



AIRICA CAREER INSTITUTE

DT

DIRECT TAX LAWS & INTERNATIONAL TAXATION

CA ATUL AGARWAL (AIR 1)

FOR

MAY & NOV 2025

Exams



CA/CMA FINAL

Concept Book

Best Wishes... Radhe Radhe!!

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» CA/CMA FINAL «

DIRECT TAX LAWS AND INTERNATIONAL TAXATION

MAY & NOV 2025 Exams



»»» Concept Book «««

As amended by the Finance Act, 2024
[Assessment Year 2025-26]

This Concept Book is prepared in Multicolor:

- | | |
|---|--|
| ☐ Headings in ORANGE box | ☐ Keywords in RED |
| ☐ Sub-headings in BLUE | ☐ Examples in RED |
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Direct Tax Laws And International Taxation

Edition: 2025

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AIRICA CAREER INSTITUTE

CA/CMA FINAL

DIRECT TAX LAWS AND INTERNATIONAL TAXATION

About the Book

बमरकर दोस्तों, राखी राखी !!

This Concept Book is prepared by CA Atul Agarwal (AIR 1). He is also a **Gold Medalist** in Direct Tax. It contains all provisions of CA/CMA Final Direct Tax & International Tax in **261 pages**. It also contains approx 80 examples for better understanding of the provisions.

This book is fully prepared as per ICAI Syllabus. All adjustments relating to **ICAI Questions** are also covered in this book.

This book has been prepared for those learning the subject for the first time **as well as for last day revision before the exam**. On first time reading, refer this book along with lectures or revision videos. On last day before exam, you can refer only keywords marked in RED in this book.

Best wishes

CA Atul Agarwal

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|  | Telegram Channel – AIRICA Guidance & Notes |  | Youtube – Atul Agarwal |
|  | Instagram – airtcaatul, airtcaojay, airtcasurender, airtcasachinagarwal |  | Website – airtca.com |
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Best Wishes... Radhe Radhe!!

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DIRECT TAX LAWS AND INTERNATIONAL TAXATION

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BASIC CONCEPTS, TAX RATES AND EXEMPT INCOME



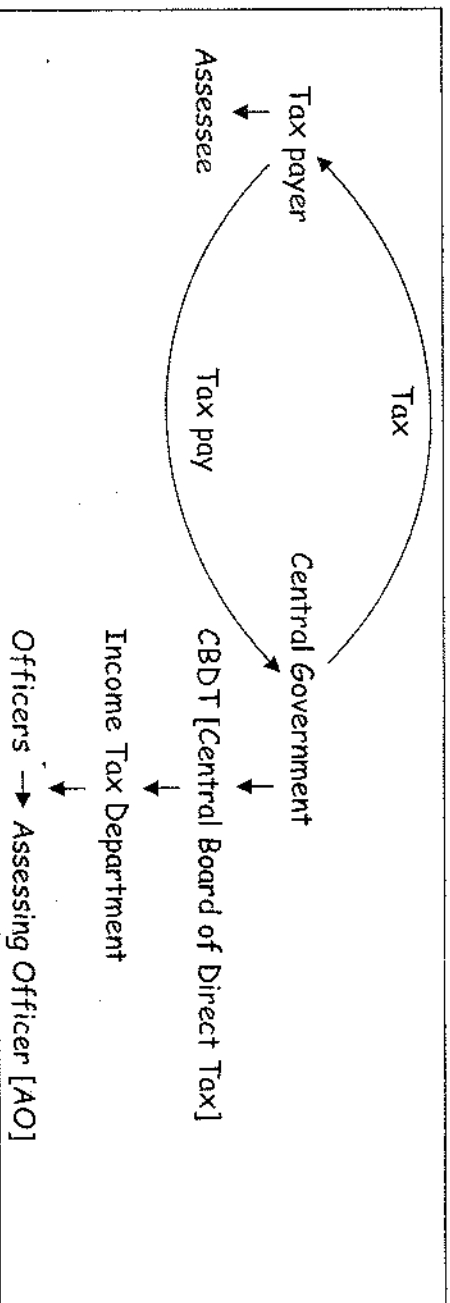
Overview of Tax

(1) Meaning of Tax

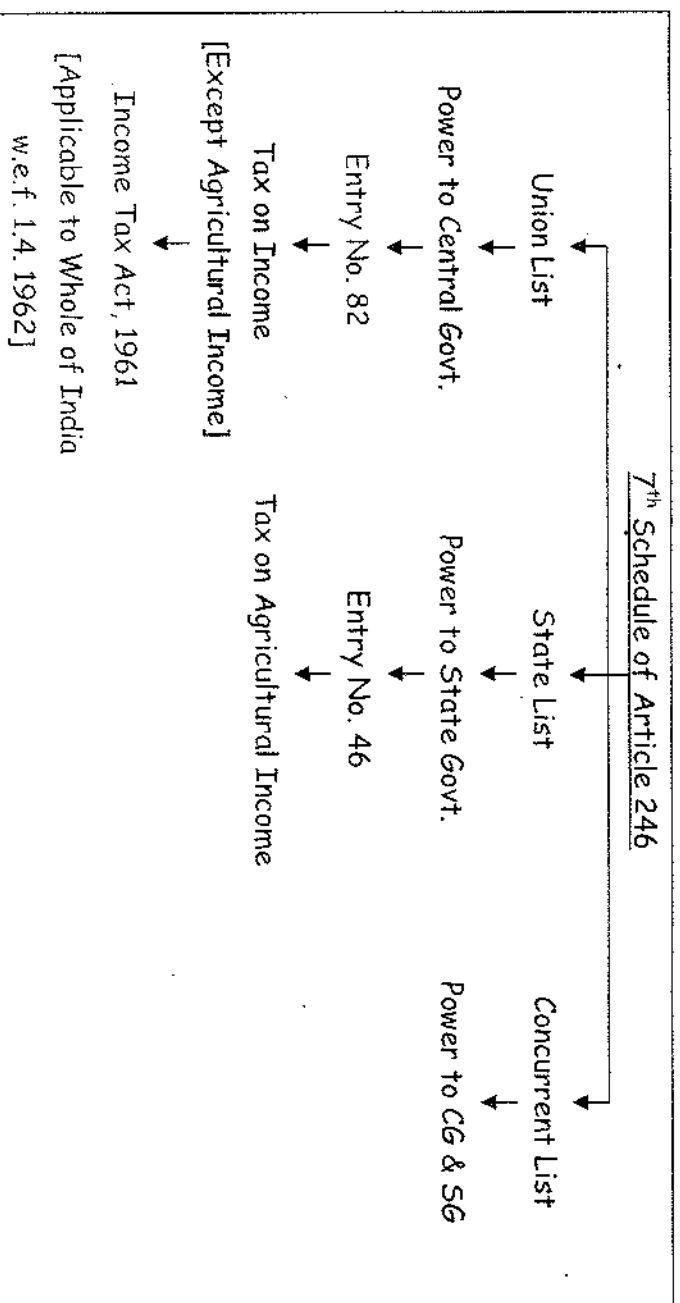
Tax is a compulsory financial charge imposed by government.



(2) Why Income Tax is Direct Tax



(3) Indian Constitution



Basic Concepts, Tax Rates and Exempt Income

(4) Source of Income Tax Law

- Income Tax Act, 1961
- Income Tax Rules, 1962
- Annual Finance Act
- Circulars issued by CBDT
 - Binding on Department
 - Not on Assessee
- Notifications issued by Central Government or CBDT
- Juridical Decisions

Basic Definitions

Person	<u>Includes:</u> ▪ Individual: Natural Person such as Man, Woman ▪ Hindu Undivided Family [HUF]: Family Entity (Karta & Other Members) ▪ Firm: Partnership Firm and LLP ▪ Company ▪ AOP/BOI [Association of Persons: Joint Venture, Body of Individuals: Unregistered Trust created by Individuals] ▪ Local Authority: Nagar Nigam, Municipality ▪ Artificial Juridical Person: Courts, Temples, Universities etc.
Assessee	Means any person who is liable to tax, interest or penalty under Income Tax Act and includes deemed assessee or assessee in default.
Assessment Year (A.Y.)	▪ Tax payment year or return filing year ▪ 12 months period [From 1st April to 31st March
Previous Year (P.Y.)	▪ Income earning year ▪ Previous Year is just preceding Assessment Year ▪ Generally 12 months period [From 1st April to 31st March] ▪ However, in case of new business/new source of income, P.Y. will be from date of new business/new source to 31st March.

As per Finance Act, 2024

Relevant P.Y. = 2024-25 [Income Earning Year] and Relevant A.Y. = 2025-26 [Tax Payment Year]

General Rule

General Rule: Income of Previous Year (P.Y.) is Taxable/Assessable in Assessment Year (A.Y.)

Exception to General Rule

Cases where Income of P.Y. is Taxable/Assessable in P.Y. itself

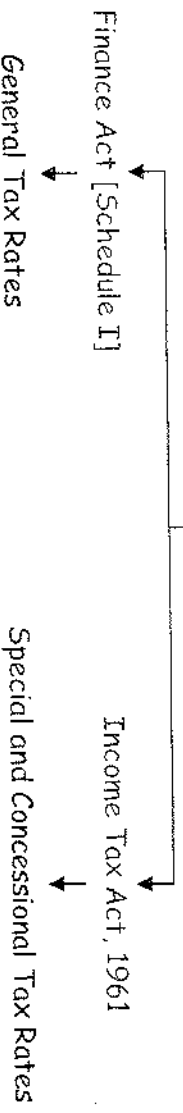
- Income of casual shipping business of Non-Resident (Section 172 - covered in NR Taxation).
- Income of person leaving India permanently or for long duration.
- Income of discontinued business.
- Income of person trying to transfer his assets for avoiding tax.
- AOP/BOI/AJP formed for particular purpose.

Application of Income v/s Diversion of Income

	▪ Income transferred/applied by assessee on own will without obligation or for personal obligation. ▪ Taxable in hands of assessee.
Application of Income	Example (i) Mr. A earns income of ₹ 1,00,000 per month. He gives/transfers ₹ 40,000 every month to his wife and children for household expenses. Such transfer will be treated as Application of Income and taxable in hands of Mr. A. (ii) CA Rohit directs his employer to donate his 1 month salary to a Temple. He received only 11 months salary from employer. Such donation (1 month salary) will be treated as Application of Income and taxable in hands of Rohit.
Diversion of Income	▪ Income transferred by assessee under obligation created by deed or law. ▪ Not included in income of assessee. Example ABC Firm has 3 Partners - A, B and C. As per deed, in case of Mr. C death, 20% profits of firm shall be paid to wife of C. In current year, C died. Profit earned by firm in current year = ₹ 10 lacs. Firm paid ₹ 2 lacs (20%) to wife of C as per deed. Such payment will be treated as Diversion of Income and will not be included in income of firm.

Changing Section [Section 4]

Income Tax shall be levied on Total Income of every person at the rate specified in:



Basic Concepts, Tax Rates and Exempt Income

Steps for Calculation of Total Income			
	₹.	₹	
▪ Determine Residential Status (Resident or Non-Resident) ▪ Determine Income under each head: ➤ Income from Salary ➤ Income from House Property ➤ Income from Business & Profession ➤ Income from Capital Gains ➤ Income from Other Source ▪ Clubbing of Income ▪ Setoff & Carry Forward of Loss	XX XX XX XX XX		
Gross Total Income (GTI)	XX		
(-) Deduction under Chapter VI-A	(XX)		
Total Income/Taxable Income (TI)	XX		
Tax on Total Income			
General Rate Income x General Tax Rates or Concessional Tax Rates		XX	
Special Rate Income x Special Tax Rates [Compulsory]		XX	
Tax		XX	
(+) Surcharge (if any) [If Total Income exceed limit]		XX	
(+) Cess (Compulsory) [4% of Tax & SC]		XX	
Total Tax Liability		XX	
(-) TDS/TCS/Advance Tax		(XX)	
Net Tax Payable/(Refundable)		XX	

Rounding Off [Section 288A & 288B]

Total Income
 And
 Tax Payable

} → Rounded off to nearest ₹ 10

Example

Total Income = ₹ 10,80,514 → ₹ 10,80,510
 = ₹ 10,80,515 → ₹ 10,80,520
 Tax Payable = ₹ 7,186 → ₹ 7,190

General Tax Rates

(1) Individual/HUF/AOP/BOI/Artificial Juridical Person

SLAB Rate		Tax Rate
If Total Income		
Upto ₹ 2,50,000 [Basic Exemption Limit]		NIL
Above ₹ 2,50,000 but upto ₹ 5,00,000		5%
Above ₹ 5,00,000 but upto ₹ 10,00,000		20%
Above ₹ 10,00,000		30%

Resident Individual plus age of 60 years or more but less than 80 years in P.Y. or 1st day of A.Y. [Resident Senior Citizen]

SLAB Rate		Tax Rate
If Total Income		
Upto ₹ 3,00,000 [Basic Exemption Limit]		NIL
Above ₹ 3,00,000 but upto ₹ 5,00,000		5%
Above ₹ 5,00,000 but upto ₹ 10,00,000		20%
Above ₹ 10,00,000		30%

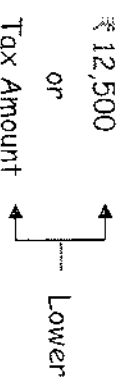
Resident Individual plus age of 80 years or more in P.Y. or 1st day of A.Y. [Resident Super

Senior Citizen]

SLAB Rate		Tax Rate
If Total Income		
Upto ₹ 5,00,000 [Basic Exemption Limit]		NIL
Above ₹ 5,00,000 but upto ₹ 10,00,000		20%
Above ₹ 10,00,000		30%

Rebate to Resident Individual [Section 87A]

If Total Income does not exceed ₹ 5,00,000, Rebate will be:



Note:

- Above Rebate is not available from Capital Gains u/s 112A.
- Rebate is also available in case of Section 115BAC (to be discussed alongwith 115BAC).
- Rebate is to be given before adding health & education cess.

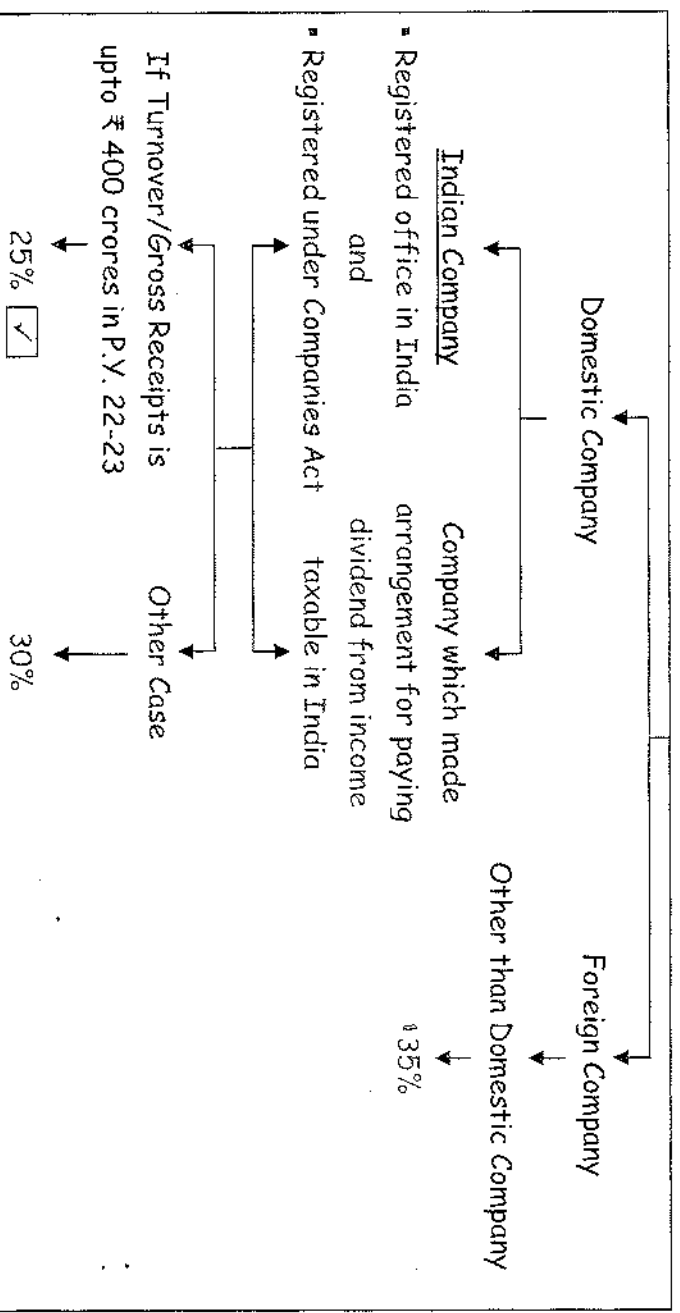
Example

Mr A [Resident]	Case I	Case II	Case III
Total Income	₹ 5,00,000	₹ 4,10,000	₹ 5,10,000
Tax	12,500	8,000	14,500
(-) Rebate u/s 87A	(12,500)	(8,000)	-
Tax after Rebate	-	-	14,500 + 4% cess

(2) **Firm/Local Authority**

Flat Rate = 30%

(3) **Company**

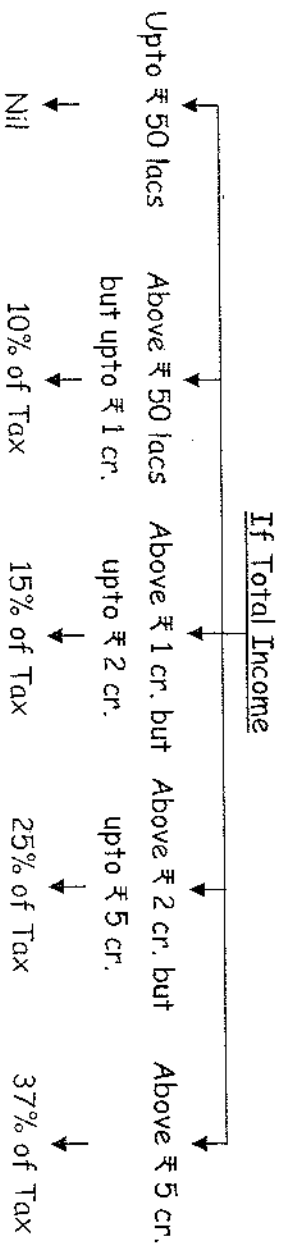


(4) **Co-operative Society**

SLAB Rate	
If Total Income	Tax Rate
Upto ₹ 10,000	10%
Above ₹ 10,000 but upto ₹ 20,000	20%
Above ₹ 20,000	30%

Surcharge [Tax on Tax]

(1) Individual/HUF/AOP/BOI/Artificial Juridical Person



Example

Mr A, Total Income = ₹ 60,00,000

	Tax (₹)
Upto ₹ 2,50,000	Nil
2,50,000 - 5,00,000 (2,50,000 × 5%)	12,500
5,00,000 - 10,00,000 (5,00,000 × 20%)	1,00,000
Above 10,00,000 (50,00,000 × 30%)	15,00,000
Tax	16,12,500
(+) SC @ 10% of Tax	1,61,250
Tax + SC	17,73,750

Note:

- (i) Surcharge Rate of 25% & 37% is not applicable on:
- > STCG u/s 111A
 - > LTCG u/s 112 and 112A
 - > Dividend Income
- (ii) If Total Income exceed ₹ 2 cr. or 5 cr. is due to CG and Dividend Income, then Surcharge Rate on Tax on other Income will be:
- > If Total Income exceed ₹ 2 cr. but upto ₹ 5 cr. = 15%
 - > If Total Income exceed ₹ 5 cr. = 25%

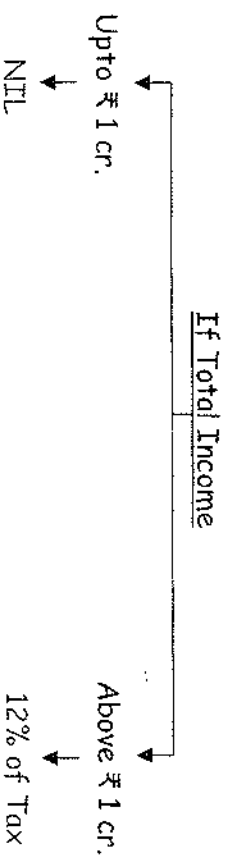
Example

Mr Rohit				
Case	CG & Dividend Income	Other Income	Total Income	
I	15 lacs	30 lacs	45 lacs	
				Surcharge Rate on Tax on CG & Dividend
				Surcharge Rate on Tax on other Income

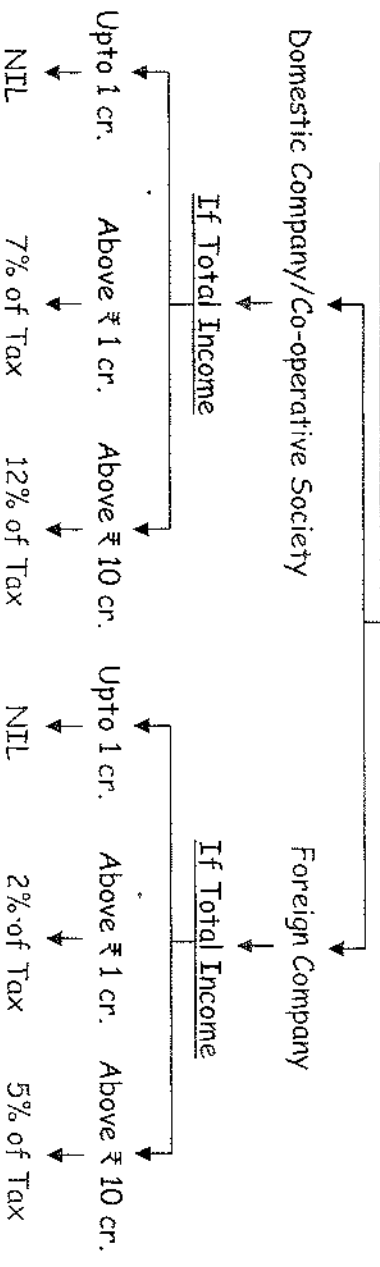
Basic Concepts, Tax Rates and Exempt Income

II	50 lacs	40 lacs	90 lacs	10%	10%
III	80 lacs	90 lacs	1.70 cr.	15%	15%
IV	2.20 cr.	40 lacs	2.60 cr.	15%	15%
V	1 cr.	2.5 cr.	3.5 cr.	15%	25%
VI	3 cr.	4 cr.	7 cr.	15%	25%
VII	3 cr.	6 cr.	9 cr.	15%	37%

(2) Firm/Local Authority



(3) Company & Co-operative Society



Health & Education cess

On [Tax & SC (if any)] @ 4% in All Cases in the end.

Marginal Relief

When Tax exceed Income due to Surcharge.

Example 1

ABC Ltd. [Domestic Company], Total Income = ₹ 1,01,00,000, Turnover in P.Y. 22-23 = ₹ 402 cr.

Solution

Calculation of Marginal Relief	₹
Tax on ₹ 1,01,00,000 @ 30%	30,30,000
(+) SC @ 7% of Tax	2,12,100

Assume if Total Income is ₹ 1,00,00,000	
Tax on ₹ 1,00,00,000 @ 30%	32,42,100
(+) SC	30,00,000
	NIL
	30,00,000
Tax to be paid = Tax on ₹ 1 cr. + Extra Income above ₹ 1 cr. [30,00,000 + 1,00,000]	31,00,000
Marginal Relief = Tax on Original Income - Tax to be paid [32,42,100 - 31,00,000]	1,42,100
Total Tax Payable	31,00,000 + 4% cess

Steps for Calculation of Marginal Relief

Step 1: Calculate Tax on Original Total Income [without cess]

Step 2: Calculate Tax on

- ₹ 50 lacs/1 cr./2 cr./5 cr. [Individual etc.]
 - ₹ 1 cr. [Firm etc.]
 - ₹ 1 cr./10 cr. [Company]
- as per case [without cess]

Step 3: Tax to be paid = Step 2 + Extra Income

Step 4: Marginal Relief = Step 1 - Step 3 [Original Tax - Tax to be paid]

Example 2

Mr. Rohit, Total Income = ₹ 51,00,000

Solution

Calculation of Marginal Relief	₹
Step 1: Tax on ₹ 51,00,000 [1,12,500 + 41 lacs x 30%] (+) SC @ 10% of Tax	13,42,500 1,34,250 14,76,750
Step 2: Tax on ₹ 50,00,000 [1,12,500 + 40 lacs x 30%] (+) SC	13,12,500 NIL 13,12,500
Step 3: Tax to be paid = Step 2 + Extra Income [13,12,500 + 1,00,000]	14,12,500
Step 4: Marginal relief = Step 1 - Step 3 [14,76,750 - 14,12,500]	64,250

Example 3

XYZ Ltd. [Domestic Company], Turnover in P.Y. 22-23 = ₹ 450 cr., Total Income = ₹ 10,01,00,000

Solution

Calculation of Marginal Relief	₹
Step 1: Tax on ₹ 10,01,00,000 [30% * 10,01,00,000] (+) SC @ 12% of Tax	3,00,30,000 36,03,600
Step 2: Tax on ₹ 10,00,00,000 [30% * 10,00,00,000] (+) SC @ 7% of Tax	3,36,33,600 3,00,00,000 21,00,000
Step 3: Tax to be paid = Step 2 + Extra Income [3,21,00,000 + 1,00,000]	3,21,00,000
Step 4: Marginal Relief = Step 1 - Step 3 [3,36,33,600 - 3,22,00,000]	3,22,00,000 14,33,600

Average Rate of Tax

$$\frac{\text{Total Tax [Including SC (if any) \& Cess]}}{\text{Total Income}} \times 100$$

Maximum Marginal Rate [MMR]

Highest Slab Rate of Individual + Highest Surcharge Rate of Individual + Cess @4%

$$30\% + 37\% \text{ of Tax} + 4\% \text{ of Tax \& SC [30\% + 11.1\% + 1.644\%]}$$

$$\text{MMR} = 42.744\%$$

Special and Concessional Tax Rates

Special Tax Rates [Compulsory]		Covered in
Sections		
Sec 111A: STCG on Certain Assets = 20% (15% before 23.07.2024)		Capital Gains
Sec 112A: LTCG on Certain Assets = upto ₹ 1.25 lacs exempt, excess Taxable = 12.5% (10% before 23.07.2024)		
Sec 112: LTCG on Other Assets = 12.5% (20% with index before 23.07.2024)		PGBP
Sec 115BBF: Royalty from Patent Developed & Registered in India = 10%		
Sec 115BBG: Income from Transfer of Carbon Credits = 10%		
Sec 115BB: Winnings from Lotteries etc. = 30%		
Sec 115BBJ: Winnings from Online Games = 30%		Other Source
Sec 115BBE: Undisclosed Income [Indian Black Money] = 60%		
Sec 115BBH: Income from Transfer of Virtual Digital Assets = 30%		
Sec 115BBC: Anonymous Donations = 30%		Charitable Trust
Sec 115BBI: Specified/Deemed Income of Trust = 30%		
Sec 115A/115AB/115AC/115AD/115BBA [Specific for Non-Resident]		NR Taxation
Concessional Tax Rates [Optional]		
Sec 115BAA: Income of Domestic Company		
Sec 115BAB: Income of New Manufacturing Domestic Company/Electricity Generation Company		
Sec 115BAC: Income of Individual/HUF/AOP/BOI/AJP		
Sec 115BAD: Income of Resident Co-operative Society		
Sec 115BAE: Income of New Manufacturing Resident Co-operative Society		

(1) Income of Company and Co-operative Society

Section	Applicable on	Tax Rate	
115BAA	Domestic Company	Tax Rate	22%
		SC [Compulsory]	10%
		Cess	4%
			25.168%
115BAB	New Manufacturing Domestic Company/Electricity Generation Company	Tax Rate	15%
	[Set up on or after 1.10.19 and not formed by splitting up or reconstruction of existing business]	SC [Compulsory]	10%
		Cess	4%
			17.16%

Basic Concepts, Tax Rates and Exempt Income

115BAD	Resident Co-operative Society	Tax Rate	22%
		SC [Compulsory]	10%
		Cess	4%
			25.168%
115BAE	New Manufacturing Resident Co-operative Society [Set up on or after 1.04.23 <u>and</u> not formed by splitting up or reconstruction of existing business]	Tax Rate	15%
		SC [Compulsory]	10%
		Cess	4%
			17.16%

Note:

(i) <u>Following benefits/deductions will not be available u/s 115BAA, 115BAB, 115BAD, 115BAE</u>	
➤ Section 10AA: SEZ	
➤ Additional Depreciation	
➤ Section 33AB and Section 33ABA	
➤ Section 35: Scientific Research [Outside Contribution]	
➤ Section 35AD: Specified Business	
➤ Section 35CCC: Agricultural Project	
➤ Section 35CCD: Skill Development Project	
➤ Chapter VI-A Deductions [Except Section 80JJAA: Employment of New Employees and 80M: Inter Corporate Dividend]	
(ii) <u>Special Note for Section 115BAB and 115BAE</u>	
➤ Following business are not eligible for Section 115BAB and 115BAE:	
✓ Printing of books	
✓ Production of films	
✓ Mining	
✓ Development of computer software	
✓ Conversion of marble blocks etc. into slabs	
✓ Bottling of gas into cylinder	
➤ 15% Tax Rate is applicable only on Manufacturing Business Income.	
➤ Other General Rate Income [House property Rent, Dividend, Interest etc.] is taxable @ 22% on Gross Basis [without any deduction of expenditure].	
(iii) Option once exercised u/s 115BAA, 115BAB, 115BAD, 115BAE cannot be withdrawn.	

(2) Income of Any Individual/HUF/AOP/BOI/AJP [Section 115BAC]

SLAB	
If Total Income	Tax Rate
Upto 3,00,000 [Basic Exemption Limit]	NIL
3,00,000 - 7,00,000	5%
7,00,000 - 10,00,000	10%
10,00,000 - 12,00,000	15%
12,00,000 - 15,00,000	20%
Above 15,00,000	30%

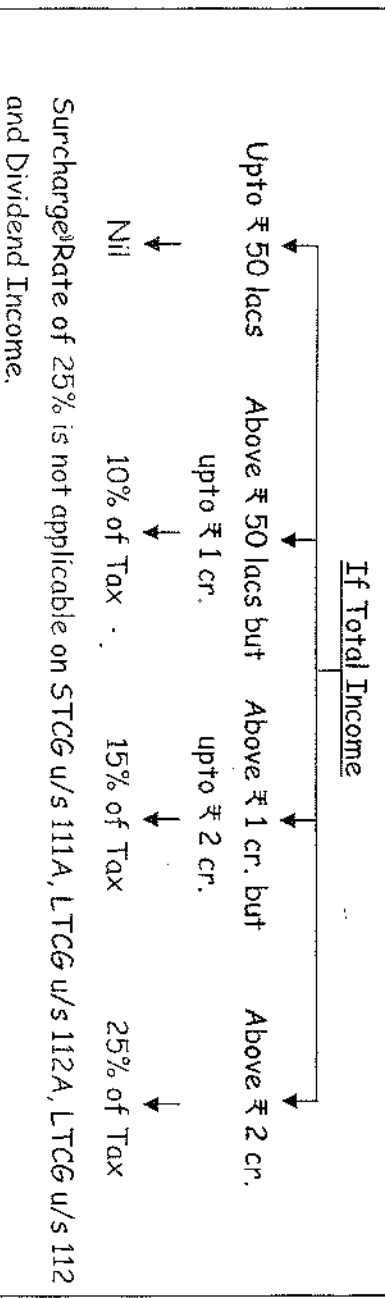
Note:

(i) <u>Following Benefits/Deductions will not be available u/s 115BAC</u>	➤ Salary Allowance Exemption [Except Travelling, Daily, Conveyance Allowance] ➤ Leave Travel Concession ➤ Salary Deduction u/s 16 [Professional Tax and Entertainment Allowance] (However, Standard Deduction of ₹ 75,000 is allowed from salary) ➤ Interest Deduction on Self Occupied House Property ➤ Section 10AA: SEZ ➤ Additional Depreciation ➤ Section 33AB and Section 33ABA ➤ Section 35: Scientific Research [Outside Contribution] ➤ Section 35AD: Specified Business ➤ Section 35CC: Agricultural Project ➤ Deduction under Chapter VI-A [Except Section 80CCD(2): Employer Contribution to New Pension Scheme, 80CCH(2): Central Government Contribution to Agnipath Scheme and 80JTAA: Employment of New Employees]
	(ii) Section 115BAC is a default tax regime for Individual/HUF/AOP/BOI/AJP. If they exercise option to shift out of default tax regime, then General Slab will be applicable.
(iii) <u>Rebate to Resident Individual in case of 115BAC [Section 87A]</u>	➤ If Total Income does not exceed ₹ 7,00,000, Rebate will be: ₹ 20,000 or Tax Amount ——— Lower ➤ Above Rebate is not available from Income taxable at Special Rates. ➤ Marginal Relief Concept is also applicable on rebate if total income exceeds ₹ 7,00,000 (in case of Section 115BAC). In that case, Rebate will be: Tax on Total Income (before cess) - Extra Income above ₹ 7,00,000

Example

Mr A [Resident]	Case I	Case II	Case III
Total Income	₹ 7,00,000	₹ 6,00,000	₹ 7,15,000
Tax as per 115BAC	20,000	15,000	21,500
(-) Rebate u/s 87A	(20,000)	(15,000)	(6,500)
Tax after Rebate	-	-	(21,500 - 15,000)
			15,000 + 4% cess

(iv) Surcharge



Certain Incomes which are Exempt & will not be included for computing Total Income [Section 10]

(1) Agricultural Income in India [Section 10(1)]

• Agricultural Income

- Income from sale of agricultural produce.
- Rent from agricultural land/farm building use for agricultural purpose.
- Income from saplings & seedling grown in a nursery.

• Partial Integration of Agricultural Income with Non-Agricultural Income

- Applicable to Individual, HUF, AOP/BOI, Artificial Juridical Person
- Apply only if —→ Net Agricultural Income exceed ₹ 5,000
and
Non-Agricultural Income exceed Basic Exemption Limit

Net Agricultural Income = Agricultural Income - Expenses incurred for earning such income
Non-Agricultural Income = Taxable Income

➤ Calculation of Tax in such case

Step 1: Calculate Tax on [Net Agricultural Income + Non-Agricultural Income] without rebate, surcharge & cess

Step 2: Calculate Tax on [Net Agricultural Income + Basic Exemption Limit] without rebate, surcharge & cess

Step 3: Tax Amount = Step 1 - Step 2

Step 4: Total Tax Liability

Tax Amount as per Step 3	XX
(-) Rebate u/s 87A (if any)	XX
(+) Surcharge (if any)	XX
(+) Cess @ 4%	XX
Tax Liability	XX

Example

Mr Aman has Taxable Income = ₹ 6,00,000 and Agricultural Income = ₹ 4,50,000. Expenses incurred for earning agricultural income = ₹ 50,000. Compute his tax liability assuming that Mr Aman has exercised the option to shift out of the default tax regime.

Tax on [4 Lacs + 6 Lacs]	1,12,500
Tax on [4 Lacs + 2.5 Lacs]	42,500
Tax Amount [1,12,500 - 42,500]	70,000
(+) Cess @ 4%	2,800
Tax Liability	72,800

- (2) Amount received by member from Income of HUF [Section 10(2)]
- (3) Share Income received by partner from Firm/LLP [Section 10(2A)]
- (4) Compensation received from government/local authority by individual/legal heirs on account of Disaster [Section 10(10BC)]
- (5) Income of Sikkimese Individual [Section 10(26AAA)]
 - Income from any source in the state of Sikkim.
 - Income by way of dividend or interest on securities.

CAPITAL GAINS

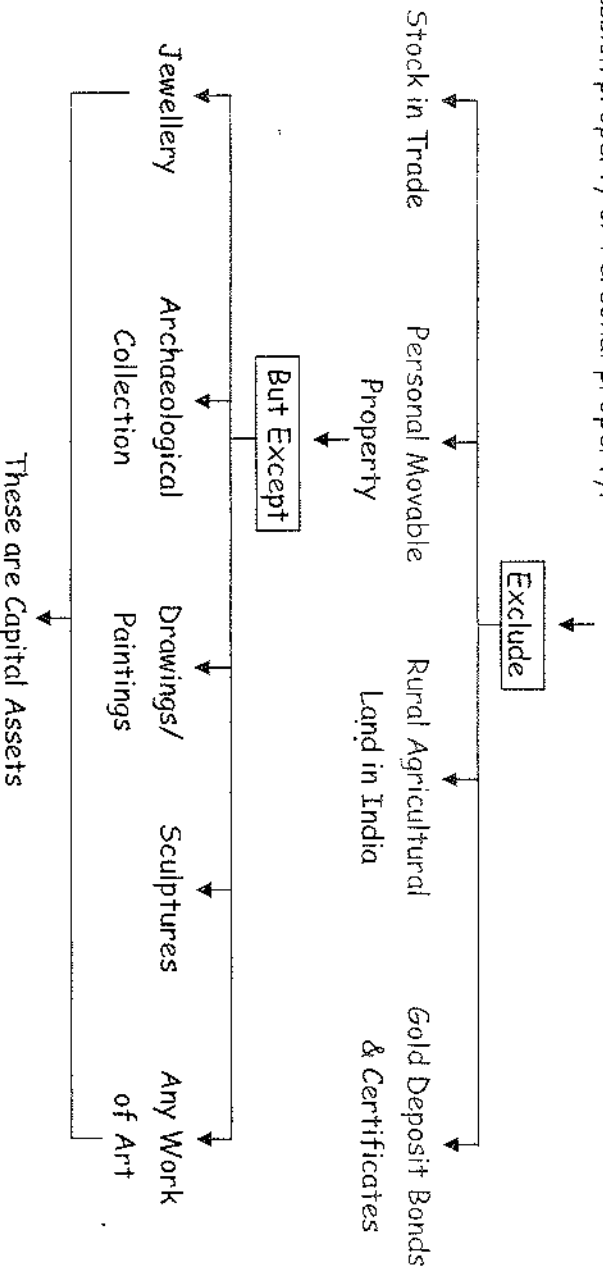


Charging Section [Section 45]

- If there is a Capital Asset and
- Transfer of such Capital Asset during P.Y.
- Then any gain arising from such transfer is taxable under head capital gains
- In the P.Y. in which transfer took place.

Capital Asset

Property of any kind [Movable/Immovable/Tangible/Intangible] held by assessee whether Business/ Profession property or Personal property.



Note:

- Any securities held by Foreign Institutional Investor [FII] is always a capital asset.
- Any Unit Linked Insurance Policy [ULIP] issued on or after 1.2.2021 on which premium payable exceeds ₹ 2,50,000 for any P.Y. is a capital asset.

(iii) Rural Agricultural Land in India

- Agricultural land situated in area having population of less than 10,000.
- Agricultural land situated more than 2 km outside from area having population above 10,000 but upto 1,00,000.
- Agricultural land situated more than 6 km outside from area having population above 1,00,000 but upto 10,00,000.
- Agricultural land situated more than 8 km outside from area having population above 10 lacs.

Types of Capital Assets

Short Term Capital Asset		Long Term Capital Asset	
Capital Asset	Short Term [Period of Holding]	Long Term [Period of Holding]	
- Listed Shares & Securities - Unit of Equity Oriented Funds - Unit of Business Trust - Zero Coupon Bonds	If held for upto 1 Year	If held for more than 1 Year	
- Unlisted Shares - Land and Building	If held for upto 2 Years	If held for more than 2 Years	
Other Capital Assets	If held for upto 2 Years*	If held for more than 2 Years*	
	(*3 Years, if transfer takes place before 23.7.2024)		

Note: Meaning of Equity Oriented Fund: A Mutual Fund where minimum 65% of its total proceeds is invested in listed equity shares of domestic companies.

Transfer

- Sale/Exchange of capital asset
- Possession of immovable property in part performance of contract
- Redemption of zero coupon bond
- Capital asset destroyed and amount/other asset received from insurance company [45(1A)]
- ULIP receipt on maturity [45(1B)]
- Capital asset converted into stock in trade [45(2)]
- Capital asset introduced to Firm/AOP/BOI by Partner/Member as capital contribution [45(3)]
- Capital asset distributed on dissolution/reconstitution of specified entity [Firm/AOP/BOI] to specified person [Partner/Member] [9B & 45(4)]
- Compulsory acquisition of capital asset [45(5)]
- Possession of immovable property in case of Joint Development Agreement [45(5A)]
- Distribution on liquidation of company [46]
- Buyback of shares [46A]
- Redemption/Transfer of Market Linked Debenture, Specified Mutual Fund units and Unlisted Bonds/Debentures [50AAA]
- Slump Sales [50B]

Transactions Not Regarded as Transfer [Section 47]

- (1) Transfer under gift/will by an individual or HUF
- (2) Distribution on total/partial partition of HUF
- (3) Transfer under Amalgamation/Demerger of Companies
 - (i) Transfer of capital asset by amalgamating company to amalgamated Indian company
 - (ii) Transfer of capital asset by demerged company to resulting Indian company
 - (iii) Issue of shares by amalgamated company to shareholders of amalgamating company
 - (iv) Issue of shares by resulting company to shareholders of demerged company
- (4) Transfer of capital asset between wholly owned subsidiary company [100%] and holding company

Conditions:

- (i) Transferee company must be Indian.
- (ii) Holding company must hold 100% share capital for atleast 8 years from date of transfer.
- (5) Conversion of bonds/debentures into shares
- (6) Conversion of preference shares into equity shares
- (7) Transfer of capital asset under reverse mortgage
- (8) Transfer of capital asset on succession of sole proprietorship/firm by a company

Conditions:

- (i) All assets/liabilities of proprietorship/firm become assets/liabilities of company.
- (ii) Proprietor/partner hold not less than 50% voting power in the company for atleast 5 years.
- (iii) Proprietor/partner does not receive any contribution except allotment of shares in the company.

- (9) Transfer of capital asset on conversion of private company or unlisted public company into LLP

Conditions:

- (i) All assets/liabilities of company become assets/liabilities of LLP.
- (ii) Shareholders of company shall become partners in LLP in same proportion of their shareholding.
- (iii) Shareholders of company shall receive atleast 50% profit of LLP for 5 years.
- (iv) No amount is paid to any partner from accumulated profit of the company for 3 years.
- (v) Total turnover/gross receipts of company does not exceed ₹ 60 lacs in 3 preceding P.Y.
- (vi) Total book value of assets of the company does not exceed ₹ 5 crores in 3 preceding P.Y.
- (10) Conversion of gold into electronic gold receipt or vice versa.

Period of Holding

Normal Case: Date of purchase to date of sale/transfer

Special Case

(i) When capital asset becomes property by way of transaction not regarded as transfer	Include period of previous owner/previous asset
--	---

Example 1

Mr. Shyam $\xrightarrow{\text{Gift on 5.7.2015}}$ Mr. Mohan [Son]
 $\downarrow$
 Building Purchase on 10.8.2011 for ₹ 50 Lacs
 POH = 10.8.2011 - 30.4.2025
 $\xrightarrow{\text{Sale on 30.4.25}} \text{Mr. Rohit}$
 ₹ 2 cr.

