer under section 2(47). It would be treated as a transfer in the year in which the capital asset is converted into stock-in-trade (i.e., P.Y.2022-23, in this case).
- (2) As per section 45(2), the capital gains arising from the transfer by way of conversion of capital assets into stock-in-trade will be chargeable to tax only in the year in which the stock-in-trade is sold.
- (3) The indexation benefit for computing indexed cost of acquisition would, however, be available only up to the year of conversion of capital asset into stock-in-trade (i.e., P.Y.2022-23) and not up to the year of sale of stock-in-trade (i.e., P.Y.2023-24).
- (4) For the purpose of computing capital gains in such cases, the fair market value of the capital asset on the date on which it was converted into stock-in-trade shall be deemed to be the full value of consideration received or accruing as a result of the transfer of the capital asset.
In this case, since only 2/3rd of the stock-in-trade (10 flats out of 15 flats) is sold in the P.Y.2023-24, only proportionate capital gains (i.e., 2/3rd) would be chargeable to tax in the A.Y.2024-25.
- (5) On sale of such stock-in-trade, business income would arise. The business income chargeable to tax would be the difference between the price at which the stock-in-trade is sold and the fair market value on the date of conversion of the capital asset into stock-in-trade.
- (6) In case of conversion of capital asset into stock-in-trade and subsequent sale of stock-in-trade, the period of 6 months is to be reckoned from the date of sale of stock-in-trade for the purpose of exemption under section 54EC [CBDT Circular No.791 dated 2.6.2000]. In this case, since the investment in bonds of NHAI has been made within 6 months of sale of flats, the same qualifies for exemption under section 54EC. With respect to long-term capital gains arising on land or building or both in any financial year, the maximum deduction under section 54EC would be ₹ 50 lakhs, whether the investment in bonds of NHAI or RECL are made in the same financial year or next financial year or partly in the same financial year and partly in the next financial year.
Therefore, even though investment of ₹ 50 lakhs has been made in bonds of NHAI during the P.Y. 2023-24 and investment of ₹ 50 lakhs has been made in bonds of RECL during the P.Y. 2024-25, both within the stipulated six month period, the maximum deduction allowable for A.Y. 2024-25, in respect of long-term capital gain arising on sale of long-term capital asset(s) during the P.Y. 2023-24, is only ₹ 50 lakhs.

4. (i) **Compensation towards loss of stock:** Any compensation received from the insurance company towards loss/damage to stock in trade is to be construed as a trading receipt. Hence, ₹ 4,80,000 received as insurance claim for loss of stock has to be assessed under the head “Profit and gains of business or profession”.

Note - The assessee can claim the value of stock destroyed by fire as revenue loss, eligible for deduction while computing income under the head “Profits and gains of business or profession”.

- (ii) **Compensation towards damage to machinery:** The question does not mention whether the salvaged machinery is taken over by the Insurance company or whether there was any replacement of machinery during the year. Assuming that the salvaged machinery is taken over by the Insurance company, and there was no fresh addition of machinery during the year, the block of machinery will cease to exist. Therefore, ₹ 4,80,000 being the excess of written down value (i.e. ₹ 10,80,000) over the insurance compensation (i.e. ₹ 6,00,000) will be assessable as a short-term capital loss.

Note – If new machinery is purchased in the next year, it will constitute the new block of machinery, on which depreciation can be claimed for that year.

- (iii) **Compensation towards loss of gold chain and diamond ring:** Gold chain and diamond ring are capital assets as envisaged by section 2(14). They are not “personal effects”, which alone are to be excluded. If any profit or gain arises in a previous year owing to receipt of insurance claim, the same shall be chargeable to tax as capital gains. The capital gains has to be computed by reducing the indexed cost of acquisition of jewellery from the insurance compensation of ₹ 1,80,000.

5. **Computation of income chargeable under the head “Capital Gains” of Mr. Sarthak for A.Y. 2024-25**

Particulars	₹
Capital Gains on sale of residential house	
Actual sale consideration	₹ 1,50,00,000
Value adopted by Stamp Valuation	
Authority on the date of agreement	₹ 1,70,00,000
[As per section 50C, where the actual sale consideration is less than the value adopted by the Stamp Valuation Authority for the purpose of charging stamp duty, and such stamp duty value exceeds 110% of the actual sale consideration, then, the value adopted by the Stamp Valuation Authority shall be taken to be the full value of consideration.	
In a case where the date of agreement is different from the date of registration, stamp duty value on the date of agreement can be considered provided the whole or part of the consideration is paid by way of account payee cheque/bank draft or by way of ECS through bank account or through such other electronic mode as may be prescribed, on or before the date of agreement.	
In this case, since 20% of ₹ 150 lakhs is paid through account payee bank draft on the date of agreement, stamp duty value on the date of agreement would be considered for determining the full value of consideration]	
Full value of sale consideration [Stamp duty value on the date of agreement, since it exceeds 110% of the actual sale consideration]	1,70,00,000
Less: Indexed cost of acquisition of residential house [₹ 30 lakhs x 348/100]	1,04,40,000
Long-term capital gains [Since the residential house property was held by Mr. Sarthak for more than 24 months immediately preceding the date of its transfer]	65,60,000

Particulars	₹
Less: Exemption u/s 54	55,00,000
Since, long-term capital gains does not exceed ₹ 2 crore, he would be eligible for exemption in respect of both the residential house properties purchased in India. The capital gain arising on transfer of a long-term residential property shall not be chargeable to tax to the extent such capital gain is invested in the purchase of these residential house properties in India within one year before or two years after the date of transfer of original asset. Thus, he would be eligible for exemption of ₹ 55,00,000 being ₹ 20,00,000 and ₹ 35,00,000 invested on acquisition of residential house property in Kanpur and Delhi, respectively.	
Long term capital gains chargeable to tax	10,60,000

6. Computation of income chargeable under the head "Capital Gains" of Mrs. Yuvika for A.Y.2024-25

Particulars	₹ (in lakhs)	₹ (in lakhs)
Capital Gains on sale of residential building		
Actual sale consideration ₹ 810 lakhs		
Value adopted by Stamp Valuation Authority ₹ 890 lakhs		
[Where the actual sale consideration is less than the value adopted by the Stamp Valuation Authority for the purpose of charging stamp duty, and such stamp duty value exceeds 110% of the actual sale consideration, then, the value adopted by the Stamp Valuation Authority shall be taken to be the full value of consideration as per section 50C.		
However, where the date of agreement is different from the date of registration, stamp duty value on the date of agreement can be considered provided the whole or part of the consideration is received by way of account payee cheque/bank draft or by way of ECS through bank account or through prescribed electronic modes on or before the date of agreement.		
In this case, since advance of ₹ 80 lakh is received by RTGS, i.e., one of the prescribed modes, stamp duty value on the date of agreement can be adopted as the full value of consideration. However, in the present case since stamp duty value on the date of agreement does not exceed 110% of the actual consideration, actual sale consideration would be taken as the full value of consideration] Gross Sale consideration (Actual consideration, since stamp duty value on the date of agreement does not exceed 110% of the actual consideration)		810.00
Less: Brokerage @1% of sale consideration (1% of ₹ 810 lakhs)		8.10
Net Sale consideration		801.90
Less: Indexed cost of acquisition		
- Cost of vacant land, ₹ 80 lakhs, plus registration and other expenses i.e., ₹ 8 lakhs, being 10% of cost of land [₹ 88 lakhs × 348/117]	261.74	
- Construction cost of residential building (₹ 100 lakhs × 348/129)	269.77	531.51
Long-term capital gains		270.39
Since the residential house property was held by Mrs. Yuvika for more than 24 months immediately preceding the date of its transfer, the resultant gain is a long-term capital gain]		

Particulars	₹ (in lakhs)	₹ (in lakhs)
Less: Exemption under section 54		130.00
Where long-term capital gains exceed ₹ 2 crore, the capital gain arising on transfer of a long-term residential property shall not be chargeable to tax to the extent such capital gain is invested in the purchase of one residential house property in India, one year before or two years after the date of transfer of original asset. Therefore, in the present case, the exemption would be available only in respect of the one residential house acquired in India and not in respect of the residential house in UK. It would be more beneficial for her to claim the cost of acquisition of residential house at Delhi, i.e., ₹ 130 lakhs as exemption.		
Less: Exemption under section 54EC		50.00
Amount invested in capital gains bonds of NHAI within six months after the date of transfer (i.e., on or before 13.7.2024), of longterm capital asset, being land or building or both, would qualify for exemption, to the maximum extent of ₹ 50 lakhs, whether such investment is made in the current financial year or subsequent financial year. Therefore, in the present case, exemption can be availed only to the extent of ₹ 50 lakh out of ₹ 90 lakhs, even if the both the investments are made on or before 13.7.2024 (i.e., within six months after the date of transfer).		
Long term capital gains chargeable to tax		90.39

Note: Advance of ₹ 20 lakhs received from Mr. Johar, would have been chargeable to tax under the head “Income from other sources”, in the A.Y. 2016-17, as per section 56(2)(ix), since the same was forfeited on or after 01.4.2014 as a result of failure of negotiation. Hence, the same should not be deducted while computing indexed cost of acquisition.

7. Computation of Capital gains in the hands of Mr. Shiva for A.Y. 2024-25

Particulars	Amount (₹)	Amount (₹)
Actual sale consideration	30,50,000	
Valuation as per Stamp duty Authority on the date of agreement (Where the actual sale consideration is less than the value adopted by the Stamp Valuation Authority for the purpose of charging stamp duty, and such stamp duty value exceeds 110% of the actual sale consideration then, the value adopted by the Stamp Valuation Authority shall be taken to be the full value of consideration as per section 50C. However, where the date of agreement is different from the date of registration, stamp duty value on the date of agreement can be considered, provided the whole or part of the consideration is received by way of account payee cheque/bank draft or by way of ECS through bank account or such other electronic mode as may be prescribed on or before the date of agreement. In the present case, since part of the payment is made by account payee cheque on the date of agreement, the stamp duty value on the date of agreement would be considered as full value of consideration)	39,00,000	
Deemed Full value of consideration [Since stamp duty value on the date of agreement exceeds 110% of the actual consideration, stamp duty value would be deemed as Full Value of Consideration]		39,00,000
Less: Expenses on transfer (Brokerage @1% of ₹ 30,50,000)		30,500

CHAPTER - 3

HEADS OF INCOME

UNIT 5 : INCOME FROM OTHER SOURCES

Proforma for computation of “Income from Other Sources

	Particulars	Amt
(i)	Dividend Income	xxx
(ii)	Casual Income (winnings from lotteries, crossword puzzles, races including horse races, card games and other games, gambling, betting etc.)	xxx
(iii)	Consideration received in excess of FMV of shares of a closely held company, where such shares are issued at a premium [Section 56(2)(viib)]	xxx
(iv)	Interest received on compensation/ enhanced compensation deemed to be income in the year of receipt [Section 56(2)(viii)]	xxx
(v)	Advance forfeited due to failure of negotiations for transfer of a capital asset [Section 56(2)(ix)]	xxx
(vi)	Sum of money or property received by any person [Section 56(2)(x)]	xxx
(vii)	Compensation or other payment, due to or received by any person, in connection with termination of his employment or the modification of the terms and conditions relating thereto [Section 56(2)(xi)]	xxx
(viii)	Sum received, including the amount allocated by way of bonus, under a LIP other than under a ULIP and keyman insurance policy, which is not exempt u/s 10(10D) Section 56(2)(xii)]	xxx
(ix)	The following income, if not chargeable under the head “Profits and gains of business or profession”	
	(a) Any sum received by an employer from his employees as contributions to any provident fund, superannuation fund or any other fund for the welfare of the employees	xxx
	(b) Interest on securities	xxx

(c)	Income from letting out on hire of machinery, plant or furniture	xxx	
(d)	Where letting out of buildings is inseparable from the letting out of machinery, plant or furniture, the income from such letting	xxx	
(e)	Any sum received under a Keyman insurance policy including bonus on such policy (if not chargeable to tax under the head "Salaries" also)	xxx	xxx
(x)	Any income chargeable to tax under the Act, but not falling under any other head of income		xxx
(xi)	Deemed income u/s 59 – Remission or cessation of a trading liability or receipt of any amount in respect of loss or expenditure allowed as deduction in an earlier P.Y.		xxx
			xxx
Less : Deductions allowable [Section 57]			
(a)	In case of dividends or income in respect of units of a mutual fund or income in respect of units from a specified company - interest expenditure allowable as deduction subject to a maximum of 20% of such income included in the total income for that year, without deduction under this section	xxx	
(b)	In case of interest on securities - Any reasonable sum paid by way of commission or remuneration to a banker or any other person	xxx	
(c)	Income consists of recovery from employees as contribution to any PF, superannuation fund etc. - Amount of contribution remitted before the due date under the respective Acts, in accordance with the provisions of section 36(1)(va)	xxx	
(d)	Income from letting on hire of machinery, plant and furniture, with or without building - current repairs to the machinery, plant, furniture or building - insurance premium - depreciation/unabsorbed depreciation	xxx	
(e)	Family Pension – 33-1/3% of such income or ₹ 15,000, whichever is less	xxx	
(f)	Interest on compensation/enhanced compensation received – 50% of such interest	xxx	
(g)	Any other expenditure not in the nature of capital expenditure incurred wholly and exclusively for earning such income	xxx	xxx
Income from Other Sources		xxx	

Deductions not allowable [Section 58]

(a)	Any personal expense of the assessee.
(b)	Any interest chargeable to tax under the Act which is payable outside India on which tax has not

	been paid or deducted at source.
(c)	Any payment chargeable to tax under the head "Salaries", if it is payable outside India unless tax has been paid thereon or deducted at source therefrom.
(d)	30% of sum payable to a resident on which tax is deductible at source, if such tax has not been deducted or after deduction has not been paid on or before the due date of return specified in section 139(1).
(e)	Any expenditure in respect of which a payment is made to a related person, to the extent the same is considered excessive or unreasonable by the Assessing Officer, having regard to the FMV.
(f)	Any expenditure in respect of which a payment or aggregate payments exceeding ₹ 10,000 is made to a person in a day otherwise than by account payee cheque/bank draft or ECS through bank account or through such other prescribed electronic mode such as credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT, and BHIM Aadhar Pay.

Tax on Income from Other Sources

Income	Winnings from lotteries, crossword puzzles, races including horse races, card games and other games, gambling, betting etc. (other than winning from any online game)	Unexplained cash credits/ investments/ money, bullion, jewellery etc./ expenditure, etc.	Net winnings from online games	Other Income
Section	Section 115BB	Section 115BBE	Section 115BBJ	-
Tax rate	30% of such winnings (further increased by surcharge, if applicable, and health and education cess@4%)	60% of such income plus surcharge @25% of tax (Effective rate of tax is 78%, including health and education cess@4%)	30% of such winnings (further increased by surcharge, if applicable, and health and education cess@4%)	Normal rates of tax
Other conditions	<ul style="list-style-type: none"> No expenditure or allowance can be allowed from such income. Deduction under Chapter VI-A is not allowable from such income. Adjustment of unexhausted basic exemption limit is also not permitted against such income. Set-off of losses is not permissible against such income. 			<p>Deductions specified in section 57 allowable, subject to limits mentioned thereunder.</p> <p>Section 58 specifies the deductions not allowable.</p>

5.1 INTRODUCTION

Any income, profits or gains includible in the total income of an assessee, which cannot be included under any of the preceding heads of income, is chargeable under the head 'Income from other sources'. Thus, this head is the residuary head of income and brings within its scope all the taxable income, profits or gains of an assessee which fall outside the scope of any other head. Therefore, when any income, profit or gain does not fall precisely under any of the other specific heads but is chargeable under the provisions of the Act, it would be charged under this head.

5.2 METHOD OF ACCOUNTING [SECTION 145]

Income chargeable under the head "Income from other sources" has to be computed in accordance with the cash or mercantile system of accounting regularly employed by the assessee.

5.3 INCOMES CHARGEABLE UNDER THIS HEAD [SECTION 56]

(i) The income chargeable only under the head 'Income from other sources'

(1) Dividend income [Section 56(2)(i)] : Dividend income is always taxable under the head "Income from other sources". The term 'dividend' as used in the Act has a wider scope and meaning than under the general law.

- **Deemed dividend [Sections 2(22)(a) to (e)] :** According to section 2(22), the following receipts are deemed to be dividend :

(a) Distribution of accumulated profits, entailing the release of company's assets - Any distribution of accumulated profits, whether capitalised or not, by a company to its shareholders is dividend if it entails the release of all or any part of its assets.

Note : If accumulated profits are distributed in cash, it is dividend in the hands of the shareholders. Where accumulated profits are distributed in kind, for example by delivery of shares etc. entailing the release of company's assets, the market value of such shares on the date of such distribution is deemed as dividend in the hands of the shareholder.

(b) Distribution of debentures, deposit certificates to shareholders and bonus shares to preference shareholders - Any distribution to its shareholders by a company of debentures, debenture stock or deposit certificate in any form, whether with or without interest, and any distribution of bonus shares to preference shareholders to the extent to which the company possesses accumulated profits, whether capitalised or not, will be deemed as dividend. The market value of such bonus shares is deemed as dividend in the hands of the preference shareholder.

In the case of debentures, debenture stock etc., their value is to be taken at the market rate and if there is no market rate they should be valued according to accepted principles of valuation.

Note : Bonus shares given to equity shareholders are not treated as dividend.

(c) Distribution on liquidation : Any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not, is deemed to be dividend income.

Note : Any distribution made out of the profits of the company after the date of the liquidation cannot amount to dividend. It is a repayment towards capital.

(d) Distribution on reduction of capital : Any distribution to its shareholders by a company on the reduction of its capital to the extent to which the company possessed accumulated profits, whether capitalised or not, shall be deemed to be dividend.

(e) Advance or loan by a closely held company to its shareholder - Any payment by a company in which the public are not substantially interested, of any sum by way of advance or loan to any shareholder who is the beneficial owner of 10% or more of the equity capital of the company will be deemed to be dividend to the extent of the accumulated profits. If the loan is not covered by the accumulated profits, it is not deemed to be dividend.

Advance or loan by a closely held company to a specified concern

-Any payment by a company in which the public are not substantially interested, to any concern (i.e. HUF/Firm/AOP/BOI/Company) in which a shareholder, having the beneficial ownership of atleast 10% of the equity shares is a member or a partner and in which he has a substantial interest (i.e. atleast 20% share of the income of the concern) will be deemed to be dividend.

Also, any payments by such a closely held company on behalf of, or for the individual benefit of any such shareholder will also be deemed to be dividend. However, in both cases the ceiling limit of dividend is to the extent of accumulated profits.

Exceptions : The following payments or loan given would not be deemed as dividend:

- (i) Loan granted in the ordinary course of business** - If the loan is granted in the ordinary course of its business and lending of money is a substantial part of the company's business, the loan or advance to a shareholder or to the specified concern is not deemed to be dividend.
- (ii) Dividend paid is set off against the deemed dividend** - Where a loan had been treated as dividend and subsequently, the company declares and distributes dividend to all its shareholders including the borrowing shareholder, and the dividend so paid is set off by the company against the previous borrowing, the adjusted amount will not be again treated as a dividend.

Note : Subsequent repayment of loan or charge of interest at market rate does not make any difference in the applicability of section 2(22)(e).

Other exceptions

Apart from the exceptions cited above, the following also do not constitute "dividend" –

- (a) Distribution in respect of non-participating shares issued for full cash consideration** – Any distribution made in accordance with (c) or (d) in respect of any share issued for full cash consideration and the holder of such share is not entitled to participate in the surplus asset in the event of liquidation.
- (b) Payment on buy back of shares** - Any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956¹;
- (c) Distribution of shares to the shareholders on demerger by the resulting company** - Any distribution of shares on demerger by the resulting companies to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).

Meaning of "accumulated profits"

- Accumulated profits in point (a), (b), (d) and (e) above include all profits of the company up to the date of distribution or payment of dividend.
- Accumulated profits in point (c) include all profits of the company up to the date of liquidation whether capitalised or not.
- In the case of an amalgamated company, the accumulated profits, whether capitalized or not, of the amalgamating company on the date of amalgamation shall be included in the accumulated profits, whether capitalized or not or loss, as the case may be, of the amalgamated company.

Clarification regarding trade advance not to be treated as deemed dividend under section 2(22)(e) – [Circular No. 19/2017, dated 12.06.2017]

Section 2(22)(e) provides that "dividend" includes any payment by a company in which public are not substantially interested, of any sum by way of advance or loan to a shareholder who is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

The CBDT observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e) and such views have attained finality.

In view of the above, the CBDT has, vide this circular, clarified that it is a settled position that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in section 2(22)(e) and therefore, the same would not be treated as deemed dividend.

Basis of charge of dividend [Section 8]

Dividend declared or distributed or paid by a company is deemed to be the income of the shareholder in the previous year in which it is so declared or distributed or paid, as the case may be.

- **Deemed dividend u/s 2(22)(a)/(b)/(c)/(d)** – Distribution by a company which is deemed as dividend u/s 2(22)(a)/(b)/(c)/(d) would be the income of the previous year in which it is so distributed.
- **Deemed dividend u/s 2(22)(e)** – Payment of advance or loan to a shareholder or a concern, as the case may be, which is deemed as dividend u/s 2(22)(e) will be the income of the previous year in which it is so paid.
- **Interim dividend** – Interim dividend would be deemed to be the income of the previous year in which such dividend is unconditionally made available by the company to the members who is entitled to it.
- **Tax rate on dividend income** - Any income by way of dividends received by a resident from a company, whether domestic or foreign, is taxable in the hands of a resident shareholder at normal rates of tax.

ILLUSTRATION 1 :

Rahul, a resident Indian, holding 28% of equity shares in a company, took a loan of ₹ 5,00,000 from the same company. On the date of granting the loan, the company had accumulated profit of ₹ 4,00,000. The company is engaged in some manufacturing activity.

- (i) *Is the amount of loan taxable as deemed dividend, if the company is a company in which the public are substantially interested?*
- (ii) *What would be your answer, if the lending company is a private limited company (i.e. which is not a company in which the public are substantially interested) ?*

SOLUTION :

Any payment by a company, other than a company in which the public are substantially interested, of any sum by way of advance or loan to an equity shareholder, being a person who is the beneficial owner of shares holding not less than 10% of the voting power, is deemed as dividend under section 2(22)(e), to the extent the company possesses accumulated profits.

- (i) The provisions of section 2(22)(e), however, will not apply where the loan is given by a company in which public are substantially interested. In such a case, the loan would not be taxable as deemed dividend.
- (ii) However, if the loan is taken from a private company (i.e., a company in which the public are not substantially interested), which is not a company where lending of money is a substantial part of the business of the company, the provisions of section 2(22)(e) would be attracted. In this case, since the company is a manufacturing company and not a lending company and Rahul holds more than 10% of the equity shares in the company, the provisions of section 2(22)(e) would be attracted.

The amount chargeable as deemed dividend cannot, however, exceed the accumulated profits held by the company on the date of giving the loan. Therefore, the amount taxable as deemed dividend would be limited to the accumulated profit i.e., ₹ 4,00,000 and not the amount of loan which is ₹ 5,00,000.

(2) Casual Income [Section 56(2)(ib)]

Casual income means income in the nature of winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort, gambling, betting etc.

Casual income is chargeable to tax under the head "Income from Other Sources".

(3) Consideration received in excess of FMV of shares issued by a closely held company to be treated as income of such company, where shares are issued at a premium [Section 56(2)(viib)]

- (i) Section 56(2)(viib) brings to tax the consideration received from a person by a company, other than a company in which public are substantially interested, which is in excess of the fair market value (FMV) of shares². *The person from whom the consideration is received may be a resident or non-resident.*
- (ii) Such excess is to be treated as the income of a closely held company taxable under section 56(2) under the head "Income from Other Sources", in cases where consideration received for issue of shares exceeds the face value of shares i.e. where shares are issued at a premium i.e., (Issue price of share – FMV of such share) x No. of shares.
- (iii) Fair market value of the shares shall be the higher of, the value as may be –
- determined in accordance with the prescribed method; or
 - substantiated by the company to the satisfaction of the Assessing Officer, based on the value of its assets on the date of issue of shares.

For the purpose of computation of FMV, the value of assets would include the value of intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

Co.	No. of shares	Face value of shares (₹)	FMV of shares (₹)	Issue price of shares (₹)	Applicability of section 56(2)(viib)
Example:					
A (P) Ltd.	10,000	100	120	130	The provisions of section 56(2)(viib) are attracted in this case since the shares are issued at a premium (i.e., issue price exceeds the face value of shares). The excess of the issue price of the shares over the FMV would be taxable under section 56(2)(viib). ₹ 1,00,000 [10,000 × ₹ 10 (₹ 130 - ₹ 120)] shall be treated as income in the hands of A (P) Ltd.