Example 2

Mr. A purchased debentures $\xrightarrow{\text{Convert in Shares}}$
 on 10.10.2018 for ₹ 20 Lacs $\xrightarrow{\text{on 1.7.2024}}$
 $\xrightarrow{\text{Sale on 30.4.25}} \text{Mr. B}$
 ₹ 30 lacs
 POH = 10.10.2018 - 30.4.2025

(ii) Asset destroyed case	upto date of destruction
(iii) Conversion of capital asset into stock in trade	upto date of conversion
(iv) Compulsory acquisition of capital asset	upto date of compulsory acquired
(v) Shares in a company in liquidation	upto date of liquidation

Calculation of Capital Gains [Section 48]

Short Term Capital Gain

Full Value of Consideration/Sale Consideration	XX
(-) Transfer Expenses	(XX)
Net Sale Consideration	XX
(-) Cost of Acquisition	(XX)
(-) Cost of Improvement	(XX)
Short Term Capital Gain/(Loss)	XX/(XX)

Long Term Capital Gain

Full Value of Consideration/Sale Consideration	XX
(-) Transfer Expenses	(XX)
Net Sale Consideration	XX
(-) Cost of Acquisition [Indexed Cost of Acquisition, if transfer before 23.7.2024]	(XX)
(-) Cost of Improvement [Indexed Cost of Improvement, if transfer before 23.7.2024]	(XX)
Long Term Capital Gain/(Loss)	XX/(XX)

Note:

- (i) Indexation Benefit is not available in case of LTCG, if transfer takes place on or after 23.7.2024
- (ii) Indexation Benefit is not available in following cases, even if transfer takes place before 23.7.2024:
 - Bonds or Debentures [except Capital Index Bonds and Sovereign Bonds]
 - Slump Sales
 - Section 112A [LTCG on Specified Assets]
 - Market Linked Debentures, Specified Mutual Fund units etc. u/s 50AA [Always Short Term]
 - Depreciable Asset [Always Short Term]

Full Value of Consideration / Sale Consideration

(1) FVOC/SC

Amount received or accruing from transfer of capital asset = Sale Price

(2) FVOC/SC of Land and Building [Section 50C]

Stamp Duty value
or
Sale Price

} → Higher

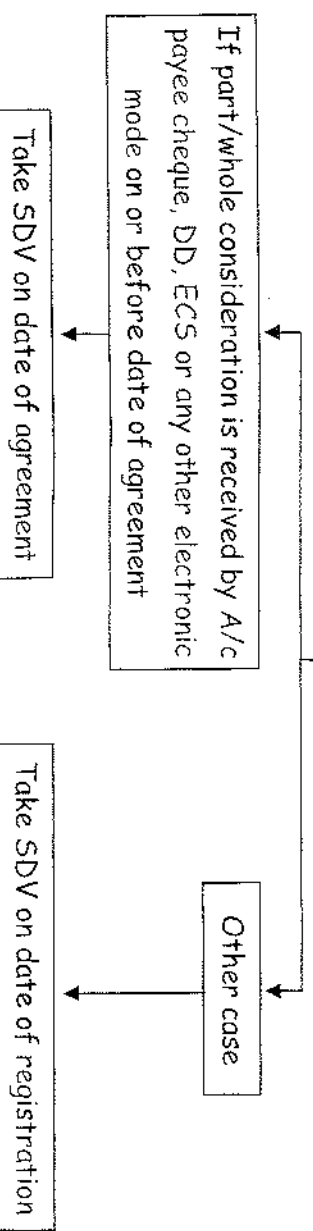
Note:

If stamp duty value is upto 110% of sale price, then sale consideration = Sale Price

Example

	Case 1	Case 2	Case 3
Sale Price	1,00,000	1,00,000	1,00,000
SDV	1,08,000	1,12,000	1,10,000
SC/FVOC	Sale Price ↓ 1,00,000	SDV or Sale Price ↓ 1,12,000 [Higher]	Sale Price ↓ 1,00,000

If date of agreement and date of registration is not same



(3) Reference to Valuation Officer

- If assessee not agree with stamp duty value and not disputed that SDV in court.
- Assessee can request AO to refer case to departmental valuation officer.
- AO may refer that case to valuation officer.
- FVOC/SC after value determined by valuation officer:

If Valuation Amount > SDV = Stamp Duty Value, [SDV]

If Valuation Amount < SDV = Valuation Amount
 or
 Sale price } → Higher

Example

Sale price = ₹ 50 lacs

SDV = ₹ 80 lacs

Value Determined by Valuation Officer [Valuation Amount]			
	Case 1	Case 2	Case 3
Valuation Amount	85 lacs	60 lacs	48 lacs
SC/FVOC	SDV ↓ ₹ 80 Lacs	VA or Sale Price ↓ 60 lacs or 50 lacs Higher ↓ ₹ 60 lacs	VA or Sale Price ↓ 48 lacs or 50 lacs Higher ↓ ₹ 50 lacs

(4) Sale Consideration of Unlisted Shares [Section 50CA]

FVOC/SC = FMV
 or
 Sale Price } → Higher

(5) Sale Consideration when Sale Price is not ascertainable or not be determined [Section 50D]

FVOC/SC = FMV on date of transfer

Transfer Expenses

Expenses incurred by assessee at the time of transfer of capital asset.

Note: No deduction of STT

Cost of Acquisition [COA]

Normal Case

Purchase Price [Including all expenses related to purchase except STT]

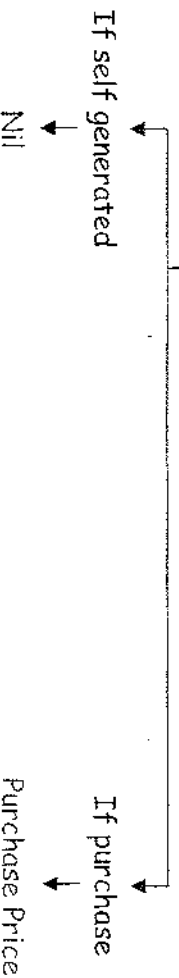
Note:

- > Amount paid for obtaining clear title on property shall be included in cost of acquisition.
- > COA of House Property shall not include interest deduction claimed u/s 24(b) or Chapter VI-A.

Special Case

- (i) When asset becomes property by way of transaction not regarded as transfer
Purchase price of previous owner/previous asset

- (ii) Goodwill of business or profession, brand name, trade mark, right to manufacture any article or thing, stage permit, loom hours or any other intangible asset/right



- (iii) Bonus Shares
- If allotted before 1.4.2001
↓
FMV as on 1.4.2001
 - If allotted on or after 1.4.2001
↓
Nil

Note:

If section 112A apply, then COA of bonus shares if allotted before 31.1.2018 is FMV as on 31.1.18.

- (iv) Sweat Equity Shares
FMV on date on which option is exercised

- (v) Right Shares
- If right shares purchased by assessee
↓
Purchase Price
 - If right offer sold/renounced to other person
↓
Nil

[STCG = Renouncement Price — Nil]

COA for other person = Amt. paid to company + Renouncement Price

- (vi) Depreciable Asset
WDV [Written Down Value]

(vii) If asset acquired before 1.4.2001

FMV as on 1.4.2001

or

Purchase Price of Assessee/Previous Owner

→ Higher

Note: In case of land and building, FMV as on 1.4.2001 shall not exceed SDV as on 1.4.2001. If FMV is higher than SDV, then COA = Purchase Price

or

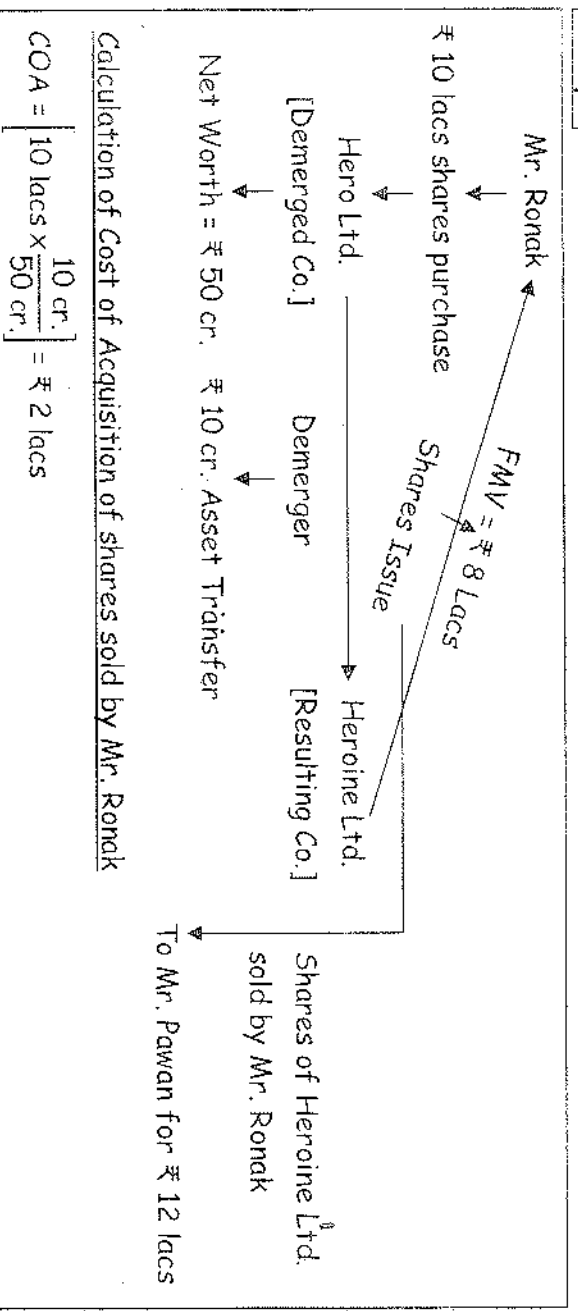
SDV as on 1.4.2001

→ Higher

(viii) Shares issued by resulting company to shareholders of demerged company in demerger

COA of shares held in Demerged Co. x $\frac{\text{Net Book Value of Asset transferred to Resulting Co.}}{\text{Net Worth of Demerged Co.}}$

Example



Calculation of Cost of Acquisition of shares sold by Mr. Ronak

$$COA = \left[10 \text{ lacs} \times \frac{10 \text{ cr.}}{50 \text{ cr.}} \right] = ₹ 2 \text{ lacs}$$

Index Cost of Acquisition

Cost of Acquisition

Index for year in which Asset is first held by Assessee x Index for Asset Transfer year

Note: As per Bombay High Court Judgement in case of Manjula J Shah, we can take Index for year in which asset purchased by previous owner.

Cost Inflation Index

P.Y. 2001-02 = 100,

P.Y. 2024-25 = 363

If asset purchased before 1.4.2001, Index for first held year/purchase year is of year 2001-02 = 100

Capital Gains

Cost of Improvement

All expenditure of capital nature incurred on improvement of capital asset by assessee/previous owner on or after 1.4.2001 [If incurred before 1.4.2001, then ignore]

Index Cost of Improvement

$$\frac{\text{Cost of Improvement}}{\text{Index for Improvement year}} \times \text{Index for Transfer year}$$

Capital Gains in Special Cases

- (1) Capital asset destroyed and amount/other asset received from insurance company [45(1A)]
- (2) Capital asset converted into stock in trade [45(2)]
- (3) Capital asset introduced to Firm/AOP/BOI by Partner/Member as capital contribution [45(3)]
- (4) Compulsory acquisition of capital asset [45(5)]
- (5) Possession of immovable property in case of Joint Development Agreement [45(5A)]
- (6) Distribution on liquidation of company [46]
- (7) Buyback of shares [46A]
- (8) Redemption/Transfer of Market Linked Debenture, Specified Mutual Fund units and Unlisted Bonds/Debentures [50AA]
- (9) Slump Sales [50B]
- (10) Capital asset distributed on dissolution/reconstitution of specified entity [Firm/AOP/BOI] to specified person [Partner/Member] [9B & 45(4)]
- (11) ULIP receipt on maturity [45(1B)]

Capital Asset Destroyed and Amount/Other Asset received from Insurance Company [Section 45(1A)]

- Sale consideration = Amount received/FMV of asset received from insurance company
- Capital gain taxable in year in which claim is received
- Index for transfer year [if applicable] = year of destruction
- If no claim is received, then no capital gain and loss is dead loss

Capital Asset Converted into Stock in Trade [Section 45(2)]

- Sale consideration = FMV of capital asset on date of conversion
- Capital gain taxable in year in which converted stock is sold
- Index for transfer year [if applicable] = year of conversion

- Business income = Sale amount of stock - FMV of capital asset on date of conversion
- If proportionate stock is sold, then proportionate amount is taxable

Capital Asset Introduced to Firm/AOP/BOI by Partner/Member as Capital Contribution [Section 45(3)]

- Taxable in the hands of partner/member
- Sale consideration = Amount credited in partner/member capital A/c

Compulsory Acquisition of Capital Asset [Section 45(5)]

Normal Compensation

- Sale consideration = Normal compensation amount
- Taxable in year in which compensation is received [Full compensation is taxable even if part amount is received]
- Index for transfer year [if applicable] = Year in which asset is compulsory acquired

Enhanced Compensation

- Sale consideration = Enhanced compensation amount
- Cost of acquisition = Litigation expenses
- Taxable in year in which it is received
- Taxable only if received on basis of final order of court and not interim order
- Nature [LTCG/STCG] of enhanced compensation is same as normal compensation

Note:

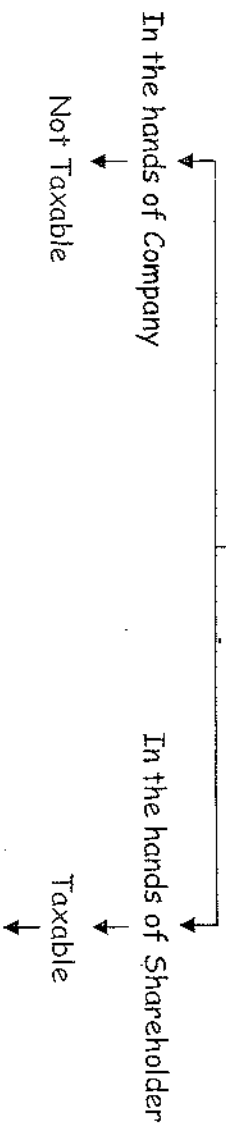
- Interest on compensation/enhanced compensation = Taxable under other source
- Exemption on compulsory acquisition of urban agricultural land [Section 10(37)]

In case of Individual and HUF, capital gain on compulsory acquisition of urban agricultural land is Fully Exempt, if such land is used for agricultural purpose preceding 2 years before transfer.

Capital Gain in case of Joint Development Agreement [Section 45(5A)]

- Joint Development Agreement → Individual/HUF → Land or Building → Possession
- Share is Project → Building/Developer
- Sale consideration = SDV of share in project on issue date of completion certificate + Amt. received
- Capital gain taxable in year in which completion certificate is issued
- Index for transfer year (if applicable) = year in which possession is transferred

Capital Asset Distributed on Liquidation of Company [Section 46]



Sale Consideration	
FMV of asset received + amount received	XX
(-) Shareholder interest in accumulated profits of company [as per section 2(22)(c)]	(XX)
Sale Consideration	XX
Cost of Acquisition = Purchase price of shares	

Buyback of Shares [Section 46A]

Taxability of Buyback of Shares by Domestic Company before 1.10.2024							
In hands of Company	Taxable @23.296% [20% Tax + 12% SC + 4% cess] on Distributed Income Distributed Income = Buyback Price - Issue Price						
In hands of Shareholder	Capital Gain Exempt u/s 10(34A)						
Taxability of Buyback of Shares by Domestic Company on or after 1.10.2024							
In hands of Company	Not Taxable						
In hands of Shareholder	- Buyback Price paid by company is treated as deemed dividend u/s 2(22)(f) & taxable under IFOS. No deduction is available against such dividend income. - Capital Loss <table> <tr> <td>Sale Consideration [taken as Nil]</td><td>Nil</td></tr> <tr> <td>(-) Cost of Acquisition of such shares</td><td>(XX)</td></tr> <tr> <td>Short Term/Long Term Capital Loss</td><td>(XX)</td></tr> </table>	Sale Consideration [taken as Nil]	Nil	(-) Cost of Acquisition of such shares	(XX)	Short Term/Long Term Capital Loss	(XX)
Sale Consideration [taken as Nil]	Nil						
(-) Cost of Acquisition of such shares	(XX)						
Short Term/Long Term Capital Loss	(XX)						
Taxability of Buyback of Shares by Foreign Company							
In hands of Company	Not Taxable						
In hands of Shareholder	Capital Gain Arise [Sale - Cost]						

Example

Mr. Aman purchased 1000 shares of Tata Ltd. in 2020 @ ₹ 40 per share (Issue Price)	₹ 40,000
Tata Ltd. buyback all these shares from Mr. Aman @ ₹ 60 per share (Buyback Price)	₹ 60,000

Discuss Taxability in following cases:

- (i) If buyback of shares done by Tata Ltd. before 1.10.2024
- (ii) If buyback of shares done by Tata Ltd. on or after 1.10.2024

Solution

Taxability in case buyback of shares done by Tata Ltd. before 1.10.2024	
In hands of Tata Ltd.	Distributed Income = ₹ 60,000 - ₹ 40,000 = ₹ 20,000 Tax on Distributed Income = ₹ 20,000 × 23.296% = ₹ 4,659
In hands of Aman	Exempt
Taxability in case buyback of shares done by Tata Ltd. on or after 1.10.2024	
In hands of Tata Ltd.	Not Taxable
In hands of Aman	▪ Deemed Dividend taxable under IFOS = Buyback Price = ₹ 60,000 ▪ Long Term Capital Loss = Nil - ₹ 40,000 = (₹ 40,000)

Capital Gain in case of Market Linked Debentures, Specified Mutual Fund Units and Unlisted Bonds/Debentures [Section 50AA]

Meaning of Certain Terms	▪ <u>Market Linked Debenture</u>: A security which has principal component in form of debt security & where returns are linked to market returns on other securities. ▪ <u>Specified Mutual Fund</u>: A Mutual Fund where not more than 35% of its total proceeds is invested in equity shares of domestic companies.
Short Term Capital Gain	<u>Capital Gain arising from Transfer of following assets is always treated as Short Term Capital Gain [irrespective of period of holding]:</u> ▪ Market Linked Debentures ▪ Specified Mutual Fund units [which are acquired on or after 1.4.2023] ▪ Unlisted Bonds or Debentures

Slump Sale [Section 50B]

- Slump Sale: It means sale of unit/undertaking/division
- Calculation of Capital Gain

Sale Consideration	XX	→ FMV of capital assets on date of transfer
(-) Transfer Expenses	(XX)	
Net Sale Consideration	XX	
(-) Cost of Acquisition	(XX)	→ Net worth of unit transferred
STCG/LTCG	XX	

• **FMV of Capital Assets on date of Transfer [Sale Consideration]**

Higher of FMV 1 or FMV 2 on Valuation Date [Date of Slump Sale]	
FMV 1 = A + B + C + D - L	
A	Book value of all assets of unit transferred [Except Jewellery, Artistic Work, Shares, Securities, and Immovable Property]
B	Open market value of Jewellery and Artistic Work as per valuation report of merchant banker of accountant
C	Fair market value of shares & securities of unit transferred
D	Stamp duty value of immovable property of unit transferred
Ignore TDS/TCS/Advance Tax/Deferred Revenue Expenses]	
L	Book value of liabilities of unit transferred but not include: ▪ Capital/Paid up Share Capital ▪ Reserves & Surplus ▪ Dividend ▪ Provision for Tax ▪ Provision for Unascertained Liabilities ▪ Contingent Liabilities
FMV 2 = E + F + G + H	
E	Amount received from transfer [Sale Price]
F	FMV of shares & securities received as a result of transfer
G	SDV of immovable property received as a result of transfer
H	Open market value of other assets received as a result of transfer

• **Net Worth of Unit Transferred [Cost of Acquisition]**

Value of Total Assets of Unit Transferred				XX
Depreciable Assets	Section 35AD Assets	Self Generated Goodwill	Other Assets	
↓	↓	↓	↓	
WDV as per IT Act	Nil	Nil	Book Value	
*Ignore/Remove Revaluation of Assets				
(-) Book Value of Liabilities of Unit Transferred, Except:				(XX)
➤ Capital/Paid up Share Capital ➤ Reserves & Surplus				
Net Worth of Unit				XX

Distribution on Dissolution/Reconstitution of Specified Entity [Firm/AOP/BOI] to Specified Person [Partner/Member] [Section 9B and 45(4)]

(1) Dissolution/Reconstitution of Firm/AOP/BOI

Dissolution	Firm/AOP/BOI cease to exist
Reconstitution	- Retirement or Death of Partner/Member - Admission of Partner/Member - Change in PSR

(2) Asset distributed on Dissolution/Reconstitution of Firm/AOP/BOI [Specified Entity] to partner/member [Specified Person] [Section 9B]

Capital Asset	<u>Capital asset distributed by Firm/AOP/BOI on dissolution/reconstitution:</u> - Taxable under capital gain in hands of Firm/AOP/BOI - Sale consideration = FMV of capital asset received by partner/member
Stock in Trade	If stock in trade distributed by firm on dissolution/reconstitution to partner, then gain [FMV - Purchase Price] on transfer of such stock is taxable under PGBP in hands of firm.
Money	If money is distributed by firm, then it is not taxable u/s 9B.

(3) Capital Assets/Money distributed on Reconstitution of Firm/AOP/BOI [Specified Entity] to partner/member [Specified Person] [Section 45(4)]

Applicability	- Applicable only in case of reconstitution in addition to section 9B. - Taxable/income in the hands of Firm/AOP/BOI. - Taxable in year in which money/capital asset received by partner/member.								
Calculation of Capital Gains	Capital Gains = A + B - C, where: A = Money received by partner/member B = FMV of capital asset received by partner/member C = Balance in capital account of such partner/member [No Index] Note: If capital gain amount is negative, then it shall be treated as zero. - While calculating value of C, Balance in capital account has to be recalculated - Compute accounting gain [Net of Tax] of transferred asset:								
Special Point	<table border="1"> <tr> <td>FMV of asset transferred</td><td>XX</td></tr> <tr> <td>(-) Book value of asset transferred</td><td>(XX)</td></tr> <tr> <td>(-) Tax on capital gain as per section 9B on asset transferred</td><td>(XX)</td></tr> <tr> <td>Accounting Gain [Net of Tax]</td><td>XX</td></tr> </table> - Distribute accounting gain of asset transferred is PSR. - Ignore other asset revaluation and goodwill while calculating above.	FMV of asset transferred	XX	(-) Book value of asset transferred	(XX)	(-) Tax on capital gain as per section 9B on asset transferred	(XX)	Accounting Gain [Net of Tax]	XX
FMV of asset transferred	XX								
(-) Book value of asset transferred	(XX)								
(-) Tax on capital gain as per section 9B on asset transferred	(XX)								
Accounting Gain [Net of Tax]	XX								

Capital Gains

Nature of Capital Gain	<u>Nature of capital gain [Short Term/Long Term] calculated u/s 45(4)</u>
	➤ Same as other revalued capital assets and goodwill. ➤ In proportion to increased amount of such assets.
Future Sale of Other Assets	<u>If other revalued capital assets and goodwill sold by firm in future</u>
	Proportionate capital gain u/s 45(4) belonging to such assets is to be reduced from sale consideration.

Example

Mr. Prem is a partner in X & Co. [Firm]. Firm has total 4 partners [Equal PSR]. Prem retires on 31.1.2025. Capital Balance of Prem on the date is ₹ 32 lacs.

Revaluation of Assets by Firm on that date			
	Date of Purchase	COA [Book Value]	FMV as on 31.1.2025
Land of Pune	21.1.13	15 Lacs	50 Lacs
Land of Nagpur	18.4.15	25.4 Lacs	45 Lacs
Land of Mumbai	14.5.13	88 Lacs	250 Lacs
Self-Generated Goodwill	—	—	70 Lacs

Firm gives Land of Nagpur and ₹ 15 lacs to Prem to settle his balance.

Examine tax treatment in the hands of X & Co. [Firm]

Solution

Tax Treatment in the hands of X & Co. [Firm] u/s 9B and 45(4)			
Amount Taxable u/s 9B			
SC [FMV of land at Nagpur given to Prem]		45,00,000	
(-) Cost of Acquisition		(25,40,000)	
LTCG u/s 9B		19,60,000	
Amount Taxable u/s 45(4)			
Accounting Gain of Transferred Asset (Net of Tax)			
FMV of land of Nagpur		45,00,000	
(-) Book Value		(25,40,000)	
(-) Tax $[19,60,000 \times 13\%] \times (12.5\% \text{ Tax} + 4\% \text{ Cess})$		(2,54,800)	
Accounting Gain (Net of Tax)		17,05,200	
Capital Balance of Prem (Recalculated)			
Given		32,00,000	
Accounting Gain Share $\left[17,05,200 \times \frac{1}{4}\right]$		4,26,300	
Capital Balance (Recalculated)		36,26,300	

Capital Gain u/s 45(4)				
FMV of land given to Prem + Money given to Prem [45,00,000 + 15,00,000]				60,00,000
(-) Capital Balance of Prem				(36,26,300)
Capital Gain				23,73,700
Apportionment of Capital Gain				
	COA	FMV	Increased Amount	Apportionment of gain u/s 45(4)
Long Term ↑	Land at Pune	15	50	35
	Land at Mumbai	88	250	162
				$23,73,700 \times \frac{35}{267} =$
				$14,40,223$
Short Term ←	Self-Generated Goodwill	—	70	70
				$23,73,700 \times \frac{70}{267} =$
				$6,22,318$
				$23,73,700$
Amount Taxable u/s 45(4)				
LTCG (3,11,159 + 14,40,223)				17,51,382
STCG (6,22,318)				6,22,318

If land at Pune, land at Mumbai, goodwill sold in future, then proportionate capital gain belonging to such assets is to be reduced from sale consideration.

ULIP Receipt on Maturity [Section 45(1B)]

(i) Exemption on Maturity of Life Insurance Policy [Section 10(10D)]

- Amount received under LIP is exempt.
- However, in following cases, it is taxable:

(i) Amount received under Keyman Insurance Policy [Taxable under PGBP]	
(ii) If annual premium paid is more than — [Taxable under IFOS]	→ 20% of sum assured [If policy taken before 1.4.12] → 10% of sum assured [If policy taken between 1.4.12 to 31.3.13] → 10% for normal person and 15% for disable [If policy taken on or after 1.4.13]
(iii) If policy (other than ULIP) issued on or after 1.4.23 and aggregate premium payable exceeds ₹ 5 lacs in any P.Y. [Taxable under IFOS]	
(iv) Any ULIP issued on or after 1.2.2021 and premium payable exceeds ₹ 2,50,000 in any P.Y. [Taxable under Capital Gain]	

If more than 1 ULIP, then exemption only for those ULIP for which aggregate premium in any P.Y. does not exceed ₹ 2,50,000.

Note: Point (ii), (iii) and (iv) shall not apply in case of death [i.e. fully exempt].

(2) Capital Gain on ULIP Receipt [Section 45(1B)]

- Taxable in the year in which amount received under ULIP.
- Calculation of Capital Gain

Amount Received under ULIP	XX
(-) Premium paid till date of receipt of Amount under ULIP	(XX)
Long Term Capital Gain Taxable u/s 112A	XX

Example

Mr Aman invested in following ULIP's

	ULIP A	ULIP B	ULIP C	ULIP D	ULIP E
Date of Issue	1.1.2021	1.2.2021	1.3.2021	1.4.2021	1.5.2021
Maturity Date	31.12.2029	31.1.2030	28.2.2030	31.3.2030	30.4.2030
Annual Premium	3,00,000	1,00,000	1,40,000	2,50,000	3,00,000
Sum Assured	30 lacs	10 lacs	15 lacs	25 lacs	30 lacs
Amt. received on maturity	32 lacs	11 lacs	17 lacs	28 lacs	35 lacs
Total premium paid till date of receipt	27 lacs [3 × 9]	9 lacs [1 × 9]	12.60 lacs [1.40 × 9]	22.50 lacs [2.50 × 9]	27 lacs [3 × 9]
	5 lacs	2 lacs	4.40 lacs	5.50 lacs	8 lacs
	Exempt u/s 10(10D)	• B & C Exempt, D Taxable u/s 112A			Taxable u/s 112A
		• D Exempt, B & C Taxable u/s 112A			
		At the option of assessee			
		Beneficial = B & C Exempt, D Taxable			

Advance Money Forfeited [Section 51]



Note: If forfeited by previous owner, then Ignore.

Exemption from Capital Gains

Particulars	Section 54	Section 54B	Section 54D
Eligible Assessee	Individual/HUF	Individual/HUF	Any Person
Asset Transferred	Residential House Property [LTCG]	Urban Agricultural Land [STCG/LTCG]	Compulsory acquisition of L&B of industrial unit [STCG/LTCG]
Asset in which Capital Gain is Invested	One Residential House in India [If CG is upto ₹ 2 cr. then 2 Houses allowed]	Agricultural Land	Land & Building of industrial area
Time limit of Investment	▪ Purchase with 1 year before or 2 years after date of transfer, or ▪ Construct with 3 years from date of transfer	Within 2 years from date of transfer	Within 3 years from date of transfer
Exemption Limit	Capital Gain or Amt. Invested or ₹ 10 crores → Lower	Capital Gain or Amt. Invested → Lower	Capital Gain or Amt. Invested → Lower
Withdrawal of Exemption	If new asset transfer within 3 years, Amount exempt earlier deducted from COA of new asset	If new asset transfer within 3 years, Amount exempt earlier deducted from COA of new asset	If new asset transfer within 3 years, Amount exempt earlier deducted from COA of new asset
Other Points	▪ Payment for investment is sufficient for exemption. ▪ Residential house can be self-occupied or let out. ▪ Investment in two adjacent flats is treated as 1 residential house. ▪ Construction includes cost of both land & building. ▪ Investment in name of any other person also eligible for exemption.	▪ Asset transferred shall be used for agriculture for 2 years. ▪ Payment for investment is sufficient for exemption. ▪ Investment in name of any other person also eligible for exemption.	▪ Asset transferred shall be used for Industrial unit for 2 years. ▪ Payment for investment is sufficient for exemption.

Capital Gains

Particulars	Section 54EC	Section 54F
Eligible Assessee	Any Person	Individual/HUF
Asset Transferred	Land or Building [LTCG]	Any capital asset other than residential house property [LTCG]
Asset in which Gain is Invested	Bonds of NHAI/RECI redeemable after 5 years	One residential house property in India
Time Limit of Investment	Within 6 months from date of transfer	Purchase within 1 year before or 2 year after date of transfer or Construct within 3 year from date of transfer
Exemption Limit	Capital Gain or Amt. Invested or ₹ 50 lacs → Lower	$\frac{\text{Amount Invested}}{\text{Net Sale Consideration}} \times \text{LTCG}$ [Amount Invested in excess of ₹ 10 crores shall be ignored]
Withdrawal of Exemption	If new asset transfer within 5 years, Amt. exempt earlier taxable as LTCG	If new asset transfer with 3 years, Amt. exempt earlier taxable as LTCG
Other Points	- Payment for investment is sufficient for exemption. - In case of conversion of L&B into stock in trade, investment time limit of 6 months shall be considered from sale of stock in trade.	- Payment for investment is sufficient for exemption. - Investment in name of any other person also eligible for exemption. - Assessee does not own more than 1 residential house property at the time of transfer.

Particulars	Section 54G	Section 54GA
Eligible Assessee	Any Person	Any Person
Asset Transferred	Land & building, plant & machinery of industrial unit of urban area [STCG/LTCG]	Land & building, plant & machinery of industrial unit of urban area [STCG/LTCG]
Asset in which Gain is Invested	Land & building, plant & machinery of industrial unit of rural area [Shifting from urban to rural area]	Land & building, plant & machinery of industrial unit of SEZ [Shifting from urban area to SEZ]
Time Limit of Investment	Within 1 year before or 3 years from date of transfer	Within 1 year before or 3 years from date of transfer

Exemption Limit	Capital Gain or Amt. Invested	Capital Gain or Amt. Invested
Withdrawal of Exemption	If new asset transfer within 3 years, Amt. exempt earlier deducted from COA of new asset	If new asset transfer within 3 years, Amt. exempt earlier deducted from COA of new asset

Note:

- (i) Assessee can claim exemption in more than 1 section for single transfer.
- (ii) Capital Gain Account Scheme [CGAS]: If investment not made before due date of ROI under above sections, then amount has to be deposited under CGAS on or before filing of ROI for claiming exemption.

Tax Rates on Capital Gain

(1) Tax on Short Term Capital Gain on Certain Assets [Section 111A]

STCG on STT Paid [Listed]:	If Transfer takes place before 23.7.2024	If Transfer takes place on or after 23.7.2024
▪ Equity Shares ▪ Unit of Equity Oriented Fund ▪ Unit of Business Trust	Taxable @ 15%	Taxable @ 20%

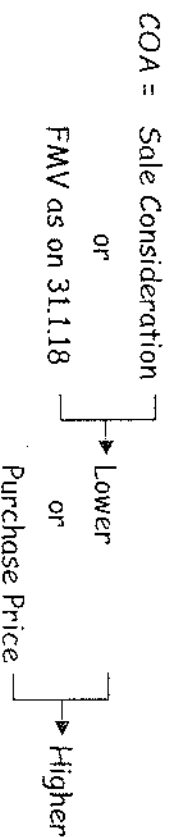
(2) Other STCG → Taxable at General Rate or Concessional Rate

(3) Tax on Long Term Capital Gain on Certain Assets [Section 112A]

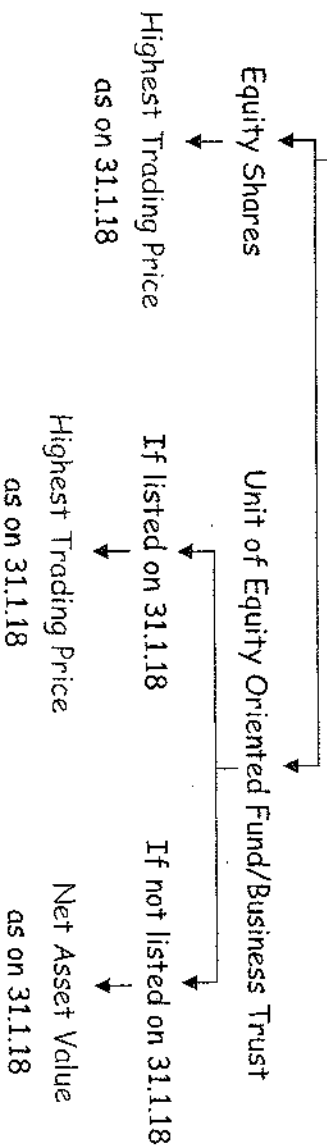
LTCG exceeding ₹ 1,25,000 on STT Paid [Listed]:	If Transfer takes place before 23.7.2024	If Transfer takes place on or after 23.7.2024
▪ Equity Shares ▪ Unit of Equity Oriented Fund ▪ Unit of Business Trust	Taxable @ 10% [No Indexation]	Taxable @ 12.5% [No Indexation]

Note:

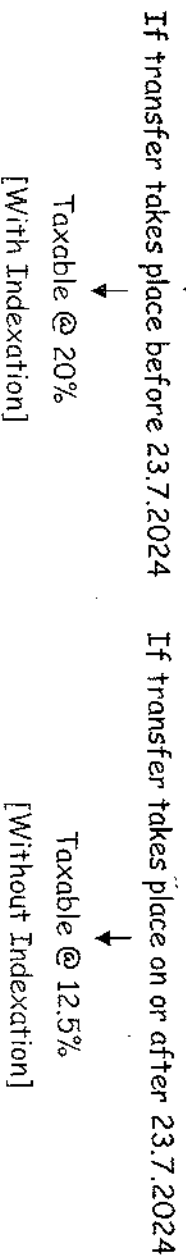
- (i) Such LTCG upto aggregate ₹1,25,000 is exempt. This exemption is available while computing tax on such LTCG but Income under head "Capital Gains" will be shown without exemption.
- (ii) Equity Shares shall be listed both at the time of purchase and sale.
- (iii) Cost of Acquisition [If purchase on or before 31.1.2018]



(iv) FMV as on 31.1.18



(4) Other Long Term Capital Gain [Section 112]



Note:

"Resident Individual/HUF" can pay tax on LTCG arising on "land and building [acquired before 23.7.2024]" transferred on or after 23.7.2024, by any of the following option:

- 12.5% without indexation
 - 20% with indexation benefit
- * Above benefit is only for computing tax on such LTCG but Income under head "Capital Gains" will be shown normally i.e. without indexation.

(5) Other Points relating to Section 111A/112A/112

- (i) No deduction under chapter VI-A from above section income.
- (ii) Benefit of basic exemption limit: Available only to Resident Individual/HUF
 - First from Other Income.
 - Then, from Section 111A/112A/112 Income.

PROFITS AND GAINS OF BUSINESS OR PROFESSION (PGBP)



Changing Section [Section 28]

Following Incomes are Taxable under this head:

- (i) Profits or gains of any business or profession carried by assessee during P.Y.
- (ii) Assistance, grant or subsidy received from Central/State Government relating to B&P.
- (iii) Export Incentive such as Cash Assistance, Duty Drawback, Import Entitlements etc.
- (iv) Value of any gift, benefit or perquisite arising from B&P whether in cash or in kind.
- (v) Amount received for:
 - Not carrying out any activity relating to B&P
 - Not sharing intangible asset
- (vi) Amount received under Keyman Insurance Policy.
- (vii) FMV of stock on conversion into capital asset.
- (viii) Interest, salary, bonus, commission or any remuneration received by partner from Firm/LLP [upto deduction allowed to Firm/LLP].



Speculative Business

- Part of business consist of purchase/sale of shares & commodities other than by actual delivery.
- Profit/Loss of Speculative Business is to be calculated separately.
- Following are not Speculative Transactions:
 - Hedging Contract
 - Forward Contract
 - Trading in Derivatives/Commodity Derivatives

Income of PGBP Computed as per Section 30 to 43D [Section 29]

Calculation of PGBP Income

Profit/Loss as per P&L A/c	XX
Add:	
Depreciation debited to P&L A/c	XX
Expenses debited to P&L A/c but not allowed as deduction under this head [Disallowed]	XX
Income not credited to P&L A/c but taxable under this head	XX
Less:	
	XX

Profits and Gains of Business or Profession (PGBP)

Depreciation as per Income Tax Act	(XX)
Expenses not debited to P&L A/c but allowed as deduction under this head	(XX)
Income credited to P&L A/c but not taxable under this head [Example - Capital Gain, IFOS, Agricultural Income etc.]	(XX)
Income from Business & Profession [PGBP]	XX

Rent, Rates, Repairs & Insurance for Building used in B&P [Section 30]

Expenses		Deduction
Rent	=	Allowed
Rates [Municipal Tax]	=	Allowed
Repairs		
> Revenue Nature	=	Allowed
> Capital Nature	=	Not Allowed [Added to cost of building]
Insurance	=	Allowed

Repairs and Insurance of Plant & Machinery, Furniture [Section 31]

Expenses		Deduction
Repairs		
> Revenue Nature	=	Allowed
> Capital Nature	=	Not Allowed [Added to cost of P&M, furniture]
Insurance	=	Allowed

Depreciation as per Income Tax Act [Section 32]

(1) Conditions to Claim Depreciation

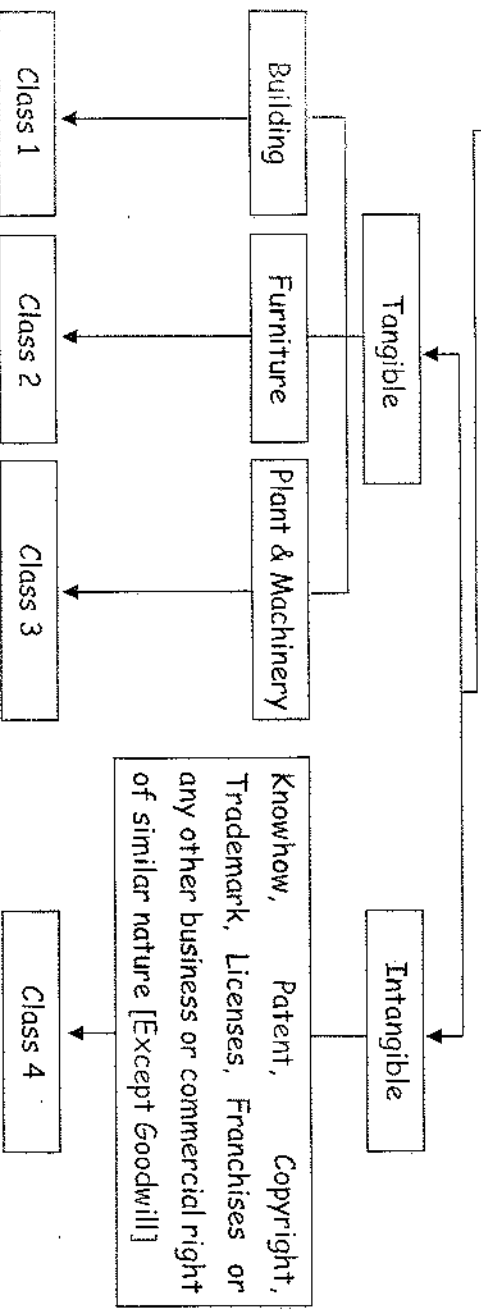
- Asset must be used in B&P [Active or Passive].
and
- Assessee must be owner of such asset [Wholly or Partly].

Note:

- Depreciation allowed only when asset is put to use.
- However, in case of — Standby Equipment —
Fire Extinguisher — Depreciation allowed even if
Machinery Spares — they are kept ready for use
- Depreciation is allowed to beneficial owner.

- (iv) In case of lease asset, lessor is entitled for depreciation.
- (v) No depreciation on Land & Goodwill.
- (vi) It is mandatory to claim depreciation.

(2) Depreciable Assets



(3) Depreciation Rates

Building			
Block 1	→	Residential Building	→ 5%
Block 2	→	Commercial Building	→ 10% ☒
Block 3	→	Temporary Structures	→ 40%
Furniture			
Block 1	→	All Furnitures	→ 10%
Plant & Machinery			
Block 1	→	Aeroplanes, Pollution Control Equipments, Medical Equipments, Windmills, Energy Saving Devices, Books & Annual Publications, Computer including Computer Software and Accessories	→ 40%
Block 2	→	Ships	→ 20%
Block 3	→	Motor Car [Taxis, Buses etc.] used in business of running on hire	→ 30%
Block 4	→	Other Motor Car, Oil Wells, Office Equipments/ Appliances, EPABX & Mobile Phones, Other Plant & Machinery	→ 15%

Note: If motor car purchase & put to use between 23.8.19 to 31.3.20

- Hire [Taxis, Buses] = 45%
- Other Motor Car = 30%

Profits and Gains of Business or Profession (PGBP)

Intangible Assets

Block 1	→	All Intangible Assets	→	25%
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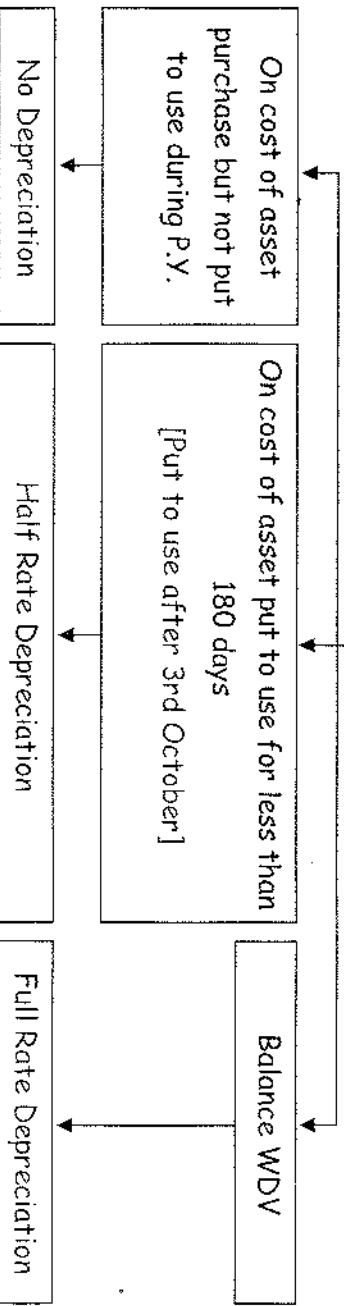
(4) Block of Asset

- Same class of asset AND same rate of depreciation.
- Depreciation shall be allowed on WDV of Block of Asset at Prescribed Percentage.

(5) Calculation of WDV of Block & Depreciation

Opening WDV of block as on 1st day of P.Y.	XX
(+) Actual cost of asset purchase during P.Y. > Put to use for 180 days or more > Put to use for less than 180 days > Purchase but not put to use during P.Y.	XX
(-) Amount received on asset sale/destroyed/demolished/discarded during P.Y.	(XX)
WDV of Block for Depreciation	XX
(-) Depreciation	(XX)
Closing WDV as on last day of P.Y.	XX

Depreciation on WDV of Block



[Half Rate Restriction applies only when Purchase & Put to use year is same]		
Example		
Purchase	Put to Use	
2025-26	10.12.25 [25-26]	Half Rate
2024-25	10.12.25 [25-26]	Full Rate

Example

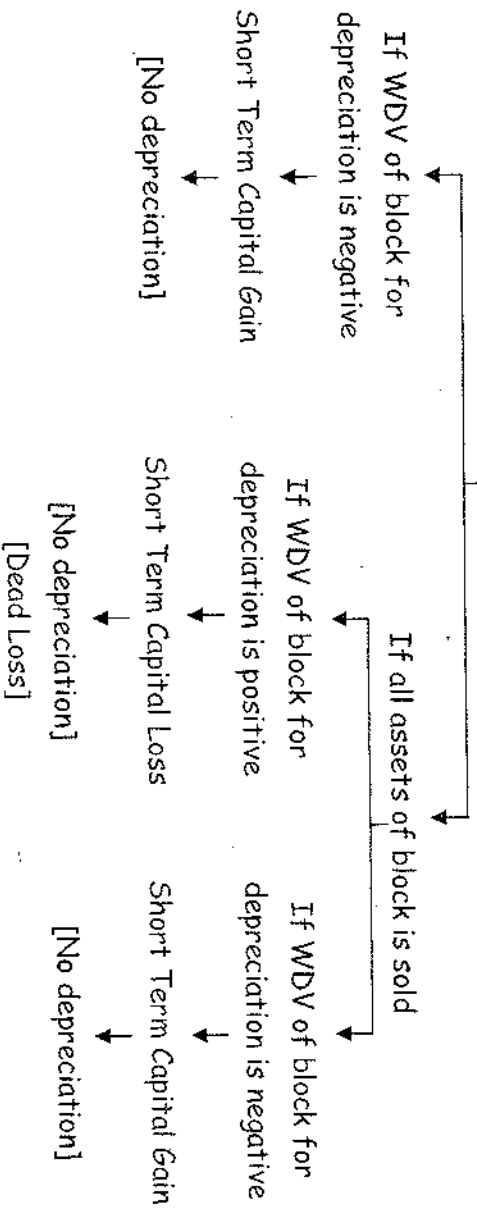
Opening WDV of P&M (15%) as on 1.4.24	5,00,000
Opening WDV of computer (40%) as on 1.4.24	1,00,000
Purchase & put to use car as on 31.7.24	2,00,000
Purchase computer on 10.10.24	50,000
Purchase & put to use P&M on 1.11.24	3,00,000
Purchase P&M on 10.12.24 but not put to use upto 31.3.25	1,00,000
Sale of 1 P&M (15%) on 25.12.24	4,00,000

Calculate Depreciation for P.Y. 24-25

Solution

P&M [15%]			
Opening WDV of Block			5,00,000
(+) Actual cost of purchase		Put to use upto 3rd Oct Put to use after 3rd Oct Purchase but not put to use	2,00,000 3,00,000 1,00,000
(-) Amount received on sale			(4,00,000)
WDV of Block for Depreciation			7,00,000
(-) Depreciation			
Not put to use [1,00,000] ↓ No Depreciation	Put to use after 3rd Oct [3,00,000] ↓ [3,00,000 × 7.5%]	Balance WDV [3,00,000] ↓ [3,00,000 × 15%]	(67,500)
Closing WDV as on 31.3.25/Opening WDV as on 1.4.25			6,32,500
P&M (40%)			
Opening WDV of Block			1,00,000
(+) Purchase (After 3rd Oct)			50,000
WDV of Block for Depreciation			1,50,000
(-) Depreciation			
After 4th Oct [50,000 × 20%]	Balance WDV [1,00,000 × 40%]		(50,000)
Closing WDV as on 31.3.25/Opening WDV as on 1.4.25			1,00,000

(6) Capital Gain/Loss on Depreciable Asset

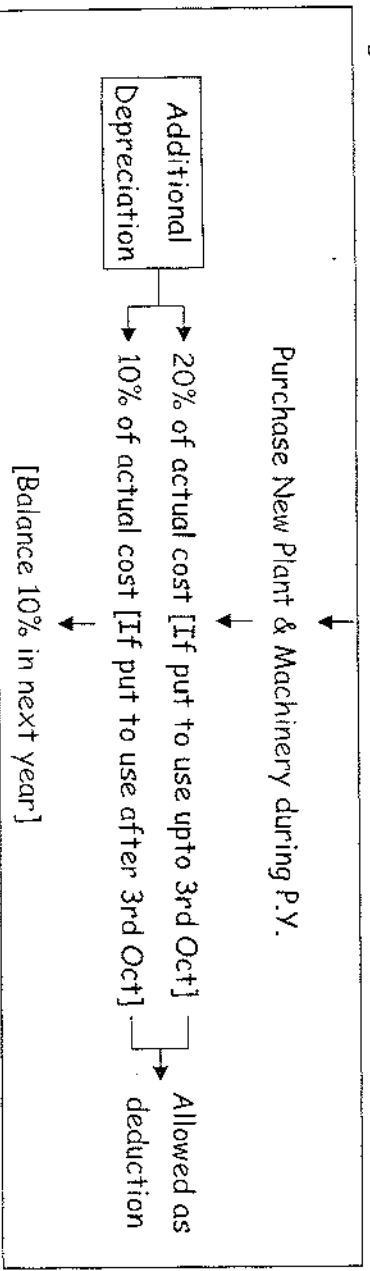


Example

Building [10%]				
Op. WDV [2 Buildings]				10,00,000
(+) Purchase (1 Building)				2,00,000
(-) Sale (1 Building)				(15,00,000) _n
STCG			No depreciation	(3,00,000)
P&M (15%)				
Op. WDV [5 P&M]	6,00,000	Op. WDV [5 P&M]	6,00,000	
(+) Purchase [3 P&M]	3,00,000	(+) Purchase [3 P&M]	3,00,000	
(-) Sale all P&M [8 P&M]	(4,00,000)	(-) Sale all P&M [8 P&M]	(10,00,000)	
STCL	5,00,000	STCG	(1,00,000)	
	No depreciation		No depreciation	

(7) Additional Depreciation

- Assessee engaged in business of Manufacturing/Production of any article [Factory/Industry] or generation/transmission/distribution of power



Note: Business of printing & publishing also eligible.

• **No Additional Depreciation in following P&M**

- Second hand plant & machinery
- Plant & machinery installed in office premises or residential accommodation
- Office appliances/equipments
- Ships, aircrafts, road transport vehicles [truck use in factory is eligible]
- Any P&M on which 100% deduction is allowed under other section

Example

A Ltd. engaged in Manufacturing Business	
	P&M (15%)
Opening WDV	20,00,000
Purchase new plant & machinery	
Put to use on 1.6.24	8,00,000
Put to Use on 30.12.24	5,00,000
Sale value received on sale of 1 machine	(3,00,000)
WDV of block for depreciation	30,00,000
(-) <u>Normal Depreciation</u>	
5,00,000 × 7.5%	25,00,000 × 15%
(-) <u>Additional Depreciation</u>	
8,00,000 × 20%	5,00,000 × 10%
	[Balance 10% allowed in next year]
Closing WDV	23,77,500

(8) Actual Cost of Asset

Normal Case

Purchase Price	XX
(+) Installation, Transportation, Trial Run and Other Expenses [upto put to use]	XX
(+) Taxes & Duties [If ITC not available]	XX
(+) Interest on loan taken for purchase of asset [upto put to use]	XX
(-) Subsidy/Government Grant received for purchase of asset	(XX)
Actual Cost of Asset Purchase	XX

Note: If payment/expenditure for asset to a single person in a single day exceeds ₹ 10,000 by Cash/Bearer Cheque/Cross Cheque, then such payment/expenditure shall not form part of actual cost of asset [Ignore such amount].

Special Case

	Cases	Actual Cost of Asset
(i)	Asset used in scientific research	Nil
(ii)	Section 35AD asset	Nil
(iii)	Stock converted into capital asset and used in B&P	FMV on date of conversion
(iv)	Asset acquired by gift/will	WDV of previous owner
(v)	Reacquisition of asset sold	Reacquisition price or WDV at the time of sale → Lower
(vi)	Asset use for personal purpose brought into business	Building = Original cost - Depreciation upto yet Other Asset = Original cost
(vii)	Asset transferred between holding & 100% subsidiary company	WDV of transferor
(viii)	Asset transferred by amalgamating company to amalgamated company	WDV of amalgamating company
(ix)	Asset transferred by demerged company to resulting company	WDV of demerged company of asset transferred.

(9) Other Points Relating to Depreciation

(i) Asset use for Partly Business & Partly Personal Purpose

Depreciation allowed only for business use.

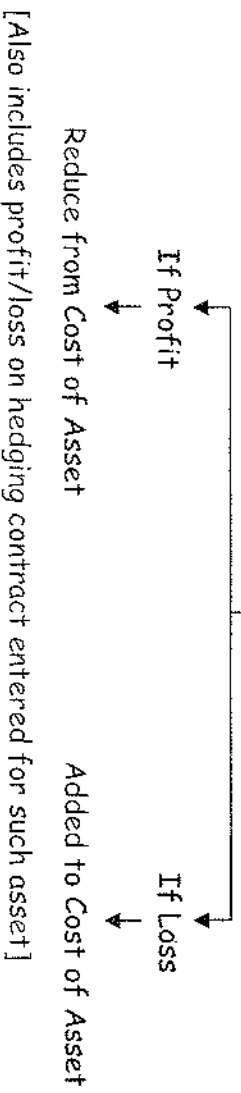
Example

Assessee uses the Car (15% rate) for both business and personal purpose in ratio of 60% and 40% respectively, WDV of Car = ₹ 10,00,000

- Total Depreciation = $10,00,000 \times 15\% = ₹ 1,50,000$
- Depreciation Allowed (60% Business use) = ₹ 90,000
- Depreciation not Allowed (40% Personal use) = ₹ 60,000
- Closing WDV = $10,00,000 - 90,000 = ₹ 9,10,000$

(ii) Asset Purchase in Foreign Currency in Credit [Section 43A]

Profit/loss due to foreign exchange fluctuations at the time of payment shall be adjusted from cost of asset.



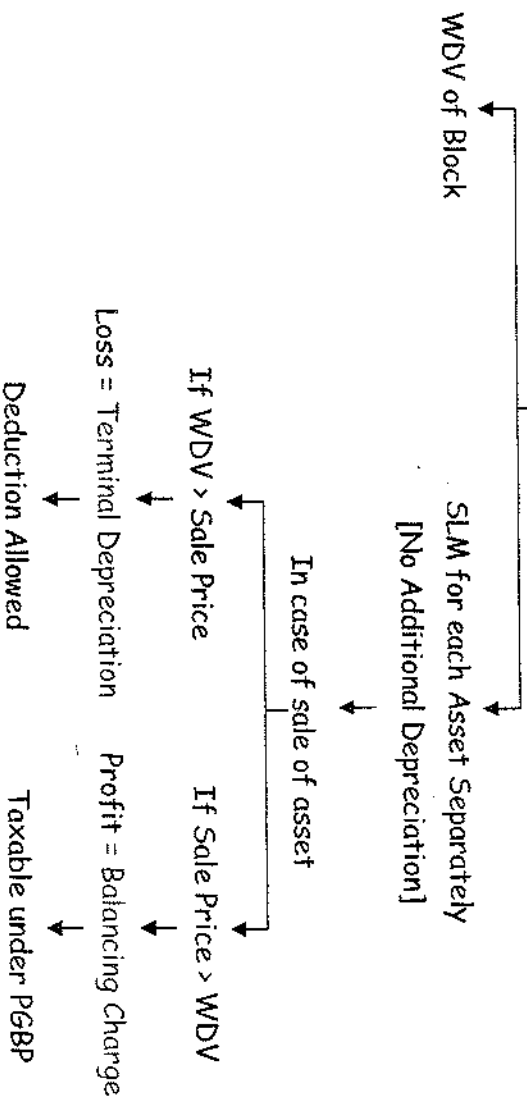
(iii) Depreciation in case of Amalgamation/Demerger/Conversion/Succession

- In case of:
 - Amalgamation/demerger of companies
 - Conversion of company into LLP
 - Succession of firm/proprietorship by company
- Depreciation is calculated normally [for predecessor]
- After that, depreciation shall be distributed between predecessor & successor in the ratio of number of days for which assets were used by them.

Example

Sai Ltd. [Amalgamating]		Amalgamation on 1.1.2025		Sirdi Ltd. [Amalgamated]	
↓					
Building (10%)					
Opening WDV	20,00,000			Sai Ltd = 275 days [1.4.24 to 31.12.24]	
				Sirdi Ltd. = 90 days [1.1.25 to 31.3.25]	
Purchase Building on 1.12.24	<u>10,00,000</u>			Sai Ltd. = 31 days [1.12.24 to 31.12.24]	
				Sirdi Ltd. = 90 days [1.1.25 to 31.3.25]	
• WDV for Dep.	30,00,000				
Depreciation for P.Y. 24-25		50,000			
$10,00,000 \times 5\% =$		<u>2,00,000</u>			
$20,00,000 \times 10\% =$		2,50,000			
Apportionment of Depreciation between Sai Ltd. and Sirdi Ltd.					
Depreciation		Sai Ltd.		Sirdi Ltd.	
2,00,000 [Op. WDV]	$\left[2,00,000 \times \frac{275}{365} \right]$	1,50,685		$\left[2,00,000 \times \frac{90}{365} \right]$	49,315
50,000 [Purchase]	$\left[50,000 \times \frac{31}{121} \right]$	12,810		$\left[50,000 \times \frac{90}{121} \right]$	37,190
		1,63,495			86,505

(iv) Depreciation for Undertaking engaged in Generation of Power



(v) Unabsorbed Depreciation [Section 32(2)]

Profit before charging depreciation as per Income Tax Act	XX
(-) Depreciation as per Income Tax Act	(XX)
Unabsorbed depreciation	(XX)

It can be set-off from any head of income [except salary] AND can be carry forward indefinitely.

Deduction for Tea/Coffee/Rubber Business [Section 33AB]

• Eligible Assessee

All assessee engaged in business of growing and manufacturing Tea/Coffee/Rubber in India.

• Deposit

Deduction allowed if some amount is deposited in NABARD upto:—

Due date of ROI
or
6 months from end of P.Y.
Earlier

• Deduction

Actual amount deposited

or

40% of profit from such business [as per IT Act]

Lower

• Utilisation of Deposit

Deposited amount should be utilised for purpose specified by Tea/Coffee/Rubber Board.

• Misutilisation

If amount utilised for following purpose, then amount utilised shall be taxable under PGBP:

➤ For P&M used in office premises or residential accommodation

Profits and Gains of Business or Profession (PGBP)

- For office appliances [other than computer]
- For P&M on which 100% deduction is allowed under other section

- **Non Utilisation**

Amount withdrawn shall be utilised in P.Y. of withdrawal, otherwise such unutilised amount is taxable

- **Sale of Asset**

When asset purchased is sold/transfer within 8 years from end of P.Y. in which it was acquired, then cost of such asset shall be taxable under PGBP in year of sale.

[If sale amount exceeds cost of asset, balance taxable as STCG]

- **Apportionment of Income**

Income calculated above shall be further divided into Taxable Business Income and Agricultural Income as per following ratio:

Income from Growing & Manufacturing in India		Business Income	Agricultural Income
Tea		40%	60%
Rubber [Latex]		35%	65%
Coffee	Grown & Cured	25%	75%
	Grown, Cured, Grounded, Roasted	40%	60%

- **Calculation of Taxable Business Income**

Net Profit as per Income Tax Act [Before Section 33AB]	XX
(-) Deduction u/s 33AB [Lower of Amt. deposited in NABARD or 40% of profit]	(XX)
	XX
(+) Misutilised amount during P.Y.	XX
(+) Amount withdrawn but not utilised during P.Y.	XX
(+) Cost of asset sold within 8 years during P.Y.	XX
Income for Apportionment	XX
(-) Agricultural Portion	(XX)
Taxable PGBP Income	XX
(-) Brought Forward Business loss (if any)	(XX)
	XX

Deduction for Petroleum and Natural Gas Business [Section 33AB(A)]

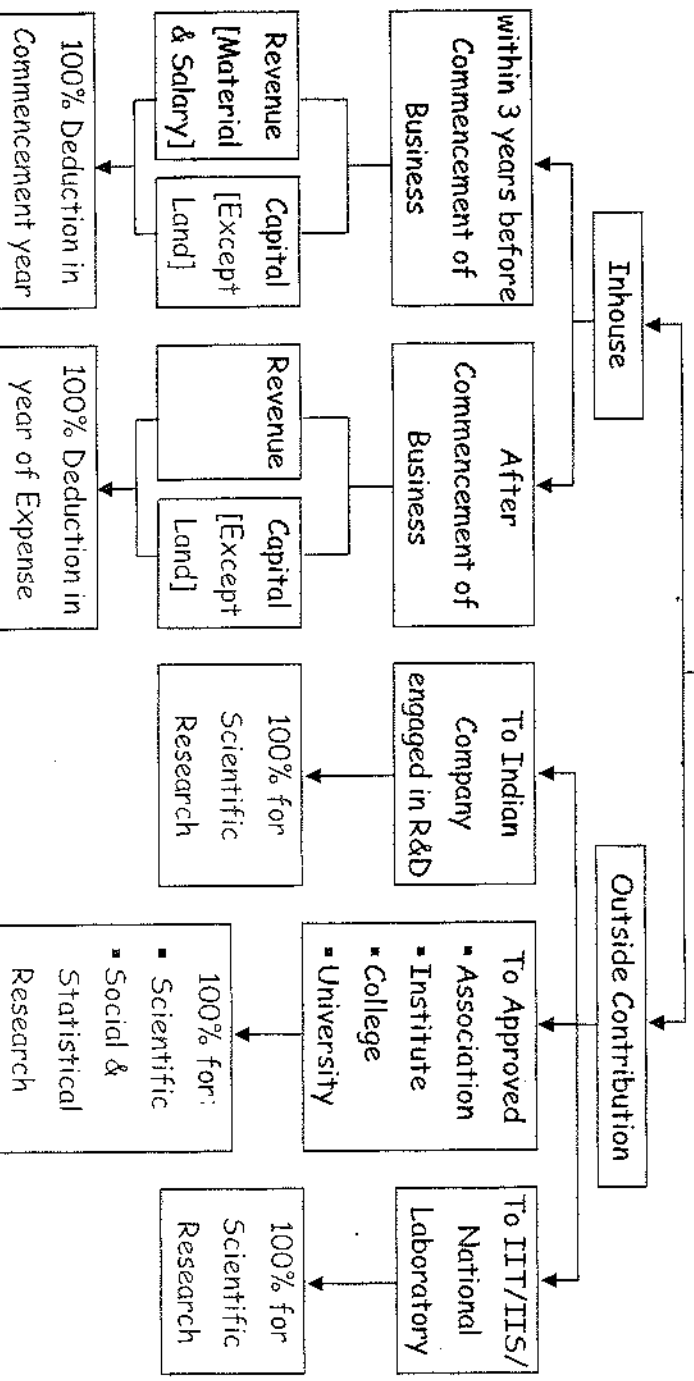
- **Eligible Assessee**

All assessee engaged in business of prospecting, extraction or production of petroleum or natural gas in India.

Profits and Gains of Business or Profession (PGBP)

- **Deposit**
Deduction allowed if some amount is deposited in SBI site restoration A/c upto end of P.Y.
- **Deduction**
Actual amount deposited
or
20% of profit from such business [as per IT Act] } **Lower**
- **Utilisation of Deposit**
Deposited amount should be utilised for purpose specified by ministry of Petroleum & Natural Gas.
- **Misutilisation**
If amount utilised for following purpose, then amount utilised shall be taxable under PGBP:
 - For P&M used in office premises or residential accommodation
 - For office appliances [other than computer]
 - For P&M on which 100% deduction is allowed under other section
- **Non Utilisation**
Amount withdrawn shall be utilised in P.Y. of withdrawal, otherwise such unutilised amount is taxable
- **Sale of Asset**
When asset purchased is sold/transfer within 8 years from end of P.Y. in which it was acquired, then cost of such asset shall be taxable under PGBP in year of sale.
[If sale amount exceed cost of asset, balance taxable as STCG]

Scientific Research Expenditure [Section 35]

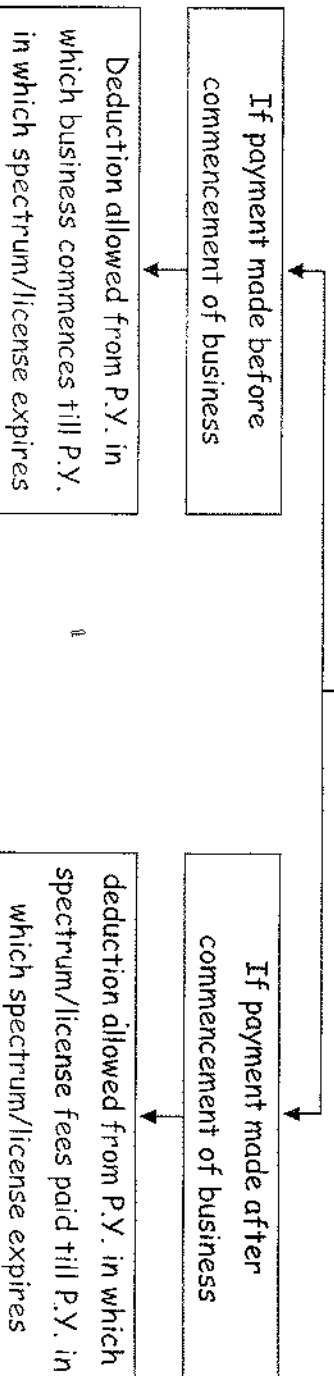


Other Points

- (i) Deduction allowed, even if approval of institution withdrawn after payment.
- (ii) Unabsorbed capital expenditure on scientific research can be carry forward and setoff same as unabsorbed depreciation.
- (iii) If scientific research asset is sold, then Sale Amount or Deduction Allowed [whichever is lower] is Taxable under PGBP.

Expenses for Obtaining Telecom Spectrum [Section 35ABA] / Telecom License [Section 35ABB]

Any amount actually paid for obtaining telecom spectrum/license shall be allowed as deduction in equal installments during no. of years for which spectrum/license is in force.



Example

Tata Telecom Ltd. obtains Telecom license of ₹ 12,00,000 for 5 years on 1.4.2022. It commences business on 1.4.23 [P.Y. 23-24]

License Fees Paid	
$\begin{array}{r} \text{₹ 6,00,000 on 1.4.22} \\ \downarrow \\ \text{Deduction from P.Y. 23-24 to P.Y. 26-27} \\ \frac{6,00,000}{4} = 1,50,000 \end{array}$	$\begin{array}{r} \text{₹ 6,00,000 on 1.4.24} \\ \downarrow \\ \text{Deduction from P.Y. 24-25 to P.Y. 26-27} \\ \frac{6,00,000}{3} = 2,00,000 \end{array}$
Deduction	Deduction
P.Y. 23-24 = 1,50,000	
P.Y. 24-25 = 1,50,000	P.Y. 24-25 = 2,00,000
P.Y. 25-26 = 1,50,000	P.Y. 25-26 = 2,00,000
P.Y. 26-27 = 1,50,000	P.Y. 26-27 = 2,00,000

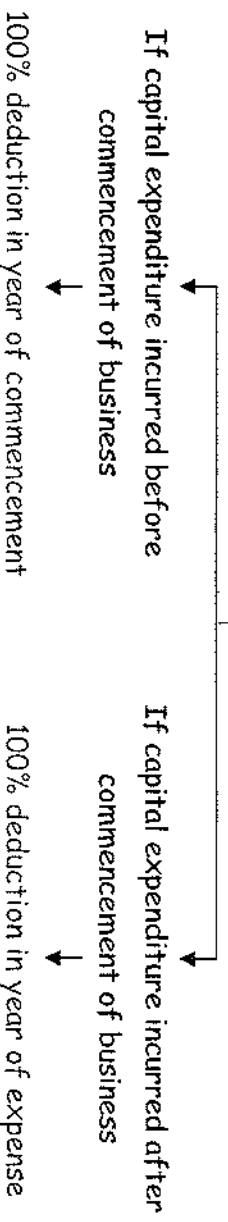
Other Points

- (i) Depreciation u/s 32 shall not be allowed on telecom spectrum/license.
- (ii) In case of amalgamation/demerger, remaining deduction shall be allowed to amalgamated/ resulting company.

Expenditure on Specified Business [Section 35AD]

• **Eligibility and Amount of Deduction**

Deduction allowed on all capital expenses except land/goodwill/financial instrument.



• **Specified Business**

1) Cold chain facility
2) Hotel of 2 star or above category
3) Hospital with at least 100 beds for patients
4) Housing projects under slum development scheme
5) Housing projects under affordable housing scheme
6) Production of fertilizers in India
7) Inland container depot
8) Honey production
9) Warehousing facility for storage of sugar
10) Warehousing facility for storage of agricultural produce
11) Cross country pipeline of natural gas/oil
12) Slurry pipeline for transportation of iron ore
13) Semi-conductor wafer fabrication manufacturing unit
14) Developing, maintaining & operating new infrastructure facility

• **Other Points**

- (i) Business should be new [not formed by splitting up or reconstruction of existing business].
- (ii) P&M should be new except:
 - Imported Old P&M
 - 20% of Total P&M can be old
- (iii) If payment/expenditure for capital asset to a person in a single day exceeds ₹ 10,000 by cash/bearer cheque/cross cheque, then no deduction allowed for such payment/expenditure [Ignore such amount].
- (iv) If deduction u/s 35AD is claimed, then deduction u/s 80IA to 80RRB & Section 10AA shall not be allowed from same business.
- (v) Profit/Loss of specified business is to be calculated separately.

Profits and Gains of Business or Profession (PGBP)

- (vi) Loss from specified business is set-off only from profit of any other specified business and such loss can be carry forward indefinitely.
- (vii) If specified business capital asset is sold, then amount received will be taxable under PGBP.
- (viii) If specified business asset converted/transferred to non-specified business within 8 years:

PGBP Income	
Deduction allowed [cost of asset]	XX
(-) Depreciation upto P.Y. preceding transfer year	(XX)
Taxable under PGBP	XX
Actual Cost of Asset for Non-Specified Business	
Cost of such asset	XX
(-) Depreciation upto P.Y. preceding transfer year	(XX)
Actual Cost of Asset	XX

Deduction of Expenses incurred on Agricultural Extension Project [Section 356cc]

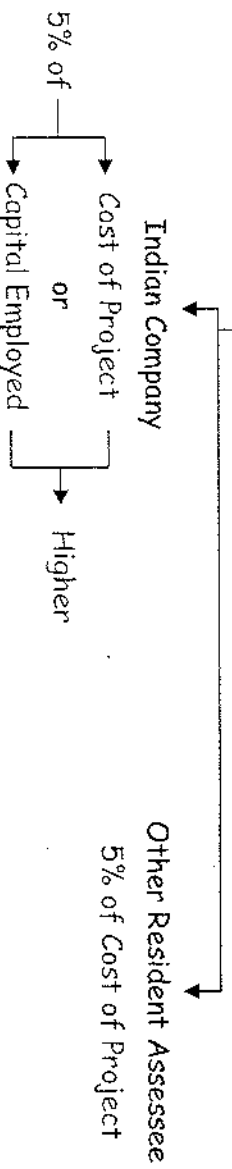
- Deduction allowed to all assessee.
- 100% of expenditure [Except Land & Building].

Deduction of Expenses incurred by Company on Skill Development Project [Section 356cd]

- Deduction allowed only to company.
- 100% of expenditure [Except Land & Building].

Preliminary Expenses [Section 35d]

- Deduction allowed only to resident assessee who incurs preliminary expenses at the time of Commencement of Business/Extension of Business/Setting up New Unit.
- **Maximum Limit of Deduction**



Cost of Project: Amount invested in fixed asset of new business/extension/ new unit

Capital Employed: Share capital [Except R&S, Share Premium] + debentures + long term borrowing of new business/extension/new unit

Profits and Gains of Business or Profession (PGBP)

- **Deduction Amount**

Actual Preliminary Expenses
or
Limit

→ Lower → Deduction allowed in 5 equal installments in 5 years

- In case of amalgamation/demerger, remaining deduction shall be allowed to amalgamated/resulting company.

Expenses on Amalgamation and Demerger [Section 35DD]

- Deduction allowed only to Indian company who incurred expenditure on Amalgamation and Demerger.
- Deduction allowed in 5 equal installments in 5 years.

Expenses incurred under Voluntary Retirement Scheme (VRS) [Section 35DDA]

- Deduction allowed to all assessee.
- Deduction allowed in 5 equal installments in 5 years of Amount Paid.
- Deduction for P.Y. = $\frac{1}{5} \times \text{Amount Paid for VRS}$
- In case of Amalgamation/Demerger/Succession/Conversion, remaining deduction shall be allowed to Successor.

Other Deduction [Section 36]

(1) **Stock Insurance [Sec. 36(1)(i)]**

Insurance premium of stock is allowed as deduction.

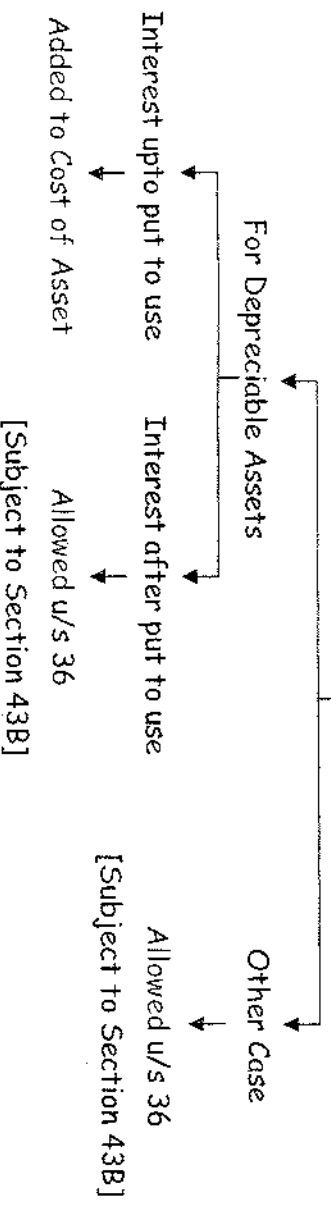
(2) **Health/Medical Insurance [Sec. 36(1)(ib)]**

Health/medical insurance premium of employee other than cash is allowed as deduction.

(3) **Bonus or Commission [Sec. 36(1)(ii)]**

Bonus or commission to employee is allowed as deduction but subject to Section 43B.

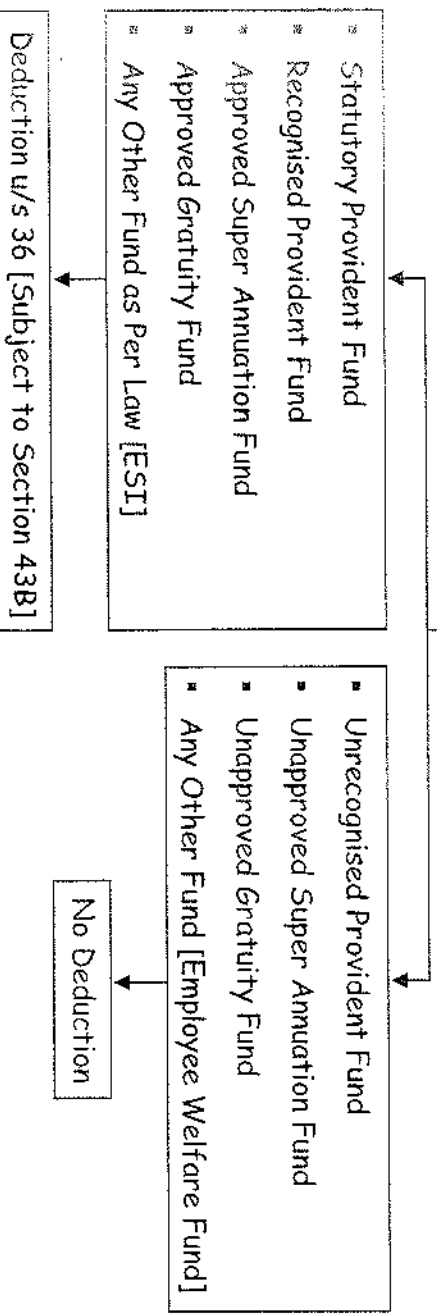
(4) **Interest on Loan for Business Purpose [Sec. 36(1)(iii)]**



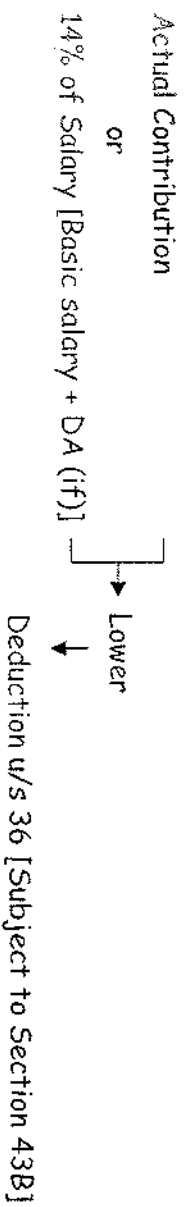
(5) **Discount on Zero Coupon Bond [Sec. 36(1)(iia)]**

Amortised over life of zero coupon bond.

(6) Employer Contribution for benefit of Employees [Sec. 36(1)(iv)]



(7) Employer contribution in Pension Scheme u/s 80CCD [Sec. 36(1)(va)]



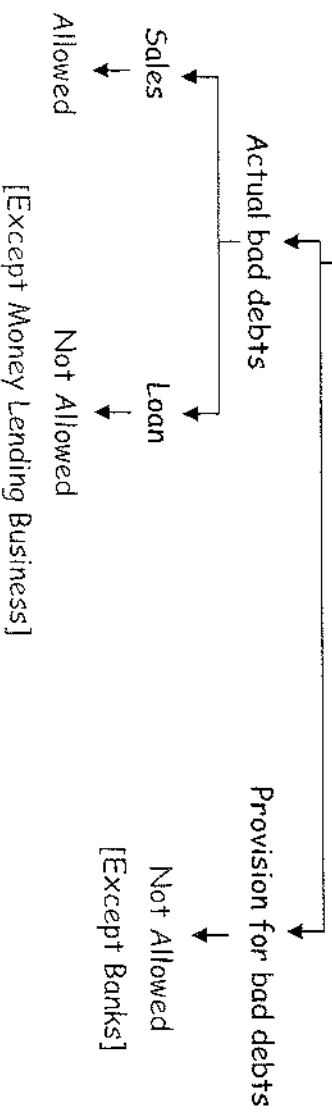
(8) Employee Contribution towards PF/ESI/Super Annuation Fund [Sec. 36(1)(vb)]

- Deduction allowed if amount deposited on or before due date of that fund.
- If not deposited by employer upto due date of that fund, then amount will be deemed to be income under PGBP.
- Due date of deposition in PF/ESI/Super Annuation Fund: 15th of next month

(9) Animals used in Business (Other than Stock in Trade) [Sec. 36(1)(vi)]

- Deduction allowed in year in which such animal becomes permanently useless or died.
- Deduction Amount = Cost of Animal - Scrap Value

(10) Bad debt [Sec. 36(1)(vii)]



Other Points

- Bad debts should be written off in the books in the P.Y. in which deduction is claimed.
- Debt should be taken into account for computing income for P.Y. or earlier years.

Profits and Gains of Business or Profession (PGBP)

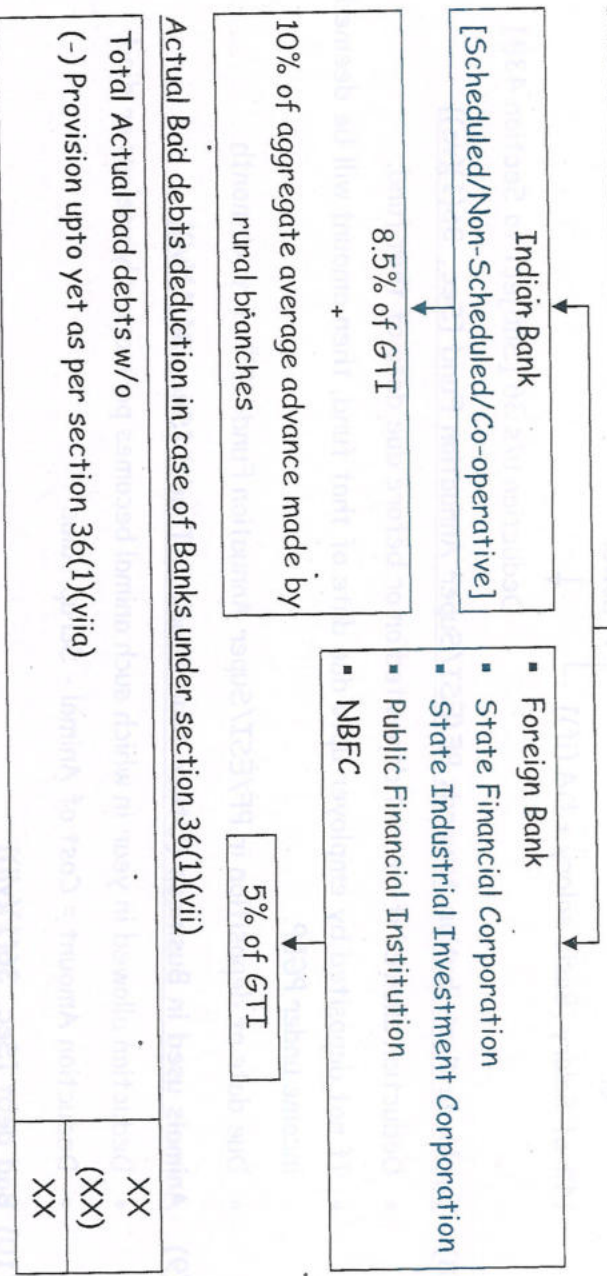
- **Recovery of Bad debts**

- Taxable under PGBP in the year of recovery.
- Amount Taxable = Bad debts recovered in excess of not written off

Example

1,00,000 [Bad Debts]		
60,000 - Written off		40,000 - Not written off
Deduction u/s 36		
	Bad debts Recovery	Taxable Amount
Case I	35,000	Nil
Case II	45,000	5,000

- **Provision for bad debts of Banks [Sec. 36(1)(viiia)]**



(11) Expenses on Promotion of Family Planning of Employees [Sec. 36(1)(ix)]

- Deduction allowed only to Companies
- | | |
|----------------|--|
| Revenue | Capital |
| ↓ | ↓ |
| 100% Deduction | Allowed in 5 equal installments in 5 years |
- Unabsorbed expenditure on family planning can be carry forward & setoff same as unabsorbed depreciation.
 - In case of amalgamation/demerger, remaining deduction shall be allowed to amalgamated/ resulting company.

(12) Securities Transaction Tax [STT]/Commodities Transaction Tax [CTT] Paid [Sec. 36(1)(xv) & (xvi)]

STT/CTT is allowed as deduction if Shares/Units/Commodities held as Stock in Trade.

(13) Purchase of Sugarcane [Sec. 36(1)(xvii)]

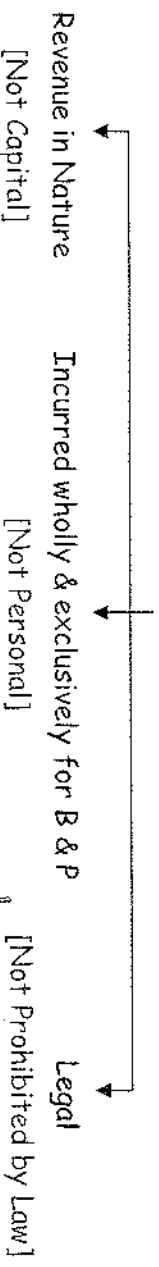
Expenses incurred by co-operative society engaged in business of manufacturing sugar for purchase of sugarcane at a price which is equal to or less than price fixed by government is allowed as deduction.

(14) Marked to Market loss or Other Expected loss [Sec. 36(1)(xviii)]

Allowed as deduction as per ICDS [On basis of Actual Settlement].

General Deductions [Section 37A]

Any expenditure [other than covered u/s 30 to 36] is allowed as deduction, if following conditions are satisfied:



Allowability of Some Expenses

1.	Corporate social responsibility [CSR] expenditure	Not Allowed
2.	Dividend & DDT	Not Allowed
3.	Secret commission, bribe, payment to gundas	Not Allowed
4.	Expenditure for advertisement in souvenir, brochure, pamphlet etc. published by political party [Eligible for deduction u/s 80GGB to companies]	Not Allowed
5.	Contribution to electoral trust, other donation [Eligible for deduction u/s 80]	Not Allowed
6.	Provision for loss of subsidiary, provision for deferred tax/income tax, provision for diminution in value of assets, provision for unascertained liability	Not Allowed
7.	Provision based on fair estimate & reasonable certainty as per ICDS	Allowed
8.	Provision for gratuity [Even based on actuarial valuation] [Sec. 40A(7)] [only gratuity paid is allowed]	Not Allowed
9.	Share issue expenses [Other than preliminary] ▪ Incurred for IPO/FPO/right issue: ▪ Other case [bonus issue]:	Not Allowed Allowed
10.	Debentures issue expenses [including convertible debentures]	Allowed
11.	Discount on issue of debentures	Allowed over life of debentures

Profits and Gains of Business or Profession (PGBP)

12.	Regularization/compounding fees	Not Allowed
13.	Expenditure incurred on project not related to existing business and project was abandoned	Not Allowed
14.	Payment to consultant for opinion on new business	Not Allowed
15.	Expenditure incurred on heart surgery of individual assessee	Not Allowed
16.	Commission paid to doctors by a diagnostic centre for referring patients for diagnosis	Not Allowed
17.	Freebies [Gift etc.] provided by pharmaceutical company to doctors	Not Allowed
18.	Tax on non monetary perquisites of employees paid by employer [Sec. 40(a)(v)]	Not Allowed
19.	Expenditure incurred [premium paid] on keyman insurance policy	Allowed
20.	Sponsorship fees	Allowed
21.	Non-compete fees	Allowed
22.	Branch Inauguration expenses	Allowed
23.	Expenses on glow sign board	Allowed
24.	Expenses incurred for grant of ISO certificate	Allowed
25.	Loss due to theft if incidental to business	Allowed
26.	Purchase/Expense bill omitted to be recorded in books	Allowed
27.	Tax, interest and penalties of direct and indirect tax	Direct Tax Not Allowed Indirect Tax Allowed [Net of ITC]
	Tax [including Cess & SC], Advance Tax, TDS	Not Allowed
	Interest [Including Interest on TDS & Advance Tax]	Not Allowed
	Penalty	Not Allowed
	Note: - Fees for delayed filing of TDS/TCS statement u/s 234E: - Interest on loan taken for payment of income tax/advance tax: - Refund of Direct/Indirect Tax - Income Tax Refund: Not Taxable - GST etc. Refund: Taxable [Net of Amount Refunded to Customers]	Allowed Not Allowed
28.	Other Penalties - For infraction/violation/breach of law: - Amount incurred to settle proceedings initiated for contravention of law: - For breach of contract:	Not Allowed Not Allowed Allowed

Amount Not Deductible [Section 40]

Non Deduction / Deposition of TDS [Section 40(a)(i)/40(a)(ia)]

Section 40(a)(i)

- Any amount paid or credited to NR or Foreign Company on which TDS is deductible
 - But TDS has not deducted during P.Y.
- or
- TDS deducted but not paid to Government upto due date of ROI

Then such amount/payment = 100% disallowed in current P.Y.
- Allowed in P.Y. of deposit to Government [If TDS deducted in subsequent year or TDS deposited after due date of ROI]

Section 40(a)(ia)

- Any amount paid or credited to Resident on which TDS is deductible
 - But TDS has not deducted during P.Y.
- or
- TDS deducted but not paid to government upto due date of ROI

Then such amount/payment = 30% disallowed in current P.Y.
- Allowed in P.Y. of deposit to Government [If TDS deducted in subsequent year or TDS deposited after due date of ROI]

Note:

If any amount paid/credited to payee without deduction of TDS and such payee:

- Furnished his ROI
- Considers such amount in total income
- Paid tax due on such amount

Then amount disallowed will be allowed in year in which payee files his ROI.

Non Deduction / Deposition of Equalisation Levy [Section 40(a)(b)]

- Any amount [consideration for specified services] paid or credited to NR on which equalisation levy is deductible
 - But equalisation levy has not deducted during P.Y.
- or
- Deducted but not paid to Government upto due date of ROI

Then such amount/payment = 100% disallowed in current P.Y.
- Allowed in P.Y. of deposit to Government [If deducted in subsequent year or deposit after due date of ROI]

Profits and Gains of Business or Profession (PGBP)

Payment to Specified Person [Section 40A(2)]

- If payment of expenditure made to specified persons [relatives], then AO can disallow excessive or unreasonable amount.
- Payment in excess of FMV, then excess disallowed.
- Specified Persons [Relatives]

Assessee	Specified Person [Relative]
Individual	Spouse, Brother, Sister or any Lineal Ascendant or Descendent of Individual
HUF	Member of HUF & relatives of member
Firm	Partner of firm & relatives of partner
AOP/ BOI	Member of AOP/ BOI & relatives of member
Company	Director of company & relatives of director
For All Assessee	Any person having substantial interest in business of assessee/relative of assessee [Substantial Interest means 20% or more voting power/profit share]

Cash Payments [Section 40A(3)]

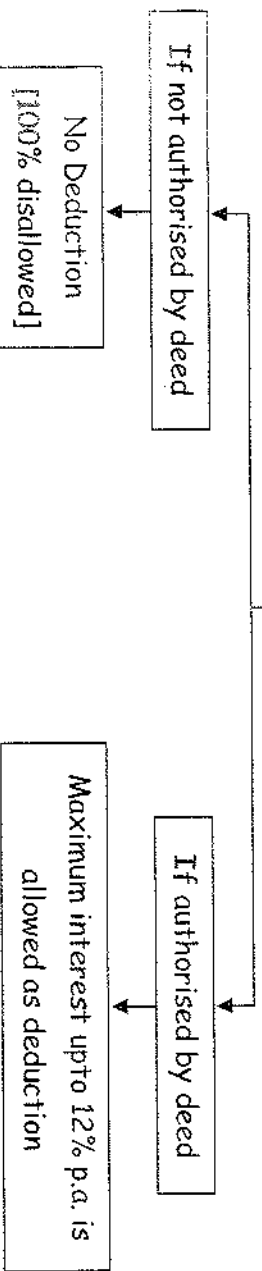
- If aggregate payment for expenditure to a single person in a day exceeds ₹ 10,000 by cash/bearer cheque/cross cheque, then such payment = 100% disallowed.
- If payment made to transporter, then limit will be ₹ 35,000.
- If expenditure claimed as deduction in earlier years on due basis and if such expenditure is subsequently paid in cash/bearer cheque/cross cheque in excess of ₹ 10,000 in a day, then deduction allowed earlier is taxable under PGBP [Section 40A(3A)].

• Non Applicability

- If payment made by A/c Payee Cheque/DD/ ECS/ Any Other Electronic Mode such as NEFT, RTGS, Debit Card, Credit Card etc.
- Payment made to Banks/ LIC/Government.
- Payment by book entry.
- Payment made in a Village/Town where no banking facility.
- Payment of retirement benefits to employees/their family upto ₹ 50,000.
- Payment of salary to an employee who is posted to a place other than his normal place of duty for 15 days or more.
- Payment to producers/cultivators of agricultural product, forest product, poultry/dairy product, fish product, livestock etc. [Not middleman/trader].