Example:

B (P) Ltd.	20,000	100	120	110	The provisions of section 56(2)(viib) are attracted since the shares are issued at a premium. However, no sum shall be chargeable to tax in the hands of B (P) Ltd. under the said section as the shares are issued at a price less than the FMV of shares.
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Example:

C (P) Ltd.	30,000	100	90	98	Section 56(2)(viib) is not attracted since the shares are issued at a discount, though the issue price is greater than the FMV.
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Example:

D (P) Ltd.	40,000	100	90	110	The provisions of section 56(2)(viib) are attracted in this case since the shares are issued at a premium. The excess of the issue price of the shares over the FMV would be taxable under section 56(2)(viib). Therefore, ₹ 8,00,000 [40,000 × ₹ 20 (₹ 110 - ₹ 90)] shall be treated as income in the hands of D (P) Ltd.
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(4) Interest received on compensation/ enhanced compensation deemed to be income in the year of receipt and taxable under the head “Income from Other Sources” [Sections 56(2)(viii)]

- (i) As per section 145(1), income chargeable under the head “Profits and gains of business or profession” or “Income from other sources”, shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.
- (ii) Section 145B(1) provides that notwithstanding anything contained in section 145(1), the interest received by an assessee on compensation or on enhanced compensation shall be deemed to be his income for the year in which it is received, irrespective of the method of accounting followed by the assessee.
- (iii) Section 56(2)(viii) provides that income by way of interest received on compensation or on enhanced compensation referred to in section 145B(1) shall be assessed as “Income from other sources” in the year in which it is received.

(5) Advance forfeited due to failure of negotiations for transfer of a capital asset to be taxable as “Income from other sources” [Section 56(2)(ix)]

- (i) Prior to A.Y. 2015-16, any advance retained or received in respect of a negotiation for transfer which failed to materialise is reduced from the cost of acquisition of the asset or the written down value or the fair market value of the asset, at the time of its transfer to compute the capital gains arising therefrom as per section 51. In case the asset transferred is a long-term capital asset, indexation benefit would be on the cost so reduced.

- (ii) With effect from A.Y. 2015-16, section 56(2)(ix) provides for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset. Such sum shall be chargeable to income-tax under the head 'Income from other sources', if such sum is forfeited and the negotiations do not result in transfer of such capital asset.
- (iii) In order to avoid double taxation of the advance received and retained, section 51 was amended to provide that where any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year, in accordance with section 56(2)(ix), such amount shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.
- (iv) It may be noted that advance received and forfeited upto 31.3.2014 has to be reduced from cost of acquisition while computing capital gains, since such advance would not have been subject to tax under section 56(2)(ix). Only the advance received and forfeited on or after 1.4.2014 would be subject to tax under section 56(2)(ix). Hence, such advance would not be reduced from the cost of acquisition for computing capital gains.

(6) Any sum of money or value of property received without consideration or for inadequate consideration to be subject to tax in the hands of the recipient [Section 56(2)(x)]

- (i) In order to prevent the practice of receiving sum of money or the property without consideration or for inadequate consideration, section 56(2)(x) brings to tax any sum of money or the value of any property received by any person without consideration or the value of any property received for inadequate consideration.

(ii) Sum of Money: If any sum of money is received without consideration and the aggregate value of which exceeds ₹ 50,000, the whole of the aggregate value of such sum is chargeable to tax.

(iii) Immovable property [Land or building or both] :

(I) If an immovable property is received -

(a) Without consideration: The stamp duty value of such property would be taxed as the income of the recipient if it exceeds ₹ 50,000.

(b) For Inadequate consideration: If consideration is less than the stamp duty value of the property and the difference between the stamp duty value and consideration is more than the higher of -

(i) ₹ 50,000 and

(ii) 10% of consideration,

the difference between the stamp duty value and the consideration shall be chargeable to tax in the hands of the assessee as "Income from other sources".

(II) Value to be considered where the date of agreement is different from date of registration: Taking into consideration the possible time gap between the date of agreement and the date of registration, the stamp duty value may be taken as on the date of agreement instead of the date of registration, if the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, provided whole or part of the consideration has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system (ECS) through a bank account or through such prescribed electronic mode on or before the date of agreement.

The prescribed electronic modes notified are credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay as other electronic modes of payment [CBDT Notification No. 8/2020 dated 29.01.2020].

(III) If the stamp duty value of immovable property is disputed by the assessee, the Assessing Officer may refer the valuation of such property to a Valuation Officer. If such value is less than the stamp duty value, the same would be taken for determining the value of such property, for computation of income under this head in the hands of the buyer.

(iv) Movable Property [Property, other than immovable property]:

If movable property is received -

(a) Without consideration : The aggregate fair market value of such property on the date of receipt would be taxed as the income of the recipient, if it exceeds ₹ 50,000.

(b) For inadequate consideration : If the difference between the aggregate fair market value and such consideration exceeds ₹ 50,000, such difference would be taxed as the income of the recipient.

(v) Applicability of section 56(2)(x) : The provisions of section 56(2)(x) would apply only to property which is the nature of a capital asset of the recipient and not stock-in-trade, raw material or consumable stores of any business of the recipient. Therefore, only transfer of a capital asset, without consideration or for inadequate consideration would attract the provisions of section 56(2)(x).

(vi) The table below summarizes the scheme of taxability of gifts -

	Nature of asset	Taxable value
1	Money	The whole amount if the same exceeds ₹ 50,000.
2	Movable property	<p>(i) Without consideration : The aggregate fair market value of the property, if it exceeds ₹ 50,000.</p> <p>(ii) Inadequate consideration : The difference between the aggregate fair market value and the consideration, if such difference exceeds ₹ 50,000.</p>
3	Immovable property	<p>(i) Without consideration : The stamp value of the property, if it exceeds ₹ 50,000.</p> <p>(ii) Inadequate consideration : The difference between the stamp duty value and the consideration, if such difference is more than the higher of ₹ 50,000 and 10% of consideration.</p>

(vii) Non-applicability of section 56(2)(x): However, any sum of money or value of property received, in the following circumstances would be outside the ambit of section 56(2)(x) :

- (a) from any relative; or
- (b) on the occasion of the marriage of the individual; or
- (c) under a will or by way of inheritance; or
- (d) in contemplation of death of the payer or donor, as the case may be; or

- (e) from any local authority; or
- (f) from any fund or foundation or university or other educational institution or hospital or other medical institution or any trust or institution; or
- (g) from or by any trust or institution registered; or
- (h) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution.
- (i) by way of transaction not regarded as transfer⁷ under section 47(i) / (iv) / (v) / (vi)/ (vib)/ (vid)/ (vii).
- (j) from an individual by a trust created or established solely for the benefit of relative of the individual.
- (k) from such class of persons and subject to such conditions, as may be prescribed.
- (l) by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to conditions notified by the Central Government

Accordingly, the Central Government has, vide Notification No. 91/2022 dated 5.8.2022, specified that for such purpose, the individual has to keep a record of the following documents, namely:-

- (a) the COVID-19 positive report of the individual or his family member, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an in-patient facility by a treating physician for a person so admitted;
- (b) all necessary documents of medical diagnosis or treatment of the individual or family member due to COVID-19 or illness related to COVID-19 suffered within 6 months from the date of being determined as a COVID-19 positive;

The details of the amount so received in any financial year has to be furnished in the prescribed form to the Income-tax Department within 9 months from the end of such financial year.

- (m) by a member of the family of a deceased person -
 - (a) from the employer of the deceased person (without any limit); or
 - (b) from any other person or persons to the extent that such sum or aggregate of such sums \leq ₹ 10 lakhs,

where the cause of death of such person is illness related to COVID-19 and the payment is :

- (i) received within 12 months from the date of death of such person; and
- (ii) subject to such other conditions notified by the Central Government.

Accordingly, the Central Government has, vide Notification No. 92/2022 dated 5.8.2022, specified the following conditions -

- (1) (i) the death of the individual should be within 6 months from the date of testing positive or from the date of being clinically determined as a COVID-19 case, for which any sum of money has been received by the member of the family;
- (ii) the family member of the individual has to keep a record of the following documents,
 - (a) the COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an inpatient facility by a treating physician;

(b) a medical report or death certificate issued by a medical practitioner or a Government civil registration office, in which it is stated that death of the person is related to corona virus disease (COVID-19).

(2) The details of such amount received in any financial year has to be furnished in the prescribed form to the Assessing Officer within 9 months from the end of such financial year.

(viii) Meaning of certain terms :

Term	Meaning
Property	<p>A capital asset of the assessee, namely,-</p> <ul style="list-style-type: none"> (a) immovable property being land or building or both, (b) shares and securities, (c) jewellery, (d) archaeological collections, (e) drawings, (f) paintings, (g) sculptures, (h) any work of art or (i) bullion. (j) It also includes virtual digital asset.
Relative	<p>(a) In case of an individual -</p> <ul style="list-style-type: none"> (i) spouse of the individual; (ii) brother or sister of the individual; (iii) brother or sister of the spouse of the individual; (iv) brother or sister of either of the parents of the individual; (v) any lineal ascendant or descendant of the individual; (vi) any lineal ascendant or descendant of the spouse of the individual; (vii) spouse of any of the persons referred in (i) to (vi) above. <p>(b) In case of Hindu Undivided Family, any member thereof.</p>
Family	<p><i>For the purpose of (l) and (m) in page 3.498, family in relation to an individual means</i></p> <ul style="list-style-type: none"> (i) <i>the spouse and children of the individual; and</i> (ii) <i>the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual.</i>

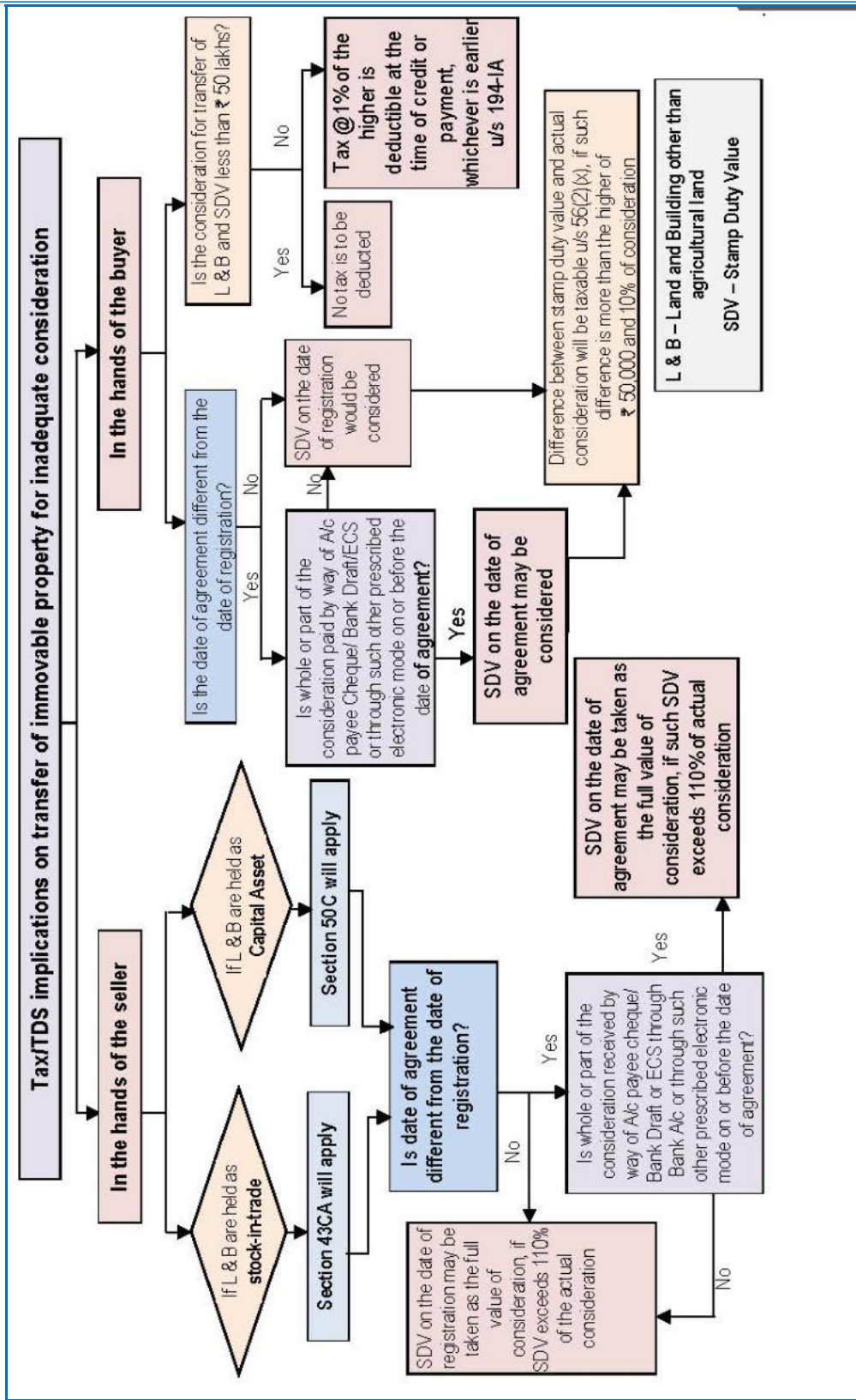


ILLUSTRATION 2 :

Mr. A, a dealer in shares, received the following without consideration during the P.Y. 2023-24 from his friend Mr. B, -

- (1) Cash gift of ₹ 75,000 on his anniversary, 15th April, 2023.
- (2) Bullion, the fair market value of which was ₹ 60,000, on his birthday, 19th June, 2023.