Payment of Interest and Remuneration [Salary/Bonus/Commission/Royalty] to Partners by Firm / LLP [Section 40(b)]

(1) Interest paid to partner on Loan/Capital/Current A/c

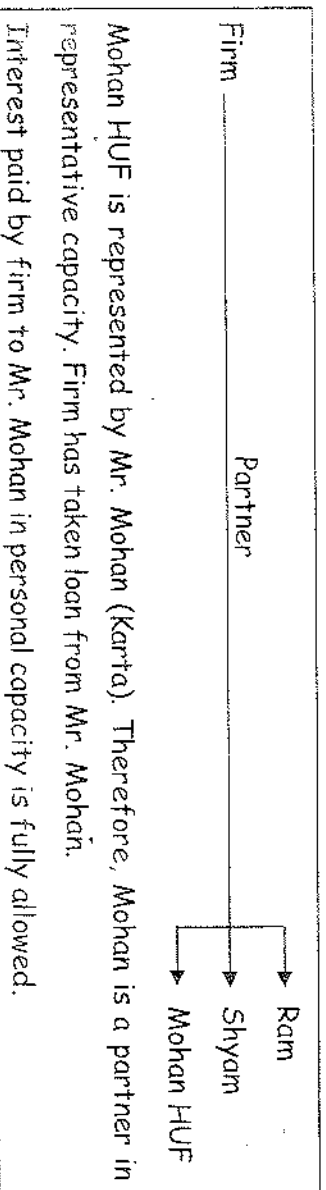


Note:

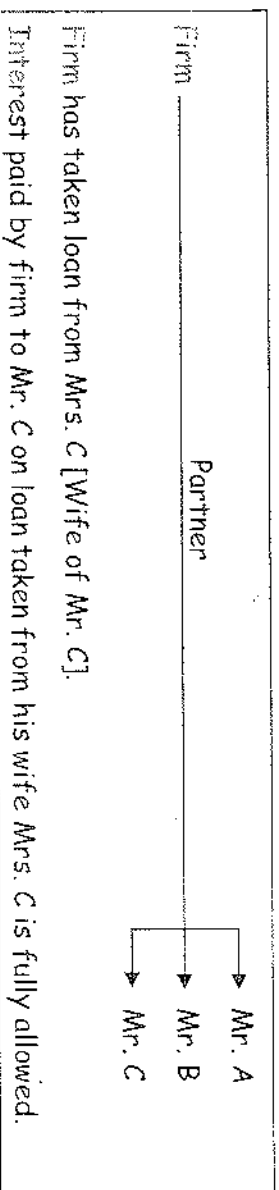
(i) Interest shall relate to period falling after date of deed and not for any earlier period [Not Retrospective]

(ii) Interest on loan [Special Point]

* If individual is a partner in firm in representative capacity, then above limit is not applicable on interest received in personal capacity i.e., such interest is fully allowed as deduction.

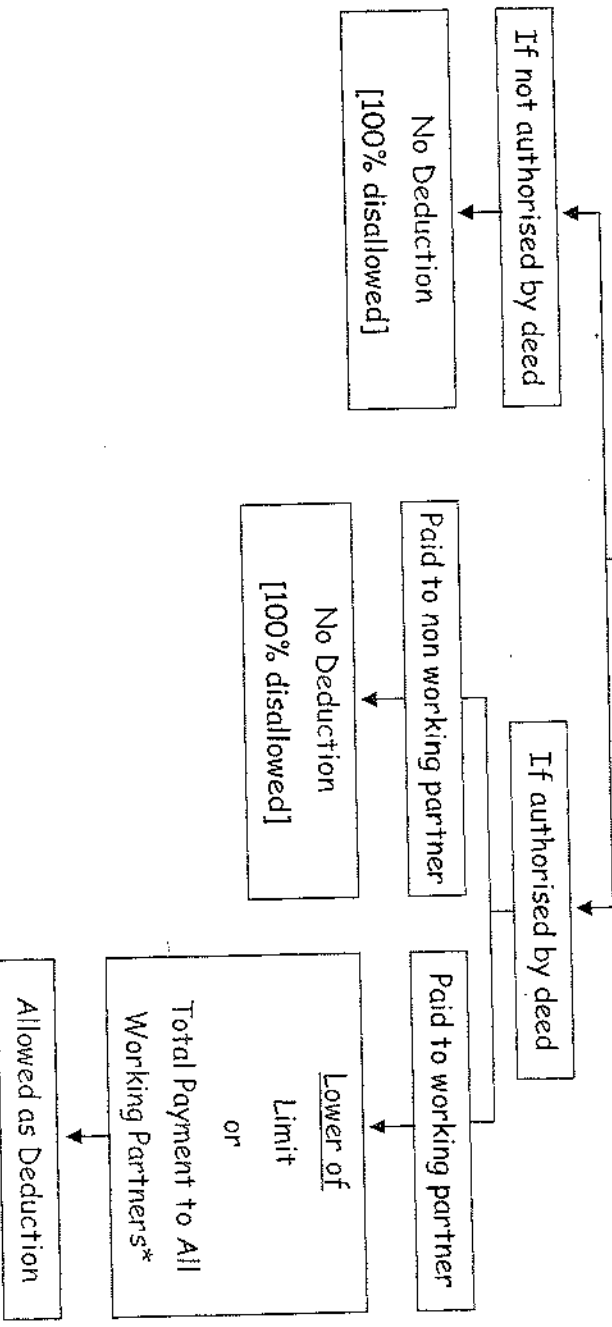


* If individual is a partner in firm in personal capacity, then above limit is not applicable on interest received on behalf of or for benefit of others i.e., such interest is fully allowed as deduction.



Profits and Gains of Business or Profession (PGBP)

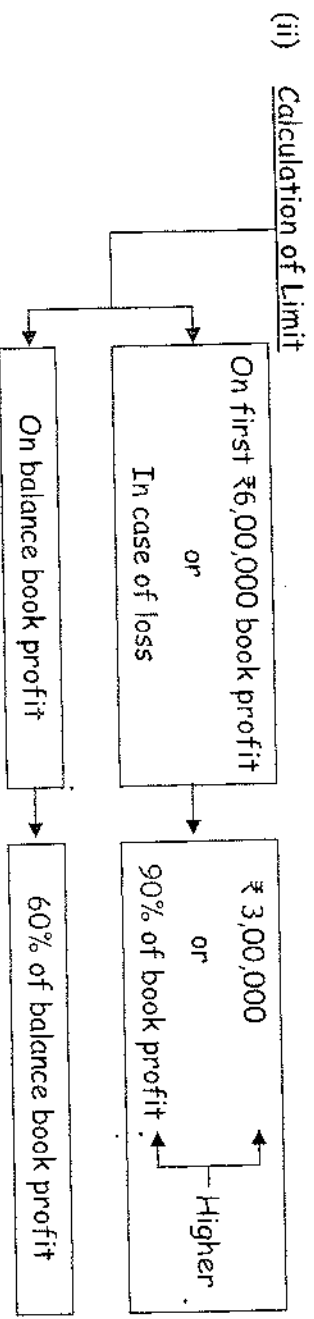
(2) Remuneration [Salary/Bonus/Commission/Royalty] paid to partners



[*Includes Partner in Representative Capacity]

Note:

- (i) Remuneration shall relate to period falling after date of deed and not for any earlier period
[Not Retrospective]



(iii) Book Profit

Book Profit means PGBP before Remuneration.

Profit as per Income Tax Act [PGBP]	XX
(+) Remuneration to Partners [Salary/ Bonus/ Commission/ Royalty] [If debited to P&L]	XX
(-) Unabsorbed Depreciation [if any]	(XX)
Book Profit	XX

Example

Book Profit	9,00,000
Payment of Salary to All Working Partners	7,50,000

Profits and Gains of Business or Profession (PGBP)

Limit = [(Higher of 6,00,000 × 90% or 3,00,000) + (3,00,000 × 60%)] = 5,40,000 + 1,80,000	7,20,000
Deduction = Lower of 7,50,000 or 7,20,000	7,20,000

(3) Other Points

- Section 40A(2) shall not attract in case of interest & remuneration paid to partners which is covered u/s 40(b).
- Rent is not covered u/s 40(b), so section 40A(2) shall attract in case of rent paid to partners.
- Share income [profit] received by partner from Firm/LLP is exempt u/s 10(2A).
- Interest and remuneration received by partner from Firm/LLP is taxable under PGBP [upto deduction allowed to Firm/LLP].
- If stock in trade distributed by firm on dissolution/reconstitution to partner, then gain [FMV - Purchase Price] on transfer of such stock is taxable under PGBP in hands of firm [Section 98].

Deemed PGBP Income [Section 41]

Remission or Cessation of Trading Liability [Section 41(1)]

If assessee has taken deduction of expenditure or trading liability in earlier years
and

During current P.Y., assessee has obtained refund of such expenditure or there is remission or cessation of such liability

Then such Remission/Refund shall be taxable under PGBP.

Example

GST/Sales Tax Refund, Creditors W/o, Less payment to creditors

Note: Waiver of working capital loan is also taxable under PGBP.

Section 41(2) : Balancing Charge	
Section 41(3) : Sale of Scientific Research Asset	Already Discussed Earlier
Section 41(4) : Recovery of bad debts	

Expenses Allowed on Actual Payment Basis [Section 43B]

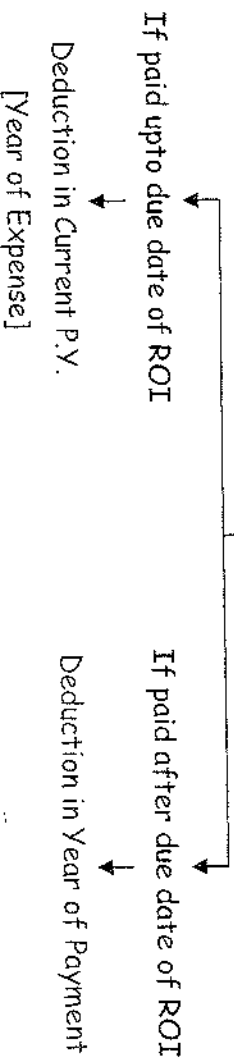
• Following expenses are allowed only if they are paid upto due date of ROI:

- Any Tax, Duty, Cess [Includes interest on tax]
- Employer contribution towards, SPF, RPF, Approved super annuation fund, Approved gratuity fund, Pension scheme u/s 80CCD, Any other fund as per law
- Bonus or commission to employees

Profits and Gains of Business or Profession (PGBP)

- (iv) Interest on loan to Scheduled Bank, Co-Operative Bank, Public Financial Institution, State Financial Corporation, State Industrial Investment Corporation and NBFC
- (v) Leave encashment (leave salary) to employees
- (vi) Amount payable to railways for use of railways assets

- Allowability of Deduction in respect of above expenses:



- Amount payable to micro or small enterprise

- Amount payable by assessee to a micro or small enterprise beyond time-limit specified in MSMED Act is allowed as deduction only in P.Y. of payment.
- MSMED Act mandates payment of goods or services to supplier (micro or small enterprises) upto date as per written agreement which can be maximum 45 days. If there is no such written agreement, payment shall be made within 15 days.
- If amount is paid within said period, deduction is allowed in year of accrual. If not, then deduction is allowed only in year of payment, even if it is paid upto due date of ROI.

Example

ABC Ltd. purchased goods of ₹ 10,000 from A & Co., a micro enterprise on 1.3.2025. As per written agreement between them, payment has to be made by 5.4.2025.

- (i) If ABC Ltd. paid the sum on 2.4.2025
Since payment is made on or before 5.4.2025, deduction is allowed in P.Y. 24-25.
- (ii) If ABC Ltd. paid the sum on 20.4.2025
Since payment is made beyond time limit, deduction is allowed in year of payment i.e., P.Y. 25-26.

- Other Points

- Furnishing of bank guarantee upto due date of ROI cannot be treated as actual payment.
- Bonus is allowed even if amount is initially remitted to the trust created for avoiding late payment of bonus provided actual payment to employees is made upto due date of ROI.
- If interest converted into loan, borrowing or debentures, then such conversion cannot be treated as payment. However, when installment of such converted interest is paid, deduction allowed.
- Interest includes pre-payment premium, so it is also allowed on paid basis.

Profits and Gains of Business or Profession (PGBP)

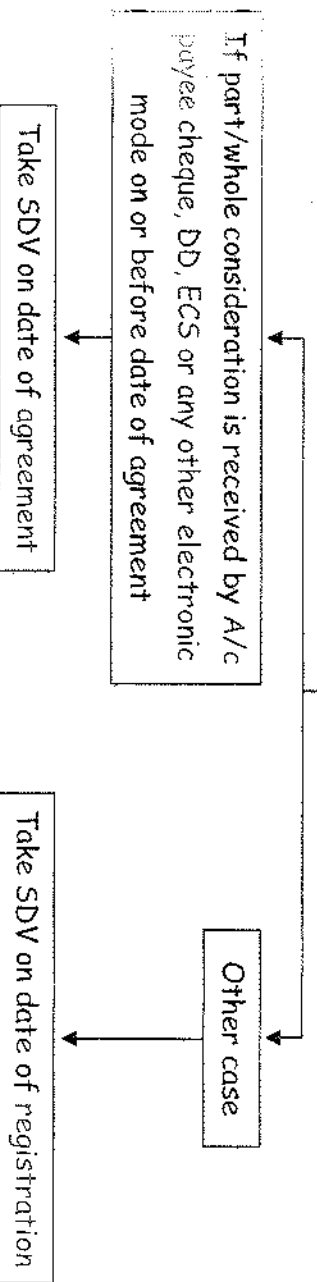
Sale Consideration of Land & Building [If held as Stock in Trade] [Section 43CA]

Sale Consideration = Stamp Duty value
or
Sale Price } → Higher

Note:

If stamp duty value is upto 110% of sale price, then sale consideration = Sale Price

If date of agreement and date of registration is not same



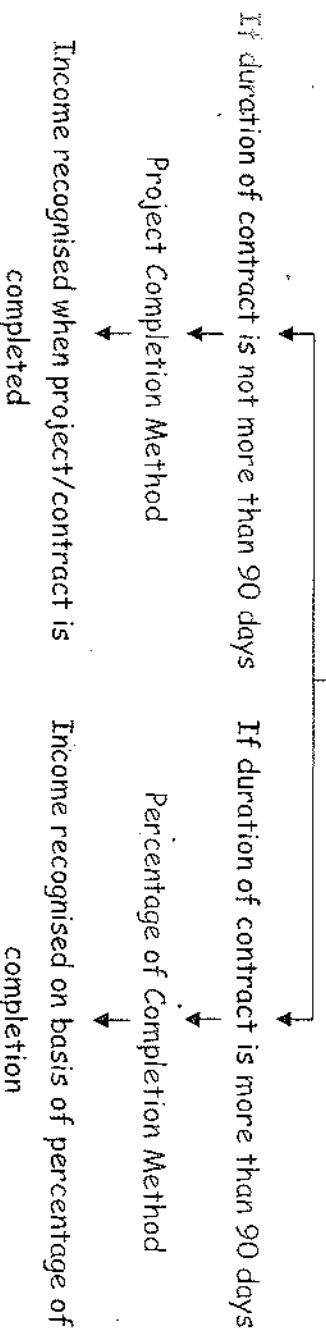
Income from Construction and Service Contracts [Section 43CB]

Construction Contract

Percentage of Completion Method: Income recognised on basis of percentage of completion.

Service Contract

Income recognised on basis of Project Completion Method or Percentage of Completion Method:



Note: Income includes Retention Money

Special Provision for Trade, Professional or Similar Associations [Section 44A]

- If expenditure of such association exceeds subscription income received from members
 - Then deficiency shall be first set off against PGBP income of association.
 - If no PGBP income, deficiency can be set off against any other income.
- Maximum deficiency that can be set off is 50% of total income of association.

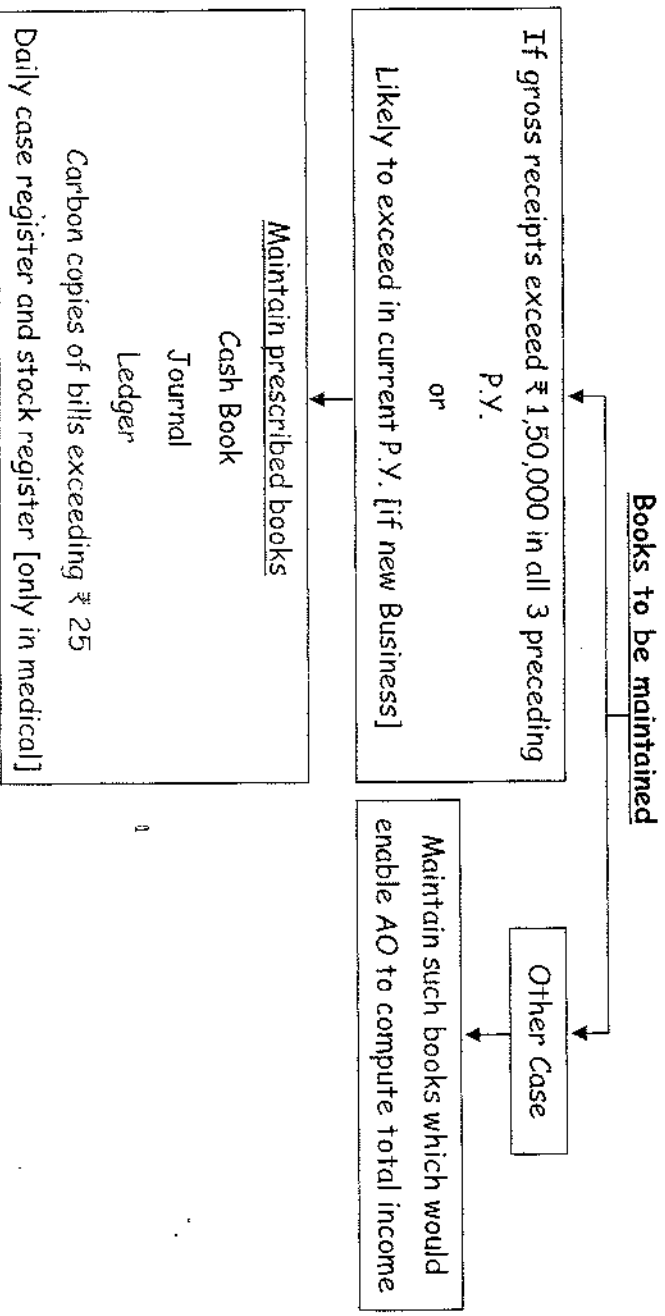
Profits and Gains of Business or Profession (PGBP)

Compulsory Maintenance of Books of Accounts [Section 44AA]

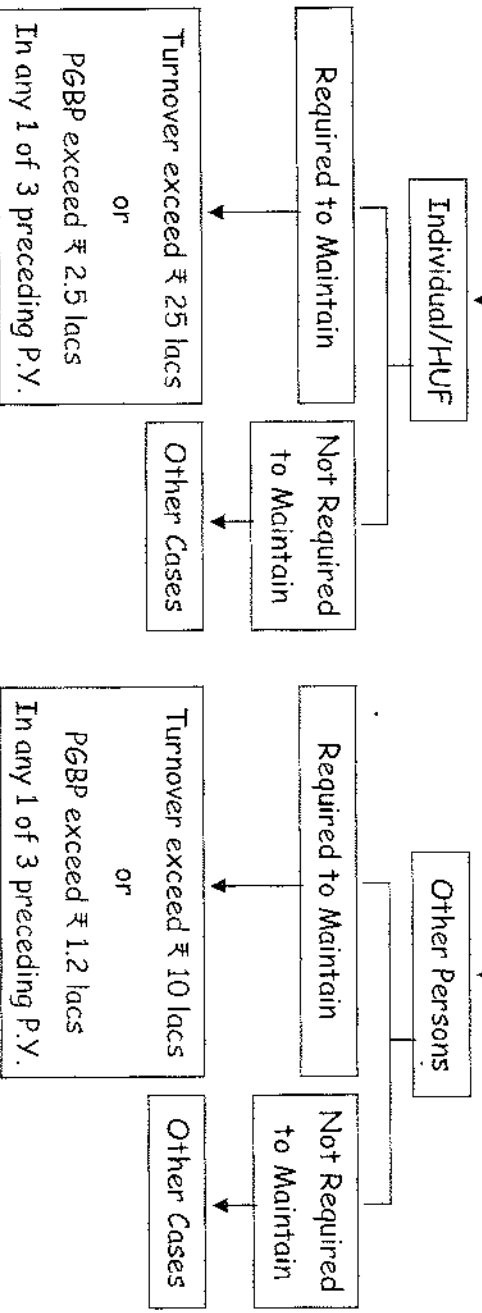
(1) Maintenance of Books of Accounts by Notified Profession

Notified Profession:

Legal, Medical, Engineering, Architect, Accounting, Technical Consultancy, Interior Decoration, Film Artist, Company Secretary, IT Professionals.



(2) Maintenance of Books of Accounts by Other Business and Profession



(3) Period for which Books of Accounts are required to be kept & maintained

Minimum 6 years from end of A.Y.

Tax Audit of Books of Accounts [Section 44AB]

Tax audit is compulsory in following cases:

Profits and Gains of Business or Profession (PGBP)

(i) In case of business

If turnover exceeds ₹ 1 crore in P.Y.

However, limit will be ₹ 10 crores, if:

- Aggregate amount received for sales during P.Y. in cash/bearer cheque/cross cheque does not exceed 5% of total amount received.
- and
- Aggregate payment made for expenses during P.Y. in cash/bearer cheque/cross cheque does not exceed 5% of total payment made.

(ii) In case of profession

If gross receipts exceed ₹ 50 lacs during P.Y.

- (iii) If assessee covered by section 44AD or 44ADA and assessee claims income less than 8%/6% or 50% of turnover/gross receipts and his total income is more than basic exemption limit.
- (iv) If assessee covered by section 44BB, 44BBB, 44AE and assessee claims income less than profit deemed under these sections.

Note:

- Audit must be done by CA.
- Tax audit report shall be furnished in Form 3CA/3CB/3CD.
- Due date of furnishing tax audit report: 1 month prior to due date of furnishing ROI u/s 139(1).

	ROI Filing Due Date	Due Date of Furnishing Tax Audit Report
Normal Tax Audit	31 st October of A.Y.	30 th September of A.Y.
Transfer Pricing	30 th November of A.Y.	31 st October of A.Y.
Other Case	31 st July of A.Y.	-

Presumptive Taxation

Particulars	Section 44AD	Section 44ADA	Section 44AE
Eligible Assessee	Resident Individual, HUF, Firm [not LLP] engaged in Any Business other than:	Resident Individual, Firm [not LLP] engaged in Notified Profession	Any assessee engaged in business of plying, hiring, leasing goods carriage [Goods Transportation Business]
	▪ Notified Profession ▪ Section 44AE Business ▪ Commission Business ▪ Agency Business		
Eligible Business/ Profession	Any business whose Total Turnover/Gross Receipts is upto ₹ 2 crores in P.Y.	Notified Profession whose Gross Receipts is upto ₹ 50 lacs in P.Y.	If assessee owns not more than 10 goods carriage at any time during P.Y.

Profits and Gains of Business or Profession (PGBP)

	<u>Note</u> If aggregate receipts in cash /bearer /cross cheque is upto 5% of total turnover in P.Y., then limit will be ₹ 3 crores.		<u>Note</u> If aggregate receipts in cash /bearer /cross cheque is upto 5% of gross receipt in P.Y, then limit will be ₹ 75 lacs.	
Presumptive PGBP Income	PGBP Income		PGBP Income	PGBP Income
	If Turnover received by A/c payee cheque/ DD/ECS/ Electronic mode upto due date of ROI ↓ 6% of such turnover/GR	Other ↓ 8% of such turnover/GR	50% of Gross Receipts	Heavy Goods Vehicle [Gross Weight exceed 12 ton /12000 Kg] ↓ ₹ 1000 × weight in tons × ownership months/part of month [Per Vehicle] ₹ 7500 × ownership months/part of month [Per Vehicle]
Expense Deduction	No deduction of any expenditure u/s 30 to 38 and Section 40(b)		No deduction of any expenditure u/s 30 to 38 and Section 40(b)	No deduction of any expenditure u/s 30 to 38
Maintenance of Books of A/c & Audit	If Assessee opts	Not required	If Assessee opts	If Assessee opts
	If Assessee not opt and his TI exceeds basic exemption limit	Required	If Assessee not opt and his TI exceed basic limit	If Assessee not opt
Other Points	- Advance Tax Payment only in 1 Installment: 15th March - ROI filing due date: 31st July - Assessee shall not claim deduction u/s 10AA and 80IA to 80RRB.		- Advance Tax Payment only in 1 Installment: 15th March of F.Y. - ROI filing due date: 31st July	
	- Advance Tax Payment only in 4 Installment - ROI filing due date: 31st July		- Advance Tax Payment in 4 Installment - ROI filing due date: 31st July	

Profits and Gains of Business or Profession (PGBP)

	* If assessee declares income for any P.Y. as per section 44AD & he does not declare income for next 5 Consecutive P.Y. as per 44AD ↓ he will not eligible for 44AD for 5 years subsequent to year in which he does not declare income as per 44AD.		
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Royalty Income in respect of Patent Developed & Registered in India [Section 115BBF]

- Applicable only to resident assessee.
- Applicable only if at least 75% of development expenses incurred in India.
- Taxable under PGBP or IFOS.
- Taxable @ 10%.
- No deduction of any expenditure from such income.
- No benefit of basic exemption limit from such income.
- No deduction under Chapter VI-A from such income.

Income from Transfer of Carbon Credits [Section 115BBG]

- Taxable under PGBP or IFOS.
- Taxable @ 10%.
- No deduction of any expenditure from such income.
- No benefit of basic exemption limit from such income.
- No deduction under Chapter VI-A from such income.

Method of Accounting for PGBP and IFOS [Section 145]

- **Income from PGBP and IFOS shall be computed as per:** Cash System OR Mercantile System
- **Section 145B**
 - Claim for escalation of price in a contract is deemed to be income of P.Y. in which reasonable certainty of its realisation is achieved.
 - Subsidy/grant from government is deemed to be income of P.Y. in which it is received.

Income Computation and Disclosure Standards [ICDS]

- Central government notified 10 ICDS [Section 145(2)]
- ICDS are applicable for computation of Income under PGBP and IFOs [Mercantile System] and not for maintaining Books of Accounts.
- ICDS applies to all assessee [except Individual and HUF who are not liable for tax audit u/s 44AB].
- **In Case of Conflict**

Income Tax Act and ICDS	→	Income Tax Act
Income Tax Rules and ICDS	→	Income Tax Rules
AS/Ind AS and ICDS	→	ICDS
- ICDS also applies in case of presumptive taxation.
- ICDS will not apply on MAT calculation but applies on calculation of AMT.

ICDS I: Accounting Policies

- Does not recognise prudence and materiality concept.

Example

- Marked to market loss/expected loss on contract etc. to be recognised on actual settlement basis.

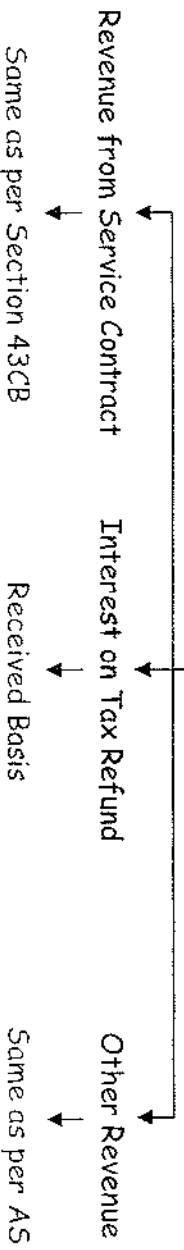
ICDS II: Valuation of Inventories

- Cost or NRV, whichever is less.
- In case of dissolution of firm, Inventory shall be valued at NRV.
- Borrowing cost shall be included only in cost of those inventories which requires 12 months or more to bring them to saleable condition.
- Borrowing cost which does not meet recognition criteria shall not be included in cost of inventory.

ICDS III: Construction Contract

- Same as per Section 43CB.

ICDS IV: Revenue Recognition

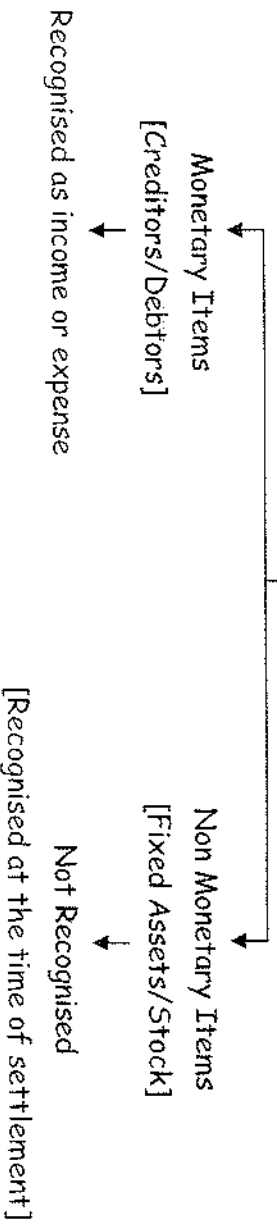


ICDS V: Tangible Fixed Assets

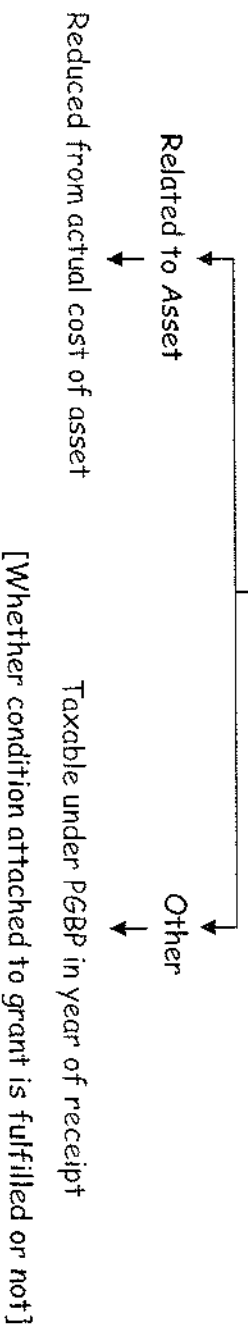
- Depreciation and transfer: same as per Income Tax Act.
- Revaluation of asset is not permitted.
- In case of exchange of asset: actual cost of asset shall be FMV of asset received.

ICDS VI: Effects of change in Foreign Exchange Rates

Exchange difference arising on last day of P.Y.



ICDS VII: Government Grants



ICDS VIII: Securities

- Covered only securities held as stock in trade.
 - As per ICDS, valuation of securities shall be done category wise and not security wise.
- Cost of Category →
or
NRV of Category → Lower
- In case of AS 13, valuation is done as per security wise.

Example

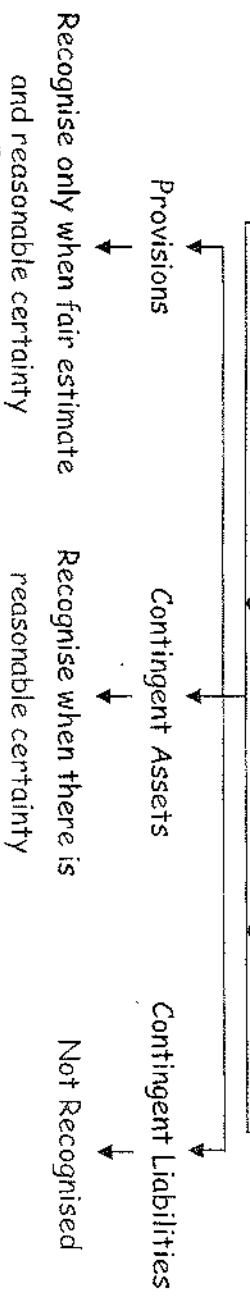
Shares	Cost	NRV	As per AS 13	As per ICDS
A Ltd	100	50	50	Lower of 700 or 800
B Ltd	300	150	150	
C Ltd	100	500	100	
D Ltd	200	100	100	
	700	800	400	700

ICDS IX: Borrowing Cost

- Same as per Income Tax Act.

Profits and Gains of Business or Profession (PGBP)

ICDS X: Provisions, Contingent Assets and Contingent Liabilities



INCOME FROM OTHER SOURCES



Changing Section [Section 56]

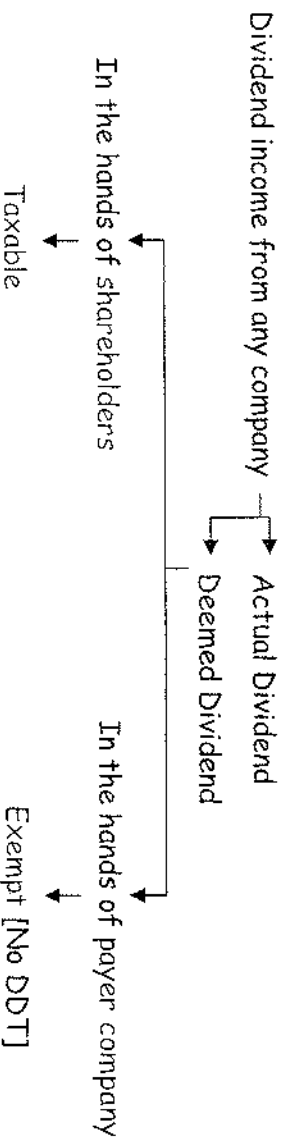
- Income is taxable under this head if
 - It is not taxable under other heads.
 - and
 - Income is not exempt under Income Tax Act, 1961.

• Following Incomes are taxable under this head

- | | |
|--------|---|
| (i) | Dividend income |
| (ii) | Income from units of UTI/Mutual Funds |
| (iii) | Interest income |
| (iv) | Interest received on compensation/enhanced compensation |
| (v) | Income from letting/renting of plant & machinery, furniture [if not taxable under PGBP] |
| (vi) | Advance money forfeit on or after 1.4.2014 |
| (vii) | Salary income of MP/MLA |
| (viii) | Family pension |
| (ix) | Amount received under life insurance policy other than ULIP and keyman insurance policy |
| (x) | Money or property received without consideration or for inadequate consideration in excess of ₹ 50,000 [Section 56(2)(x)] |
| (xi) | Casual income |
| (xii) | Winings from Online Games |
| (xiii) | Income from transfer of Virtual Digital Assets [if not taxable under PGBP] |
| (xiv) | Undisclosed Income u/s 68, 69, 69A, 69B, 69C and 69D |
| (xv) | Other income not taxable under other heads and not exempt |

Dividend Income

(1) Taxability of Dividend Income



(2) Deduction of Expenses from Dividend Income

Only Interest expense, maximum 20% of such income

(3) Deemed Dividend

- (i) Distribution of company assets to shareholders to the extent of Accumulated Profits [2(22)(a)]
- (ii) Distribution of debentures, deposit certificates to shareholders and bonus shares to preference shareholders to the extent of Accumulated Profits [2(22)(b)]
- (iii) Distribution on liquidation to shareholders to the extent of Accumulated Profits [2(22)(c)]
- (iv) Distribution on reduction of capital to shareholders to the extent of Accumulated Profits [2(22)(d)]
- (v) Loan or Advance by a closely held company to its shareholders to the extent of Accumulated Profits [2(22)(e)]
- (vi) Payment by company on buyback of shares to its shareholders [2(22)(f)]

(4) Loan or Advance by Closely Held Company [2(22)(e)]

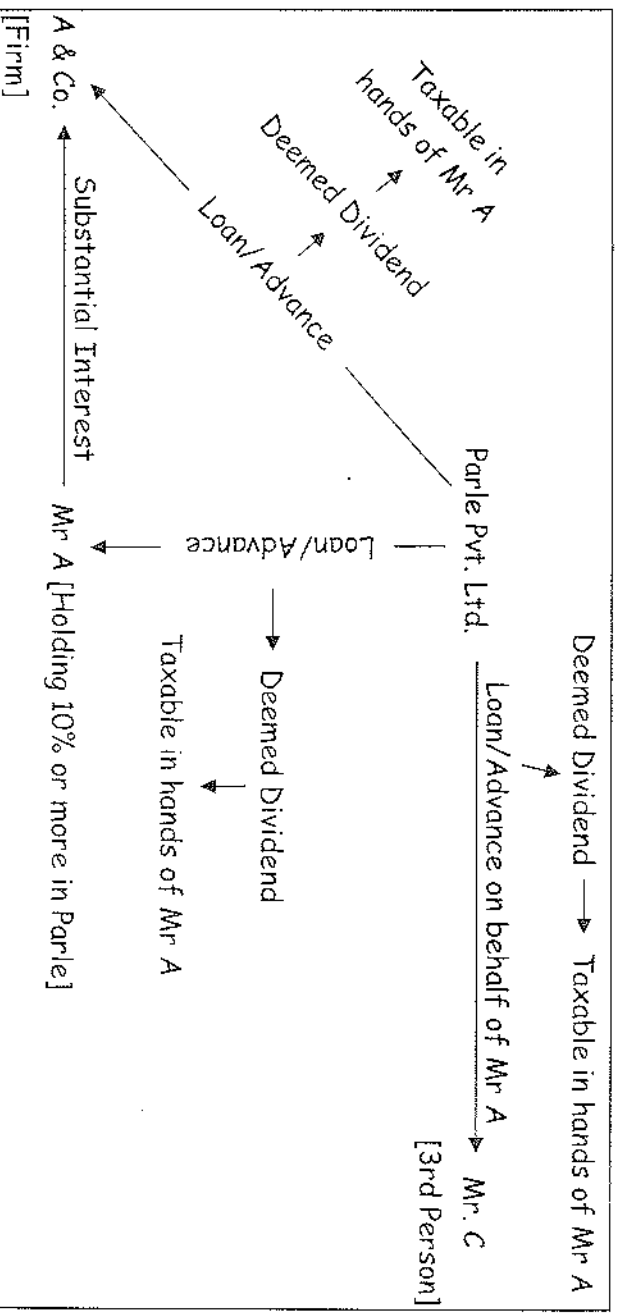
Any payment by a company in which public is not substantially interested [Private/Unlisted Public Company], by way of loan or advance to:

- Shareholder holding 10% or more voting power [Equity Share Capital]

OR

- Any concern/entity in which such shareholder has substantial interest [20% or more share in concern/entity]

To the extent of Accumulated Profits of the company shall be treated as deemed dividend in the hands of shareholder.

Example

Note:

- (i) Any payment by a company on behalf of or for individual benefit of such shareholder is also deemed dividend.
- (ii) Repayment of loan/advance is irrelevant.
- (iii) Shareholder can be any person.
- (iv) Following are not treated as deemed dividend [Non Applicability]:
 - If loan/advance is given in ordinary course of business.
 - Trade advance [commercial business transaction such as creditors payment, job work]
 - If loan/advance is given in return to benefit provided to company by such shareholder [shareholder mortgaged his personal property to enable company to obtain loan in past]

Income from Units of UTI / Mutual Funds

- Taxable in the hands of unitholders
- Deduction of expenses: Only Interest expense, maximum 20% of such income

Interest Income

Taxable Interest Income	▪ <u>Interest on Securities/Deposits/Loans</u> ➤ If not taxable under PGBP, then taxable under Other Source ➤ Deduction of expenses: Interest/brokerage/any expense [same as PGBP provision] ▪ Interest on Bank Deposits [Interest on Savings A/c and Fixed Deposit (FD)] ▪ Interest on Tax Refund [Taxable in year in which it is received]
Exempt Interest Income	▪ Interest on PPF ▪ Interest on Post Office Saving Bank A/c → If Individual A/c = upto ₹ 3500 Exempt → If Joint A/c = upto ₹ 7000 Exempt ▪ Interest on share application money deposited in bank to comply with statute

Interest on Compensation / Enhanced Compensation

- Taxable in year in which it is received.
- Computation of Income

Interest on compensation/enhanced compensation received	XX
(-) 50% deduction	(XX)
Income from Other Source	XX

Note: No other deduction

Income from Other Sources

Income from Renting of Plant & Machinery / Furniture

- If not taxable under PGBP, then taxable under Other Source.

• Computation of Income

Rent Amount	XX
(-) Deduction of Expenses [same as PGBP provisions]	(XX)
> Repairs, Insurance Premium, Depreciation and Any Other Expenses	
Income from Other Source	XX

Advance Money Forfeited

If forfeit on or after 1.4.2014 = Taxable under Other Source

Salary Income of MP / MLA

- Daily Allowance and Constituency Allowance is Exempt
- Other Salary Income [Pay & Allowance from Parliament/Assembly] = Taxable under Other Source

1

Family Pension

- Monthly pension received by employee family from employer after death of employee.

• Deduction Limit

1/3 of family pension received

or

₹ 15,000 p.a. [₹ 25,000 p.a. in case of 115BAC]

→ Lower

- Family pension received by widow/children of member of armed/para military force is fully exempt.

Amount received under Life Insurance Policy other than ULIP & Keyman Insurance Policy

- Amount received under life insurance policy other than ULIP and keyman insurance policy is Taxable under Other Source if it is not exempt u/s 10(10D).

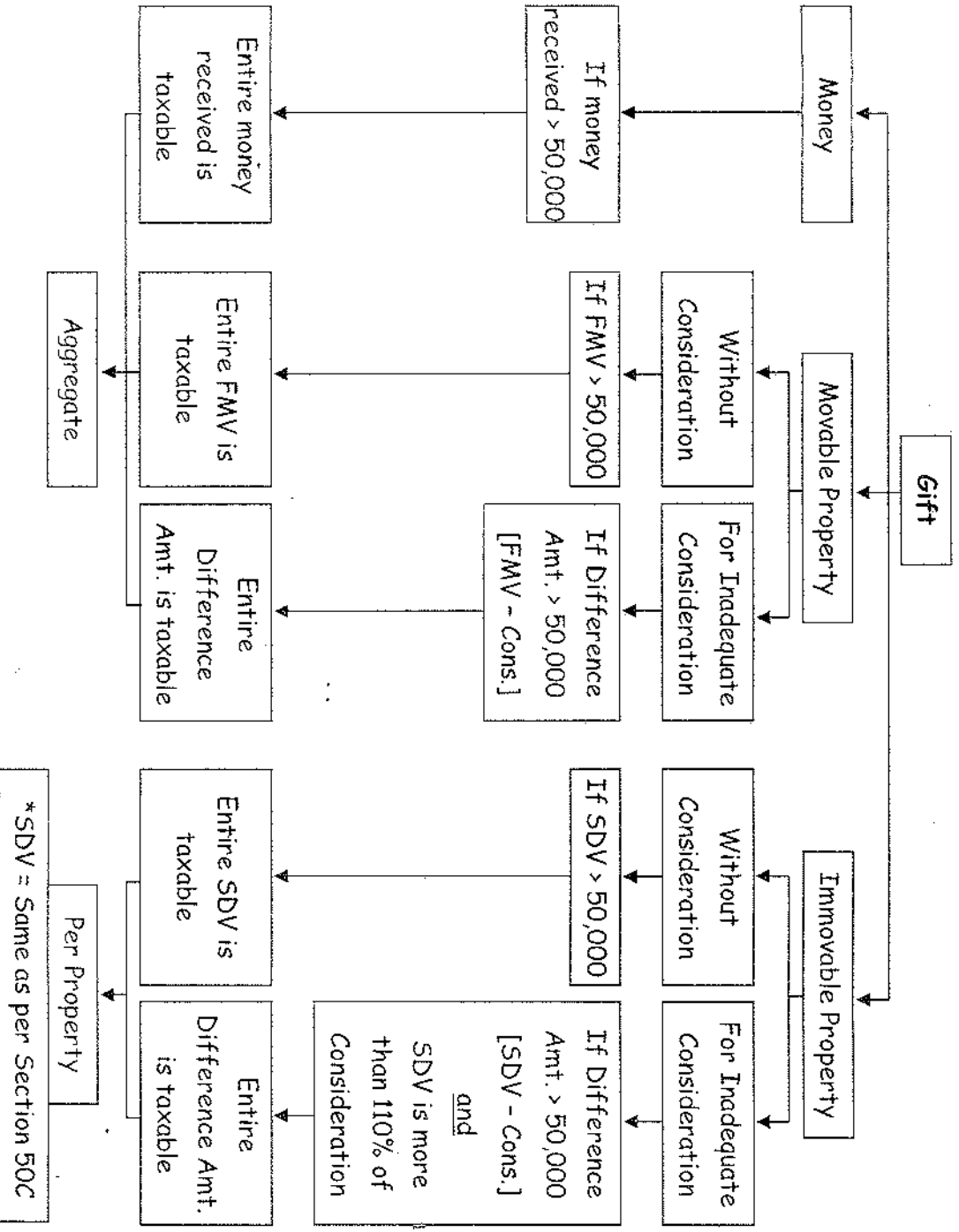
• Computation of Income

Amount Received under life insurance policy	XX
(-) Premium paid till date of receipt of amount under life insurance policy	(XX)
Income from Other Source	XX

Money or Property received Without Consideration or for Inadequate Consideration in Excess of ₹ 50,000 / Taxability of Gifts [Section 56(2)(x)]

(1) **Applicability:** Applicable to All Persons

(2) **Meaning of Gift**



(3) **Property:** Capital Asset for recipient [not stock in trade]

Movable Property	(i) Share & Securities
	(ii) Jewellery
	(iii) Archaeological Collections
	(iv) Drawings/Paintings
	(v) Sculptures
	(vi) Any work of art
	(vii) Bullion
	(viii) Virtual Digital Asset
Immovable Property	Land and Building [Except Rural Agricultural Land]

(4) Non-Applicability of Section 56(2)(x) [Exempted Gifts]Gift Received:

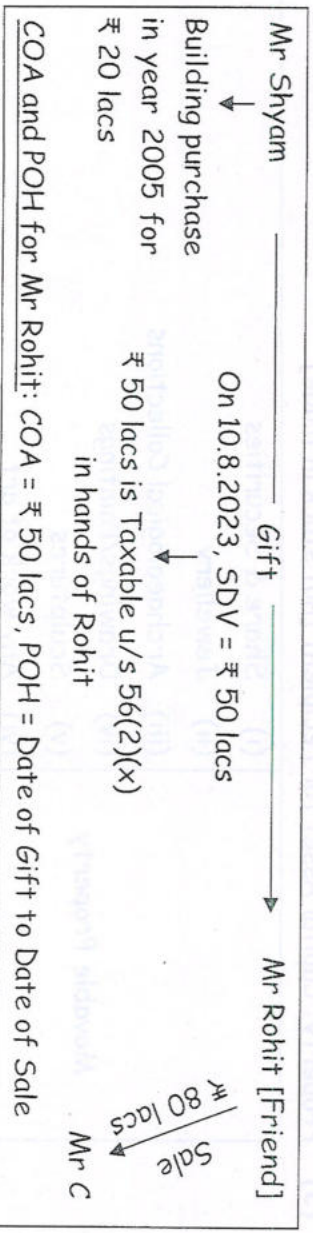
- From Relative
- On Marriage of individual
- Under will or inheritance
- In contemplation of death of donor/payer
- From Local Authority
- From Institution/Trust registered/referred in Income Tax Act u/s 12AA/12AB/10(23C)
- By Institution/Trust registered/referred in Income Tax Act u/s 12AA/12AB/10(23C)
- From individual by a Trust created for the benefit of relative of individual
- By individual for medical treatment of COVID of himself and his family
- By family of deceased person [death due to COVID] from employer of deceased
from any other person upto ₹ 10 lacs

(5) Meaning of Relative

For Individual	(i) Spouse of Individual
	(ii) Brother or Sister of Individual or Spouse of Individual
	(iii) Brother or Sister of either of Parents of Individual
	(iv) Lineal Ascendant or Descendant of Individual or Spouse of Individual
	(v) Spouse of Person referred in Point (ii) to (iv) above
	<u>Note:</u> Niece, Nephew, Friends, Fiancee are not Relatives
For HUF	Any member of HUF

(6) Other Points

- (i) If Property [Gift] is taxable u/s 56(2)(x), then its Cost of Acquisition will be FMV/SDV Taxed u/s 56(2)(x). [Ignore cost of previous owner and period of holding of previous owner]

Example

- (ii) Gift received by employee from employer is taxable under Salary.
- (iii) Bonus Shares received by shareholders is not treated as gift and not taxable u/s 56(2)(x).