(3) A plot of land at Faridabad on 1st July, 2023, the stamp value of which is ₹ 5 lakh on that date. Mr. B had purchased the land in April, 2009.

Mr. A purchased from his friend Mr. C, who is also a dealer in shares, 1000 shares of X Ltd. @ ₹ 400 each on 19th June, 2023, the fair market value of which was ₹ 600 each on that date. Mr. A sold these shares in the course of his business on 23rd June, 2023.

Further, on 1st November, 2023, Mr. A took possession of property (office building) booked by him two years back at ₹ 20 lakh. The stamp duty value of the property as on 1st November, 2023 was ₹ 32 lakh and on the date of booking was ₹ 23 lakh. He had paid ₹ 1 lakh by account payee cheque as down payment on the date of booking.

On 1st March, 2024, he sold the plot of land at Faridabad for ₹ 7 lakh.

Compute the income of Mr. A chargeable under the head "Income from other sources" and "Capital Gains" for A.Y. 2024-25.

SOLUTION :

Computation of "Income from other sources" of Mr. A for the A.Y. 2024-25

Particulars	₹
(1) Cash gift is taxable under section 56(2)(x), since it exceeds ₹ 50,000	75,000
(2) Since bullion is included in the definition of property, therefore, when bullion is received without consideration, the same is taxable, since the aggregate fair market value exceeds ₹ 50,000	60,000
(3) Stamp value of plot of land at Faridabad, received without consideration, is taxable under section 56(2)(x)	5,00,000
(4) Difference of ₹ 2 lakh in the value of shares of X Ltd. purchased from Mr. C, a dealer in shares, is not taxable as it represents the stock-in-trade of Mr. A. Since Mr. A is a dealer in shares and it has been mentioned that the shares were subsequently sold in the course of his business, such shares represent the stock-in-trade of Mr. A.	-
(5) Difference between the stamp duty value of ₹ 23 lakh on the date of booking and the actual consideration of ₹ 20 lakh paid is taxable under section 56(2)(x) since the difference exceeds ₹ 2,00,000, being the higher of ₹ 50,000 and 10% of consideration	3,00,000
Income from Other Sources	9,35,000

Computation of "Capital Gains" of Mr. A for the A.Y.2024-25

Particulars	₹
Sale Consideration	7,00,000
Less :Cost of acquisition [deemed to be the stamp value charged to tax under section 56(2)(x) as per section 49(4)]	5,00,000
Short-term capital gains	2,00,000

Note – The resultant capital gains will be short-term capital gains since for calculating the period of holding, the period of holding of previous owner is not to be considered.

ILLUSTRATION 3 :

Discuss the taxability or otherwise of the following in the hands of the recipient under section 56(2)(x) the Income-tax Act, 1961 -

- (i) Akhil HUF received ₹ 75,000 in cash from niece of Akhil (i.e., daughter of Akhil's sister). Akhil is the Karta of the HUF.
- (ii) Nitisha, a member of her father's HUF, transferred a house property to the HUF without consideration. The stamp duty value of the house property is ₹ 9,00,000.
- (iii) Mr. Akshat received 100 shares of A Ltd. from his friend as a gift on occasion of his 25th marriage anniversary. The fair market value on that date was ₹ 100 per share. He also received jewellery worth ₹ 45,000 (FMV) from his nephew on the same day.
- (iv) Kishan HUF gifted a car to son of Karta for achieving good marks in XII board examination. The fair market value of the car is ₹ 5,25,000.

SOLUTION :

	Taxable/ Non-taxable	Amount liable to tax (₹)	Reason
(i)	Taxable	75,000	Sum of money exceeding ₹ 50,000 received without consideration from a non-relative is taxable under section 56(2)(x). Daughter of Mr. Akhil's sister is not a relative of Akhil HUF, since she is not a member of Akhil HUF.
(ii)	Non-taxable	Nil	Immovable property received without consideration by a HUF from its relative is not taxable under section 56(2)(x). Since Nitisha is a member of the HUF, she is a relative of the HUF. However, income from such asset would be included in the hands of Nitisha under 64(2).
(iii)	Taxable	55,000	As per provisions of section 56(2)(x), in case the aggregate fair market value of property, other than immovable property, received without consideration exceeds ₹ 50,000, the whole of the aggregate value shall be taxable. In this case, the aggregate fair market value of shares (₹ 10,000) and jewellery (₹ 45,000) exceeds ₹ 50,000. Hence, the entire amount of ₹ 55,000 shall be taxable.
(iv)	Non-taxable	Nil	Car is not included in the definition of property for the purpose of section 56(2)(x), therefore, the same shall not be taxable.

ILLUSTRATION 4 :

Mr. Hari, a property dealer, sold a building in the course of his business to his friend Mr. Rajesh, who is a dealer in automobile spare parts, for ₹ 90 lakh on 1.1.2024, when the stamp duty value was ₹ 150 lakh. The agreement was, however, entered into on 1.9.2023 when the stamp duty value was ₹ 140 lakh. Mr. Hari had received a down payment of ₹ 15 lakh by a crossed cheque from Rajesh on the date of agreement. Discuss the tax implications in the hands of Hari and Rajesh, assuming that Mr. Hari has purchased the building for ₹ 75 lakh on 12th July, 2022. *Would your answer be different if Hari was a share broker instead of a property dealer ?*

SOLUTION :**Case 1 : Tax implications if Mr. Hari is a property dealer**

In the hands of the seller, Mr. Hari	In the hands of the buyer, Mr. Rajesh
<p>In the hands of Hari, the provisions of section 43CA would be attracted, since the building represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value; and the stamp duty value exceeds 110% of consideration.</p> <p>Under section 43CA, the option to adopt the stamp duty value on the date of agreement can be exercised only if whole or part of the consideration has been received on or before the date of agreement by way of account payee cheque or draft or by use of ECS through a bank account or through credit card, debit card, net banking,</p> <p>IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay on or before the date of agreement. In this case, since the down payment of ₹ 15 lakh is received on the date of agreement by crossed cheque and not account payee cheque, the option cannot be exercised.</p> <p>Therefore, ₹ 75 lakh, being the difference between the stamp duty value on the date of transfer i.e., ₹ 150 lakh, and the purchase price i.e., ₹ 75 lakh, would be chargeable as Business income in the hands of Mr. Hari, since stamp duty value exceeds 110% of the consideration</p>	<p>Since Mr. Rajesh is a dealer in automobile spare parts, the building purchased would be a capital asset in his hands. The provisions of section 56(2)(x) would be attracted in the hands of Mr. Rajesh who has received immovable property, being a capital asset, for inadequate consideration and the difference between the consideration and stamp duty value exceeds ₹ 9,00,000, being the higher of ₹ 50,000 and 10% of consideration.</p> <p>Therefore, ₹ 60 lakh, being the difference between the stamp duty value of the property on the date of registration (i.e., ₹ 150 lakh) and the actual consideration (i.e., ₹ 90 lakh) would be taxable under section 56(2)(x) in the hands of Mr. Rajesh, since the payment on the date of agreement is made by crossed cheque and not account payee cheque/draft or ECS or through credit card, debit card, net banking,</p> <p>IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay.</p>

Case 2 : Tax implications if Mr. Hari is a share broker

In the hands of the seller, Mr. Hari	In the hands of the buyer, Mr. Rajesh
<p>In case Mr. Hari is a share broker and not a property dealer, the building would represent his capital asset and not stock-in-trade. In such a case, the provisions of section 50C would be attracted in the hands of Mr. Hari, since building is transferred for a consideration less than the stamp duty value; and the stamp duty value exceeds 110% of consideration.</p> <p>Thus, ₹ 75 lakh, being the difference between the stamp duty value on the date of registration (i.e., ₹ 150 lakh) and the purchase price (i.e., ₹ 75 lakh)</p>	<p>There would be no difference in the taxability in the hands of Mr. Rajesh, whether Mr. Hari is a property dealer or a stock broker.</p> <p>Therefore, the provisions of section 56(2)(x) would be attracted in the hands of Mr. Rajesh who has received immovable property, being a capital asset, for inadequate consideration and the difference between the consideration and stamp duty value exceeds ₹ 9,00,000, being the higher of ₹ 50,000 and 10% of consideration.</p>

In the hands of the seller, Mr. Hari	In the hands of the buyer, Mr. Rajesh
<p>would be chargeable as short-term capital gains.</p> <p>It may be noted that under section 50C, the option to adopt the stamp duty value on the date of agreement can be exercised only if whole or part of the consideration has been received on or before the date of agreement by way of account payee cheque or draft or by use of ECS through a bank account or through credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay on or before the date of agreement. In this case, since the down payment of ₹ 15 lakhs has been received on the date of agreement by crossed cheque and not account payee cheque, the option cannot be exercised.</p>	<p>Therefore, ₹ 60 lakh, being the difference between the stamp duty value of the property on the date of registration (i.e., ₹ 150 lakh) and the actual consideration (i.e., ₹ 90 lakh) would be taxable under section 56(2)(x) in the hands of Mr. Rajesh, since the payment on the date of agreement is made by crossed cheque and not account payee cheque/draft or ECS or through credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay.</p>

(7) Compensation or any other payment received in connection with termination of his employment [Section 56(2)(xi)]

Any compensation or any other payment, due to or received by any person, by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto shall be chargeable to tax under this head.

(8) Sum received, including the amount allocated by way of bonus, under a LIP other than under a ULIP and keyman insurance policy, which is not exempt u/s 10(10D) [Section 56(2)(xii)]

Any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy would not be included in the total income of a person [Section 10(10D)].

The following table summarizes the exemption available under section 10(10D) *vis-a-vis* the date of issue of such policies and the corresponding condition to be satisfied for exemption -

	Exemption u/s 10(10D)
In respect of policies issued before 1.4.2003	Any sum received under a LIP including the sum allocated by way of bonus is exempt.
In respect of policies issued between 1.4.2003 & 31.3.2012	Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 20% of "actual capital sum assured".
In respect of policies issued on or after 1.4.2012 but before 1.4.2013	Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% of actual capital sum assured.

In respect of policies issued on or after 1.4.2013	(a) Where the insurance is on the life of a person with disability or severe disability as referred to in section 80U or a person suffering from disease or ailment as specified under section 80DDB.
	(b) Where the insurance is on the life of any person, other than mentioned in (a) above
	Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 15% of “actual capital sum assured”
In respect of policies issued on or after 1.4.2023	<p>Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% or 15%, as the case may be, of “actual capital sum assured.</p> <p>Further, exemption would also not be available if the amount of premium payable exceeds ₹ 5,00,000 for any of the previous years during the term of such policy.</p> <p>In a case where premium is payable by a person for more than one LIP (other than ULIP) and the aggregate of premium payable on such policies exceed ₹ 5,00,000 for any of the previous years during the term of any such policy(ies), exemption would be available in respect of any of those LIPs (other than ULIP), at the option of the assessee, whose aggregate premium payable does not exceed ₹ 5,00,000 for any of the previous years during their term.</p>

Any sum is received on the death of a person is exempt irrespective of the annual premium payable on the policy. The condition of payment of premium of 10% or 15% or 20% or ₹ 5,00,000 would not be applicable.

- **Exemption is not available in respect of amount received from an insurance policy taken for disabled person under section 80DD :** Any sum received under section 80DD(3) shall not be exempt under section 10(10D). Accordingly, if the dependent disabled, in respect of whom an individual or the member of the HUF has paid or deposited any amount in any scheme of LIC or any other insurer, predeceases the individual or the member of the HUF, the amount so paid or deposited shall be deemed to be the income of the assessee of the previous year in which such amount is received. Such amount would not be exempt u/s 10(10D).
- **Exemption is not available in respect of the sum received under a Keyman insurance policy :** Any sum received under a Keyman insurance policy shall also not be exempt.
- *Explanation 1* to section 10(10D) defines “Keyman insurance policy” as a life insurance policy taken by one person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person. The term includes

within its scope a keyman insurance policy which has been assigned to any person during its term, with or without consideration. Therefore, such policies shall continue to be treated as a keyman insurance policy even after the same is assigned to the keyman. Consequently, the sum received by the keyman on such policies, being “keyman insurance policies”, would not be exempt u/s 10(10D).

- **Taxability of sum received under a LIP which is not exempt u/s 10(10D)** Where any sum is received (including the amount allocated by way of bonus) at any time during a previous year, under a life insurance policy, other than the sum

- (i) received under a ULIP
- (ii) received under a Keyman insurance policy

which is not exempt under section 10(10D), the sum so received as exceeds the aggregate of the premium paid during the term of such life insurance policy, and not claimed as deduction under any other provision of the Act, computed in the prescribed manner, would be chargeable to tax under the head “Income from other sources”.

- (ii) Income chargeable under the head “Income from other sources” only if not chargeable under the head “Profits and gains of business or profession” -**

- (1) Any sum received by an employer-assessee from his employees as contributions to any provident fund, superannuation fund or any other fund for the welfare of the employees
- (2) Income from letting out on hire, machinery, plant or furniture.
- (3) Where letting out of buildings is inseparable from the letting out of machinery, plant or furniture, the income from such letting.
- (4) Interest on securities

However, certain interest income arising to certain persons would be exempt under section 10(15), for example, :

- (i) Income by way of interest, premium on redemption or other payment on notified securities, bonds, annuity certificates or other savings certificates is exempt subject to such conditions and limits as may be specified in the notification.

It may be noted that interest on Post Office Savings Bank Account which was so far fully exempt would henceforth be exempt from tax for any assessment year only to the extent of:

- (1) ₹ 3,500 in case of an individual account.
- (2) ₹ 7,000 in case of a joint account.

- (ii) Interest on Gold Deposit Bond issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetization Scheme, 2015 notified by the Central Government.

- (iii) Interest on bonds, issued by –

- (1) a local authority; or
- (2) a State Pooled Finance Entity

and specified by the Central Government by notification in the Official Gazette.

“**State Pooled Finance Entity**” means such entity which is set up in accordance with the guidelines for the Pooled Finance Development Scheme notified by the Central Government in the Ministry of Urban Development.

- (iii) Keyman Insurance Policy :**

Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy is chargeable under the head “Income from other sources” if such income is not chargeable

under the head “Profits and gains if business or profession” or under the head “Salaries” i.e. if such sum is received by any person other than the employer who took the policy and the employee in whose name the policy was taken.

(iv) Residual Income :

Any income chargeable to tax under the Act, but not falling under any other head of income shall be chargeable to tax under the head “Income from other sources”.

For example, salary received by an MPs/MLAs will not be chargeable to income-tax under the head ‘Salary’ but will be chargeable as “Income from other sources” under section 56. However, the following incomes of Members of Parliament or State Legislatures will be exempt under section 10(17):

- (i) Daily Allowance** - Daily allowance received by any Member of Parliament or of any State Legislatures or any Committee thereof.
- (ii) Constituency Allowance of MPs** - In the case of a Member of Parliament, any allowance received under Members of Parliament (Constituency Allowance) Rules, 1986; and
- (iii) Constituency allowance of MLAs** - Any constituency allowance received by any person by reason of his membership of any State Legislature under any Act or rules made by that State Legislature.

There are other exemptions also in respect of certain incomes which are as follows :

1. Interest on moneys standing to the credit of individual in his NRE A/c [Section 10(4)(ii)] :

- As per section 10(4)(ii), in the case of an individual, any income by way of interest on moneys standing to his credit in a Non-resident (External) Account (NRE A/c) in any bank in India in accordance Foreign Exchange Management Act, 1999 (FEMA, 1999), and the rules made thereunder, would be exempt, provided such individual;
 - is a person resident outside India, as defined in FEMA, 1999, or
 - is a person who has been permitted by the Reserve Bank of India to maintain such account.
- In this context, it may be noted that the joint holders of the NRE Account do not constitute an AOP by merely having these accounts in joint names. The benefit of exemption under section 10(4)(ii) will be available to such joint account holders, subject to fulfillment of other conditions contained in that section by each of the individual joint account holders.

2. Compensation received on account of disaster [Section 10(10BC)]

- (i) This clause exempts any amount received or receivable as compensation by an individual or his legal heir on account of any disaster.
- (ii) Such compensation should be granted by the Central Government or a State Government or a local authority.
- (iii) However, exemption would not be available in respect of compensation for alleviating any damage or loss, which has already been allowed as deduction under the Act.
- (iv) "Disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence. It should have the effect of causing -
 - (a) substantial loss of life or human suffering; or
 - (b) damage to, and destruction of, property; or
 - (c) damage to, or degradation of, environment.

It should be of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

ILLUSTRATION 5 :

Compensation on account of disaster received from a local authority by an individual or his/her legal heir is taxable. Examine the correctness of the statement with reference to the provisions of the Income-tax Act, 1961.

SOLUTION :

The statement is **not** correct. As per section 10(10BC), any amount received or receivable as compensation by an individual or his/her legal heir on account of any disaster from the Central Government, State Government or a local authority is exempt from tax. However, the exemption is not available to the extent such individual or legal heir has already been allowed a deduction under this Act on account of such loss or damage caused by such disaster.

1. Educational scholarships [Section 10(16)] :

The value of scholarship granted to meet the cost of education would be exempt from tax in the hands of the recipient irrespective of the amount or source of scholarship.

4. Awards for literary, scientific and artistic works and other awards by the Government [Section 10(17A)]

Any award instituted in the public interest by the Central/State Government or by any other body approved by the Central Government and a reward by Central/State Government for such purposes as may be approved by the Central Government in public interest, will enjoy exemption under this clause.

5. Payment in commutation of pension received from a set up by LIC [Section 10(10A)]

Any commuted pension received by an individual from a fund set up by LIC of India, approved by Controller of Insurance or IRDA of India will be exempted.

Interest from non-SLR Securities of Banks: Whether chargeable under the head "Profits and gains of business or profession" or "Income from other sources"? [Circular No. 18, dated 2.11.2015]

The issue addressed by this circular is whether in the case of banks, expenses relating to investment in non-SLR securities need to be disallowed under section 57(i), by considering interest on non-SLR securities as "Income from other sources."

Section 56(1)(id) provides that income by way of interest on securities shall be chargeable to income-tax under the head "Income from Other Sources", if the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession".

The CBDT clarified that the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession".

5.4 APPLICABLE RATE OF TAX IN RESPECT OF CASUAL INCOME OTHER THAN WINNINGS FROM ANY ONLINE GAME [SECTION 115BB]

- (i) This section provides that income by way of winnings from lotteries, crossword puzzles, races including horse races or card games and other games of any sort or from gambling or betting of any form would be taxed at a flat rate of 30% *plus* surcharge, if applicable, *plus* health and education cess@4%.
- (ii) However, income by way of winnings from any online game would not be taxed under this section.
- (iii) No expenditure or allowance can be allowed from such income.
- (iv) Deduction under Chapter VI-A is not allowable from such income.
- (v) Adjustment of unexhausted basic exemption limit is also not permitted against such income.

5.5 APPLICABLE RATE OF TAX IN RESPECT OF WINNINGS FROM ONLINE GAMES [SECTION 115BBJ]

- (i) This section provides that net winnings from any online game would be taxed at a flat rate of 30% plus surcharge, if applicable, plus health and education cess@4%.
- (ii) Meaning of online games:** A game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device
- (iii) No expenditure or allowance can be allowed from such income.
- (iv) Deduction under Chapter VI-A is not allowable from such income.
- (v) Adjustment of unexhausted basic exemption limit is also not permitted against such income.

5.6 DEDUCTIONS ALLOWABLE [SECTION 57]

The income chargeable under the head “Income from other sources” shall be computed after making the following deductions :

- (i) In the case of dividend or income in respect of units of a mutual fund⁹ or income in respect of units of a specified company¹⁰:** Interest expenditure to earn such income is allowed as deduction subject to a maximum of 20% of such income included in the total income, without deduction under this section.
- (ii) In the case of interest on securities:** Any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such interest on behalf of the assessee.
- (iii) Income consists of recovery from employees as contribution to any provident fund etc. in terms of section 2(24)(x):** A deduction will be allowed in accordance with the provisions of section 36(1)(va) i.e., to the extent the contribution is remitted before the due date under the respective Acts.
- (iv) Where the income to be charged under this head is from letting on hire of machinery, plant and furniture, with or without building:** The following items of deductions are allowable in the computation of such income :
 - (a) the amount paid on account of any current repairs to the machinery, plant, furniture or building.
 - (b) the amount of any premium paid in respect of insurance against risk of damage or destruction of the machinery or plant, furniture or building.
 - (c) the normal depreciation allowance in respect of the machinery, plant or furniture, due thereon.
- (v) In the case of income in the nature of family pension:** A deduction of a sum equal to 33-1/3 per cent of such income or ₹ 15,000, whichever is less, is allowable. From A.Y.2024-25, this deduction is allowable both under the default tax regime u/s 115BAC and under the optional tax regime i.e., normal provisions of the Act.

For the purposes of this deduction, “family pension” means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death.

Exemption in respect of family pension

- (i) The family pension received by the widow or children or nominated heirs, of a member of the armed forces (including para-military forces) of the Union, where the death of such member has occurred in the course of operational duties, in specified circumstances would, however, be exempt under section 10(19).
- (ii) The family pension received by any member of the family of an individual who had been in the service of Central or State Government and had been awarded “Param Vir Chakra” or “Maha Vir Chakra” or “Vir Chakra” or other notified gallantry awards would be exempt u/s 10(18)(ii).

- (vi) **Any other expenditure not being in the nature of capital expenditure** laid out or expended wholly and exclusively for the purpose of making or earning such income.
- (vii) **In case of income by way of interest on compensation/ enhanced compensation received chargeable to tax under section 56(2)(viii):** Deduction of 50% of such income. No deduction would be allowable under any other clause of section 57 in respect of such income.

ILLUSTRATION 6 :

Interest on enhanced compensation received by Mr. G during the previous year 2023-24 is ₹ 5,00,000. Out of this interest, ₹ 1,50,000 relates to the previous year 2019-20, ₹ 1,65,000 relates to previous year 2020-21 and ₹ 1,85,000 relates to previous year 2021-22. Discuss the tax implication, if any, of such interest income for A.Y.2024-25.

SOLUTION :

The entire interest of ₹ 5,00,000 would be taxable in the year of receipt, namely, P.Y. 2023-24.

Particulars	₹
Interest on enhanced compensation taxable u/s 56(2)(viii)	5,00,000
Less: Deduction under section 57(iv) @50%	2,50,000
Interest chargeable under the head "Income from other sources"	2,50,000

5.7 DEDUCTIONS NOT ALLOWABLE [SECTION 58]

No deduction shall be made in computing the "Income from other sources" of an assessee in respect of the following items of expenses :

(i) In the case of any assessee :

- (1) any personal expense of the assessee;
- (2) any interest chargeable to tax under the Act which is payable outside India on which tax has not been paid or deducted at source.
- (3) any payment chargeable to tax under the head "Salaries", if it is payable outside India unless tax has been paid thereon or deducted at source.