Casual Income Other Than Winnings from Any Online Game [Section 115BBB]

	<u>Casual Income includes:</u> ➤ Winning from lotteries ➤ Crossword puzzles ➤ Races including horse race ➤ Card games ➤ Betting/Gambling ➤ Any other games (other than online games)
Taxability	Taxable @ 30% u/s 115BB
Other Points	(i) No deduction of any expenditure from such income. (ii) No deduction under Chapter VI-A from such income. (iii) No benefit of basic exemption limit from such income. (iv) No set-off of any loss from such income. (v) No set-off of loss from above activity against any income [Dead Loss].

Winnings from Online Games [Section 115BBB]

Meaning of Online Games	A game that is offered on internet and is accessible by a user through computer resource including any telecommunication device.
Taxability	Taxable @ 30% u/s 115BBJ on Net Winnings
Calculation of Net Winnings	▪ <u>Net Winnings</u> = Gross Winnings from an online game – Loss from same online game ▪ Gross Winnings includes joining bonus/referral bonus/incentives given by online gaming platform if such amount is withdrawable. ▪ If joining bonus/referral bonus/incentives is not withdrawable, then ignore (not taxable). ▪ If there are multiple user accounts (wallets) of a person in an online gaming platform, Net Winnings will be aggregate of all wallets of such person. ▪ <u>Alternative Calculation of Net Winnings</u> = (A+D) – (B+C) A = Aggregate Amount withdrawn from user account by assessee during P.Y. B = Aggregate Amount deposited/added in user account by assessee including non-withdrawable joining bonus/referral bonus/incentives during P.Y. C = Opening Balance of user account at the beginning of P.Y. D = Closing Balance of user account at the end of P.Y.
Other Points	(i) No deduction of any expenditure from such income. (ii) No deduction under Chapter VI-A from such income. (iii) No benefit of basic exemption limit from such income.

Income from Other Sources

(iv) No set-off of any loss from such income.
(v) No set-off of loss from online games against any income (except winning from same game).

Example

Rohit provides following details about his user account (wallet) of Dream11, an online game platform:

Date	Particulars	Debit	Credit	Balance
1 st April	Opening Balance	-	-	-
1 st April	Joining Bonus (non-withdrawable)	-	1,000	1,000
10 th April	Amount Deposited/Added by Rohit	-	20,000	21,000
15 th April	Winnings	-	40,000	61,000
4 th May	Loss	10,000	-	51,000
20 th June	Referral Bonus (withdrawable)	-	5,000	56,000
30 th June	Amount Withdraw	30,000	-	26,000

Gross Winnings = 45,000 [40,000 (winnings) + 5,000 (withdrawable referral bonus)]

Net Winnings = 45,000 - 10,000 = 35,000

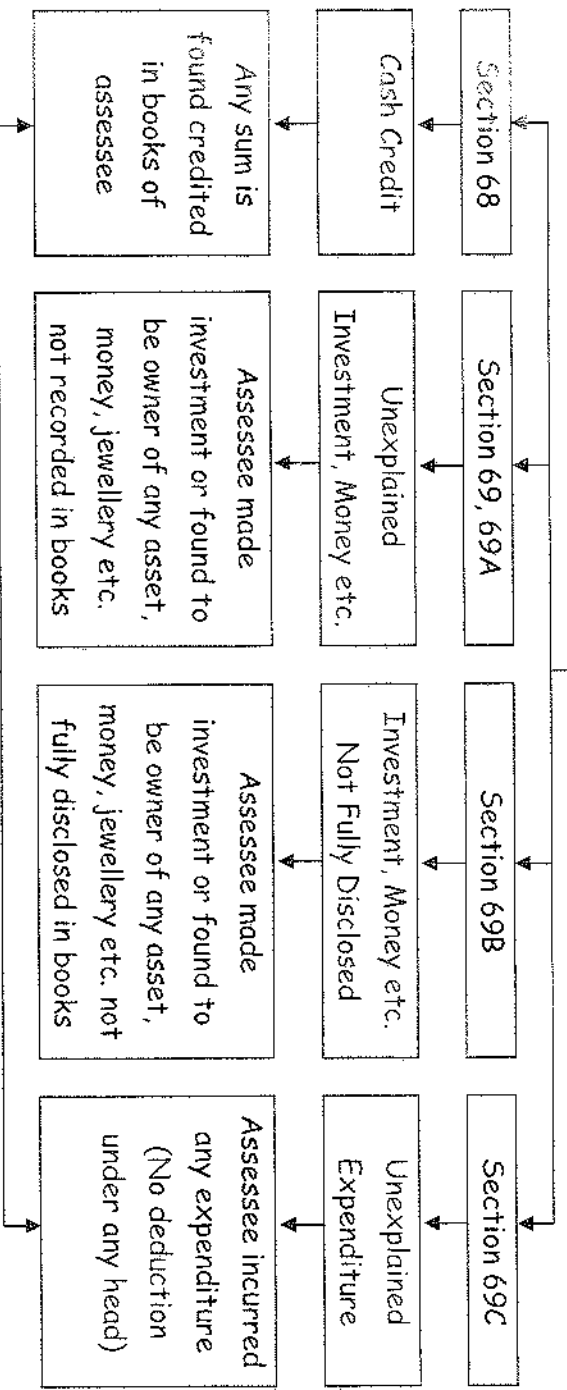
Alternative Calculation of Net Winnings = [30,000 + 26,000] - [21,000 + 0] = 35,000

Income from Transfer of Virtual Digital Assets [Section 115BBH]

Meaning of Virtual Digital Asset (VDA)	It means: > Any information/code/number/token generated through cryptographic means. [Cryptocurrency] > Any non-fungible token [NFT] or any other token of similar nature.						
Income from Transfer of VDA	<table> <tr> <td>Sale Amount</td><td>XX</td></tr> <tr> <td>(-) Cost of Acquisition</td><td>(XX)</td></tr> <tr> <td>Taxable Income</td><td>XX</td></tr> </table>	Sale Amount	XX	(-) Cost of Acquisition	(XX)	Taxable Income	XX
Sale Amount	XX						
(-) Cost of Acquisition	(XX)						
Taxable Income	XX						
Taxability	Such income is taxable @ 30% u/s 115BBH						
Other Points	(i) No deduction of any expenditure [except cost of acquisition] from such income. (ii) No deduction under Chapter VI-A from such income. (iii) No benefit of basic exemption limit from such income. (iv) No set-off of any loss from such income. (v) No set-off of loss from transfer of VDA against any income [Dead Loss].						

Undisclosed Income

Indian Black Money [Undisclosed Income]



- (i) Assessee has no explanation of source, or
- (ii) Explanation offered by assessee is unsatisfactory as per AO.

Amount borrowed or repaid on hundi [Section 69D]

- Other than A/c payee cheque shall be deemed to be income of person borrowing or repaying.
- However, if borrowed amount deemed to be income earlier, same cannot be treated as income at the time of repayment.

Other points regarding Section 68, 69, 69A, 69B, 69C, 69D

- (i) Undisclosed Income is taxable in the year in which it comes to the notice of Assessing Officer.
- (ii) Taxable at Special Rate i.e. 78% [60% Tax, 25% Surcharge, 4% Cess] u/s 115BBE.
- (iii) No deduction of any expenditure from such income.
- (iv) No deduction under Chapter VI-A from such income.
- (v) No benefit of basic exemption limit from such income.
- (vi) No set-off of any loss from such income.

Other Income Not Taxable under Other Heads and Not Exempt

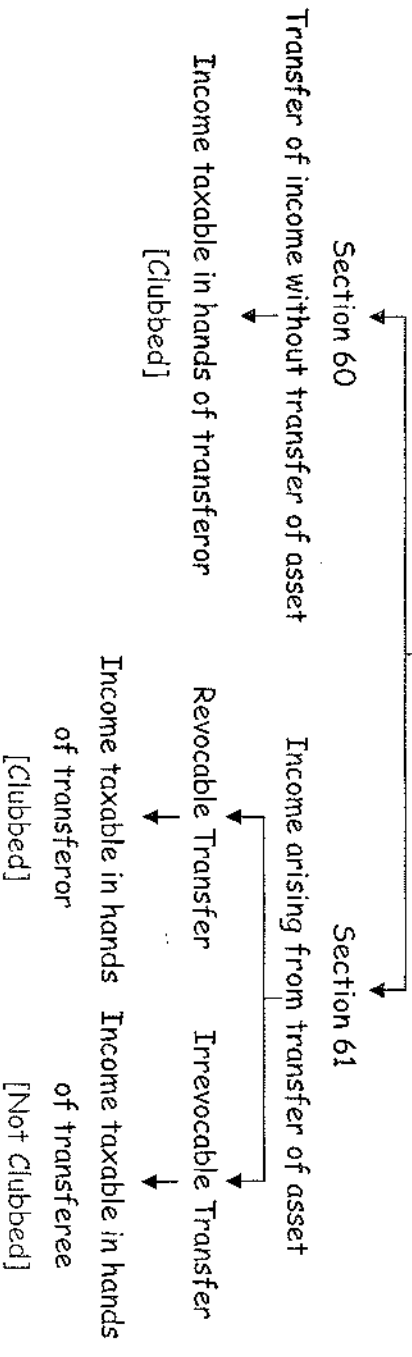
- Agricultural income from outside India
- Tuition income

CLUBBING OF INCOME

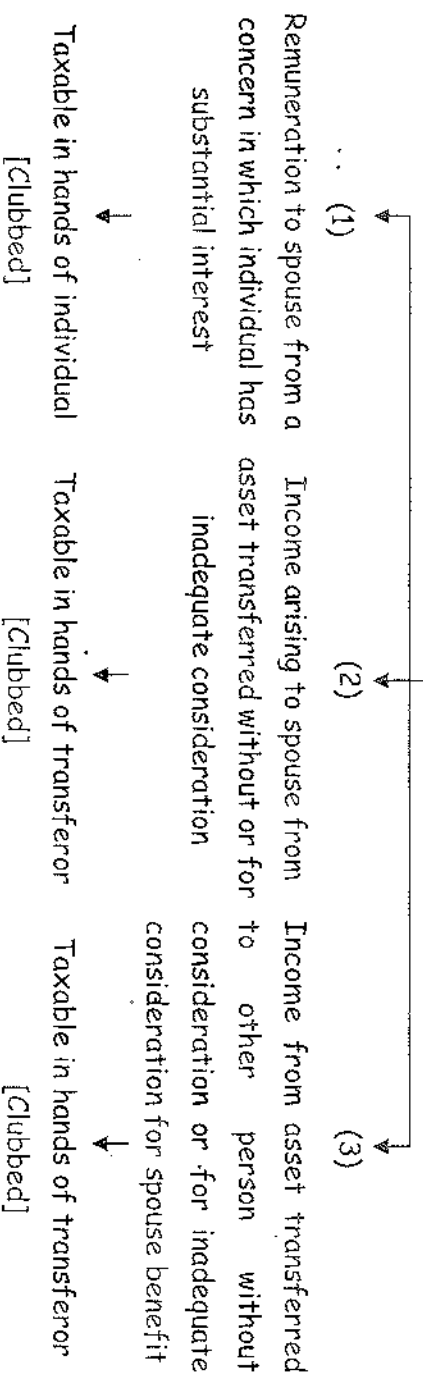


Clubbing of Income

General Provision



Clubbing of Spouse Income [Section 64]



Exception

If spouse has technical or professional qualification [Model is covered under exception]

Other Points

- Income earned by investing such income is not clubbed
- Income from accretion of transferred asset is not clubbed
- If transferred asset is invested by spouse in business/firm, then income/interest on capital to be clubbed

$$\text{Profit of Business/Interest on Capital} \times \frac{\text{Amt. of Transferred Asset Invested by spouse on 1st day of P.Y.}}{\text{Total Investment/Capital on 1st day of P.Y.}}$$

Clubbing of Sons Wife Income

Same as above [point (2) & (3)]

Clubbing of Minor Child Income [Section 64(1A)]

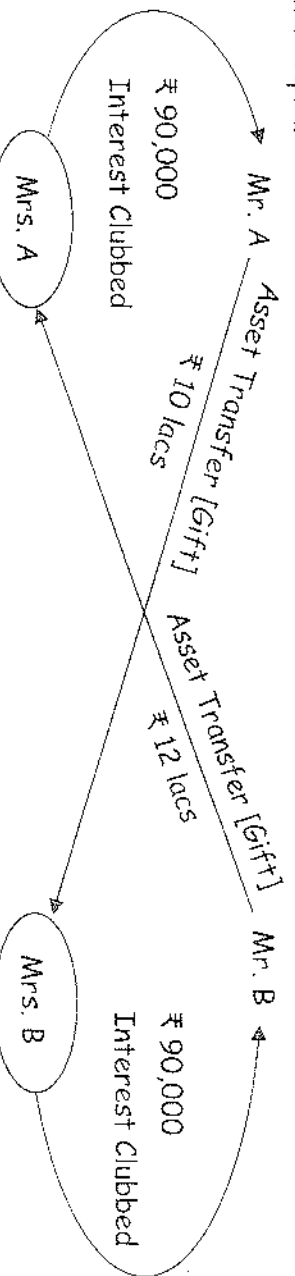
- Income of minor child is taxable/clubbed in hands of parent whose income is more.
- **Exception:** In following cases, minor income is taxable in hands of minor only:
 - Income is due to manual work.
 - Income is due to skill & talent.
 - Minor child is suffering from disability u/s 80U.
- **Other Points**
 - Income earned by investing income due to manual work, skill & talent is also taxable/clubbed in hands of parent.
 - If minor child income is clubbed in the hands of parent, then exemption u/s 10(32) of maximum ₹ 1500 p.a. per child is allowed to parent.
 - If marriage of parents does not subsist, income of minor child shall be clubbed in hands of parent who maintains the minor child in relevant P.Y.
 - Clubbing provisions are attracted even in respect of minor married daughter.

Cross Transfer

- If there are two transactions and they are inter-connected and part of same transaction, it will be considered to be device for evasion of tax and clubbing provisions shall apply.
- Clubbing provisions will be applicable only to the extent of income on matching amount of cross transfer/cross gift.

Example

Mr. A & Mr. B are Brothers. Mr. A gifted ₹ 10 lacs to his brother's wife [Mrs. B] and his Brother Mr. B gifted ₹ 12 lacs to Mr. A wife [Mrs. A]. Gifted Amt. deposited in Bank by Mrs. A & Mrs. B @ 9% p.a. on 1st April.



Matching amount of cross transfer = ₹ 10 lacs [lower of 10 lacs or 12 lacs]

Interest income on matching amount to be clubbed = ₹ 10 lacs × 9% = ₹ 90,000

Asset Transfer to HUF [Section 64(2)]

- If any member transfers his personal asset to HUF without consideration or for inadequate consideration,
- Then income from such asset is clubbed/taxable in hands of transferor/member.

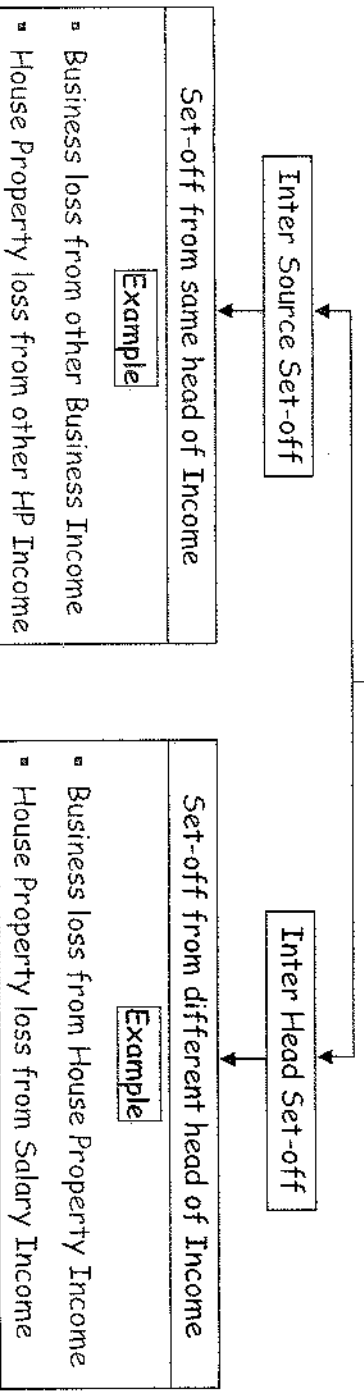
Other Points relating to Clubbing

- Losses are also clubbed.
- AO can also serve notice of demand [for tax payment] to the person to whom asset is transferred in case of clubbing [Section 65].

SET-OFF AND CARRY FORWARD OF LOSSES



Set-off of Losses



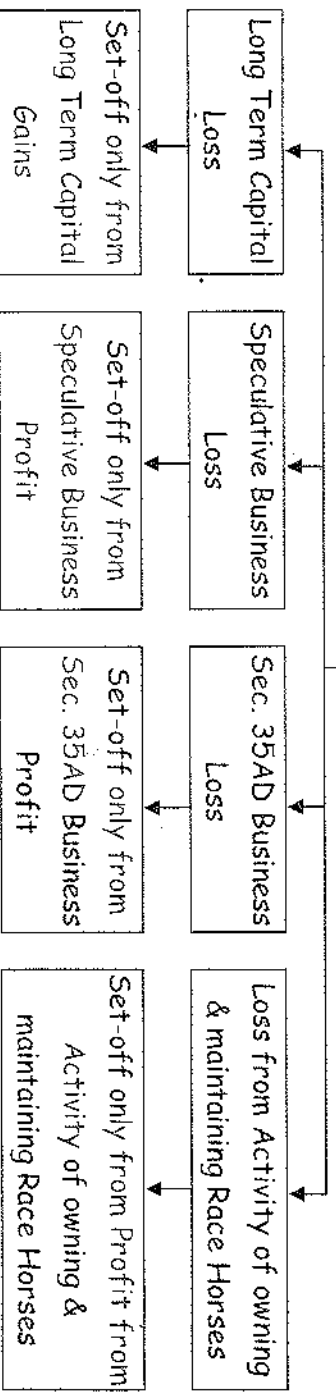
Set-off of Current Year losses

- First Inter Source
- Then Inter Head
- Balance Carried Forward

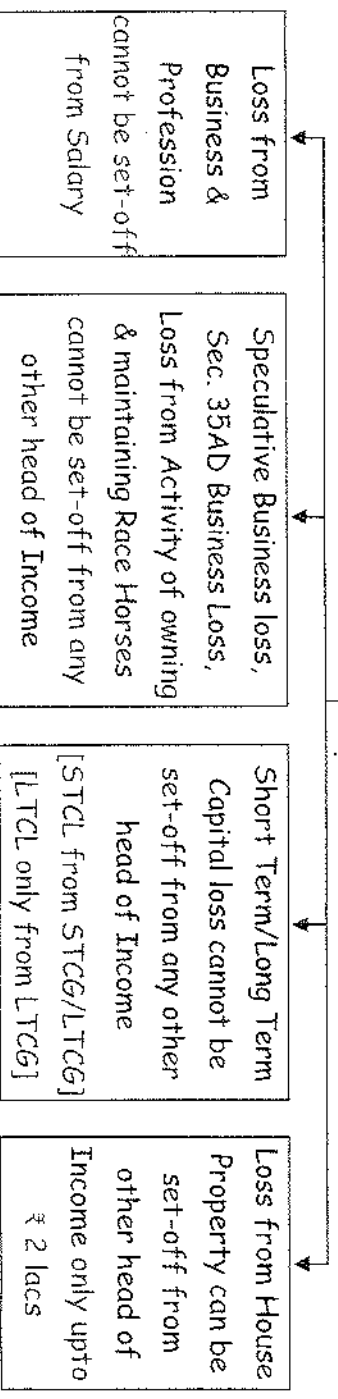
Set-off of Earlier Years brought forward losses

- Only Inter Source Set-off is allowed [same head set-off]

Exceptions in Inter Source [Same Head] Set-off



Exceptions in Inter Head [Different Head] Set-off



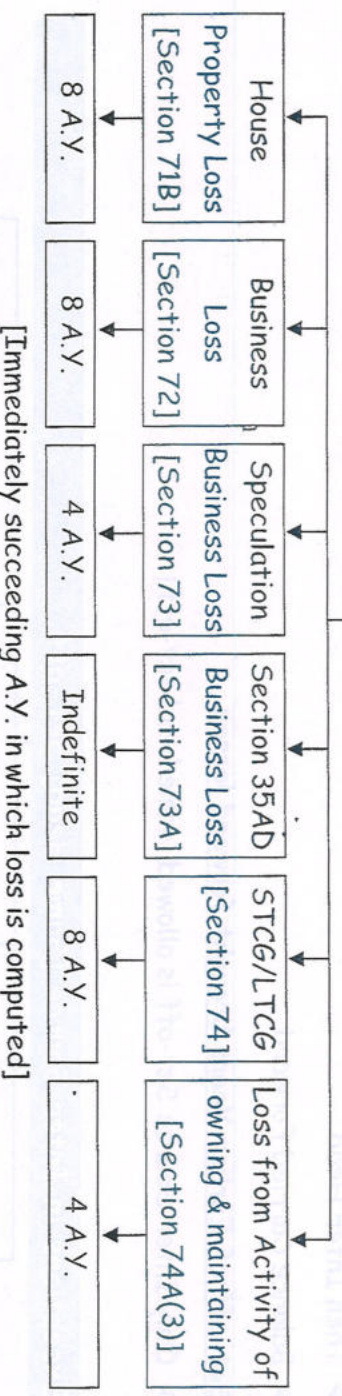
Other Points

(i) **Any loss under any head or unabsorbed depreciation cannot be set-off from:**

- Casual Income u/s 115BB
- Winnings from Online Games u/s 115BBJ
- Income from Transfer of Virtual Digital Asset (VDA) u/s 115BBH
- Undisclosed Income u/s 115BBE

(ii) **Losses which cannot be set-off & carried forward:**

- Section 115BB [Lottery etc. losses]
- Section 115BBH [Loss from Transfer of Virtual Digital Asset (VDA)]
- Loss from Exempt Source [Agricultural loss]

Carry Forward of Losses**Maximum Period of Carry Forward of Losses**

Carry Forward & Set-off of Accumulated Business Losses and Unabsorbed Depreciation in case of Amalgamation / Demerger / Conversion [Section 72A]

In case of Amalgamation

- Business loss [except speculative business loss] & unabsorbed depreciation of amalgamating company can be carry forward & set-off by amalgamated company.
- For business loss c/f, fresh period of 8 years is allowed to amalgamated company.

In case of Conversion of Proprietorship/Firm into Company

- Business loss [except speculative business loss] & unabsorbed depreciation of proprietorship/firm can be carry forward & set-off by the company.
- For business loss c/f, fresh period of 8 years is allowed to the company.

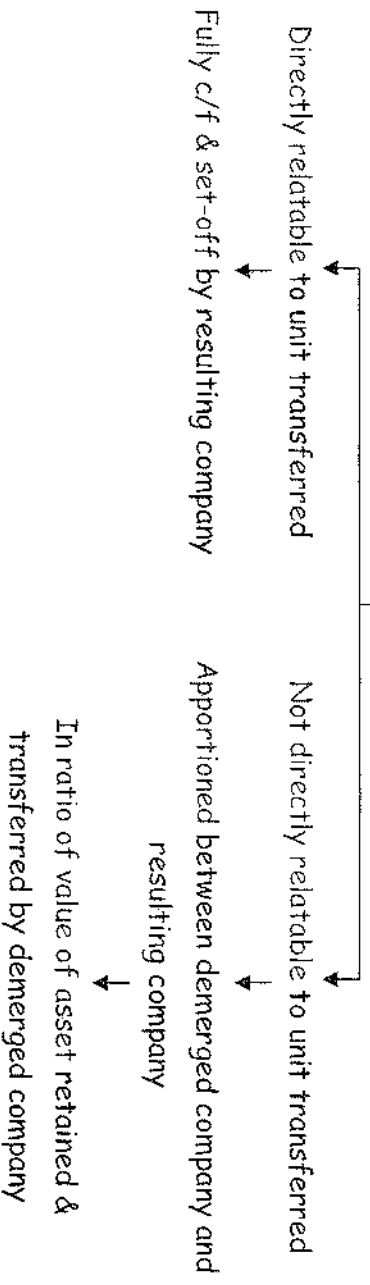
In case of Conversion of Company into LLP

- Business loss [except speculative business loss] & unabsorbed depreciation of company can be carry forward & set-off by the LLP.

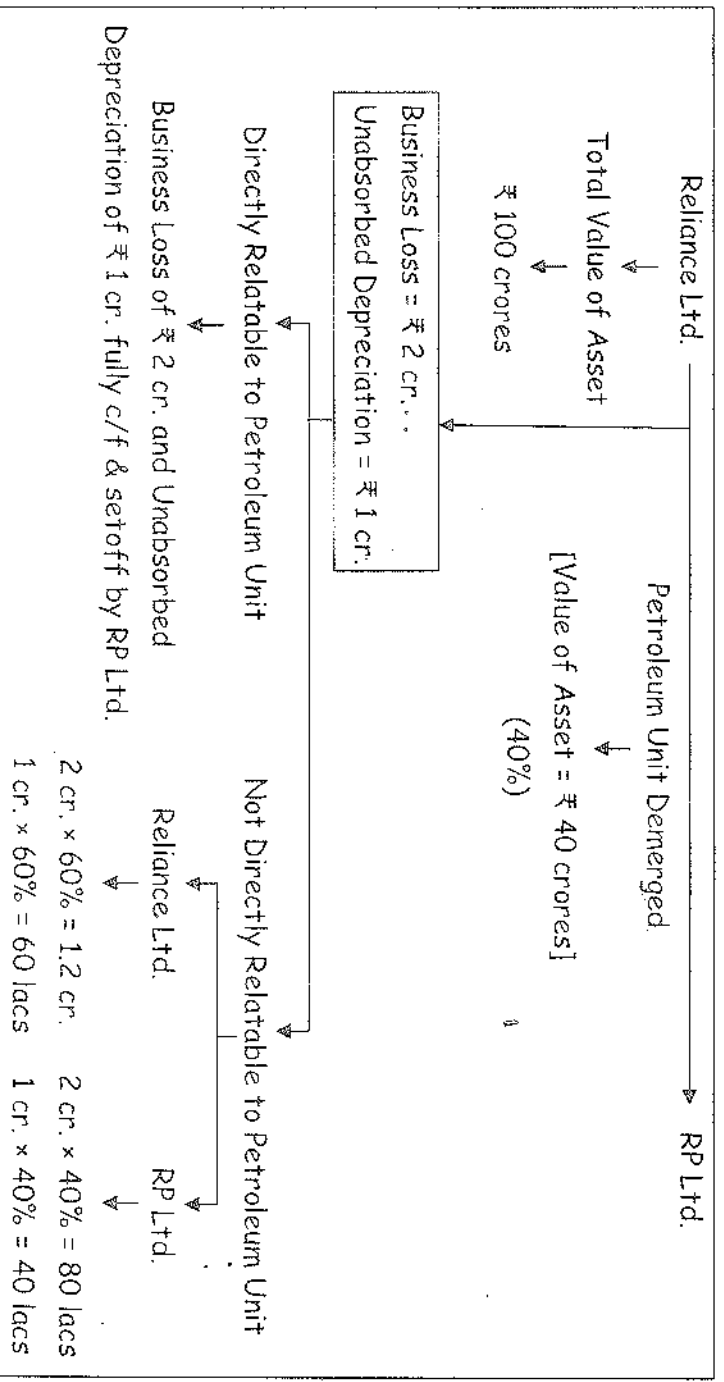
- For business loss c/f, fresh period of 8 years is allowed to the LLP.

In case of Demerger

If business loss [except speculative business loss] & unabsorbed depreciation



Example



Carry Forward & Set-off of Losses in case of Change in Constitution of Firm or Succession [Section 78]

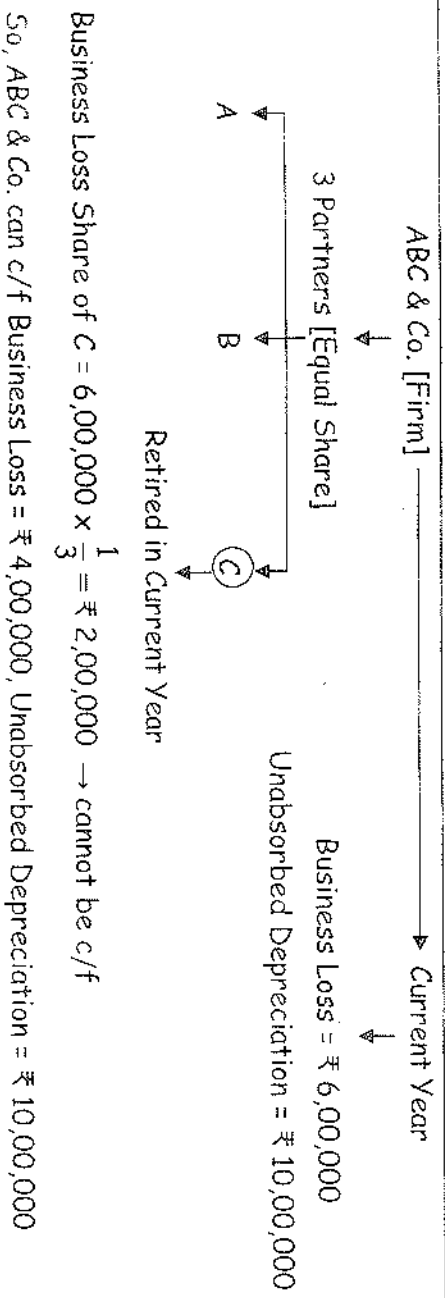
In case of Change in Constitution of Firm

Unabsorbed business loss share of retired/deceased partner shall not be allowed to be carry forward by the firm.

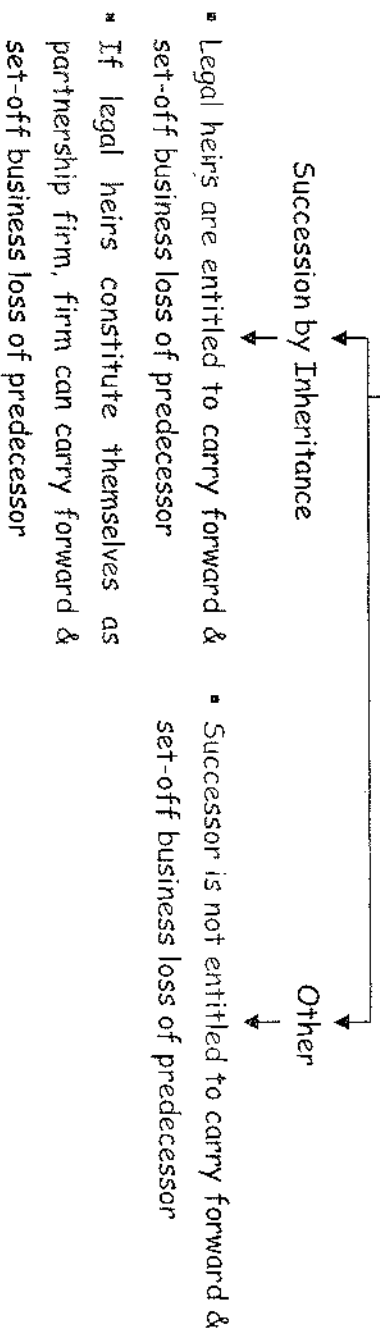
Note:

- Unabsorbed depreciation can be carried forward fully.
- Above provision is not applicable in case of admission of partner or change in PSR among partners.

Example



In case of Succession of Business



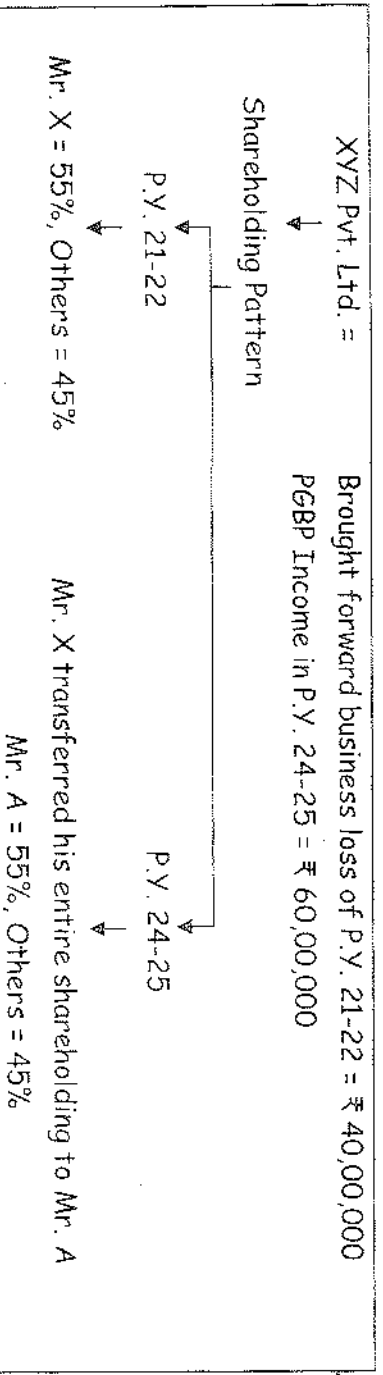
Special Provision for Carry Forward & Set-off of Losses in case of Closely Held Companies [Section 79]

Loss incurred in earlier year shall be carry forward & set-off in P.Y. only if

At least 51% voting power held by same shareholders

On last day of P.Y. in which loss is incurred and on last day of P.Y. in which loss will be set-off.

Example



Set-Off and Carry Forward of Losses

Income in P.Y. 24-25	
PGBP Income	60,00,000
(-) B/f Business Loss [cannot be setoff]	NIL
Total Income	60,00,000

Non Applicability

- (i) On unabsorbed depreciation.
- (ii) Where change in shareholding is due to death of shareholder or by way of gift to relative.
- (iii) Where change in shareholding is due to resolution plan approved under IBC, 2016.

No Set-off of Losses against Undisclosed Income found in Search and Survey [Section 79AI]

No loss (whether brought forward or otherwise) or unabsorbed depreciation can be set-off against undisclosed income found in search or survey.

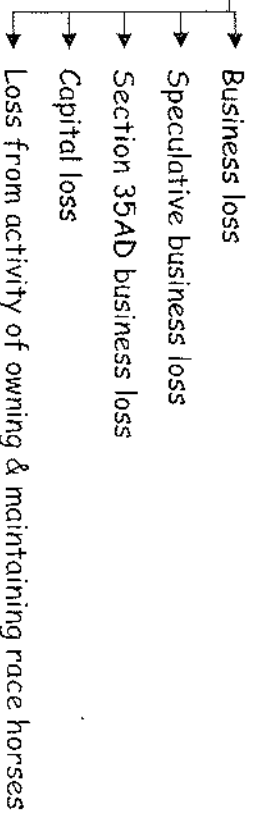
Order of Set-off [In case of Business]

If profit is not sufficient in case of business, then set-off from PGBP income can be done in following order:

- Current year depreciation
- Brought forward business loss
- Unabsorbed depreciation
- Unabsorbed capital expenditure on scientific research
- Unabsorbed family planning expenditure

Submission of Return of Losses [Section 80]

Assessee must file loss return u/s 139(3) upto due date of ROI given u/s 139(1) to carry forward following losses of current year: →



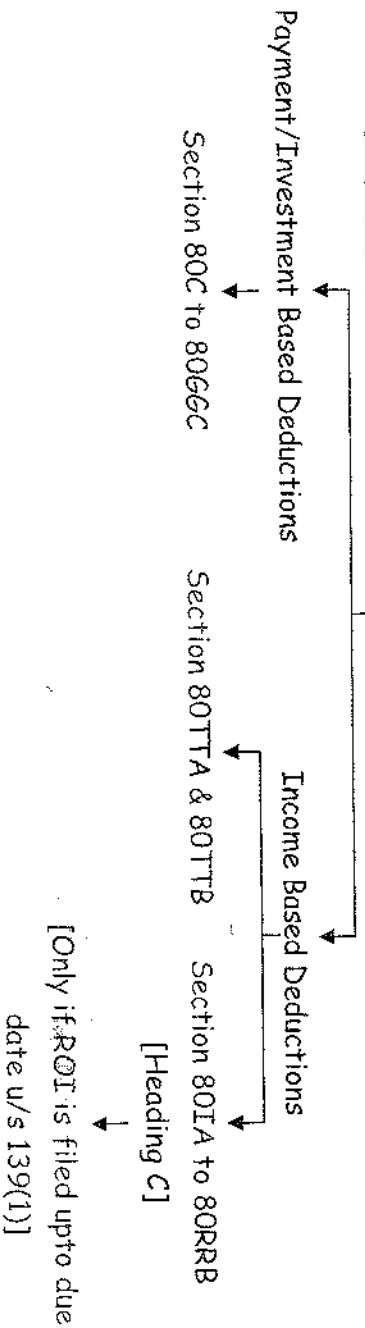
Non-Applicability [Can be carry forward even if ROI is filed after due date]

- (i) House Property loss
- (ii) Unabsorbed depreciation

DEDUCTIONS UNDER CHAPTER VI-A AND SECTION 10AA

Basics

- Deduction under Chapter VI-A cannot exceed Gross Total Income.
- Deduction under Chapter VI-A is not available from Incomes which are chargeable at Special Rates.
- Types of Deductions



Payment / Investment Based Deductions

Section 80C: Specified Investments

- Eligible Assessee: Individual/HUF
- Maximum Limit of Deduction: ₹ 1,50,000
- Eligible Investments

- Life Insurance Premium paid to Any Insurance Company → Individual: Self, Spouse, Children
→ HUF: Any member of HUF

Limit of premium allowed		
Policy taken before 1.4.2012	Policy taken between 1.4.2012 to 31.3.2013	Policy taken on or after 1.4.2013
Lower of		
Premium Paid	Premium Paid	Premium Paid
or	or	or
20% of Policy Amount (Sum Assured)	10% of Policy Amount (Sum Assured)	10% of Policy Amount (Normal Person) 15% of Policy Amount (Disable Person)

- Investment in Public Provident Fund [PPF] → Individual: Self, Spouse, Children
→ HUF: Any member of HUF

- (iii) Employee contribution in SPF & RPF
- (iv) Investment in NSC & interest thereon
- (v) Repayment of housing loan

Conditions:

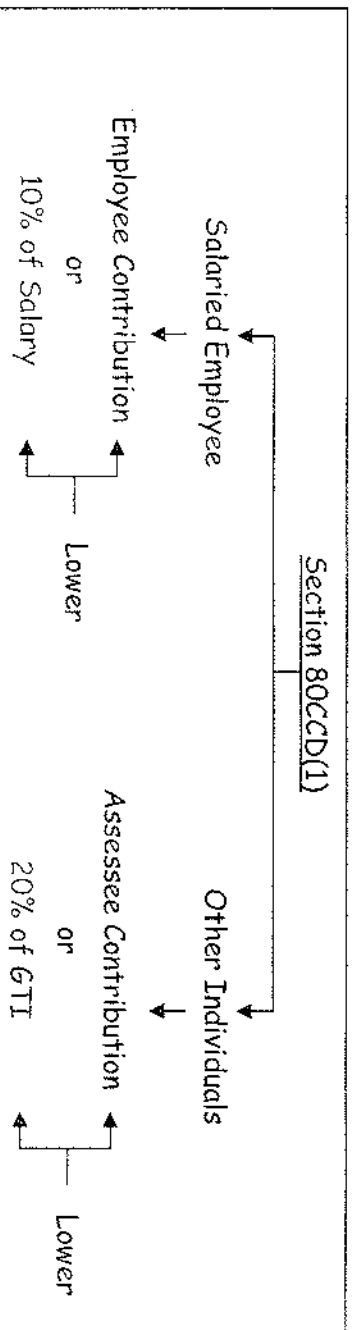
- Loan taken for purchase or construction of house property.
- Construction/purchase shall be completed during P.Y.
- Loan taken from government, banks, financial institutions, employer or company.
- (vi) Fixed Deposit [FD] in scheduled bank or post office for 5 years or more
- (vii) Tuition fees paid for maximum 2 children for education in India [Not include donation/development/coaching fees]
- (viii) Deposit in NABARD bonds
- (ix) Deposit in Senior Citizen Saving Scheme
- (x) Deposit in Sukanya Samridhi Scheme
- (xi) Stamp duty, registration fees paid for purchase of house property
- (xii) Investment in units of UTI/Mutual Fund
- (xiii) Investment in pension fund of UTI/Mutual Fund
- (xiv) Contribution by Central Government employee to Tier II A/c of pension scheme u/s 80CCD

Section 80CCD: Contribution to Pension Fund / Annuity Plan of LIC or Other Insurance Company

- Eligible Assessee: Individual
- Maximum Limit of Deduction: ₹ 1,50,000

Section 80CCD: Contribution to Pension Scheme of Central Government / New Pension Scheme / Atal Pension Yojna

- Eligible Assessee: Individual
- Amount of Deduction



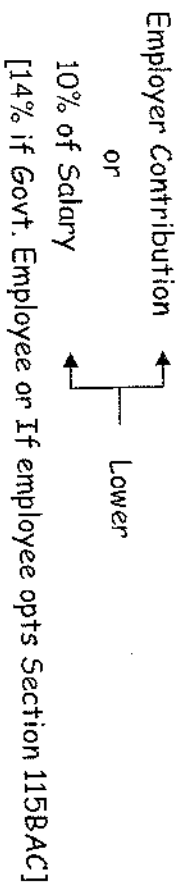
Deductions under Chapter VI-A and Section 10AA

Section 80CCD(1B)

Balance contribution u/s 80CCD(1) can be claimed u/s 80CCD(1B) upto ₹ 50,000

Section 80CCD(2): Employer contribution for benefit of employee

Employer contribution is first taxable under head salary in hands of employee, then he gets deduction u/s 80CCD(2)



* Salary = Basic Salary + Dearness Allowance (if)

- Taxability of amount received from above scheme on closure of account

In case of death	Fully Exempt
Other case	60% Exempt

Section 80CCC: Aggregate Deduction u/s 80C + 80CCC + 80CCD(1)

- Aggregate deduction u/s 80C + 80CCC + 80CCD(1) shall be restricted to ₹ 1,50,000.

Section 80CCH: Deduction in respect of contribution to Agnipath Scheme

- Eligible Assessee: Individual

- Amount of Deduction

Section 80CCH(1): Amount deposited by individual enrolled in Agnipath Scheme in his account in Agniveer Corpus Fund.

Section 80CCH(2): Contribution made by Central Government to the said account of assessee.

Central Government contribution is first taxable under head salary in hands of individual, then he gets deduction u/s 80CCH(2)

- Any payment from Agnipath Corpus Fund to a person enrolled under Agnipath Scheme or his nominee is exempt from tax.

Section 80DB: Deduction in respect of Medical / Health Insurance Premium, CGHS, Preventive Health Checkup

- Eligible Assessee: Individual/HUF
- For whom:
 - Individual: Self, Spouse, Dependent Children & Parents [Whether dependent or not]
 - HUF: Any member of HUF

• Amount of Deduction

Amount Paid for	Nature of Payment	Amount of Deduction
Self, Spouse & Dependent Children	- Health/Medical Insurance Premium paid other than cash - Contribution to Central Govt. Health Scheme [CGHS] other than cash - Preventive Health Checkup by any mode	₹ 25,000 or Total Payment If any person is 60 years or more plus resident ₹ 50,000 or Total Payment Lower
Parents [Whether Dependent or Not]	- Health/Medical Insurance Premium paid other than cash - Preventive Health Checkup by any mode	₹ 25,000 or Total Payment If any person is 60 years or more plus resident ₹ 50,000 or Total Payment Lower

• Other Points

- Aggregate payment for preventive health checkup for all cannot exceed ₹ 5,000.
- If person is 60 years or more plus resident, then medical expenditure is also eligible.
- If premium is paid for more than 1 year, deduction for each year:

$$= \frac{\text{Total premium paid}}{\text{No. of years for which payment is made}}$$

Section 80DD: Deduction in respect of Maintenance and Medical Treatment of Disabled Dependent Relative

- Eligible Assessee: Resident Individual/HUF
- For whom:
 - Individual: Spouse, Children, Brother, Sister & Parents who are dependent on Individual
 - HUF: Any dependent member of HUF
- Assessee should incur expenses on medical treatment or maintenance of such disabled dependent.
- Amount of Deduction
 - Normal Disability = ₹ 75,000 [Flat Deduction]
 - Severe Disability [80% or more] = ₹ 1,25,000

Deductions under Chapter VI-A and Section 10AA

Section 80U: Deduction for Disabled Assessee

- Eligible Assessee: Resident Individual
- Amount of Deduction
 - Normal Disability = ₹ 75,000
 - Severe Disability [80% or more] = ₹ 1,25,000 [Flat Deduction]

Section 80DDB: Deduction in respect of Medical Treatment of Specified Disease

- Eligible Assessee: Resident Individual/HUF
- For whom:
 - Individual: Self, Spouse, Children, Brother, Sister & Parents who are dependent on Individual
 - HUF: Any dependent member of HUF
- Amount of Deduction

Deduction Amount	Lower of Actual Expenses on Treatment or ₹ 40,000 / ₹ 1,00,000 [for Senior Citizen]	XX
	(-) Insurance Claim Received	(XX)
		XX

Section 80E: Deduction in respect of Interest Paid on Loan taken for Higher Education in India or Abroad

- Eligible Assessee: Individual
- For whom: Self, Spouse, Children and Any student for whom assessee is legal guardian
- Amount of Deduction: Interest Paid [Maximum for 8 Years]

Section 80EEA: Deduction in respect of Interest on Loan taken for Purchase of Residential House Property

- Eligible Assessee: Individual
- Limit of Deduction: ₹ 1,50,000
- [First deduction should be claimed under House Property head upto ₹ 2,00,000 u/s 24(b)]
- Conditions:
 - Loan should be taken from Bank, Financial Institution or Housing Finance Company [Not NBFC].
 - SDV of house does not exceed ₹ 45 lacs.
 - Individual does not own any residential house on date of sanction of loan.
 - Loan should be sanctioned between 1.4.2019 to 31.3.2022.

Section 80EEB: Deduction in respect of Interest on Loan taken for Purchase of Electric Vehicle

- Eligible Assessee: Individual
- Limit of Deduction: ₹ 1,50,000
- Conditions:
 - Loan should be taken from Bank, Financial Institution, Housing Finance Company or NBFC.
 - Loan should be sanctioned between 1.4.2019 to 31.3.2023.

Section 80G: Donations

- Eligible Assessee: All Persons
- Eligible Donations

Category A

➤ PM Drought Relief Fund — 50% Deduction without any Limit

Category B

➤ Other PM Fund
➤ CM Fund
➤ National Fund
➤ Swachh Bharat Kosh
➤ Clean Ganga Fund — 100% Deduction without any Limit

Category C

➤ Charitable Trust/Institutions
➤ Donation for Renovation/Repair of Temple, Church etc.
➤ Donation for Promoting Interest of Minority Community
➤ Donation to Housing Development Authority — 50% Deduction with Limit

Category D

➤ Donation for Promoting Family Planning
➤ Donation by Company to Indian Olympics Association — 100% Deduction with Limit

• **Calculation of Limit & Donation under Category C & D**

Step 1: Calculate Adjusted Total Income	
Gross Total Income [Exclude Income Taxable at Special Rates]	XX
(-) Deductions under Chapter VI-A [Except Section 80G]	(XX)
Adjusted Total Income	XX

Step 2: Total Donation under Category C & D

or
10% of Adjusted Total Income

Lower = Maximum limit of Donation

First Category D [100% with limit] Then, Category C [50% with limit]

Full Deduction Half Deduction

Example

Adjusted Total Income = ₹ 6,00,000

Donation: Trust [Category C 50%] = ₹ 30,000, Family Planning [Category D 100%] = ₹ 50,000

Maximum limit of Donation = Lower of (30,000 + 50,000) or (10% × 6,00,000)

= Lower of 80,000 or 60,000 = ₹ 60,000

Out of ₹ 60,000, first claim deduction of Category D Donation (100%) i.e., ₹ 50,000

Remaining balance of limit = (60,000 - 50,000) = ₹ 10,000

Deduction of Category C Donation (50%) = (10,000 × 50%) = ₹ 5,000

No deduction allowed in any category for donation paid in cash exceeding ₹ 2000.

Section 80GCG: Deduction in respect of Rent Paid for House Property

Eligible Assessee: Individual [who does not receive HRA]

Amount of Deduction

₹ 5,000 p.m.

or

25% of Adjusted Total Income

or

Rent Paid - 10% of Adjusted Total Income

Lower

Section 80GGEA: Deduction in respect of Donation for Scientific Research or Rural Development

- Eligible Assessee: All Persons who do not have PGBP Income
- Amount of Deduction: 100% of Donation
- No deduction allowed for donation paid in cash exceeding ₹ 2,000.

Section 80GGB: Donation given by Indian Company to Political Parties or Electoral Trusts

- Eligible Assessee: Indian Company

- **Amount of Deduction:** 100% of Donation

- Other Points

- No deduction allowed if donation paid in cash.
- Expenditure incurred by Indian Company for advertisement in souvenir, brochure, pamphlet, newspaper etc. published by political party is **also eligible** for deduction.

Section 80G(6C): Donation given by Any other Person to Political Parties or Electoral Trusts

- Eligible Assessee: Any Person [other than Indian Company]

- **Amount of Deduction:** 100% of Donation

- Other Points

- No deduction allowed if donation paid in cash.
- Expenditure incurred by Other Assessee for advertisement in souvenir, brochure, pamphlet, newspaper etc. published by political party is **not eligible** for deduction.

Income Based Deductions

Section 80TTA: Deduction in respect of Interest on deposits in Savings Account

- Eligible Assessee: Individual/HUF

- Amount of Deduction

Total Interest on Savings A/c
or
₹ 10,000

└─ Lower

- Other Points

- Savings A/c with Banking Company, Co-operative Banks or Post Office.
- Deduction not available to Resident Senior Citizen eligible for deduction u/s 80TTB.

Section 80TTB: Deduction in respect of Interest on Deposits in Savings and FD Account in case of Resident Senior Citizens

- Eligible Assessee: Resident Senior Citizen [60 years or more + Resident]

- Amount of Deduction

Total Interest on Savings/FD Account
or
₹ 50,000

└─ Lower

- Other Points

Savings and FD A/c with Banking Company, Co-operative Banks or Post Office.

Deductions under Chapter VI-A and Section 10AA

Income Based Deductions under Heading C

Section 80IA, 80IAB, 80IB, 80IC, 80IE Deduction in respect of Profits of Certain Eligible Business

Application: Eligible Business commences before 1.4.2017

Amount of Deduction: 100% of Profit from Eligible Business for 10 A.Y.

Other Points

- > Profit/Loss of Eligible Business is to be calculated separately.
- > Loss/unabsorbed depreciation of eligible business can be set-off from profit of non-eligible business. [However, deduction to the extent of set-off is not allowed in subsequent year].
- > If deduction is claimed u/s 10AA/35AD, no deduction is allowed here.
- > Deduction is allowed only for profit derived from eligible business activity.

Allowed	Not Allowed
▪ Profit from Eligible Business Activity ▪ Transport/Power/Insurance Subsidy	▪ Duty Drawback/Import Entitlements ▪ Interest on Bank Deposits

- > Increase in eligible business income due to disallowance by AO u/s 40(a), 40A(3), 43B etc. is also eligible for deduction.
- > In case of transfer of business, remaining deduction shall be allowed to transferee.

Section 80IAC Deduction for Eligible Startup

Eligible Startup

- > Company or LLP engaged in business which involves innovation or development of new products, processes or services driven by technology or intellectual property.
- > Incorporated on or after 1.4.16.
- > Total Turnover is upto ₹ 100 crores in P.Y. in which deduction is claimed.
- > Holds a certificate of eligible business from IMBC.

Amount of Deduction

100% of Profit derived by Startup for any 3 consecutive A.Y. out of 10 years beginning from the year in which startup is incorporated.

Section 80IBB Deduction in respect of Business of Developing & Building Housing Projects / Rental Housing Projects

Conditions

- > Project is approved by competent authority after 1.6.2016 but upto 31.3.22.
- > Project is completed within 5 years from date of approval.

- **Amount of Deduction:** 100% of Profit from such Business

Section 80JJAA: Deduction in respect of Employment of New Employees

- **Eligible Assessee:** Any Assessee engaged in Business and to whom Section 44AB Applies
- **Amount of Deduction**
30% of Additional Employee Cost [Deduction allowed for 3 consecutive years]
- **Additional Employee Cost** = Total Salary Paid/Payable to Additional Employees employed during P.Y.
- **Other Points**
 - (i) In case of existing business, deduction is allowed only if:
 - There is an increase in total number of employees.
 - Salary paid by A/c payee cheque/DD/ECS/Electronic mode.
 - (ii) Additional Employees do not include:
 - Employee whose total salary is more than ₹ 25,000 p.m.
 - Employee who does not participate in RPF.
 - Employee for whom entire contribution paid by government under employee pension scheme.
 - Employee employed for less than 240 days in P.Y. [150 days in case of business of manufacturing of apparel, footwear or leather products].

Section 80M: Deduction in respect of Inter Corporate Dividend

- **Eligible Assessee:** Domestic Company
- **Amount of Deduction**

Dividend received from any other Company/Business Trust
or
Dividend distributed by it upto 1 month before due date of ROI

Section 80QQB: Deduction in respect of Royalty Income from Books of Literary, Artistic, Scientific Nature

- **Eligible Assessee:** Resident Individual
- **Amount of Deduction**

Net Royalty Income
or
₹ 3,00,000

- If Royalty is earned outside India, then deduction is allowed only if such royalty amount is brought to India in convertible foreign exchange within 6 months from end of P.Y. or time allowed by RBI.

Section 80RRB: Deduction in respect of Royalty Income from Patents

- Eligible Assessee: Resident Individual
- **Amount of Deduction**

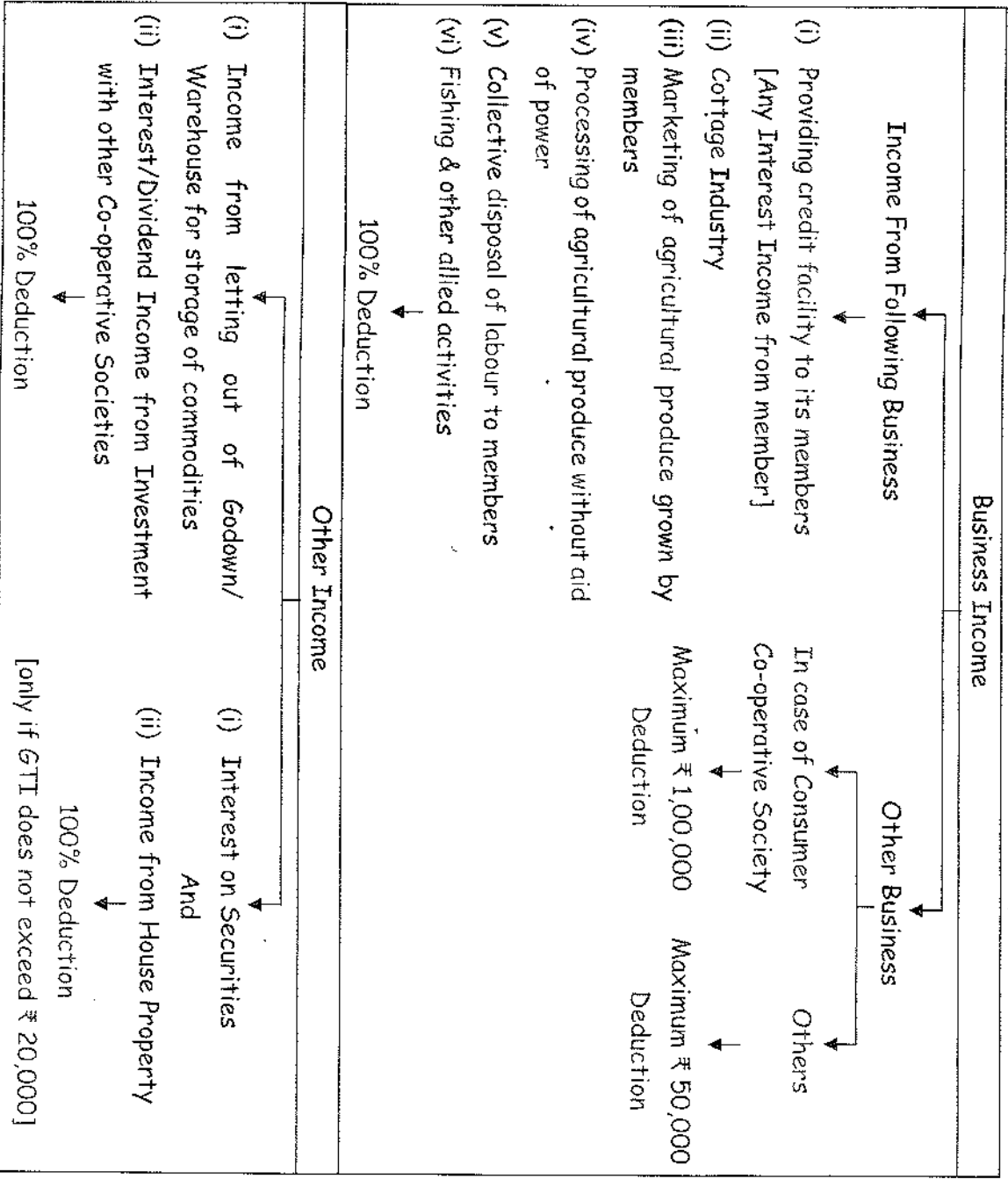
Net Royalty Income
or
₹ 3,00,000

↓ Lower

- If Royalty is earned outside India, then deduction is allowed only if such royalty amount is brought to India in convertible foreign exchange within 6 months from end of P.Y. or time allowed by RBI.

Section 80P: Deduction in respect of Income of Co-operative Societies

- Eligible Assessee: Co-operative Society
- **Eligible Incomes & Amount of Deduction**



Note:

Deduction u/s 80P is not available to Co-operative Banks other than:

- Primary Agricultural Credit Societies
 - Primary Co-operative Agricultural & Rural Development Banks
- [Cooperative Banks having its area of operation confined to a taluk & principal objective is to provide long term credit for agricultural & rural development activities]

Section 80PA: Deduction in respect of Income of Producer Companies

- Eligible Assessee: Farm Producer Companies having Turnover of less than ₹ 100 crores in P.Y.
- **Amount of Deduction:** 100% of Profit from eligible business
- Eligible Business
 - Marketing of agricultural produce grown by members.
 - Processing of agricultural produce of its members.

Tax Holiday for Units Established in SEZ [Section 10AA]

(1) Eligible Assessee

Deduction is available to all assessee engaged in manufacturing or production of any article or thing or computer software in Special Economic Zone [SEZ].

(2) Period & Amount of Deduction

For First 5 A.Y. →	100% of Export Profit from SEZ Unit
For Next 5 A.Y. →	50% of Export Profit from SEZ Unit
For Next 5 A.Y. →	Amt. Credited to SEZ Reinvestment Reserve A/c
	or
	50% of Export Profit from SEZ Unit
	↓
	Lower

(3) Export Profit from SEZ Unit

$$\text{PGBP of unit located in SEZ [as per Income Tax]} \times \frac{\text{Export Turnover [Proceeds] of SEZ Unit}}{\text{Total Turnover of SEZ Unit}}$$

(4) Other Points

- (i) Export Turnover means export proceeds received/realised/brought into India in convertible foreign exchange within 6 months from end of P.Y. or time permitted by RBI. Amount which become irrecoverable shall be excluded from Export Turnover.
- (ii) For computing deduction u/s 10AA, following amount shall be excluded from Export Turnover & Total Turnover:
 - Freight
 - Telecommunication Charges
 - Insurance or any other Expenses

Deductions under Chapter VI-A and Section 10AA

- (iii) For computing deduction u/s 10AA, following amount shall be excluded from PGBP of unit located in SEZ:
- Cash Compensatory Support
 - Duty Drawback
 - Profit on Sale of Import Entitlement
- (iv) For computing deduction u/s 10AA, PGBP of unit located in SEZ shall be taken before set-off of B/f loss but after set-off of unabsorbed depreciation.
- (v) Onsite development of computer software outside India at client place is also eligible for deduction.
- (vi) In case of Amalgamation/Demerger, remaining deduction shall be available to amalgamated /resulting unit [If conditions fulfilled].
- (vii) Deduction u/s 10AA is allowed only if ROI is filed upto due date u/s 139(1).
- (viii) Deduction u/s 10AA is allowed only to SEZ unit who received approval upto 31.3.20 and begins manufacturing or production on or before 31.3.21.

Example

ABC Ltd. has two units. Unit I is located in SEZ and Unit II is located in Domestic Tariff Area. Details regarding Unit I which is located in SEZ are given below:

Particulars	₹
Net Profit (As per Income Tax)	70 lacs
Duty Drawback	6 lacs
Profit on Sale of Import Entitlement	4 lacs
Export Turnover	3 crores
Domestic Turnover	5 crores
Export proceeds received/realised in India	2.80 crores
Export Turnover includes Insurance & Freight charges of ₹ 50 lacs	
Export proceeds received/realised in India includes Insurance & Freight charges of ₹ 30 lacs	

Compute Export Profit from SEZ unit for computing deduction u/s 10AA.

Solution

For computing deduction u/s 10AA

PGBP Income of SEZ unit = [70 lacs - 6 lacs - 4 lacs] = ₹ 60 lacs

Export Turnover (Proceeds realised) of SEZ unit = [2.80 crores - 30 lacs] = ₹ 2.50 crores

Total Turnover of SEZ unit = [3 crores + 5 crores - 50 lacs] = ₹ 7.50 crores

Export Profit from SEZ unit = [60 lacs x 2.50 crores/7.50 crores] = ₹ 20 lacs

Deductions under Chapter VI-A and Section 10AA

- (iii) For computing deduction u/s 10AA, following amount shall be excluded from PGBP of unit located in SEZ:
- Cash Compensatory Support
 - Duty Drawback
 - Profit on Sale of Import Entitlement
- (iv) For computing deduction u/s 10AA, PGBP of unit located in SEZ shall be taken before set-off of B/f loss but after set-off of unabsorbed depreciation.
- (v) Onsite development of computer software outside India at client place is also eligible for deduction.
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Export Turnover includes Insurance & Freight charges of ₹ 50 lacs	
Export proceeds received/realised in India includes Insurance & Freight charges of ₹ 30 lacs	

Compute Export Profit from SEZ unit for computing deduction u/s 10AA.

Solution

For computing deduction u/s 10AA

PGBP Income of SEZ unit = [70 lacs - 6 lacs - 4 lacs] = ₹ 60 lacs

Export Turnover (Proceeds realised) of SEZ unit = [2.80 crores - 30 lacs] = ₹ 2.50 crores

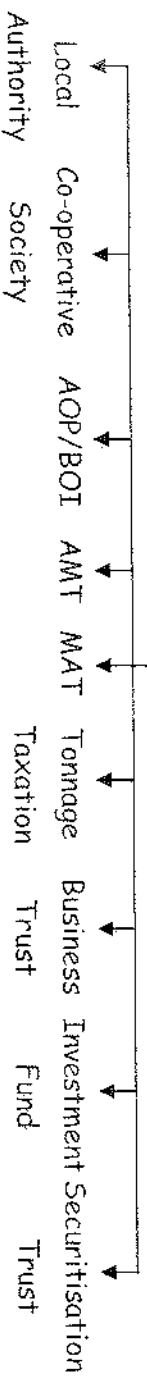
Total Turnover of SEZ unit = [3 crores + 5 crores - 50 lacs] = ₹ 7.50 crores

Export Profit from SEZ unit = [60 lacs × 2.50 crores/7.50 crores] = ₹ 20 lacs

ASSESSMENT/TAXATION OF VARIOUS ENTITIES



Assessment/Taxation of Various Entities



Taxation of Local Authority

Following Income of Local Authority is Exempt u/s 10(20):

- > Income from House Property
- > Capital Gains
- > Income from Other Source
- > Business Income
 - Supply of commodity or service with its own jurisdiction area
 - Supply of water or electricity within or outside its own jurisdiction area
- **Taxable Income:** Supply of commodity or service [except water or electricity] outside its own jurisdiction area.

Taxation of Co-operative Society

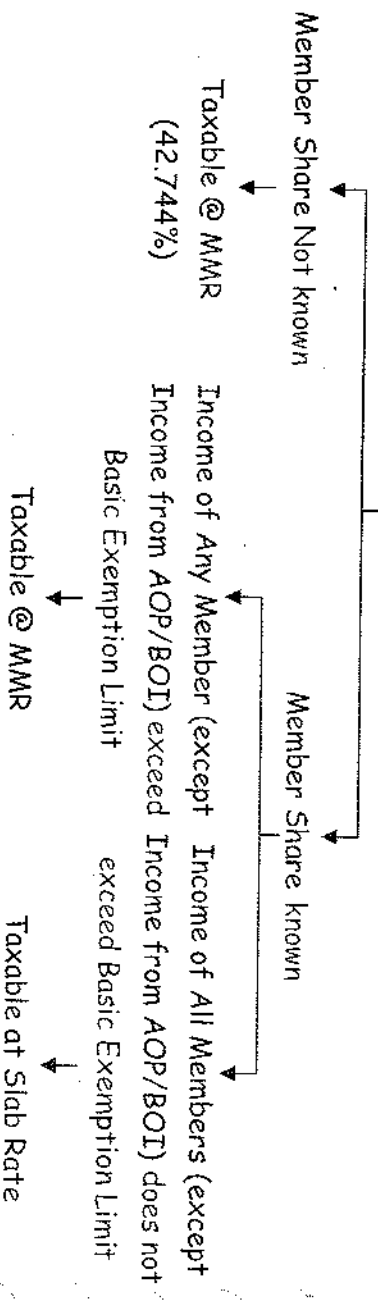
- If Co-operative Society does not opt for Section 115BAD and 115BAE, it is eligible to claim deduction u/s 80P.
- Deduction u/s 80P is not allowed to Co-operative Banks.
- Deduction u/s 80P is already discussed in Deductions Chapter.
- Transfer fees received by a Co-operative Housing Society from its incoming and outgoing members is not taxable.

Taxation of AOP/BOI and their Members

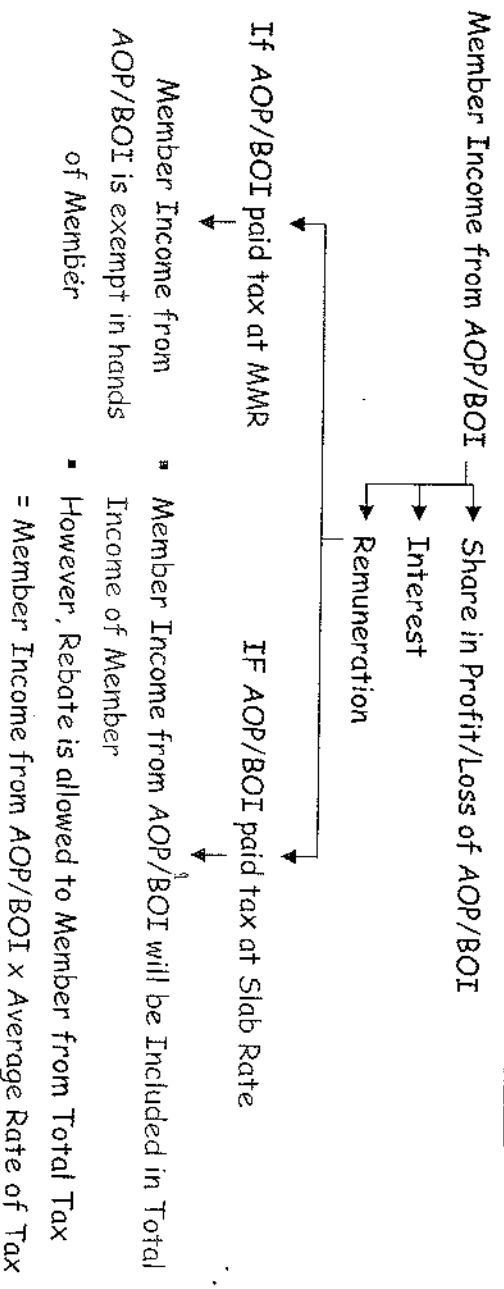
(1) Total Income of AOP/BOI

- Calculation in same manner as in case of any other assessee.
- However, in PGBP [Section 40(ba)]:
 - (i) Interest and Remuneration [salary/bonus/commission] paid to member is not allowed as deduction.
 - (ii) If interest paid by AOP/BOI to members and member's also paid interest to AOP/BOI, then only net excess interest paid by AOP/BOI to member is disallowed.

(2) Tax on Total Income of AOP/BOI [Section 167B]



(3) Treatment of Member Income from AOP/BOI in hands of Member [Section 86]



Example

AOP has 2 members - Mr. A (50%) and Mr. B (50%). Share Income of Mr. A and Mr. B from AOP is ₹ 4,00,000 and ₹ 6,00,000. Other Income of Mr. A and Mr. B is ₹ 2,40,000 and ₹ 1,50,000. Income of AOP is taxable at Slab Rate. Calculate Tax Payable by A and B (Assume they do not opt for 115BAC).

Solution

	Mr. A	Mr. B
Other Income	2,40,000	1,50,000
Member Income From AOP	4,00,000	6,00,000
Total Income	6,40,000	7,50,000
Total Tax	42,120	65,000
Avg. Rate of Tax $\left[\frac{\text{Total Tax}}{\text{Total Income}} \times 100 \right]$	6.58%	8.67%
(-) Rebate	(26,320) [4,00,000 × 6.58%]	(52,020) [6,00,000 × 8.67%]
Tax Payable	15,800	12,980

Alternate Minimum Tax (AMT) [Section 115JC]**(1) AMT Basics**

- AMT is applicable to All Assessee except Company.
- Income Tax Payable by Any Assessee (except Company):

Tax Payable as per Normal Provisions of Income Tax Act
or
18.5% of Adjusted Total Income
[Plus Surcharge [if any] & Cess]

↑
Higher

(2) Calculation of Adjusted Total Income:

Particulars	₹
Total Income as per Normal Provisions of Income Tax Act	XX
Add	
Deduction u/s 10AA [SEZ]	XX
Deduction u/s 35AD [Specified Business Capital Expenditure]	XX
Deduction u/s 80IA to 80RRB [except Section 80P]	XX
Less	
Depreciation u/s 32 on Specified Business Capital Asset [35AD Asset]	(XX)
Adjusted Total Income	XX

(3) Other Points

- In case of Co-operative Society, AMT is applicable @ 15% instead of 18.5%.
- If unit of assessee is located in IFSC, then AMT is applicable @ 9% instead of 18.5%.
- If assessee is liable to AMT, then also Advanced Tax, Interest u/s 234A/B/C is applicable.
- Non Applicability of AMT in following cases:
 - (i) If assessee does not claim deduction u/s 10AA, 35AD, 80IA to 80RRB. However, AMT is not applicable even if assessee claims deduction u/s 80P.
 - (ii) If ATI is upto ₹ 20 lacs in case of Individual/HUF/AOP/BOI/AJP.
 - (iii) If assessee has exercised the option u/s 115BAC, 115BAD and 115BAE.

(4) AMT Credit [Section 115JD]

- If AMT > Normal Income Tax, then excess shall be treated as AMT Credit.
- AMT Credit can be set-off and c/f for 15 years.
- AMT Credit can be set-off in the year in which Normal Tax is more than AMT upto the extent of difference between Normal Tax and AMT in that year.

Example

Assessment/Taxation of Various Entities

Previous Year	Normal Tax	AMT	Tax Payable	AMT Credit Balance	AMT Credit Set-off	Net Tax Payable
23-24	80,000	1,00,000	1,00,000	20,000	-	1,00,000
24-25	70,000	1,10,000	1,10,000	60,000 [20,000 + 40,000]	-	1,10,000
25-26	1,50,000	1,20,000	1,50,000	30,000 [60,000 - 30,000]	30,000	1,20,000

Minimum Alternate Tax [MAT] [Section 115JB]

(1) MAT Basics

- MAT is applicable only to Companies.
- Income Tax Payable by Company:
Tax Payable as per Normal Provisions of Income Tax Act
or
15% of Book Profit
[Plus Surcharge [if any] & Cess]

↑
Higher

(2) Computation of Book Profit [Explanation to Section 115JB]

Particulars	(₹)	(₹)
Profit/Loss as per P&L A/c		XX
Add: Following Items [If debited to P&L]		
1) Income Tax Paid/Provision [Includes Interest on IT/TDS, DDT, SC & Cess]	XX	
2) Deferred Tax	XX	
3) Dividend Paid/Proposed	XX	
4) Any Amount Transferred to Any Reserve A/c	XX	
5) Loss/Provision for Loss of Subsidiary	XX	
6) Provision for Unascertained Liability/Contingent Liability	XX	
7) Provision for Diminution in Value of Asset	XX	
8) Notional Loss regarding Business Trust Unit	XX	
9) Expenses for earning Income u/s 10,11,12	XX	
10) Expenses relating to Share Income of AOP	XX	
11) Expenses relating to Income from Royalty u/s 115BBF	XX	
12) Expenses relating to Income of Foreign Company from:		
• Capital Gain on Securities		

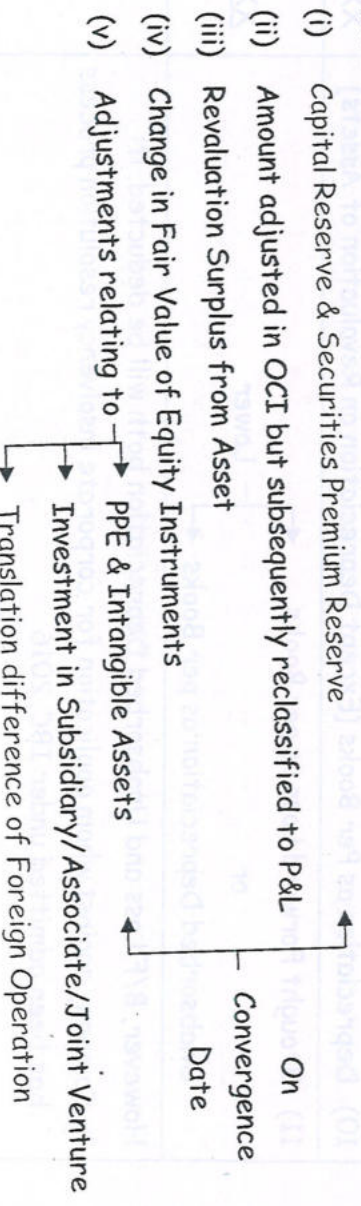
▪ Interest, Dividend, Royalty, FTS [If tax rate on above Income is less than MAT rate i.e., 15%]		
13) Total Depreciation debited to P&L	XX	
<u>Other Addition</u>		
14) Balance in Revaluation Reserve on retirement or disposal of Asset [If not credited to P&L A/c]	XX	XX
Less: Following Items [If credited to P&L]		
1) Deferred Tax	XX	
2) Amount withdrawn from Any Reserve [If reserve made through P&L in earlier years]	XX	
3) Profit of Sick Industrial Company	XX	
4) Notional Gain regarding Business Trust Unit	XX	
5) Income exempt u/s 10, 11, 12	XX	
6) Share Income from AOP	XX	
7) Royalty Income from Patents u/s 115BBF	XX	
8) Income of Foreign Company from: ▪ Capital Gain on Securities ▪ Interest, Dividend, Royalty, FTS [If tax rate on above Income is less than MAT rate i.e., 15%]	XX	
9) Transfer from Revaluation Reserve [To the extent of Depreciation on Revaluation of Assets]	XX	
<u>Other Deductions</u>		
10) Depreciation as Per Books [Except Depreciation on Revaluation of Assets]	XX	
11) Brought Forward Loss as per Books or Unabsorbed Depreciation as per Books	XX	(XX)
However, B/F Loss and Unabsorbed Depreciation both will be deducted, if: ➤ Company against whom application for corporate insolvency resolution process has been admitted under IBC, 2016 or ➤ Company and its subsidiary of which BOD has been suspended by tribunal u/s 241 & 242 of Companies Act, 2013		
Book Profit		XX

- (3) **If Company is required to Comply with Ind-AS, then Following Additional Adjustments is to be made in Book Profit**

	(₹)	(₹)
Book Profit Computed above		XX
Add		
1) Items credited to OCI and not reclassified to P&L except: ▪ Revaluation Surplus from Asset as per Ind AS 16 & 38 ▪ Change in Fair Value of Equity Instrument as per Ind AS 109	XX	
2) Amount debited to P&L on distribution of Non Cash Assets to Shareholder in Demerger	XX	
3) 1/5th of Transition Amount on Convergence Date [if Credit Balance]	XX	XX
Less		
1) Items debited to OCI and not reclassified to P&L except: ▪ Revaluation Surplus from Asset as per Ind AS 16&38 ▪ Change in Fair Value of Equity Instrument as per Ind AS 109	XX	
2) Amount credited to P&L on distribution of Non Cash Assets to Shareholder in Demerger	XX	
3) 1/5th of Transition Amount on Convergence Date [if Debit Balance]	XX	(XX)
Final Book Profit		XX

Note:

- **Convergence Date:** Means first day of first Ind-AS reporting period.
- **Transition Amount on convergence date:** Means aggregate amount adjusted in other equity but does not include following:



(4) **Other Points**

- For above adjustments, Net Profit shall be computed as per Schedule III of Companies Act.
- For electricity/ banking/ insurance companies, profit shall be computed as per respective Act.
- Provision for gratuity/leave salary/warranty based on actuarial valuation is ascertained

liability, so not to be added back.

- If unit of assessee is located in International Finance Service Centre [IFSC], then MAT is applicable @ 9% instead of 15%.

- If assessee is liable to MAT, then also Advanced Tax, Interest u/s 234A/B/C is applicable.

- Non Applicability of MAT in following cases:

(i) Life Insurance Companies

(ii) Companies who have exercised the option u/s 115BAA or 115BAB.

(5) MAT Credit [Section 115JAA]

- If MAT > Normal Income Tax, then excess shall be treated as MAT Credit.
- MAT Credit can be set-off and c/f for 15 years.
- MAT Credit can be set-off in the year in which Normal Tax is more than MAT upto the extent of difference between Normal Tax and MAT in that year.
- In case of conversion of Company into LLP, MAT Credit would not be allowed to the LLP.

Tonnage Taxation / Special Provision relating to Income of Indian Shipping Companies [Section 115V to 115VZG]

(1) Qualifying Company

Indian Company [POEM in India] engaged in business of operating ships.
and

Owns at least 1 qualifying ship [minimum tonnage of 15 tons or more].

(2) PGBP Income of Qualifying Company from Shipping Business

As per PGBP Provisions
[Section 28 to 43D]

Tonnage Income as per Tonnage Tax Scheme
[Optional]

(3) Calculation of Tonnage Income

Daily Tonnage Income × No. of days in which ship is operated in P.Y.

Daily Tonnage Income	
Ship having net tonnage [in Tons]	Daily Tonnage Income
Upto 1,000	₹ 70 for each 100 tons
> 1,000 upto 10,000	₹ 700 + ₹ 53 for each 100 tons exceeding 1,000 tons
> 10,000 upto 25,000	₹ 5,470 + ₹ 42 for each 100 tons exceeding 10,000 tons
> 25,000	₹ 11,770 + ₹ 29 for each 100 tons exceeding 25,000 tons

Note:

- Tonnage shall be rounded off to the nearest multiple of 100 tons.

- (ii) Deductions, set-off of any loss shall not be allowed against Tonnage Income.
- (iii) Tonnage Income shall not be liable to MAT.

(4) Conditions for Applicability of Tonnage Tax Scheme

- Minimum 20% of book profit shall be transferred to Tonnage Tax Reserve A/c in each P.Y.
- Reserve amount shall be utilised for purchasing ship before 8 years or in shipping business.
- Shortfall in Reserve

$$\text{Taxable Amount} = \text{Relevant Shipping Income} \times \frac{\text{Shortfall in Reserve}}{\text{Minimum Reserve to be Created}}$$

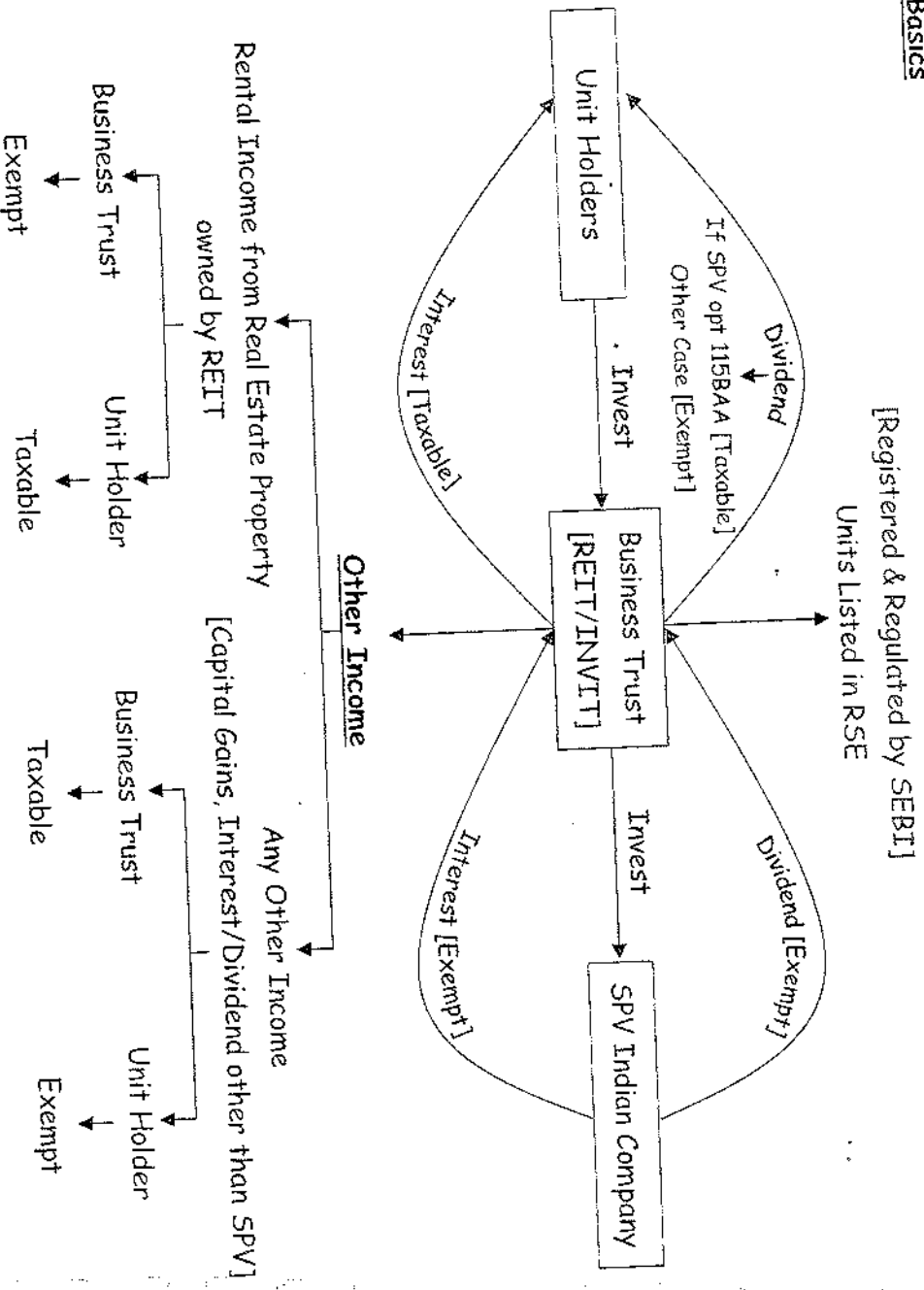
• Consequences of Misutilisation/Non-Utilisation

$$\text{Taxable Amount} = \text{Relevant Shipping Income} \times \frac{\text{Amount Misutilised/Unutilised}}{\text{Total Reserve Created during year}}$$

- Relevant Shipping Income = Profit from Core Shipping Activity + Incidental Activity

Taxation of Business Trust [Section 115BAA]

(1) Basics



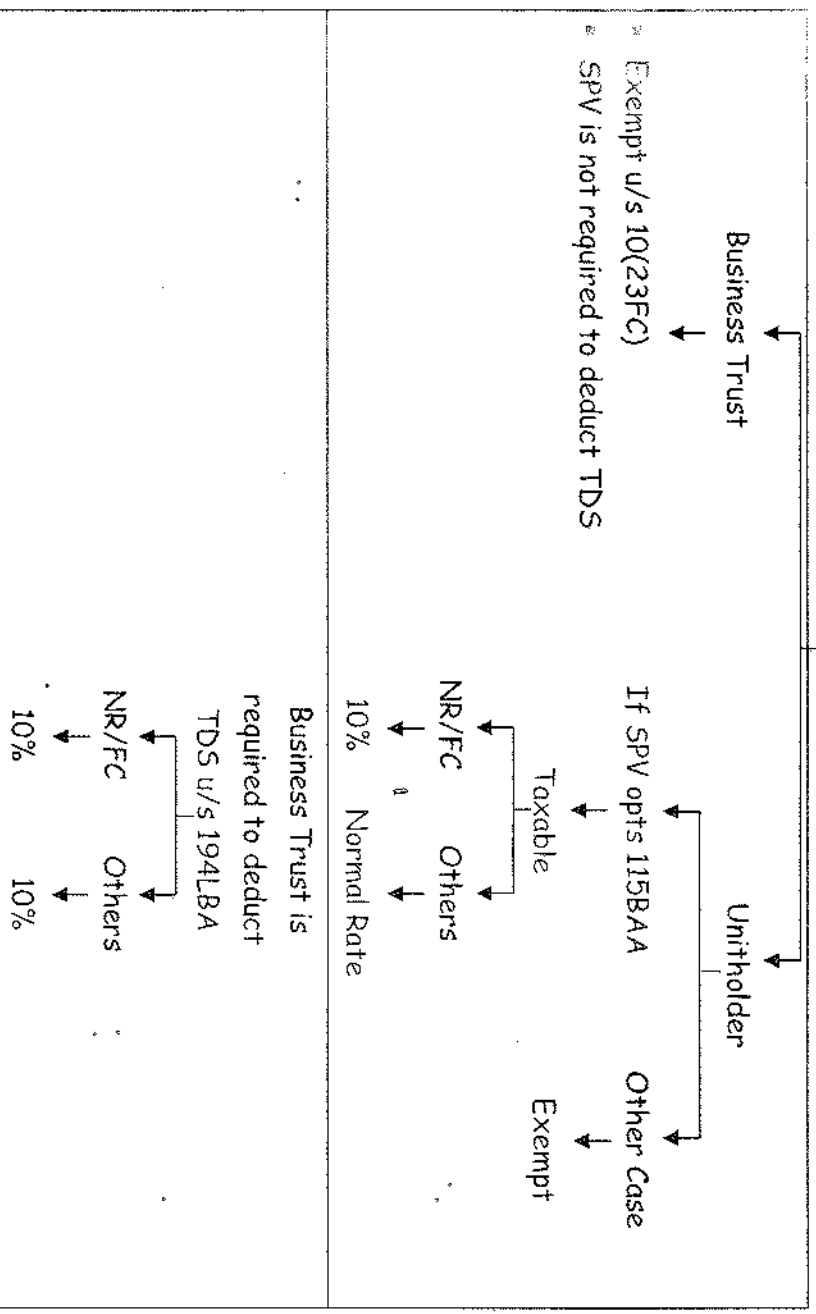
Business Trust: Business Trust means Real Estate Investment Trust [REIT] or Infrastructure Investment Trust [INVT] which is registered & regulated by SEBI and units of which are listed in Recognised Stock Exchange.

Unitholders: Person who invest in units of Business Trust.