(ii) Any expenditure in respect of which a payment is made to a related person:

In addition to these disallowances, section 58(2) specifically provides that the disallowance of any expenditure in respect of which a payment is made to a related person, to the extent the same is considered excessive or unreasonable by the Assessing Officer, having regard to the FMV and disallowance of payment or aggregate of payments exceeding ₹ 10,000 or ₹ 35,000, as the case may be, made to a person during a day otherwise than by account payee cheque or draft or ECS through bank account or through such other prescribed electronic mode such as credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT, and BHIM Aadhar Pay covered by section 40A will be applicable to the computation of income under the head 'Income from other sources' as well.

(iii) Disallowance of 30% of expenditure :

30% of expenditure shall not be allowed, in respect of a sum which is payable to a resident and on which tax is deductible at source, if

- such tax has not been deducted or;
- such tax after deduction has not been paid on or before the due date of return specified in section

139(1).

In case, assessee fails to deduct the whole or any part of tax on any such sum but is not deemed as assessee in default under the first proviso to section 201(1) by reason that such payee –

- (i) has furnished his return of income under section 139;
- (ii) has taken into account such sum for computing income in such return of income; and
- (iii) has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed, it would be deemed that the assessee has deducted and paid the tax on such sum.

The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the payee.

(iv) No deduction in respect of any expenditure incurred in connection with casual income :

No deduction in respect of any expenditure or allowance in connection with income by way of earnings from lotteries, cross word puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever shall be allowed in computing the said income.

The prohibition will not, however, apply in respect of the income of an assessee, being the owner of race horses, from the activity of owning and maintaining such horses. In respect of the activity of owning and maintaining race horses, expenses incurred shall be allowed even in the absence of any stake money earned. Such loss shall be allowed to be carried forward in accordance with the provisions of section 74A.

5.8 DEEMED INCOME CHARGEABLE TO TAX [SECTION 59]

The provisions of section 41(1) are made applicable, so far as may be, to the computation of income under this head. Accordingly, where a deduction has been made in respect of a loss, expenditure or liability and subsequently any amount is received or benefit is derived in respect of such expenditure incurred or loss or trading liability allowed as deduction, then, it shall be deemed as income in the year in which the amount is received or the benefit is accrued.

LET US RECAPITULATE

Where any income, profits or gains includible in the total income of an assessee, cannot be included under any of the other heads, it would be chargeable under the head 'Income from other sources'. Hence, this head is the residuary head of income [Section 56(1)]

Specific Incomes Chargeable under this head [Section 56(2)] :

- (1) Dividend Income
- (2) Casual income (winnings from lotteries, cross word puzzles, races including horse races, card games and other games, gambling, betting etc.). Such winnings are chargeable to tax at a flat rate of 30% under section 115BB and in case of online games, net winnings therefrom is chargeable to tax @30% u/s 115BBJ and no expenditure or deduction under Chapter VIA can be allowed from such income. No loss can be set-off against such income and even the unexhausted basic exemption limit cannot be exhausted against such income.

(iii) Sum of money or property received by any person [Section 56(2)(x)] :

	Nature of asset	Particulars	Taxable value
1	Money	Without consideration	The whole amount, if the same exceeds ₹ 50,000.
2	Movable property	Without consideration	The aggregate fair market value of the property, if it exceeds ₹ 50,000.
3	Movable property	Inadequate consideration	The difference between the aggregate fair market value and the consideration, if such difference exceeds ₹ 50,000.
4	Immovable property	Without consideration	The stamp value of the property, if it exceeds ₹ 50,000.
5	Immovable property	Inadequate consideration	The difference between the stamp duty value and the consideration, if such difference exceeds the higher of ₹ 50,000 and 10% of consideration.

Receipts exempted from the applicability of section 56(2)(x) :

Any sum of money or value of property received -

- (a) from any relative; or
- (b) on the occasion of the marriage of the individual; or
- (c) under a will or by way of inheritance; or
- (d) in contemplation of death of the payer or donor, as the case may be; or
- (e) from any local authority; or
- (f) from any fund or university or other educational institution or hospital or other medical institution or any trust or institution; or
- (g) from or by any registered trust or institution
- (h) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution.
- (i) by way of transaction not regarded as transfer under specified clauses of section 47
- (j) from an individual by a trust created or established solely for the benefit of relative of the individual.
- (k) from such class of persons and subject to such conditions, as may be prescribed.
- (l) by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to conditions notified by the Central Government
- (m) by a member of the family of a deceased person -
 - (i) from the employer of the deceased person (without any limit); or
 - (ii) from any other person or persons to the extent that such sum or aggregate of such sums \leq ₹ 10 lakhs,
where the cause of death of such person is illness related to COVID-19 and the payment is—
 - (i) received within 12 months from the date of death of such person; and
 - (ii) subject to such other conditions notified by the Central Government.

(4) Other receipts chargeable under this head :

Section	Provision
56(2)(viib)	Consideration received in excess of FMV of shares issued by a closely held company to any person, to be treated as income of such company, where shares are issued at a premium
56(2)(viii)	Interest received on compensation/enhanced compensation deemed to be income in the year of receipt and taxable under the head "Income from Other Sources".
56(2)(ix)	Any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if such sum is forfeited and the negotiations do not result in transfer of such asset (in a case where advance is received and forfeited on or after 1.4.2014).
56(2)(xi)	Compensation or other payment, due to or received by any person, by whatever name called, in connection with termination of his employment or the modification of the terms and conditions relating thereto.
56(2)(xii)	Sum received, including the amount allocated by way of bonus, under a LIP other than under a ULIP and keyman insurance policy, which is not exempt u/s 10(10D).

Exemptions [Section 10]

Section	Provision
10(4)(ii)	Income by way of interest on moneys standing to his credit in a Non-resident (External) Account (NRE A/c) , is exempt in the hands of an individual, being a person resident outside India as per the FEMA, 1999 or in the hands of an individual who has been permitted by the RBI to maintain such account.
10(10BC)	Compensation received or receivable from the Central Government, State Government or local authority by an individual or his legal heir on account of any disaster is exempt except to the extent of loss or damage allowed as deduction under the Act.
10(16)	The value of scholarship granted to meet the cost of education would be exempt from tax in the hands of the recipient irrespective of the amount or source of scholarship.
10(17)	Daily allowance and Constituency allowance received by any Member of Parliament or of State Legislatures is exempt.
10(17A)	Payment, whether in cash or kind, in pursuance of an award instituted in public interest by the Govt or reward by the Govt. for approved purposes is exempt.
10(10A)	Any commuted pension received by an individual from a fund set up by LIC of India or any other insurer under a pension scheme, approved by Controller of Insurance or IRDA of India will be exempted.

Deductions allowable [Section 57]

S. No.	Particulars	Deduction
1.	In case of dividend or income in respect of units of mutual fund or income in respect of units from a specified company	Interest expenditure to earn such income. However, such interest expenses cannot exceed 20% of such income included in total income, without deduction under this section.
2.	In case of interest on securities	Any reasonable sum paid by way of commission or remuneration to a banker or any other person.
3.	Income consists of recovery from employees as contribution to any PF, superannuation fund etc.	Amount of contribution remitted before the due date under the respective Acts, in accordance with the provisions of section 36(1)(va)
4.	Income from letting on hire of machinery, plant and furniture, with or without building	Current repairs to the machinery, plant, furniture or building, insurance premium, depreciation/unabsorbed depreciation
5.	Family Pension	Sum equal to : - 33 1/3% of such income or - ₹ 15,000, whichever is less
6.	Interest on compensation/ enhanced compensation received	50% of such interest income

Deductions not allowable [Section 58]

S. No.	Deductions not allowable
1.	Any personal expense of the assessee
2.	Any interest chargeable to tax under the Act which is payable outside India on which tax has not been paid or deducted at source.
3.	Any payment chargeable to tax under the head "Salaries", if it is payable outside India unless tax has been paid thereon or deducted at source.
4.	Any expenditure in respect of which a payment is made to a related person, to the extent the same is considered excessive or unreasonable by the Assessing Officer, having regard to the FMV.
5.	Any expenditure in respect of which a payment or aggregate payments exceeding ₹ 10,000 is made to a person in a day otherwise than by account payee cheque or draft or ECS through bank account or through such other prescribed electronic mode such as credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT, and BHIM Aadhar Pay.
6.	Any expenditure or allowance in connection with income by way of earnings from lotteries, cross word puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature
7.	30% of expenditure in respect of sum which is payable to a resident on which tax is deductible at source, if such tax has not been deducted or after deduction has not been paid on or before the due date of return specified in section 139(1)

TEST YOUR KNOWLEDGE

1. Examine under which heads the following incomes are taxable :
 - (i) Rental income in case property held as stock-in-trade for 3 years
 - (ii) Salary received by a partner from his partnership firm
 - (iii) Rental income of machinery
 - (iv) Winnings from lotteries by a person having the same as business activity
 - (v) Salaries received by a Member of Parliament
 - (vi) Receipts without consideration
 - (vii) In case of retirement, interest on employee's contribution if provident fund is unrecognized.
 - (viii) Rental income in case of a person engaged in the business of letting out of properties.

2. Examine whether the following are chargeable to tax and the amount liable to tax :
 - (i) A sum of ₹ 1,20,000 was received as gift from non-relatives by Raj on the occasion of the marriage of his son Pravin.
 - (ii) Interest on enhanced compensation of ₹ 96,000 received on 12-3-2024 for acquisition of urban land, of which 40% relates to P.Y.2022-23.

3. On 10.10.2023, Mr. Govind (a bank employee) received ₹ 5,00,000 towards interest on enhanced compensation from State Government in respect of compulsory acquisition of his land effected during the financial year 2015-16.
 Out of this interest, ₹ 1,50,000 relates to the financial year 2016-17; ₹ 1,65,000 to the financial year 2017-18; and ₹ 1,85,000 to the financial year 2018-19. He incurred ₹ 50,000 by way of legal expenses to receive the interest on such enhanced compensation.
 How much of interest on enhanced compensation would be chargeable to tax in the A.Y.2024-25?

4. The following details have been furnished by Mrs. Hemali pertaining to the year ended 31.3.2024 :
 - (i) Cash gift of ₹ 51,000 received from her friend on the occasion of her "Shastiaptha Poorthi", a wedding function celebrated on her husband completing 60 years of age. This was also her 25th wedding anniversary.
 - (ii) On the above occasion, a diamond necklace worth ₹ 2 lacs was presented by her sister living in Dubai.
 - (iii) When she celebrated her daughter's wedding on 21.2.2024, her friend assigned in Mrs. Hemali's favour, a fixed deposit held by the said friend in a scheduled bank; the value of the fixed deposit and the accrued interest on the said date was ₹ 52,000.
 Compute the income, if any, assessable as "Income from other sources" for A.Y.2024-25.

5. Examine the following transactions in the context of Income-tax Act, 1961:
 - (i) Mr. B transferred 500 shares of R (P) Ltd. to M/s. B Co. (P) Ltd. on 10.10.2023 for ₹ 3,00,000 when the fair market value was ₹ 5,00,000. The indexed cost of acquisition of shares for Mr. B was computed at ₹ 4,45,000. The transfer was not subjected to securities transaction tax.
 Determine the income chargeable to tax in the hands of Mr. B and M/s. B Co. (P) Ltd. because of the above said transaction.
 - (ii) Mr. Chezian is employed in a company with taxable salary income of ₹ 5,00,000. He received a sum of ₹ 1,00,000 from Atma Charitable Trust (registered under section 12AB) by account payee cheque in December 2023 for meeting his medical expenses.
 Is the sum of money so received from the trust chargeable to tax in the hands of Mr. Chezian?

ANSWERS

1. Head under which following incomes are taxable :

	Particulars	Head of Income
(i)	Rental income in case property held as stock-in trade for 3 years	Income from house property
(ii)	Salary by partner from his partnership firm	Profits and gains of business or profession
(iii)	Rental income of machinery (See Note below)	Profits and gains of business or profession/Income from other sources
(iv)	Winnings from lotteries by a person having the same as business activity	Income from other sources
(v)	Salaries payable to a Member of Parliament	Income from other sources
(vi)	Receipts without consideration	Income from other sources
(vii)	In case of retirement, interest on employee's contribution if provident fund is unrecognized	Income from other sources
(viii)	Rental income in case of a person engaged in the business of letting out of properties	Profits and gains from business or profession

Note : As per section 56(2)(ii), rental income of machinery would be chargeable to tax under the head "Income from Other Sources", if the same is not chargeable to income-tax under the head "Profits and gains of business or profession".