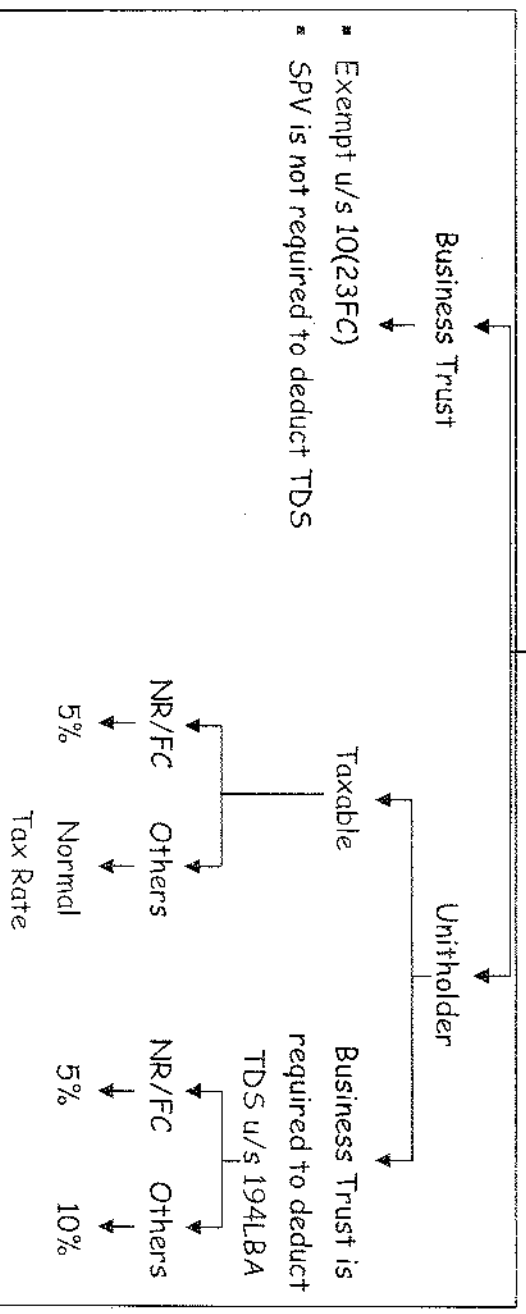
SPV: SPV means an Indian Company in which Business Trust holds 50% or more shareholding.