2. Taxability of Receipts

S. No.	Taxable/ Not Taxable	Answer Amount liable to tax (₹)	Reason
(i)	Taxable	1,20,000	The exemption from applicability of section 56(2)(x) would be available if, <i>inter alia</i> , gift is received from a relative or gift is received on the occasion of marriage of the individual himself. In this case, since gift is received by Mr. Raj from a non-relative on the occasion of marriage of his son, it would be taxable in his hands under section 56(2)(x).
(ii)	Taxable	48,000	As per section 145B(1), interest received by the assessee on enhanced compensation shall be deemed to be the income of the year in which it is received, irrespective of the method of accounting followed by the assessee. Interest of ₹ 96,000 on enhanced compensation is chargeable to tax in the year of receipt i.e. P.Y. 2023-24 under section 56(2)(viii) after providing deduction of 50% under section 57(iv). Therefore, ₹ 48,000 is chargeable to tax under the head "Income from other sources".

3. Section 145B provides that interest received by the assessee on enhanced compensation shall be deemed to be the income of the assessee of the year in which it is received, irrespective of the method of accounting followed by the assessee and irrespective of the financial year to which it relates.

Section 56(2)(viii) states that such income shall be taxable as 'Income from other sources'. 50% of such income shall be allowed as deduction by virtue of section 57(iv) and no other deduction shall be permissible from such Income.

Therefore, legal expenses incurred to receive the interest on enhanced compensation would not be allowed as deduction from such income.

Computation of interest on enhanced compensation taxable as "Income from other sources" for the

A.Y 2024-25 :

Particulars	₹
Interest on enhanced compensation taxable u/s 56(2)(viii)	5,00,000
Less: Deduction under section 57(iv) (50% x ₹ 5,00,000)	2,50,000
Taxable interest on enhanced compensation	2,50,000

4. (i) Any sum of money received by an individual on the occasion of the marriage of the individual is exempt. This provision is, however, not applicable to a cash gift received during a wedding function celebrated on completion of 60 years of age.

The gift of ₹ 51,000 received from a non-relative is, therefore, chargeable to tax under section 56(2)(x) in the hands of Mrs. Hemali, since the same exceeds ₹ 50,000.

- (ii) The provisions of section 56(2)(x) are not attracted in respect of any sum of money or property received from a relative. Thus, the gift of diamond necklace received from her sister, being a relative, is not taxable under section 56(2)(x), even though jewellery falls within the definition of "property".

- (iii) To be exempt from applicability of section 56(2)(x), the property should be received on the occasion of the marriage of the individual, not that of the individual's son or daughter. Therefore, this exemption provision is not attracted in this case.

Any sum of money received without consideration by an individual is chargeable to tax under section 56(2)(x), if the aggregate value exceeds ₹ 50,000 in a year. "Sum of money" has, however, not been defined under section 56(2)(x).

Therefore, there are two possible views in respect of the value of fixed deposit assigned in favour of Mrs. Hemali -

- (1) The first view is that fixed deposit does not fall within the meaning of "sum of money" and therefore, the provisions of section 56(2)(x) are not attracted. It may be noted that fixed deposit is also not included in the definition of "property".
- (2) However, another possible view is that fixed deposit assigned in favour of Mrs. Hemali falls within the meaning of "sum of money" received.

Income assessable as "Income from other sources"

If the first view is taken, the total amount chargeable to tax as "Income from other sources" would be ₹ 51,000, being cash gift received from a friend on her Shastiaptha Poorthi.

As per the second view, the provisions of section 56(2)(x) would also be attracted in respect of the fixed deposit assigned and the "Income from other sources" of Mrs. Hemali would be ₹ 1,03,000 (₹ 51,000 + ₹ 52,000).

5. (i) Any movable property received for inadequate consideration by any person is chargeable to tax under section 56(2)(x), if the difference between aggregate Fair Market Value of the property and consideration exceeds ₹ 50,000.

Thus, share received by M/s B. Co. (P) Ltd. from Mr B for inadequate consideration is chargeable to tax under section 56(2)(x) to the extent of ₹ 2,00,000.

As per section 50CA, since, the consideration is less than the fair market value of unquoted shares of R (P) Ltd., fair market value of shares of the company would be deemed to be the full value of consideration. It is presumed that the shares of R (P) Ltd are unquoted shares.

The full value of consideration (₹ 5,00,000) less the indexed cost of acquisition (₹ 4,45,000) would result in a long term capital gains of ₹ 55,000 in the hands of Mr. B.

- (ii) The provisions of section 56(2)(x) would not apply to any sum of money or any property received from any trust or institution registered under section 12AB. Therefore, the sum of ₹ 1 lakh received from Atma Charitable Trust, being a trust registered under section 12AB, for meeting medical expenses would not be chargeable to tax under section 56(2)(x) in the hands of Mr. Chezian.

Guidelines u/s 10(10D) of the Income-tax Act, 1961 [Circular No. 15/2023 dated 16.08.2023]

Section 10(10D) provides for exemption of the sum received under a life insurance policy, including the sum allocated by way of bonus on such policy subject to the condition that the annual premium does not exceed 10% of actual capital sum assured.

W.e.f. A.Y. 2024-25, section 10(10D) amended by the Finance Act, 2023 to provide that -

- (I) In case where an assessee has a single life insurance policy (other than ULIP) issued on or after 1.4.2023 - Exemption u/s 10(10D) would not be available with respect to any life insurance policy (other than ULIP) issued on or after 1.4.2023, if the amount of premium payable exceeds ₹ 5,00,000 for any of the previous years during the term of such life insurance policy.
- (II) In case where an assessee has multiple life insurance policies (other than ULIPs) issued on or after 1.4.2023 - In a case where premium is payable by a person for more than one life insurance policies (other than ULIPs) issued on or after 1.4.2023 and the aggregate of premium payable on such life insurance policies exceed ₹ 5,00,000 for any of the previous years during the term of any such LIP(s), exemption u/s 10(10D) would be available in respect of any of those LIPs, at the option of the assessee, whose aggregate premium payable does not exceed ₹ 5,00,000 for any of the previous years during their term. However, to get exemption u/s 10(10D), the condition of annual premium not exceeding 10% of the actual capital sum assured also needs to be satisfied.
- (III) Exemption in case of death of a person - In case any sum is received on the death of a person, exemption u/s 10(10D) would be available irrespective of the annual premium payable of the LIP.

Guidelines issued by the CBDT: In case any difficulty arises in giving effect to the provisions of this clause, the CBDT may issue guidelines for the purpose of removing the difficulty with the previous approval of the Central Government.

Accordingly, the CBDT has, with the approval of the Central Government, vide this circular, issued the following guidelines in respect of LIPs (other than ULIPs)-

Situation 1 : No sum of any nature including bonus (such sum hereinafter referred as “consideration”) is received by the assessee on any LIPs which are issued on or after 1.4.2023 (such LIPs hereinafter referred as “eligible LIPs”) during any previous year preceding the current previous year (being the P.Y. in which consideration is received and its taxability is being examined) or consideration has been received on such eligible LIPs in an earlier previous year but has not been claimed exempt. In such a situation, the exemption u/s 10(10D) would be determined as under:

I) Where the assessee has received consideration, during the current P.Y., under one eligible LIP only

Circumstance	Eligibility for exemption u/s 10(10D)
If the amount of premium payable on such eligible LIP does not exceed ₹ 5,00,000 for any of the PYs during the term of such eligible LIP and annual premium does not exceed 10% of actual capital sum assured	Such consideration would be eligible for exemption u/s 10(10D). [Refer Example 1 and 2 given below]
If the amount of premium payable on such eligible LIP > ₹ 5,00,000 for any of the PYs during the term of such eligible LIP	Such consideration would <u>not</u> be eligible for exemption u/s 10(10D). [Refer Example 3 given below]

Example 1 :

LIP	A
Date of issue	1.4.2013
Annual premium	6,00,000
Sum assured	60,00,000
Consideration received as on 01.11.2023 on maturity	70,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2023-24.	

Eligibility for exemption u/s 10(10D) - The consideration received under LIP “A” would be exempt u/s 10(10D) in A.Y. 2024-25 since annual premium does not exceed 10% of the actual capital sum assured. Moreover, as the policy has been issued before 1.4.2023, limit of ₹ 5,00,000 of amount of premium payable is not applicable, since it is not an eligible ULIP.

Example 2 :

LIP	A
Date of issue	1.4.2023
Annual premium	5,00,000
Sum assured	50,00,000
Consideration received as on 01.11.2033 on maturity	52,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34.	

Eligibility for exemption u/s 10(10D) - The consideration received would be exempt u/s 10(10D) in A.Y. 2034-35, since the annual premium payable on the policy does not exceed ₹ 5,00,000 and also does not exceed 10% of actual capital sum assured.

Example 3 :

LIP	A
Date of issue	1.4.2023
Annual premium	6,00,000
Sum assured	60,00,000
Consideration received as on 01.11.2033 on maturity	70,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34.	

Eligibility for exemption u/s 10(10D) - The consideration received would not be exempt u/s 10(10D) in A.Y. 2034-35 since the annual premium payable on the eligible LIP exceeds ₹ 5,00,000.

II. Where the assessee has received consideration, during the current P.Y., under more than one eligible LIP

Circumstance	Eligibility for exemption u/s 10(10D)
If the aggregate of the amount of premium payable on such eligible LIPs does not exceed ₹ 5,00,000 for any of the PYs during the term of such eligible LIPs and the annual premium \leq 10% of actual capital sum assured	Such consideration would be eligible for exemption under u/s 10(10D). [Refer Example 4 given below]
If the aggregate of the amount of premium payable on such eligible LIPs $>$ ₹ 5,00,000 for any of the PYs during the term of such eligible LIP	Consideration in respect of any of those eligible LIPs whose aggregate amount of premium payable does not exceed ₹ 5,00,000 for any of the PYs during their term would be eligible for exemption u/s 10(10D), provided their annual premium \leq 10% of actual capital sum assured. [Refer Examples 5, 6 and 7 given below]

Example 4 :

LIP	A	B
Date of issue	1.4.2023	1.4.2023
Annual premium	3,00,000	2,00,000
Sum assured	30,00,000	20,00,000
Consideration received as on 01.11.2033 on maturity	32,00,000	21,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34.		

Eligibility for exemption u/s 10(10D) – In this case, the aggregate of the annual premium payable for LIP “A” and LIP “B” does not exceed ₹ 5,00,000 during the term of these policies.

Further, annual premium payable in respect of LIP “A” and LIP “B” does not exceed 10% of actual capital sum assured. Therefore, the consideration received under LIP “A” and “B” would be exempt u/s 10(10D) in A.Y. 2034-35

Example 5 :

LIP	A	B
Date of issue	1.4.2023	1.4.2023
Annual premium	4,50,000	5,50,000
Sum assured	45,00,000	55,00,000
Consideration received as on 01.11.2033 on maturity	52,00,000	60,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34.		

Eligibility for exemption u/s 10(10D) – In this case, the aggregate of the annual premium payable for LIP “A” and LIP “B” exceeds ₹ 5,00,000 during the term of these policies.

However, the consideration received under LIP “A” would be exempt u/s 10(10D) in A.Y. 2034 -35, since its annual premium payable does not exceed ₹ 5,00,000 for any previous year during the term of the policy and also does not exceed 10% of actual capital sum assured.

Consequently, the consideration received under LIP “B” alone would not be exempt u/s 10(10D) in A.Y. 2034-35.

Example 6 :

LIP	A	B	C
Date of issue	1.4.2023	1.4.2023	1.4.2023
Annual premium	1,00,000	3,50,000	6,00,000
Sum assured	10,00,000	35,00,000	60,00,000
Consideration received as on 01.11.2033 on maturity	12,00,000	40,00,000	70,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34.			

Eligibility for exemption u/s 10(10D) - The aggregate of annual premium payable for LIP “A”, LIP “B” and LIP “C” exceeds ₹ 5,00,000 during the term of these policies.

However, the consideration received under LIPs “A” and “B” would be exempt u/s 10(10D) in A.Y. 2034-35, since aggregate of annual premium payable for these two policies does not exceed ₹ 5,00,000 for any previous year during the term of these two policies and annual premium payable in respect of these policies does not exceed 10% of actual capital sum assured.

Consequently, the consideration received under LIP “C” alone would not be exempt u/s 10(10D) in A.Y. 2034-35.

Example 7 :

LIP	X	A	B	C
Date of issue	1.4.2022	1.4.2023	1.4.2023	1.4.2023
Annual premium	5,50,000	1,00,000	3,50,000	6,00,000
Sum assured	55,00,000	10,00,000	35,00,000	60,00,000
Consideration received as on 01.11.2032 on maturity	62,00,000			
Consideration received as on 01.11.2033 on maturity		12,00,000	40,00,000	70,00,000

Note - The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34, except LIP X in P.Y. 2032-33.

Eligibility for exemption u/s 10(10D) - The consideration received under LIP "X" would be exempt u/s 10(10D) in A.Y. 2032-33, since annual premium does not exceed 10% of the actual capital sum assured. Moreover, as the policy has been issued before 1.4.2023, limit of ₹ 5,00,000 on amount of premium payable is not applicable, since LIP "X" is not an eligible LIP.

The aggregate of annual premium payable for LIP "A", LIP "B" and LIP "C" (being LIPs issued on or after 1.4.2023) exceeds ₹ 5,00,000 during the term of these policies.

However, the consideration received under LIPs "A" and "B" would be exempt u/s 10(10D) in A.Y. 2034-35, since aggregate of annual premium payable for these two policies does not exceed ₹ 5,00,000 for any previous year during the term of these two policies and annual premium payable in respect of these policies does not exceed 10% of actual capital sum assured.

Consequently, the consideration received under LIP "C" alone would not be exempt u/s 10(10D) in A.Y. 2034-35.

Situation 2 : Consideration has been received by the assessee under any one or more eligible LIPs (i.e., issued on or after 1.4.2023) during any P.Y. preceding the current P.Y. and it has been claimed to be exempt u/s 10(10D). Such eligible LIPs are referred as "Earlier Exempt Eligible LIPs (EEE LIPs)" in this paragraph and corresponding examples and reference to eligible LIPs shall not include EEE LIPs. The exemption u/s 10(10D) would be determined as under:

I. Where the assessee has received consideration, during the current P.Y., under one eligible LIP only

Circumstance	Eligibility for exemption u/s 10(10D)
If aggregate amount of premium payable on such eligible LIP and EEE LIPs does not exceed ₹ 5,00,000 for any of the PYs during the term of such eligible LIP and annual premium in respect of eligible LIP does not exceed 10% of actual capital sum assured.	Consideration under such eligible LIP would be eligible for exemption u/s 10(10D).
If aggregate amount of premium payable on such eligible LIP and EEE LIPs > ₹ 5,00,000 for any of the PYs during the term of such eligible LIP	Consideration under such eligible LIP would not be eligible for exemption u/s 10(10D).

II. Where the assessee has received consideration, during the current P.Y., under more than one eligible LIP

Circumstance	Eligibility for exemption u/s 10(10D)
If aggregate of the amount of premium payable on such eligible LIPs and EEE LIPs does not exceed ₹ 5,00,000 for any of the PYs during the term of such eligible LIPs and annual premium in respect of eligible LIPs also does not exceed 10% of actual capital sum assured.	Consideration received would be eligible for exemption under u/s 10(10D).
If aggregate of the amount of premium payable on such eligible LIPs and EEE LIPs > ₹ 5,00,000 for any of the PYs during the term of such eligible LIPs	Consideration in respect of any of those eligible LIPs (whose aggregate amount of premium along with the aggregate amount of premium of EEE LIPs does not exceed ₹ 5,00,000 for any of the PYs during their term) would be eligible for exemption u/s 10(10D). [Refer Examples 8, 9 and 10 given below]

Example 8:

LIP	X	A	B	C
Date of issue	1.4.2023	1.4.2024	1.4.2024	1.4.2024
Annual premium	4,50,000	1,00,000	1,50,000	6,00,000
Sum assured	45,00,000	10,00,000	15,00,000	60,00,000
Consideration received as on 01.11.2033 on maturity	50,00,000			
Consideration received as on 01.11.2034 on maturity		12,00,000	18,00,000	70,00,000

Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2034-35, except LIP X in P.Y. 2033-34.

Eligibility for exemption u/s 10(10D) - The consideration under LIP “X” would be exempt u/s 10(10D) in P.Y. 2033-34, since the annual premium does not exceed ₹ 5,00,000 and also does not exceed 10% of actual capital sum assured.

In this case, the aggregate of the annual premium payable for LIP “A”, LIP “B” and LIP “C” along with the premium for LIP “X” exceeds ₹ 5,00,000 during the term of these policies.

The aggregate of the annual premium payable for LIP “A” and the premium for LIP “X” also exceeds ₹ 5,00,000 during the term of these policies.

Consequently, the consideration received under LIP “A”, LIP “B” and LIP “C” would not be exempt u/s 10(10D) in A.Y. 2035-36.

Example 9:

LIP	X	A	B	C
Date of issue	1.4.2023	1.4.2024	1.4.2024	1.4.2024
Annual premium	2,50,000	2,00,000	2,50,000	6,00,000

LIP	X	A	B	C
Sum assured	25,00,000	20,00,000	25,00,000	60,00,000
Consideration received as on 01.11.2033 on maturity	30,00,000			
Consideration received as on 01.11.2034 on maturity		24,00,000	38,00,000	70,00,000

Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2034-35, except LIP X in P.Y. 2033-34.

Eligibility for exemption u/s 10(10D) - The consideration under LIP “X” would be exempt u/s 10(10D) in P.Y. 2033-34, since the annual premium does not exceed ₹ 5,00,000 and also does not exceed 10% of actual capital sum assured.

In this case, the aggregate of the annual premium payable for LIP “A”, LIP “B” and LIP “C” along with the premium for LIP “X” exceeds ₹ 5,00,000 during the term of these policies.

However, the consideration received under LIPs “A” or “B” (any one) can be claimed as exempt u/s 10(10D) in A.Y. 2035-36.

If the consideration received under LIP “A” is claimed to be exempt as aggregate of the annual premium payable for LIP “X” and “A” did not exceed ₹ 5,00,000 for any of the P.Ys., the consideration received under LIP “B” would not be exempt.

If the consideration received under LIP “B” is claimed to be exempt as aggregate of the annual premium payable for LIP “X” and “B” did not exceed ₹ 5,00,000 for any of the P.Ys., the consideration received under LIP “A” would not be exempt. Exemption for consideration received under LIP “B” is preferred as it is more beneficial to the assessee.

Alternative treatment: If the consideration under LIP “X” was not claimed to be exempt u/s 10(10D) in A.Y. 2034-35 by the assessee, then, the consideration received under LIP “A” and LIP “B” would be exempt u/s 10(10D) in A.Y. 2035-36 since the aggregate of the annual premium payable for the LIPs “A” and “B” together did not exceed ₹ 5,00,000 for any of the previous years during the term of these two policies. However, the most beneficial treatment is to claim LIP “X” and “B” as exempt.

It may be noted that in every case, the consideration received for LIP “C” would not be exempt u/s 10(10D).

Example 10 :

LIP	X	Y	A	B	C
Date of issue	1.4.2023	1.4.2023	1.4.2024	1.4.2024	1.4.2024
Annual premium	2,00,000	2,00,000	2,00,000	3,00,000	6,00,000
Sum assured	20,00,000	20,00,000	20,00,000	30,00,000	60,00,000
Consideration received on surrender as on 1.7.2033	12,00,000				
Consideration received as on 01.11.2034 on maturity		24,00,000			
Consideration received as on 01.11.2035 on maturity			24,00,000	36,00,000	70,00,000

Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2035-36, except LIP “X” and “Y”.

Eligibility for exemption u/s 10(10D) - The consideration under LIP "X" would be exempt u/s 10(10D) in A.Y.2034-35, since the annual premium does not exceed ₹ 5,00,000 and also does not exceed 10% of actual capital sum assured.

The consideration received under LIP "Y" would be exempt u/s 10(10D) in A.Y. 2035 -36, since the aggregate of annual premium payable for LIP "X" and "Y" does not exceed ₹ 5,00,000 and annual premium payable for LIP "Y" does not exceed 10% of actual capital sum assured.

The consideration received under LIPs "A", ULIP "B" and ULIP "C" would not be exempt u/s 10(10D) in A.Y. 2036-37, since aggregate of annual premium payable for these three policies and LIP "X" and "Y" exceeds ₹ 5,00,000.

Alternative treatment: If the consideration on surrender under LIP "X" was not claimed to be exempt u/s 10(10D) in A.Y. 2034-35 by the assessee, then the consideration received under LIP "Y" would be exempt and the consideration received under LIP "A" or LIP "B" (any one) can be exempt u/s 10(10D) in A.Y. 2036-37. If the consideration received under LIP "A" is claimed to be exempt, as aggregate of the annual premium payable for LIP "Y" and "A" did not exceed ₹ 5,00,000 for any of the PYs., the consideration received under LIP "B" would not be exempt.

If the consideration received under LIP "B" is claimed to be exempt as aggregate of the annual premium payable for LIP "Y" and "B" did not exceed ₹ 5,00,000 for any of the PYs., the consideration received under LIP "A" would not be exempt. Exemption for consideration received under LIP "B" is preferred as it is more beneficial to the assessee.

If the consideration on surrender of LIP "X" and on maturity of LIP "Y" were not claimed to be exempt under section 10(10D) in A.Y.2034-35 and A.Y.2035-36, respectively, then consideration received under both LIP "A" and LIP "B" would be exempt in A.Y.2036 -37 (being LIPs issued on or after 1.4.2023, whose aggregate consideration does not exceed ₹ 5,00,000).

It may be noted that, in every case, consideration received under LIP "C" would not be exempt under section 10(10D).

Clarification on GST Component : It is also clarified by the CBDT that the premium payable/ aggregate premium payable for a life insurance policy/policies, other than a ULIP, issued on or after 1.4.2023, for any previous year, would be exclusive of the amount of GST payable on such premium.

Clarification on premium of Term life insurance policy : It is further clarified by the CBDT that the limit of ₹ 5,00,000 of amount of premium payable would not be applicable in case of a term life insurance policy i.e. where sum under a life insurance policy is only paid to the nominee in case of the death of the person insured during the term of the policy and no amount is paid to anyone if the insured person survives the policy tenure.

Hence, any sum received under a term insurance policy shall continue to be exempt under section 10(10D), irrespective of the amount of the premium payable in respect of such policy. Further the premium paid for such policies would not be counted for checking the limit of ₹ 5,00,000 of amount of premium payable.

Manner of computation of taxable income from LIP under section 56(2)(xiii) [Notification No. 61/2023 dated 16.08.2023]

Where any sum is received (including the amount allocated by way of bonus) at any time during a previous year, under a life insurance policy, other than the sum

- (i) received under a ULIP
- (ii) received under a Keyman insurance policy

which is not exempt under section 10(10D), the sum so received as exceeds the aggregate of the premium paid during the term of such life insurance policy, and not claimed as deduction under any other provision of the Act, computed in the prescribed manner, would be chargeable to tax under the head "Income from other sources" under section 56(2)(xiii).

Accordingly, the CBDT has, vide this notification, inserted Rule 11UACA to compute the income chargeable to tax under section 56(2)(xiii). Where any person receives at any time during any previous year any sum under such LIP, then, the income chargeable to tax under section 56(2)(xiii) during the previous year in which such sum is received has to be computed in the following manner –

	Situation	Income chargeable to tax during the previous year in which such sum is received
(i)	where the sum is received for the first time under the LIP during the previous year (first previous year)	<p>A-B, where</p> <p>A = the sum or aggregate of sum received under the LIP during the first previous year; and</p> <p>B = the aggregate of the premium paid during the term of the LIP till the date of receipt of the sum in the first previous year that has not been claimed as deduction under any other provision of the Act.</p>
(ii)	where the sum is received under the LIP during the previous year subsequent to the first previous year (subsequent previous year)	<p>C-D, where</p> <p>C = the sum or aggregate of sum received under the LIP during the subsequent previous year; and</p> <p>D = the aggregate of the premium paid during the term of the LIP till the date of receipt of the sum in the subsequent previous year not being premium which –</p> <p>(a) has been claimed as deduction under any other provision of the Act; or</p> <p>(b) is included in "B" or "D" in any of the previous year(s).</p>

"Sum received under a LIP" means any amount, by whatever name called, received under such policy which is not exempt under section 10(10D), other than the sum –

- (a) received under a ULIP; or
- (b) received under a Keyman insurance policy