(2) Taxability of Income in the hands of Business Trust and Unitholders

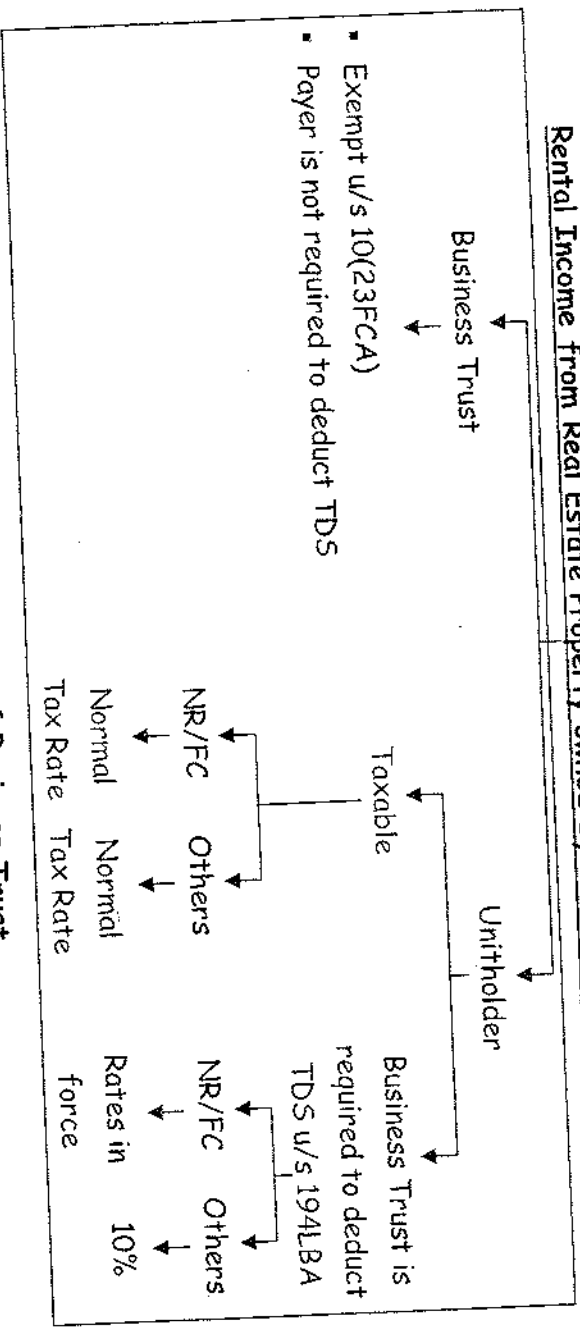
Dividend Income from SPV



Interest Income from SPV



8.10



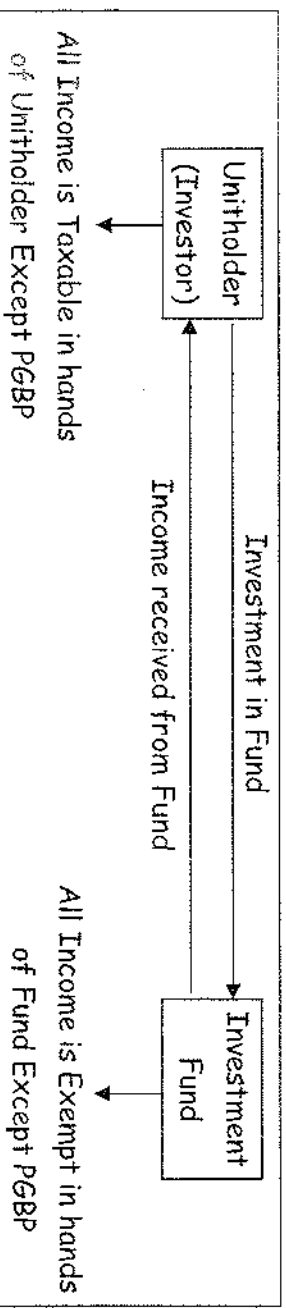
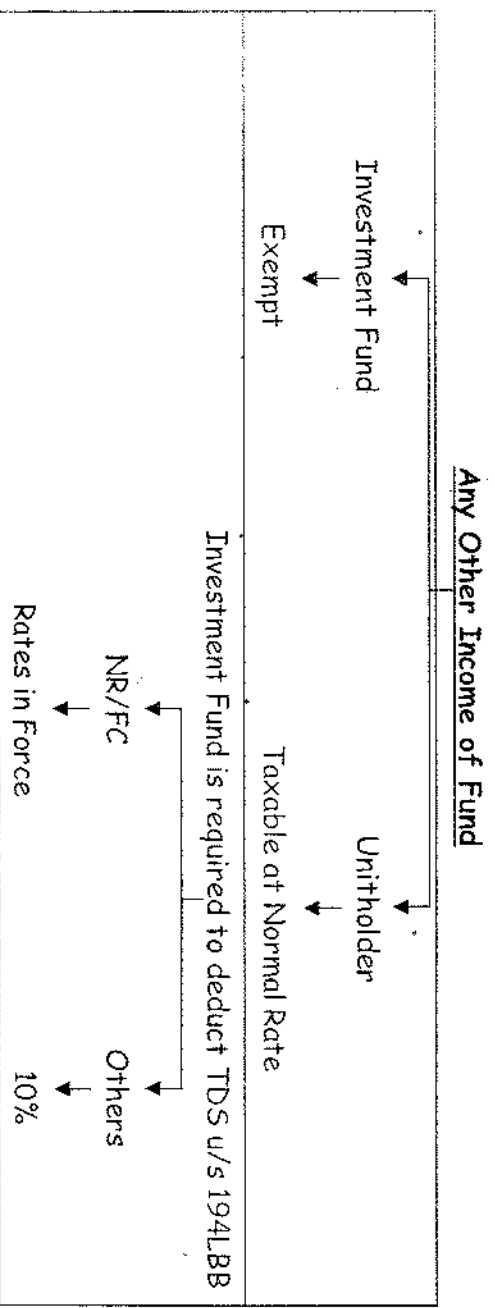
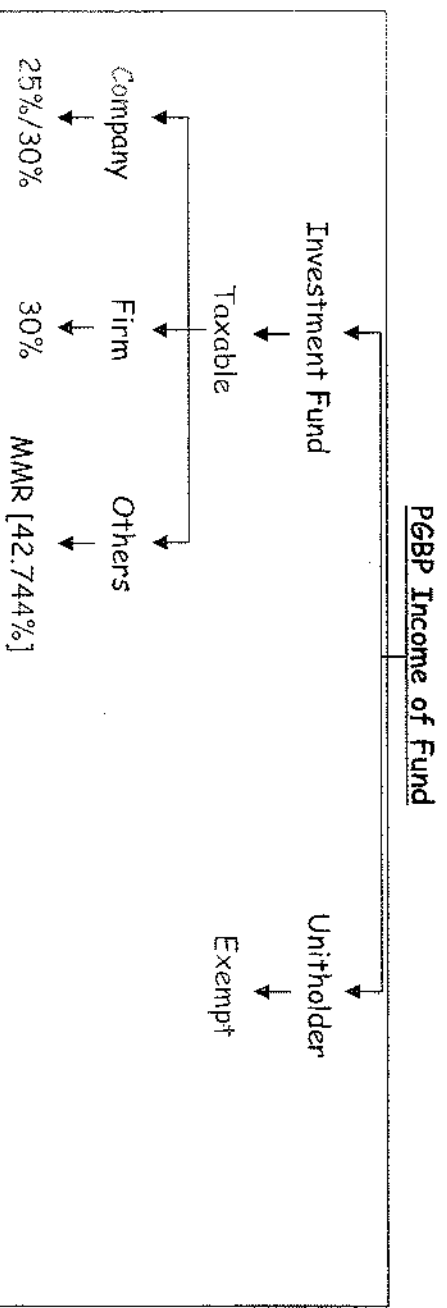
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graph TD
    A[ANY Other Income of Trust] --> B[Business Trust]
    A --> C[Unitholder]
    B --> D[Taxable]
    B --> E[Exempt u/s 10(23FD)]
    D --> F[LTCG u/s 112]
    D --> G[STCG u/s 111A]
    D --> H[All Other Income]
    F --> I[12.5%]
    G --> J[20%]
    H --> K[MMR [42.744%]]
  
```

The flowchart illustrates the distribution of income from a Business Trust to a Unitholder. It starts with 'ANY Other Income of Trust' which splits into 'Business Trust' and 'Unitholder'. The 'Business Trust' further splits into 'Taxable' and 'Exempt u/s 10(23FD)'. The 'Taxable' income is then categorized into 'LTCG u/s 112', 'STCG u/s 111A', and 'All Other Income'. These categories lead to specific tax rates: 'LTCG u/s 112' leads to '12.5%', 'STCG u/s 111A' leads to '20%', and 'All Other Income' leads to 'MMR [42.744%]'.

Other Points

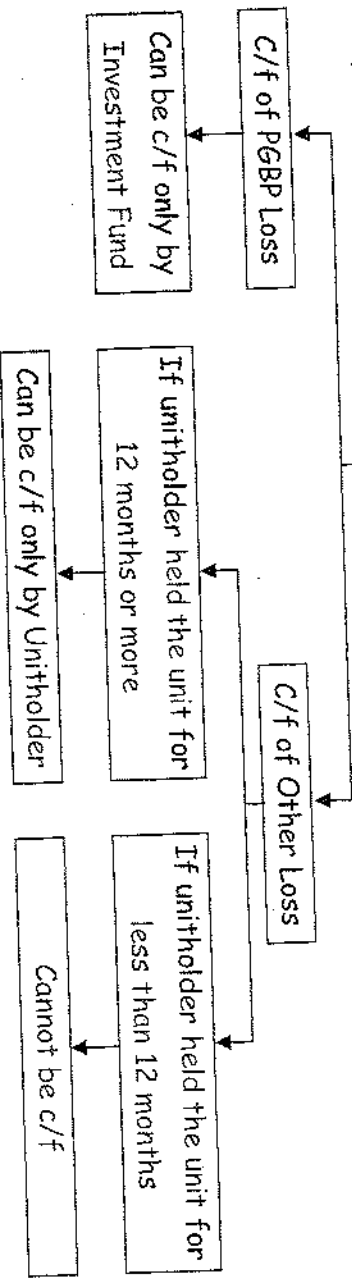
- Other Points**
- Income distributed by Business Trust to its unitholders shall be of the same nature and in same proportion in hands of unitholders as it had been received by Business Trust.
 - Any specified sum distributed by Business Trust to unitholders in respect of unit held by him is taxable under IFOS in hands of unitholder.
 - Taxable specified sum = Amt. distributed except covered above - Purchase price of such unit
 - Taxability on transfer of units of Business Trust by unitholders:
 - If units held for upto 1 year
 - STCG [Taxable u/s 111A]
 - If units held for more than 1 year
 - LTCG [Taxable u/s 112A]
 - COA of such unit = Purchase Price - Specified Sum not taxable under IFOS (if any).
 - Business Trust is compulsory required to file ROI u/s 139(4E).

Taxation of Investment Fund [Section 115UB]**(1) Basics****(2) Taxability of Income in the hands of Investment Fund and Unitholders****(3) Other Points**

- If other income earned by fund during P.Y. has not been paid/credited to unitholder, same shall be deemed to be credited to unitholder on last day of P.Y. and taxable in hands of unitholder.
- Income distributed by Investment Fund to its unitholders shall be of the same nature and in same proportion in hands of unitholders as it had been received by Investment Fund.
- Carry forward of losses of Investment Fund

First, losses shall be set-off by the investment fund as per set-off provisions. If set-off is

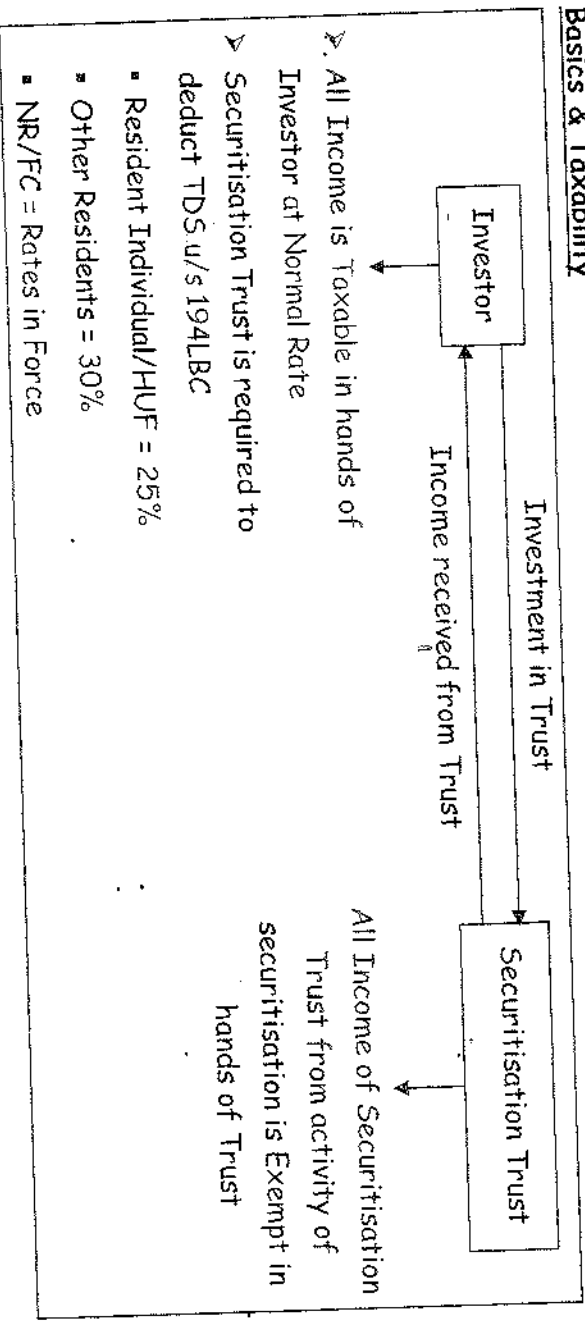
not possible, then losses shall be carried forward in following manner:



- Investment Fund is compulsory required to file ROI u/s 139(4F).

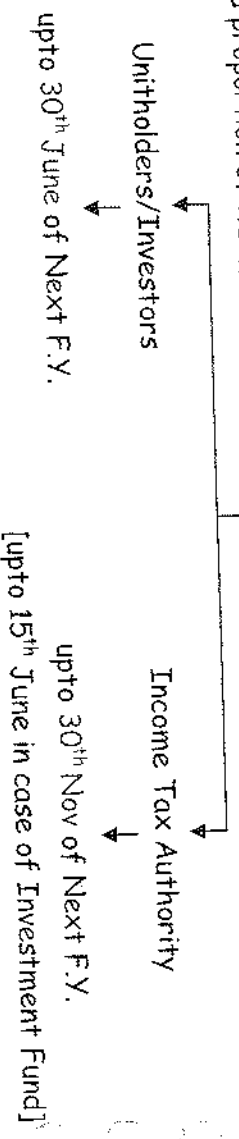
Taxation of Securitisation Trust [Section 115TCA]

(1) Basics & Taxability



(2) Other Points

- If Income earned by Trust during P.Y. has not been paid/credited to investor, same shall be deemed to be credited to investor on last day of P.Y. and taxable in hands of investor.
- Common Point for Business Trust, Investment Fund and Securitisation Trust
Business Trust, Investment Fund and Securitisation Trust shall provide breakup regarding nature and proportion of its income to:



CHARITABLE TRUST, POLITICAL PARTIES AND ELECTORAL TRUST



Part I - Taxation of Charitable / Religious Trust

Meaning of Charitable

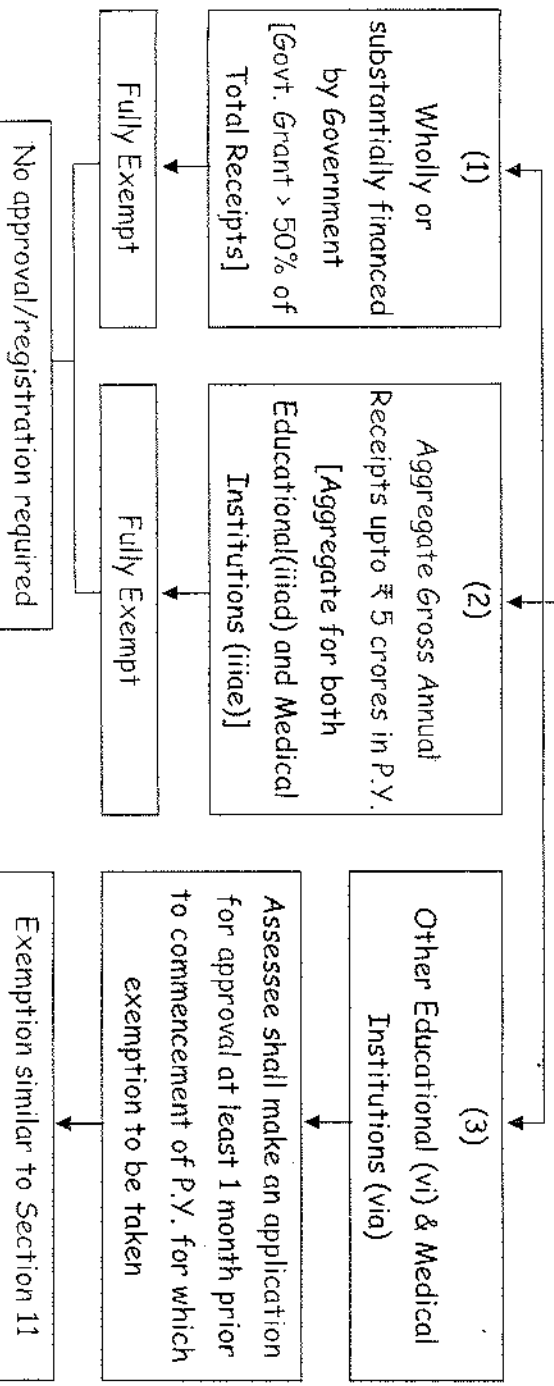
Charitable Means

- Relief of poor
- Education
- Yoga
- Medical relief
- Preservation of Environment [including watersheds, forest & wildlife]
- Preservation of monuments/places/objects of artistic or historic interest
- Advancement of any other object of General Public Utility

Note:

Advancement of any other object of general public utility shall not be treated as charitable if aggregate receipt from trade or business activity is more than 20% of Total Receipts.
[No Exemption u/s 11 for that year, No need to cancel registration]

Income of [Educational Institution [School, College, University] or Medical Institution [Hospital] which exist solely for Educational or Medical Purpose and Not for Profit [Section 10(23C)]

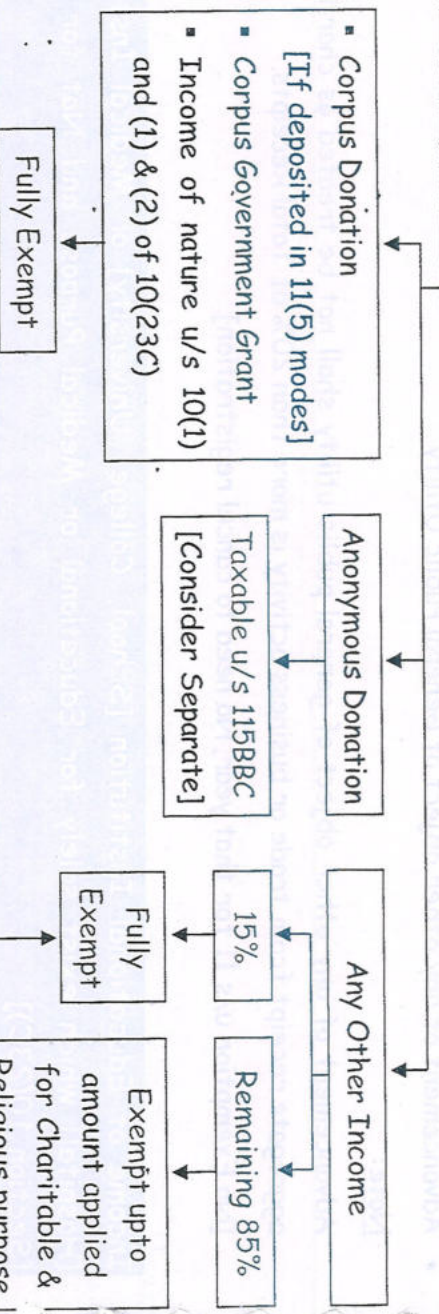


- Donation _____

Normal ☒
Corpus ☐

- Government Grant
- | | |
|--------------------|-------------------------------------|
| Anonymous [115BBC] | ☒ |
| Normal | ☐ |
| Corpus | ☐ |

- (2) Taxability of Income



- Revenue expenses of trust
- Capital expenses of trust [purchase/construction of land, building etc.]
- Donation to other trust/institution registered or approved u/s 12AB and 10(23C) to the extent of 85% of such donation
- Repayment of loan taken for acquisition/construction of capital assets or any expense

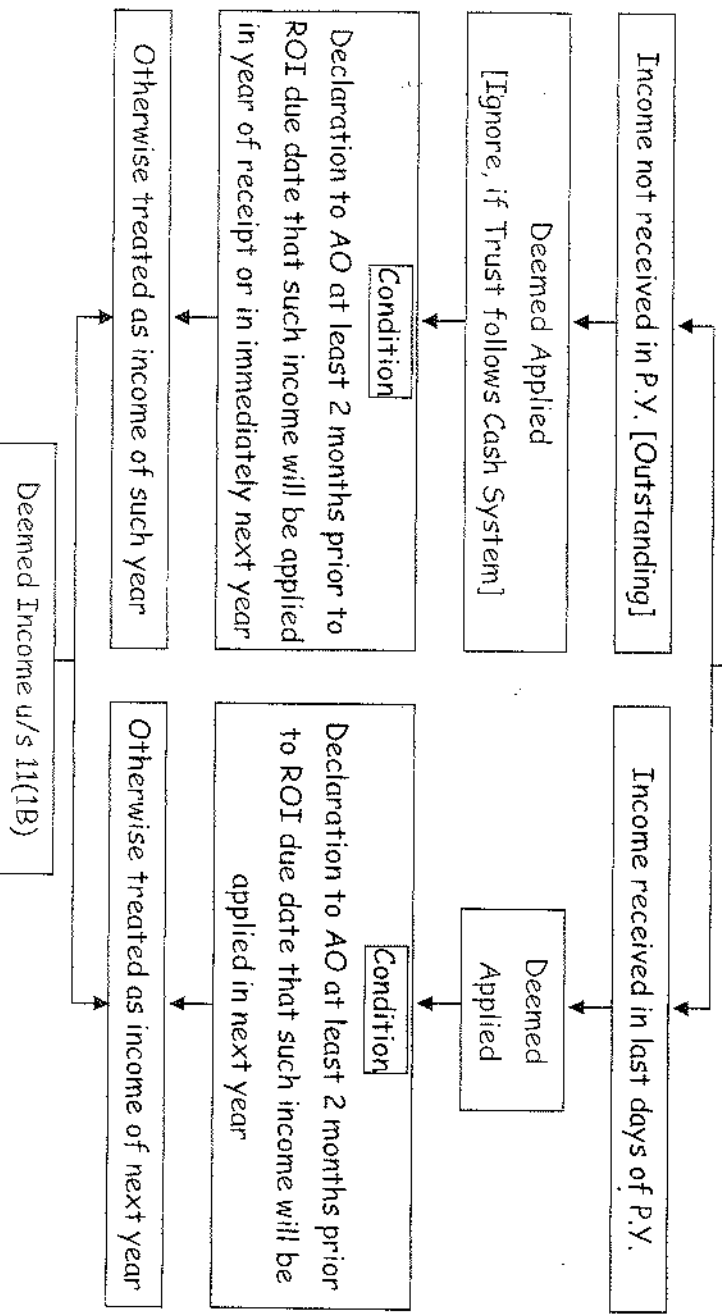
➤ Expenditure from such loan is not treated as application.

- CA ATUL AGARWAL (AIR 1)**

Note:

- (i) If cost of asset is already taken as applied, then depreciation on such asset shall not be considered as applied in any P.Y.
- (ii) Any application from corpus donation shall not be treated as applied.
- (iii) Corpus donation to other trust/institution registered u/s 12AB or 10(23C) shall not be treated as applied.
- (iv) In case of acquisition of land/building, then purchase price shall be considered as applied [Ignore SDV]
- (v) Provision of Section 40(a)(ia), 40A(3), 40A(3A) also apply in case of Revenue expenses.
 - TDS not deducted in case of Resident [Section 40(a) (ia)] = 30% of such sum shall not be treated as applied
 - Payment exceeding 10,000 by cash/bearer cheque/cross cheque [Section 40A(3)/40A(3A)] = 100% of such sum shall not be treated as applied
- (vi) No setoff/deduction of loss of earlier years [i.e. excess application of earlier years].
- (vii) If trust has any Temple, mosque, gurdwara, church etc. and trust received amount for renovation or repair of such religious property, such amount may be treated as Corpus Donation, if trust:
 - ➔ Invest it in safe modes u/s 11(5) as separately identifiable
 - ➔ Applies it for such purpose
- (viii) Any amount payable by trust shall be treated as applied only on Paid Basis [whether trust follows Accrual System or Cash System].

(4) If 85% could not be applied due to following reasons:

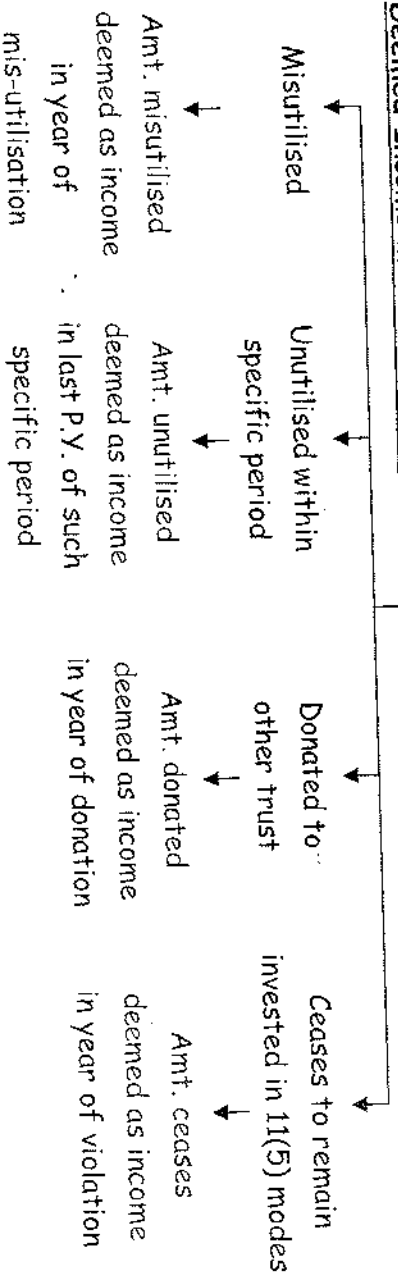


(5) Exemption if income accumulated/set apart for specific purpose [Section 11(2)]

If 85% income not fully applied during P.Y. but accumulated/set apart for specific purpose, then such accumulation shall be treated as applied, if following conditions are satisfied:

- Furnish statement to AO in Form no. 10 at least 2 months prior to due date of ROI stating period & purpose for which such income is accumulated [Maximum Period 5 Years].
- Such amount shall be deposited in 11[5] modes [Safe Investments] upto end of P.Y.
- Such amount shall not be donated to other trust.

(6) Deemed Income in Case of Mis-utilisation/Non-utilisation [Section 11(3)]

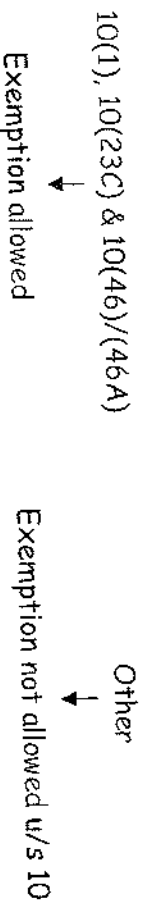


Special Provisions regarding Certain Incomes of Trust

(1) Business Income of Trust

- If business is incidental to attainment of main objective and separate books of accounts are maintained for such business, then exemption u/s 11(1) & 11(2) available.
- If AO finds any concealed income in respect of such business, then such concealed income is fully taxable.

(2) Exemption u/s 10



(3) Capital Gains

- Sale - Cost will be treated as income of trust.
- If any capital asset is transferred by trust and net sale consideration is used for purchase of another capital asset, then Cost of New Asset - Cost of Old Asset shall be treated applied.
- Investment of net sale consideration in Fixed Deposit (FD) is also considered as investment in new capital asset for above purpose.

Example

Cost of Asset Transferred = ₹ 1,00,000

Sale Consideration = ₹ 1,50,000

Capital Gains = 1,50,000 - 1,00,000 = ₹ 50,000

New Asset Purchase Cost —→ Case 1 = ₹ 1,50,000

→ Case 2 = ₹ 1,20,000

→ Case 3 = ₹ 1,60,000

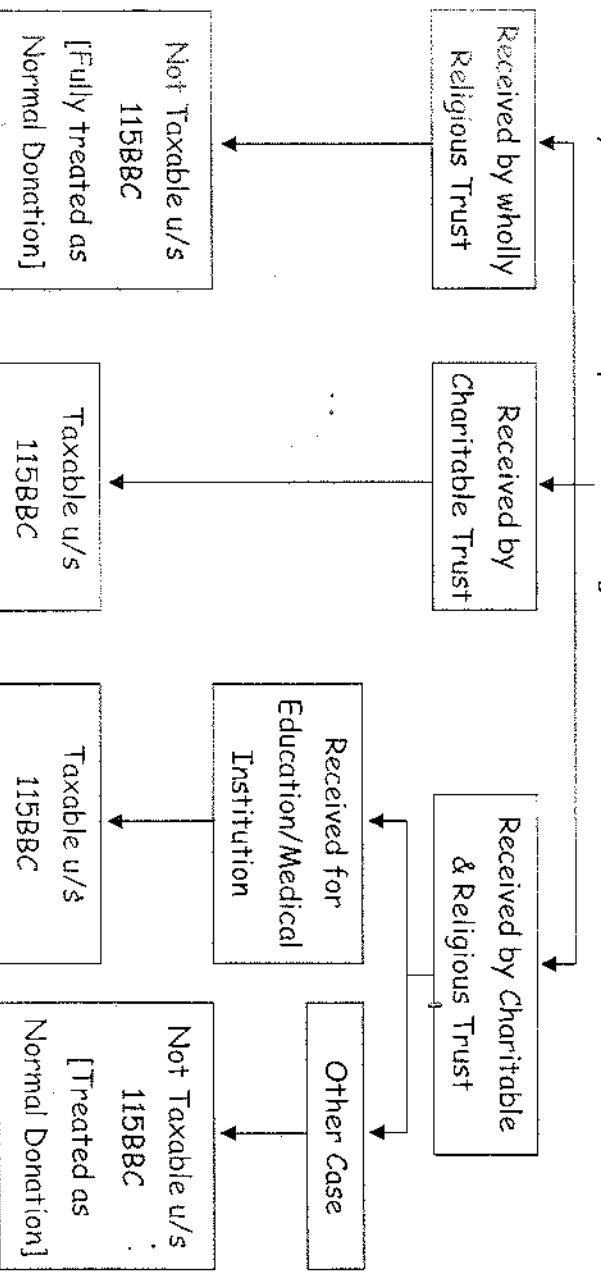
Amount treated as applied —→ Case 1 = 1,50,000 - 1,00,000 = ₹ 50,000

→ Case 2 = 1,20,000 - 1,00,000 = ₹ 20,000

→ Case 3 = 1,60,000 - 1,00,000 = ₹ 60,000

(4) Anonymous Donation

Means any donation where person receiving such donation does not maintain record of donor.



• **Taxable Anonymous Donation u/s 115BBC:**

Actual Amount of Anonymous Donation Received	XX
(-) Limit	
5% of Total Donation Received*	
or	Higher
₹ 1,00,000	(XX)
Anonymous Donation Taxable u/s 115BBC @ 30%	XX
This Amount will be treated as Normal Donation	
* Total Donation Received = [Normal Donation + Corpus Donation + Anonymous Donation]	

Charitable Trust, Political Parties & Electoral Trust

Conditions for Applicability of Section 11 [Section 12A]

- Trust/Institution shall be registered u/s 12AB.
- If Total Income [before exemption] exceeds basic exemption limit, then
 - Books & Documents shall be maintained.
 - and
 - Audit Report shall be furnished.
- ROI is to be filed upto due date u/s 139(4A).

Procedure for Registration [Section 12AB]

(1) Registration Procedure

Provisional Registration/Approval	
➤ Application to be filed online at least 1 month prior to commencement of P.Y. for which provisional registration/approval is sought. ➤ Principal Commissioner/Commissioner shall grant approval within 1 month from end of the month in which application is made. ➤ Provisional registration is valid for 3 years.	
Final Registration	
➤ Trust shall apply for final registration	Atleast 6 months prior to expiry of provisional registration or Within 6 months of commencement of its activities } Earlier
➤ Trust which has already commenced its activities need not first apply for provisional registration. It can at any time after commencement of such activities directly apply for final registration. ➤ PCIT/CIT shall within 6 months from end of quarter in which application is received, pass order to register or refuse to register after he is satisfied about genuineness of activities of trust and compliance of other laws by trust. ➤ Registration granted will be effective or exemption will be applicable from P.Y. in which application is made. ➤ Final registration is valid for 5 years [Renewal Option]. ➤ Application for renewal has to be made at least 6 months prior to expiry of 5 years validity. ➤ If registered trust modifies its objects which do not conform to conditions of registration, trust shall required to apply for fresh registration within 30 days from date of modification. ➤ In any case, if application is filed beyond time allowed and there is reasonable cause for delay, then PCIT/CIT may condone such delay.	

(2) Cancellation of Registration

▪ After granting registration, If PCIT/CIT noticed Specified Violations: ➤ Income applied other than for the objects of trust. ➤ Trust had PGBP Income which is not incidental to attainment of objective. ➤ Separate books are not maintained for business incidental to attainment of objective. ➤ Income applied for private religious purpose. ➤ Income applied for benefit of any particular religious community or caste. ➤ Activities not genuine or not in accordance with objectives. ➤ Trust not complied with requirement of other laws. ➤ Application is not complete or it contains false information. ▪ PCIT/CIT has received reference from AO u/s 143(3) about above Specified Violations. ▪ Such case has been selected as per Risk Management Strategy. Commissioner shall cancel the registration of such trust after giving reasonable opportunity of being heard, if he is satisfied that any Specified Violation have taken place.

Section 11 shall not Apply in Certain Cases [Section 11(3)]

(1) Exemption u/s 11 shall not apply

- Income applied for private religious purpose.
 - Income applied for benefit of particular religious caste or community.
 - Income applied/used for benefit of Related Persons to the extent of such income/benefit.
- Excess Payment
Inadequate Consideration
Receive
- Funds are invested in other than 11(5) modes to the extent of such fund.
- Deemed Income Taxable u/s 115BBI

Note:

(i) Meaning of Related Persons

- Author/Founder of trust
 - Person who made donation > ₹ 50,000
 - Trustee/Manager of trust [Not Employees]
 - Relative of any Founder, Donor, Trustee, Manager [Relative same as 56(2)(x)]
 - Any concern in which any of the above person has substantial interest
- (ii) Penalty for benefit provided to Related Persons [Section 271AAE]**
- First Time Violation : Equal to income applied for benefit of Related Persons
 - Subsequent Violation : 200% of income applied for benefit of Related Persons

Charitable Trust, Political Parties & Electoral Trust

(iii) Safe Modes/Investments u/s 11(5)

- Scheduled Bank, Cooperative Bank, Post Office Saving Bank [Not NBFC]
- Public Sector Company [Government Company]
- Government Securities and Certificates
- UTI Units
- Units of Powergrid Infrastructure Investment Trust
- Land or Building

(2) Calculation of Trust Income in Some Specific Cases

• Specific Cases

- (i) If trust has objective of general public utility & business receipts is more than 20%.
- (ii) If Total Income [before exemption] exceeds basic exemption limit but trust has Not maintained Books & Documents or Not furnish Audit Report.
- (iii) If Trust has not filed its ROI upto due date.

• Calculation of Taxable Income of Trust in above cases

Gross Receipts	XX
(-) Revenue Expenditure of Trust [Section 40(a)(ia), 40A(3)/(3A) Applies]	(XX)
<u>Except</u>	
➤ Expense from corpus	
➤ Expense from loan or borrowing	
➤ Donation to any person	
➤ Set-off of any loss	
Taxable Income	XX

Tax on Specified / Deemed Income of Certain Trust or Institutions [Section 11(5B)]

• Specified/Deemed Income

- (i) Corpus Donation not deposited in 11(5) modes.
- (ii) Deemed Income u/s 11(1B).
- (iii) Deemed Income u/s 11(3).
- (iv) Income applied/used for benefit of Related Persons to the extent of such income/benefit.
- (v) Funds are invested in other than 11(5) modes to the extent of such fund.
- (vi) Income applied outside India.
- Above Specified/Deemed Income is taxable separately @ 30%.
- No deduction of any expenditure from such Deemed Income.

Charitable Trust, Political Parties & Electoral Trust

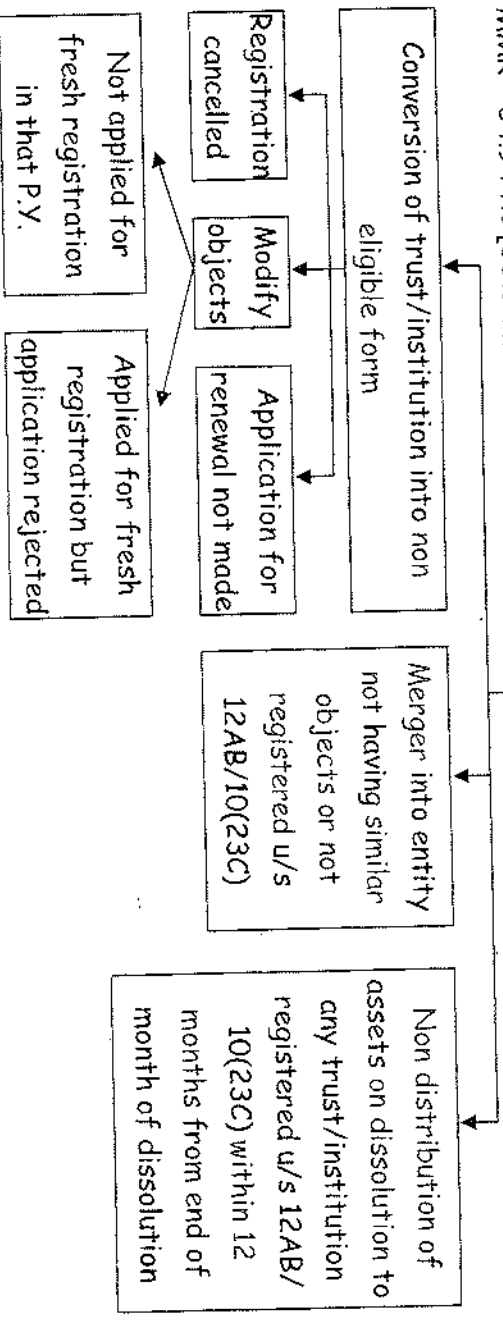
Formnet to Calculate Total Income of Trust

Total Income of Charitable/Religious Trust

Particulars	(₹)
Corpus Donation [If deposited in Safe Investments i.e., 11(5) modes]	Nil
Corpus Government Grant, Income u/s 10(1) and Point (1) & (2) of 10(23C)	Nil
Gross Receipts from School/College/University/Hospital etc. of Point (3) of 10(23C)	XX
Capital Gains/House Property/Other Source	XX
Income from business which is incidental to attainment of main objective	XX
Government Grant	XX
Normal Donation [Including Anonymous Donation Limit]	XX
	XX
(-) 15% Standard Deduction	(XX)
	XX
(-) Amount Applied for Charitable & Religious Purpose in India	(XX)
(-) Deemed Applied $\left\{ \begin{array}{l} \text{Income not received in P.Y. [Ignore if Cash System Followed]} \\ \text{Income received in last days of P.Y.} \end{array} \right.$	(XX)
(-) Income Accumulated/Set apart u/s 11(2)	(XX)
(-) Excess of Expenditure over Income in Earlier Years [Not Allowed]	Nil
Total Income [SLAB Rate]	XX
(+) Anonymous Donation Taxable u/s 115BBC [30%]	XX
(+) Deemed Income Taxable u/s 115BBI [30%]	XX
Total Income	XX

Tax on Accreted Income of Certain Trust or Institution / Exit Tax [Section 115TD]

- (1) Accreted Income of Trust/Institution registered u/s 12AA/12AB/10(23C) shall be Taxable @ MMR - 34.944% [30% Tax + 12% SC + 4% Cess] in following cases:



(2) **Calculation of Accreted Income**

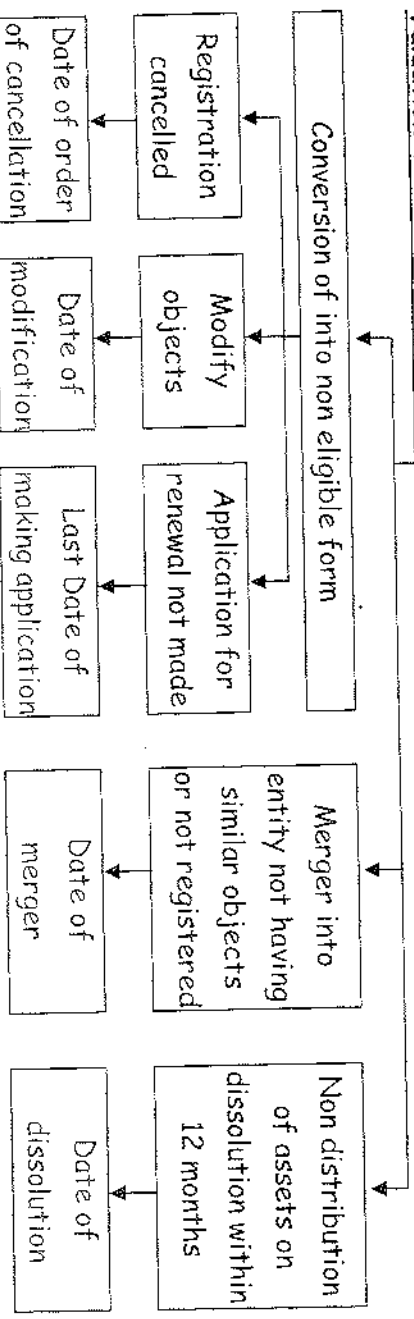
Aggregate FMV of Total Assets of Trust/Institution	XX
(-) Total Liabilities of Trust/Institution	(XX)
Accreted Income	XX
Exit Tax = Accreted Income X 34.944% ..	

Note:

Following assets shall not be considered in Accreted Income:

- Assets acquired out of Agricultural Income.
- Assets acquired from date of creation of trust to date on which registration becomes effective u/s 12AA/12AB/10(23C).
- Assets distributed on dissolution to other trust/institution registered u/s 12AB/10(23C) within 12 months from end of month of dissolution.
[Liability in respect of above assets also has to be ignored]

(3) **Valuation date of Assets and Liabilities**



(4) Calculation of Value of Assets and Liabilities**Value of Assets**

Aggregate FMV of all assets in balance sheet on valuation date but not include:

- 3 Assets mentioned above
- TDS/TCS/Advance Tax
- Deferred Revenue Expenditure

FMV of Assets	
Assets	FMV
Quoted Shares & Securities	Average of lowest and highest price on valuation date in recognised stock exchange [If no trading on valuation date, then immediately preceding valuation date]
Unquoted Shares & Securities [Other than Equity Share]	Open Market Value as per valuation report of merchant banker or accountant
Unquoted Equity Shares	$\frac{A + B - L}{PE} \times PV$ A = Book value of all assets [other than covered in B] B = FMV of shares, securities, immovable property, bullion, jewellery, precious stone L = [Ignore TDS/TCS/Adv. Tax/Deferred Revenue Expenses] Book value of liabilities but not include following: ➤ Paid up equity share capital ➤ Reserves & Surplus ➤ Dividend ➤ Provision for tax ➤ Provision for unascertained liabilities ➤ Contingent liabilities PE = Total paid up equity share capital of company PV = Paid up value of equity shares held by trust
Immovable Property [Land or Building]	Stamp Duty Value [SDV] or Open Market Value → Higher
Any Other Asset	Open Market Value

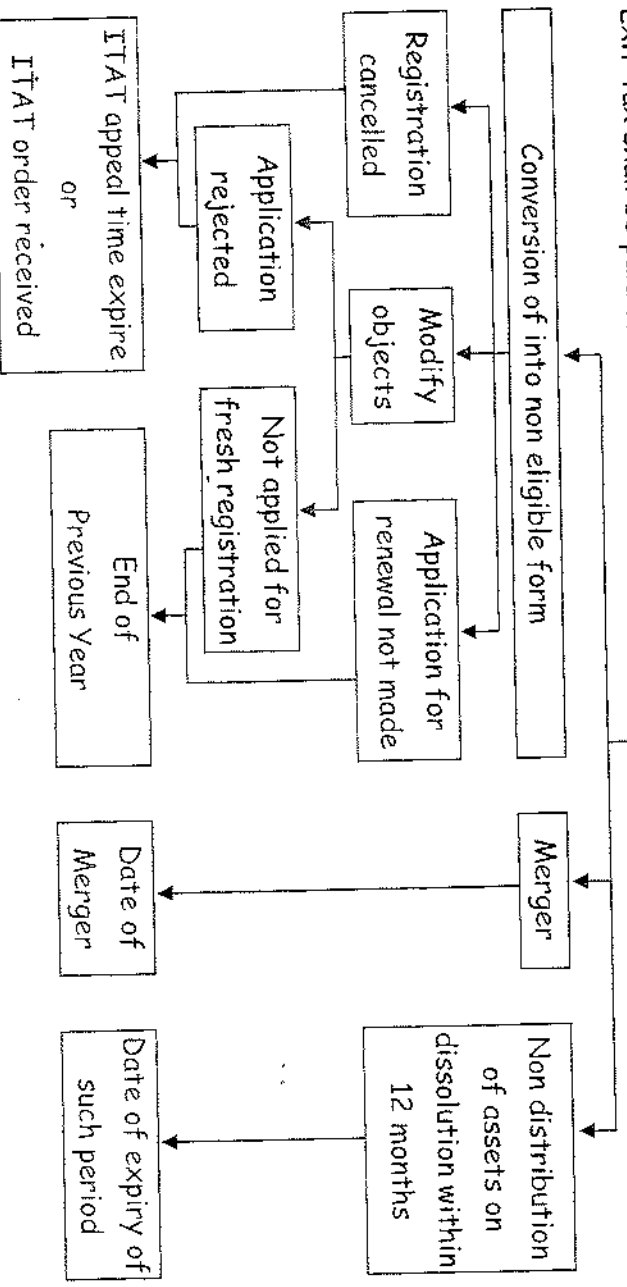
Value of Liabilities

Book value of liabilities in balance sheet of trust on valuation date but not include following:

- Corpus/Capital/Accumulated Fund
- Reserves & Surplus
- Provision for Tax
- Provision for Unascertained Liabilities
- Contingent Liabilities

(5) Other Points

- Exit Tax shall be in addition to normal income tax.
- Exit Tax shall be paid to Central Government within 14 days from:



- If Exit Tax is not paid within 14 days, Interest is leviable @ 1% per month or part of month on amount of such tax not paid FROM date after 14 days TILL date on which tax is actually paid.
- Principal officer/trustee and the trust will also deemed to be an assessee in default [if tax not paid within 14 days].

• **Section 12AC**

Where any trust or institution registered u/s 12AB/10(23C) merges with another trust or institution, exit tax shall not apply if:

- Other trust or institution has same/similar objects and
- Other trust or institution is registered u/s 12AB/10(23C)

Part II - Taxation of Political Parties & Electoral Trust**Taxation of Political Parties [Section 13A]**

▪ Certain incomes of Political Party will be exempt, if following conditions are satisfied:

- (i) Must maintain books of accounts and documents.
- (ii) Must get its books of accounts audited.
- (iii) Must file ROI upto due date.
- (iv) Must keep and maintain record of each voluntary contribution [donation] exceeds ₹ 20,000 received by it [Name & Address of Donor].
- (v) Must receive donation exceeds ₹ 2,000 only by A/c Payee Cheque/DD/ECS/Electronic Mode/Electoral Bond.

▪ If Any condition is not fulfilled, then All Incomes are Taxable.

Income from House Property	Fully Exempt
Capital Gains	Fully Exempt
Other Source and Voluntary Contribution Received	
Income from Business & Profession	Fully Taxable

Taxation of Electoral Trust [Section 13B]

Taxability of Income	▪ <u>Voluntary contribution [donation] received by Electoral Trust is Exempt if:</u> Atleast 95% of aggregate donation of current year along with surplus b/f from earlier year is distributed to any Political Party. ▪ Other Income is fully taxable for Electoral Trust.
Donation Spend Limit	<u>For managing its affairs, Electoral Trust may spend:</u> 5% of total donation received in a year or ₹ 5 lacs (in first year of incorporation) / ₹ 3 lacs (in subsequent years) } Lower
Distributable Donation	Current year donation received (+) earlier year surplus (-) spend limit
Other Points	▪ Donation shall be accepted only by A/c Payee Cheque/DD/ECS/Electronic Mode ▪ Electoral Trust may receive donation from Indian citizen, Company registered in India or Firm/HUF/AOP/BOI resident in India. ▪ Electoral Trust shall not accept donation from Individual who is not citizen of India, other Electoral Trust, government company or foreign entity.

TDS, TCS, ADVANCE TAX, INTEREST AND REFUND



Part I – Tax Deduction at Source [TDS]

TDS Basics

- TDS is deducted by the payer.
- TDS is deducted if amount is taxable in hands of payee/receiver.
- TDS is deducted at the time of:
 - Payment
 - or
 - Crediting the A/c of Payee→ Earlier

- However in following cases, TDS is deducted only at the time of payment:

Salary [192]	Compensation on Compulsory Acquisition [194LA]
EPF [192A]	Cash Withdrawal [194N]
Casual Income [194B & BB]	Benefits or Perquisite of B&P [194R]
Maturity of Policy [194DA]	

- TDS is deducted at fixed rates as given in respective section except:
 - Salary
 - Payment to Non Resident/Foreign Company
 - Income of Specified Senior Citizen [Section 194P]→ [Surcharge & Cess also]
- TDS is deducted both from payment for commercial purpose or personal purpose [Except in Section 194C & 194J, where no TDS on payment made for personal purpose by Individual & HUF].
- If payment is made by payer without deducting TDS, then payee is responsible for payment of tax directly.
However, if TDS deducted by payer but not deposited with Government, then payee cannot be liable to pay such tax.
- No TDS, if payee is Central Government, State Government, RBI, Statutory Corporation, Mutual Fund.
- If GST on goods/service is indicated separately on bill, then no TDS on GST component.

TDS Sections

Section 192: Salary			
Payer	Payee	Rate	Exemption
Any Employer	Any Employee [R/NR]	Slab Rate	If Total Income of employee is upto basic exemption limit

Additional Points

- Slab rate means total tax of employee [reduce by TDS/TCS deducted/collected in other sections].
- If employee does not want to opt default tax regime u/s 115BAC, he has to Intimate to employer.
- Employer shall consider following, if provided by employee:
 - Other income & deductions of employee
 - HP loss [Ignore other loss]
- Employer shall obtain evidence of following claims made by employee [If not provided, then ignore]:
 - HRA: Name, Address, PAN of landlord, if aggregate rent exceeds ₹ 1 lac
 - LTC: Evidence of expense
 - HP Interest: Name, Address, PAN
- VI-A Deduction: Evidence of expense/investment
- In case of arrears of salary, TDS is deducted after considering relief u/s 89.
- Tip paid to waiters [employee]: No TDS

Section 192A: Accumulated Balance of RPF

Payer	Payee	Rate	Exemption
Any Person	. Any Person [Employee]	10%	If aggregate payment less than ₹ 50,000 for year

Additional Points

- TDS only if amount taxable in hands of employee [Employee renders less than 5 years of service].

Section 193: Interest on Securities

Payer	Payee	Rate	Exemption
Any Person	Any Resident Person	10%	—

Additional Points

- No TDS, If Interest:
 - Paid to any Insurance Company
 - Paid on Government Securities [TDS is applicable on Interest on 8% Saving Bonds 2003 or 7.75% Saving Bonds 2018 or Floating Rate Saving Bond 2020, if interest is more than ₹ 10,000 p.a.]

TDS, TCS, Advance Tax, Interest and Refund

Section 194: Dividend [including Deemed Dividend]

Payer	Payee	Rate	Exemption
Domestic Company	Resident Shareholders	10%	—

Additional Points

- No TDS, If Dividend:
 - Paid to any Insurance Company
 - Paid to individual other than cash [If amount not exceed ₹ 5000 p.a.]

Section 194A: Interest [other than Interest on Securities]

Payer	Payee	Rate	Exemption
Any Person [other than Individual/HUF whose turnover/gross receipts in business/profession upto ₹ 1 cr./50 lacs in preceding F.Y.] [Example: Mohanlal - Last Year Business Turnover ₹ 98 lacs/No Business/Doing Job]	Any Resident Person	10%	<u>Interest Paid by</u> Bank/Co-operative Bank/Post Office: ₹ 40,000 for year [₹ 50,000 if senior citizen] Other Person: ₹ 5,000 for year

Additional Points

- If bank opting Core Bank Solutions [CBS], then limit will not be per branch but per bank.
- No TDS if:
 - Interest on savings bank A/c.
 - Interest paid by firm to partners [covered u/s 194T].
 - Interest on Tax refund.
 - Interest paid to any Bank or Insurance Company.
 - Interest paid by co-operative society to its members or to any other co-operative society.
 - Interest on compensation amount awarded by motor accidents claim tribunal.
 - Interest on FD made in name of registrar general of court.
 - Interest is credited by bank to provisioning A/c on daily/monthly basis for macro monitoring only by use of CBS software.

Section 194B: Casual Income [other than Horse Race and Online Games]

Payer	Payee	Rate	Exemption
Any Person	Any Person	30%	Aggregate ₹ 10,000 for year

Additional Points

- If winning in kind, then organiser shall release winning only after ensuring that tax on winning has been paid to government.
- TDS will be deducted without set-off of loss.

Section 194BA: Winnings from Online Games

Payer	Payee	Rate	Exemption
Any Online Gaming Platform	Any Person	30%	-

Additional Points

- TDS will be deducted at the time of withdrawal from user account [on net winnings withdrawal] and at the end of F.Y. [on remaining amount of net winnings].
- No TDS at the time of withdrawal, if net winnings withdrawal is upto ₹ 100 in a month.
- If winning in kind, then organiser shall release winning only after ensuring that tax on net winnings has been paid to government.
- Calculation of net winnings is already discussed in IFOS Chapter.

Section 194BB: Horse Race

Payer	Payee	Rate	Exemption
Any Person	Any Person	30%	Aggregate ₹ 10,000 for year

Additional Points

- TDS will be deducted without set-off of loss.

Section 194C: Contract

Payer	Payee	Rate	Exemption
Any Person [other than Individual/HUF whose turnover/gross receipts in business/profession upto ₹ 1 cr./50 lacs in preceding F.Y.]	Any Resident Person	If <u>Contractor</u> Individual/HUF: 1% Other: 2%	₹ 30,000 for single payment and Aggregate ₹ 1 lac for year

Additional Points

- For purpose of contract, work includes:
 - Advertisement, Broadcast, Telecast
 - Catering
 - Transport of goods/passengers [other than railway]

TDS, TCS, Advance Tax, Interest and Refund

- Manufacturing/supplying product as per customer specification out of material supplied by such customer or its associate [Relative u/s 40A(2)] [Job Work]
- If payment made for personal purpose by Individual/HUF: No TDS
- If payment made to transporter & he does not own more than 10 vehicles at any time during P.Y. & furnish declaration with PAN: No TDS
- In case of Job Work:

If material value separately mentioned in invoice	TDS deducted on invoice value excluding material
If not separately mentioned	TDS deducted on full invoice value
- Payment by TV channel/broadcasters to production house for production of program:

If program as per specification	TDS
If already produced program acquired by TV channel	No TDS
- Payment of gas transportation charges by purchaser of natural gas to seller of gas: No TDS
- Services of event manager [other than sports activity]: TDS u/s 194C
- Contract also includes sub-contract.

Section 194D: Insurance Commission			
Payer	Payee	Rate	Exemption
Any Person [Insurance Co.]	Any Resident Person [Agent]	2% [w.e.f. 1.4.25] 5% [upto 31.3.25]	Aggregate ₹ 15,000 for year

Section 194DA: Life Insurance Policy Maturity Amount			
Payer	Payee	Rate	Exemption
Any Person [Insurance Co.]	Any Resident Person	2% of [Maturity Amount (-) Total premium]	If maturity amount is less than ₹ 1 lac for year

- TDS if maturity amount is Taxable [Taxable if premium paid exceeds limit given in section 10(10D)]

Additional Points

Section 194E: Payment to NR Sportsman / Sports Association / Entertainer			
Payer	Payee	Rate	Exemption
Any Person	NR Sportsman/Sports Association/Entertainer [not citizen of India]	Rate in Force [20% + Surcharge & Cess]	—

Additional Points

- TDS u/s 194E is attracted on Income Taxable u/s 115BBA
 - Participation in any game in India
 - Advertisement
 - Contribution of article in Newspaper
 - Performance in India

Section 194G: Commission on Sale of Lottery Tickets			
Payer	Payee	Rate	Exemption
Any Person	Any Person	2%	Aggregate ₹ 15,000 for year

Section 194H: Commission or Brokerage			
Payer	Payee	Rate	Exemption
Any Person [other than individual/HUF whose turnover/gross receipts in business/profession upto ₹ 1 cr./50 lacs in preceding F.Y.]	Any Resident Person	2%	Aggregate ₹ 15,000 for year

Additional Points

- No TDS [since there is no principal-agent relationship] If:
 - Commission/brokerage is related to securities [commission to underwriters].
 - Product given at discounted price to distributors/retailers/franchisees.
 - Bank guarantee commission paid to banks.
 - Commission paid by banks for ATM network services.
- Payment by consignor to consignee: TDS
- Payment by airline co. to agent: TDS on both standard commission and supplementary commission

Section 194I: Rent			
Payer	Payee	Rate	Exemption
Any Person [other than Individual/HUF whose turnover/gross receipts in business/profession upto ₹ 1cr./50 lacs in preceding F.Y.]	Any Resident Person	P&M, Equipment: 2% Land & Building, Furniture: 10%	Aggregate ₹ 2,40,000 for year

Additional Points

- In following cases, TDS is deducted u/s 194C and not u/s 194I:

TDS, TCS, Advance Tax, Interest and Refund

- Landing & parking charges paid by airline company to airport authority.
- Payment to contractors for hiring vehicles.
- Payment of cooling charges to cold storage owners.
- Lump sum lease premium paid for acquisition of long-term lease: No TDS
- Payment for use of mobile towers: 2% TDS u/s 194I

Section 194IA: Purchase of Immovable Property [Other than Rural Agriculture Land]

Payer	Payee	Rate	Exemption
Any Person (Buyer)	Any Resident Person (Seller)	1% of Actual Consideration or SDV [whichever is higher]	If Consideration and SDV for property is less than ₹ 50 lacs [per property]

Additional Points

- Consideration includes all charges such as maintenance fees, car parking fees, club membership fees, electricity/water fees etc.
- If there is more than one buyer/seller for any immovable property, then consideration shall be aggregate amount paid/payable for such property.

Section 194IB: Rent of Immovable Property

Payer	Payee	Rate	Exemption
Individual & HUF [other than covered u/s 194I]	Any Resident Person	2%	₹ 50,000 per month

Additional Points

- TDS is deducted at the time of:
 - Payment or credit of last month rent of P.Y.
 - Payment or credit of last month rent of tenancy [If property is vacated during P.Y.]
- If PAN not furnished by payee, TDS will be 20%. But maximum TDS is upto last month rent/vacancy month rent.

Section 194IC: Payment under Joint Development Agreement

Payer	Payee	Rate	Exemption
Any Person	Any Resident Person	10%	—

Additional Points

- TDS on money consideration [not on kind]

5.46 194J: Professional Fees/Technical Fees/Royalty/Non-Compete Fees/Director Remuneration

Payer	Payee	Rate	Exemption
Any Person [other than Individual/HUF whose turnover/gross receipts in business/profession upto ₹ 100/50 lacs in preceding F.Y.]	Any Resident Person	Technical Fees (FTS), Royalty for Cinematographic Films, Payment to Call Centres: 2% Other Case: 10%	Professional Fees = 30,000 for year Technical Fees = 30,000 for year Royalty = 30,000 for year Non-Compete Fees = 30,000 for year Director Remuneration: No limit

Additional Points

- * If payment made for personal purpose by Individual/HUF: No TDS
- * Professional Services
 - Services covered in 44AA
 - Services in relation to sports activities rendered by following persons - sports person, umpire, referee, coach, trainer, team physician, event manager, commentator anchor and sports columnist
- * Fees for Technical Services
 - Any consideration for rendering of managerial, technical, consultancy services.
- * Director remuneration includes any remuneration/fees/commission paid to director which is not in nature of salary.
- * Payment made by Third Party Administrators (TPA) on behalf of Insurance co. to hospitals: TDS
- * Transactions charges paid by member to stock exchange for online trading facility: No TDS

Section 194K: Income from UPI/Mutual Fund Units

Payer	Payee	Rate	Exemption
Any Person [UTI/Mutual Fund]	Any Resident Person	10%	₹ 5,000 for year

Section 194L A: Compensation on compulsory Acquisition of Immovable Property

Payer	Payee	Rate	Exemption
Any Person	Any Resident Person	10%	₹ 2,50,000 for year

Additional Points

- * No TDS on compensation on compulsory acquisition of any agricultural land.

Section 194I B: Interest on Infrastructure Debt Fund

Payer	Payee	Rate	Exemption
Infrastructure Debt Fund	NR/FC	Rate in Force	—

TDS, TCS, Advance Tax, Interest and Refund

Additional Points

- Such Interest is taxable under section 115A [Covered in NR Taxation]

Section 194Ic: Interest on Foreign Currency Borrowing made by Indian Co. or Business Trust

Payer	Payee	Rate	Exemption
Indian Co. or Business Trust	NR/FC	Rate in Force	—

Additional Points

- Such Interest is taxable under section 115A [Covered in NR Taxation]

Section 194Lb: Interest to Foreign Institutional Investor/Qualified Foreign Investor

Payer	Payee	Rate	Exemption
Any Person	FTI/QFI	Rate in Force	—

Additional Points

- Such Interest is taxable under section 115A [Covered in NR Taxation].

1

Section 194M: Contract Commission/Brokerage, Professional Fees

Payer	Payee	Rate	Exemption
Individual or HUF [other than covered u/s 194C, 194H, 194J]	Any Resident Person	2%	Aggregate ₹. 50,00,000 for year

Section 194N: Cash Withdrawal

Payer	Payee	Rate	Exemption
Bank, Co-Operative Banks, Post Office	Any Person	2%	Cash Withdrawal upto ₹ 1 cr. for year

Additional Points

- TDS applicable only on excess of amount over ₹ 1 cr.
- If payee has not furnished ROI for preceding 3 P.Y. [and ROI filing time expires]:
 - On withdrawal amount more than ₹ 20 lacs upto ₹ 1 cr. = 2%
 - On withdrawal amount more than ₹ 1 cr. = 5%
- If payee is a co-operative society, then ₹ 3 crores will be taken in place of ₹ 1 cr.
- This section is not applicable if payee is government, banks, co-operative banks, post office, ATM operator or any person notified by RBI.

Section 194Q: Certain Payments by E-Commerce Operator to E-Commerce Participants

Payer	Payee	Rate	Exemption
E-Commerce Operator	E-Commerce Participant [Resident]	0.1% of Gross Amount of Sale of Goods/Services	—

Additional Points

- If E-Commerce Participant is Individual/HUF and gross amount of sale of goods/services does not exceed ₹ 5 lacs in a year: No TDS
- Gross sale means total sales made by e-commerce operator without deducting his commission.
- TDS will be deducted after adjusting purchase returns, if money is refunded against return [however, no adjustment is required, if goods are replaced by seller against purchase return].
- If PAN not furnished by payee, TDS rate = 5%

Section 194B: Income of Specified Senior Citizen

Payer	Payee	Rate	Exemption
Specified Bank [Scheduled Bank]	Specified Senior Citizen	Rate in Force	—

Additional Points

- **Specified Senior Citizen**
 - Resident Individual [age of 75 years or more]
 - Having pension income
 - No other income except interest from same specified bank in which he is receiving pension income
- Rate in Force means Total Tax of specified senior citizen as per Section 115BAC or General Slab.
- Specified Senior Citizen is not required to file ROI.

Section 194Q: Purchase of Goods

Payer	Payee	Rate	Exemption
Buyer	Resident Seller	0.1% of Consideration	₹ 50,00,000 for year

[If turnover from business exceeds ₹ 10 crores in preceding F.Y.]

Additional Points

- TDS is applicable only on excess amount over ₹ 50,00,000
- If some goods are returned by buyer, then TDS will be deducted after adjusting purchase returns.
- If PAN not furnished by seller, TDS rate = 5%

Section 194R: Benefits or Perquisite in respect of Business & Profession

Payer	Payee	Rate	Exemption
Any Person [other than Individual/HUF whose turnover/gross receipts in business/profession upto ₹ 1cr./50 lacs in preceding F.Y.]	Any Resident Person	10%	Aggregate ₹ 20,000 for year

Additional Points

- Examples of benefit or perquisite liable for TDS u/s 194R:
 - Incentives to distributors/dealers/retailers etc.
 - Free Samples
 - Free Tickets
 - Sponsoring a Trip
- Following are not treated as benefit or perquisite [No TDS]:
 - Sales Discount, Cash Discount and Rebate
 - Buy 10 Get 1 Free Offers etc.
 - Waiver of loan by bank/financial institution
 - Issue of Bonus Shares
 - Reimbursement of out of pocket expenses/Reimbursement of expenses to pure agent
 - Product given to social media influencer for doing promotion (if product is returned by influencer)
- Special Point regarding dealer/business conference

Expenses (travel, stay, food etc.) incurred by company relating to dealer/business conference is not treated as benefit or perquisite. However following expenses are treated as benefit or perquisite and liable for TDS u/s 194R:

 - Expenses relating to leisure trip or leisure component
 - Expenses on Overstay (1 day before and 1 day after conference date is not treated as overstay)
 - Any family member expenses of dealer
- If benefit/perquisite in kind, then payer shall release benefit/perquisite only after ensuring that tax on such benefit/perquisite has been paid to government.
- Value of benefit/perquisite in kind
 - Purchased by provider = Purchase Price
 - Manufactured by provider = Price that provider charges from its customers
 - Other Case = Fair Market Value

Section 194S: Transfer of Virtual Digital Asset			
Payer	Payee	Rate	Exemption
Any Person [Buyer]	Any Resident Person [Seller]	1% of Consideration	₹ 50,000 for year [If payer is Mohan Lal] ₹ 10,000 for year [If payer is Other Person]

Section 194I: Payments by Firm to Partners			
Payer	Payee	Rate	Exemption
Firm	Partner	10%	Aggregate ₹ 20,000 for year
Additional Points			
▪ Nature of Payment: Interest and Remuneration [Salary/Bonus/Commission etc.]			

Section 195: Any Sum Payable to NR/FC [Except Covered in Other Sections]			
Payer	Payee	Rate	Exemption
Any Person	NR/FC	Rate in Force	—
Additional Points			
▪ TDS only if such sum is Taxable in India.			
▪ Payment to overseas agent for service rendered outside India is not taxable in India: No TDS			
▪ Person responsible for paying any sum to NR/FC [whether taxable or not] shall required to furnish information relating to such sum.			

Other Points regarding TDS

(1) Changes in TDS Rate in Certain Sections w.e.f. 1st October 2024

	TDS Rate upto 30 th September 2024	TDS Rate from 1 st October 2024 onwards
Section 194DA, 194G, 194H, 194IB, 194M	5%	2%
Section 194O	1%	0.1%

(2) Certificate for Lower Deduction/No Deduction of TDS

- Payee can apply to AO to issue a certificate for no deduction/lower deduction of TDS.
- If income of Payee is upto Basic Exemption Limit, he can give self-declaration in form 15G/15H [Senior Citizen] for non deduction of TDS [for section 192A, 193, 194A, 194DA, 194I, 194K].

(3) Assessee in Default [Section 201]

If assessee fails to deduct TDS or after deduction fails to pay TDS to Government, assessee shall be deemed to be an assessee in default.

(4) Mandatory Requirement of Furnishing PAN [Section 206AA]

If payee does not furnish his PAN to the payer, TDS rate shall be rate given in respective section or 20% [whichever is higher].

(5) Higher Rate of TDS for non filing of Income Tax Return [Section 206AB]

- If payee has not filed his ROI for preceding P.Y. [for which ROI filing time limit expires] and aggregate of TDS & TCS of such payee is 50,000 or more in such preceding P.Y., then TDS rate shall be Twice of rate given in respective section or 5% [whichever is higher].
- This provision is not applicable in case of 192, 192A, 194B, 194BA, 194BB, 194IA, 194IB, 194M, 194N.
- If both section 206AA and 206AB is applicable: TDS rate will be higher of both.

(6) Due dates of Payment of TDS

TDS deducted during April to February	By 7 th of Next Month
TDS deducted in March	By 30 th April
For Section 194IA, 194IB, 194M	By 30 th of Next Month

(7) Due Dates of TDS Return/TDS Statement

Quarter Ended

June	=	31 st July	...
September	=	31 st October	
December	=	31 st January	
March	=	31 st May	

(8) Interest on Late Deduction/Late Payment of TDS [Section 201(1A)]

In Case of Late Deduction

Interest @ 1% per month or part of month on amount of TDS not deducted from date on which tax was deductible till date on which tax is actually deducted.

In Case of Late Payment

Interest @ 1.5% per month or part of month on amount of TDS not paid from date on which tax was deducted till date on which tax is actually paid.

Part II - Tax Collection at Source [TCS]**TCS Basics**

- TCS is collected by the seller from the buyer.
- TCS is collected at the time of:
 - Receipt of Amount
 - or
 - Debiting the A/c of Buyer } Earlier
- However, in case of Motor Vehicle [206C(1F)] and Sale of Goods [206C(1H)], TCS shall be collected at the time of receipt of amount.
- No TCS, if seller is Individual/HUF and whose total turnover/gross receipts from business/profession in preceding F.Y. is upto ₹ 1 cr./50 lacs.
- No TCS, if buyer is Government, Embassies, Consulates, High Commission.

TCS Applicability and Rates [Section 206C]

(a) Specified Goods [Section 206C(1)]	
▪ Alcoholic Liquor for Human Consumption ▪ Scrap [Not usable as such] ▪ Minerals being Coal, lignite or Iron ore ▪ Timber and any other Forest Produce ▪ Tendu leaves <u>Note:</u> No TCS on Specified Goods: ➤ If goods purchased for personal consumption ➤ If goods used in manufacturing of any article	1% 1% 1% 2.5% 5%
(b) Motor Vehicle and Luxury Goods [Section 206C(1F)]	
▪ Any Motor Vehicle of value exceeding ₹ 10 lacs ▪ Any Other Goods of value exceeding ₹ 10 lacs, as may be specified by Central Government [Luxury Goods] <u>Note:</u> (i) In case of Motor Vehicle, sale consideration will be Ex-Showroom Price (ii) No TCS on Motor Vehicle/Luxury Goods: ➤ If consideration per vehicle/per item is upto ₹ 10 lacs ➤ Sale of vehicle/luxury goods by manufacturer to dealer/distributor	1% of sale consideration

TDS, TCS, Advance Tax, Interest and Refund

(c)	Lease or License [Section 206C(1C)]	
	▪ Lease or License of Parking Lot, Toll Plaza, Mines & Quarry	2%
(d)	Remittance under LRS of RBI and Overseas Tour Package [Section 206C(1G)]	
	▪ Remittance under Liberalised Remittance Scheme of RBI through Authorised Dealer	5%
	➤ If remittance is for education or medical treatment	0.5%
	➤ If remittance is for education out of loan taken from banks & financial institution in India	20%
	➤ Other remittance	
	Note: TCS will apply only on remittance in excess of ₹ 7 lacs. No TCS, if aggregate remittance is upto ₹ 7 lacs in a year.	
	▪ Overseas Tour Package	5% upto ₹ 7 lacs and 20% above ₹ 7 lacs
(e)	Sale of Goods [Section 206C(1H)]	
	▪ Sale of Goods of Value exceeding ₹ 50 lacs	0.1% of sale consideration in excess of ₹ 50 lacs
	Note: (i) No TCS on → Export of Goods → Goods covered in Point (a)	
	(ii) Applicable only if seller turnover exceeds ₹ 10 crore in preceding F.Y.	
	(iii) If TDS is applicable u/s 194Q, then No TCS in point (e)	
	(iv) If PAN not furnished by buyer, TCS rate = 1%	

Other Points regarding TCS

- (1) **Mandatory Requirement of Furnishing PAN [Section 206CC]**
 - If collectee does not furnish his PAN to the collector, TCS rate shall be Twice of rate given in respective section or 5% [whichever is higher].
 - Rate of TCS under this section shall not exceed 20%.
- (2) **Higher Rate of TCS for non filing of Income Tax Return [Section 206CCA]**
 - If collectee has not filed his ROI for preceding P.Y. [for which ROI filing time limit expires] and aggregate of TDS & TCS of such collectee is 50,000 or more in such preceding P.Y., then TCS rate shall be Twice of rate given in respective section or 5% [whichever is higher].
 - Rate of TCS under this section shall not exceed 20%.

(3) Due Dates of Payment of TCS

By 7th of Next Month

(4) Due Dates of TCS Return/TCS Statement

Quarter Ended

June	=	15 th July
September	=	15 th October
December	=	15 th January
March	=	15 th May

(5) Interest on Late Collection/Late Payment of TCS [Section 206(7)]

Same as TDS Late Deduction/Late Payment.

(6) Fees for Default in Furnishing TDS/TCS Statements [Section 234E]

Fees is payable @ ₹ 200 per day after due date till actual date of furnishing.

[Note: Total amount of fees shall not exceed TDS/TCS amount]

* Above fees is not treated as penalty, so deduction is allowed under PGBP.

Types of TDS/TCS Questions

Examine/Discuss	Calculate/Compute/Determine/Work Out
▪ TDS/TCS Liability ▪ TDS/TCS Implications ▪ TDS/TCS Provisions ▪ TDS/TCS Applicability ▪ TDS/TCS Obligations ▪ TDS/TCS Attract	▪ TDS/TCS ▪ TDS/TCS Liability ▪ Amount Payable to Payee/Seller
➤ Provision with Section No. ↓ Rate Limit Specific Point (If any)	➤ Provision with Section No. ↓ Rate Limit Specific Point (If any)
➤ Conclusion	➤ If applicable, then calculate

Part III – Advance Tax, Interest, Recovery, Refunds

Advance Tax

- Advance Tax means tax paid in P.Y. on estimated total income of P.Y.

- **Calculation of Estimated Advance Tax Liability**

Tax on Estimated Total Income	XX
(-) Estimated TDS/TCS/Relief/Credit	(XX)
Estimated Advance Tax Liability	XX

- **No requirement to pay Advance Tax**

- If advance tax liability is less than ₹ 10,000.
- Resident senior citizen not having income under PGBP.

- **Due date of payment of Advance Tax**

Due Date	Amount of Advance Tax to be paid
upto 15 th June of P.Y.	upto 15% of Advance Tax Liability
upto 15 th September of P.Y.	upto 45% of Advance Tax Liability
upto 15 th December of P.Y.	upto 75% of Advance Tax Liability
upto 15 th March of P.Y.	upto 100% of Advance Tax Liability

Note:

- If assessee opts for section 44AD/44ADA, then due date of payment of Advance Tax is 15th March of P.Y. [1 Installment].
- Tax paid upto 31st March of P.Y. is treated as Advance Tax.

Interest u/s 234A/234B/234C

Section 234A: Interest for delay in Filing of ROI

Tax Payable on Self Assessment	x	Rate	x	Period
↓		↓		↓
Tax Payable on IT as per ROI	XX	1% p.m. or		From Next day after due
(-) TDS/TCS/Relief u/s 89,90,91/ MAT, AMT, Credit	(XX)	part of		date of ROI till Actual date
	(XX)	month		of filing of ROI
(-) Advance Tax Paid	XX			

Section 234B: Interest for Short Payment of Advance Tax

Advance Tax Short Paid	x	Rate	x	Period
		↓		↓
Actual Advance Tax Liability*	XX	1% p.m. or part of month		
(-) Advance Tax Paid	(XX)	From 1st April of A.Y. till Actual date of Payment		
	XX			
* Actual Advance Tax Liability				
Tax Payable on TI as per ROI	XX			
(-) TDS/TCS/Relief u/s 89,90,91/ MAT, AMT Credit	(XX)			
	XX			

Note:

- (i) Section 234B is not applicable if advance tax paid by assessee is 90% or more of actual advance tax liability.
- (ii) If there is change in total income due to processing of return u/s 143(1) or assessment, then tax payable on TI as per 143(1)/assessment will be taken instead of tax payable on TI as per ROI. [Applicable for 234A & 234B]

Section 234C: Interest for Deferment of Advance Tax Installments

Ist	[15% of Actual Advance Tax Liability — Advance Tax Paid upto 15 th June]	x	3%
IIInd	[45% of Actual Advance Tax Liability — Advance Tax Paid upto 15 th September]	x	3%
IIIrd	[75% of Actual Advance Tax Liability — Advance Tax Paid upto 15 th December]	x	3%
IVth	[100% of Actual Advance Tax Liability — Advance Tax Paid upto 15 th March]	x	1%
			XX

Note:

- (i) In case of Ist & IIInd Installment, no interest if assessee paid upto 12% in Ist and 36% in IIInd Installment.
- (ii) If assessee opts for Section 44AD/44ADA, then interest u/s 234C will be:
[100% of Actual Advance Tax Liability - Advance Tax Paid upto 15th March] x 1%
- (iii) Non-Applicability of Interest u/s 234C on:
- Capital Gains
 - Casual Income
 - First Time PGBP Income
 - Dividend Income u/s 2(22)(a)/(b)/(c)/(d)

Fees for Default in Filing ROI [Section 234F]

- If any person who is required to file ROI u/s 139 fails to do so within time given u/s 139(1), Fees = ₹ 5,000.
- If Total Income of person is upto ₹ 5 lacs, then fees shall not exceed ₹ 1,000.

Other Modes of Recovery of Tax

- **By Assessing Officer**
 - By way of serving of notice of demand u/s 156.
 - Amount as specified in notice shall be paid within 30 days of notice [Section 220].
- **By Tax Recovery Officer**
 - Attachment and sale of assessee's movable/immovable properties.
 - Assessee property includes any property transferred by assessee to spouse, minor child, son's wife, son's minor child without consideration/inadequate consideration.
 - If minor child and son's minor child attain majority after transfer, then also treated as assessee's property [If recovery is related to year before minor child attains majority].

Refunds

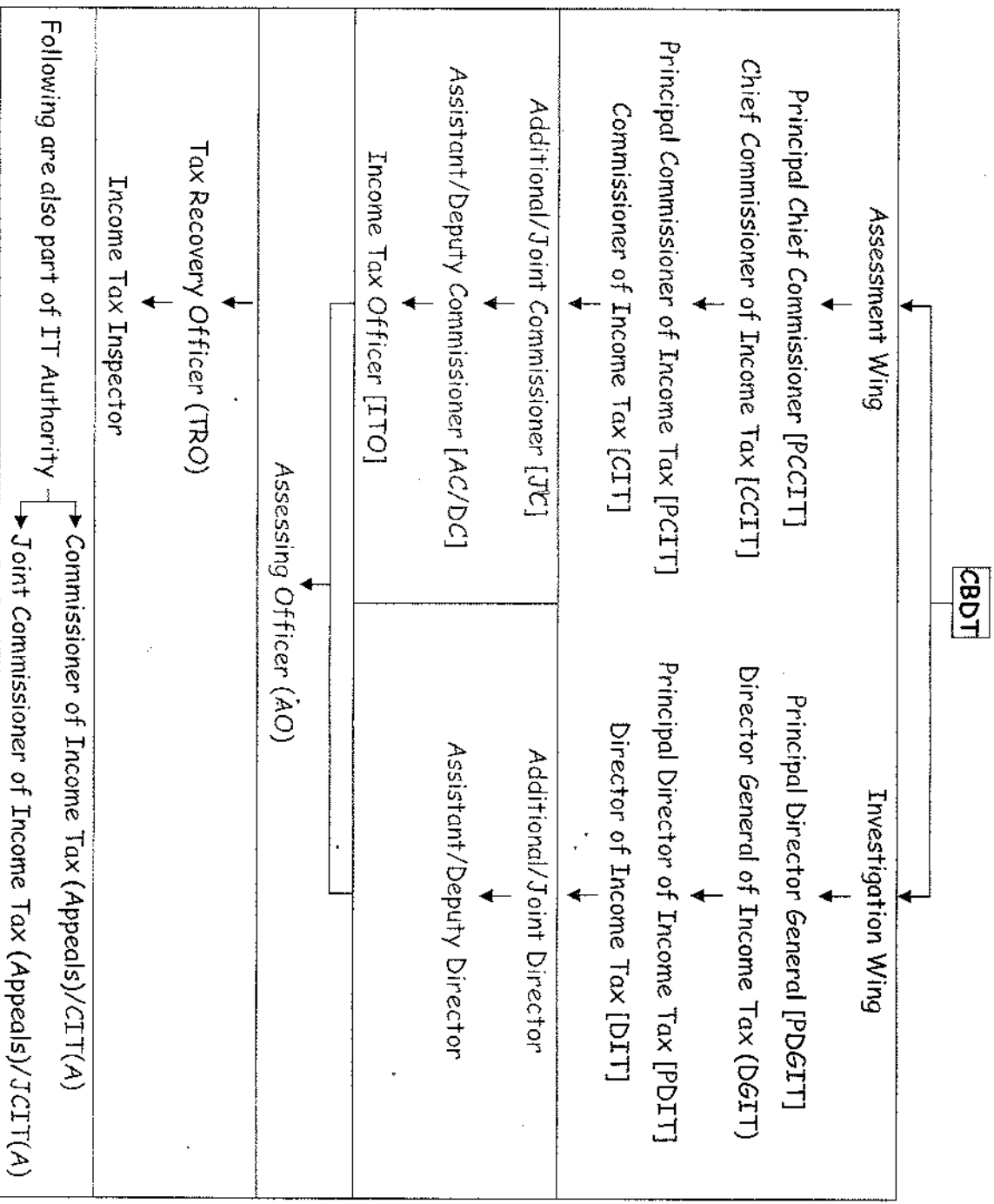
- If actual tax paid is more than tax payable, then assessee is entitled to claim refund.
- **Interest on Refund**
 - Interest @ 0.5% per month or part of month will be paid by the department on amount refunded.
 - Period of Interest:
 - If ROI is filed upto due date = From 1st April of A.Y. till date of grant of refund
 - If ROI is filed after due date = From date of filing of ROI till date of grant of refund
- **Setoff and Withholding of Refund by Income Tax Authorities**
 - Refund can be set-off against any amount payable under this Act.
 - Refund can be withheld by AO by recording reasons in writing.

INCOME TAX AUTHORITIES, RETURN FILING AND ASSESSMENT PROCEDURE



Part I - Income Tax Authorities

Level of Income Tax Authorities



Central Board of Direct Taxes [CBDT]

- Statutory body who exercises control & supervision over all officers of Income Tax Department by issue of Orders/ Instructions/Circulars.
- CBDT may grant relief to the assessee for genuine reasons under certain sections [139, 201(1A), 234A/B/C, 234E etc.].
- CBDT has no power to amend legislative provisions of the Act.

Income Tax Authorities, Return Filing and Assessment Procedure

Powers of Income Tax Authorities

- General Powers
- Special Powers

General Powers [Section 133A]

IT Authorities have all powers of Civil Court:

- Discovery & Inspection
- Enforcing attendance of any person & examining on oath
- Compelling production of books & documents
- Issuing commission [summons]

Power to Call for Information [Section 133B]

- IT Authority can call any information from any person which will be useful or relevant to any proceedings under the Act.
- If no proceedings are pending and authority is below Rank of CIT, he has to take prior approval of CIT.

Power of Survey [Section 133A]

(1) Place of Survey

- IT Authority may enter any building or place at which Business or Profession is carried on.
- If books or assets relating to business & profession are kept at some other place, then such other place can also be covered under survey.

(2) Approval for Survey

Prior approval of CCIT/DGIT is required.

(3) Power in course of Survey

Upon entering, IT Authority can:

- Inspect any books of accounts & documents.
- Check or verify cash, stock or other valuable articles.
- Place identification marks on books & documents.
- Make an inventory of cash, stock or other valuable articles.
- Record statement of any person.
- Impound & retain books & documents after recording reasons [maximum 15 working days].

(4) Entry Restrictions

Entry to the place of business & profession



Only during those hours when such place is kept open for conducting B&P



Entry to any other place



Only after sunrise but before sunset

[*Restriction is only for Entry, not for Exit]

(5) Survey of Function, Ceremony or Event

IT authority can also survey any function, ceremony or event but only after conclusion of such function, ceremony or event and require any person to furnish information & statement.

(6) TDS/TCS Survey

- For verifying TDS/TCS has been deducted/collected as per provisions of Income Tax Act.
- However, in TDS/TCS survey, IT Authority cannot
 - Impound Books & Documents
 - Make inventory of cash, stock etc.
- In TDS/TCS survey, entry at any place can be made only after sunrise but before sunset.

Power to Collect Information [Section 133B]

- IT authority may enter any place at which business or profession is carried on and collect information from there.
- Entry shall be made only during hours when such place is kept open for conducting B&P.
- No power to impound books & documents u/s 133B.

Power of Search and Seizure [Section 132]

(1) Authority who can Authorize Search & Issue Search Warrant

- CIT/DIT & higher authorities
- Additional/Joint Commissioner or Director [If empowered by CBDT]

(2) To whom Search is Authorised [Authorised Officer]; Assessing Officer

(3) When Search can be Authorised

If IT authority has reason to believe that:

- Any person to whom notice u/s 142(1) or summon u/s 131 issued to produce books of accounts or documents and assessee failed to produce such books or documents.
- Any person to whom notice u/s 142(1) or summon u/s 131 might be issued to produce books of accounts or documents and assessee will not produce such books or documents.
- Any person who is in possession of any money, bullion, jewellery or any other valuable articles and such asset has not been disclosed/would not be disclosed.

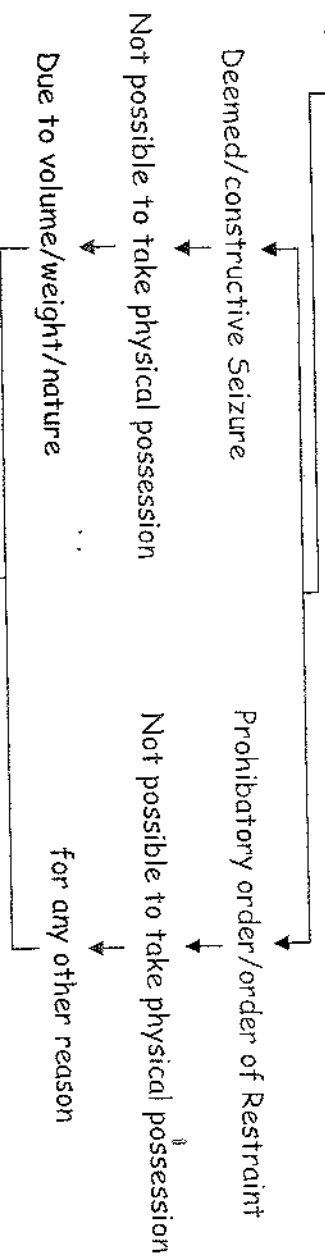
(4) Power of Authorised Officer in course of Search

- Enter and search any building, place, vessel, vehicle or aircraft where he has suspect that books, money etc. are kept.
- Power to break lock of any door, box, locker etc if keys not available.
- Search any person there.
- Require to produce password, if books are in electronic form.
- Seized any books of accounts, documents, money, bullion, jewellery etc. found under search. [stock cannot be seized]

(5) Assistance to Authorised Officer

Authorised Officer may demand the services of police officer, Central Govt. officer or any person approved by CCIT to assist him during search.

(6) Special Seizure



(7) Presumption under Search

If any books, documents, money, bullion, jewellery etc. found in possession of any person, it is presumed that:

- They belong to such person.
- Content of books & documents are true.
- Signature & other part of books & documents which seems to be in handwriting of any particular person are in that person's handwriting.

(8) If Authorised Officer has no jurisdiction over the person searched by him or if he found books, assets etc. of other person, Authorised Officer shall handover books, assets etc. to AO having jurisdiction over such other person within 60 days from date on which search was completed.

(9) Requisition [Section 132A]

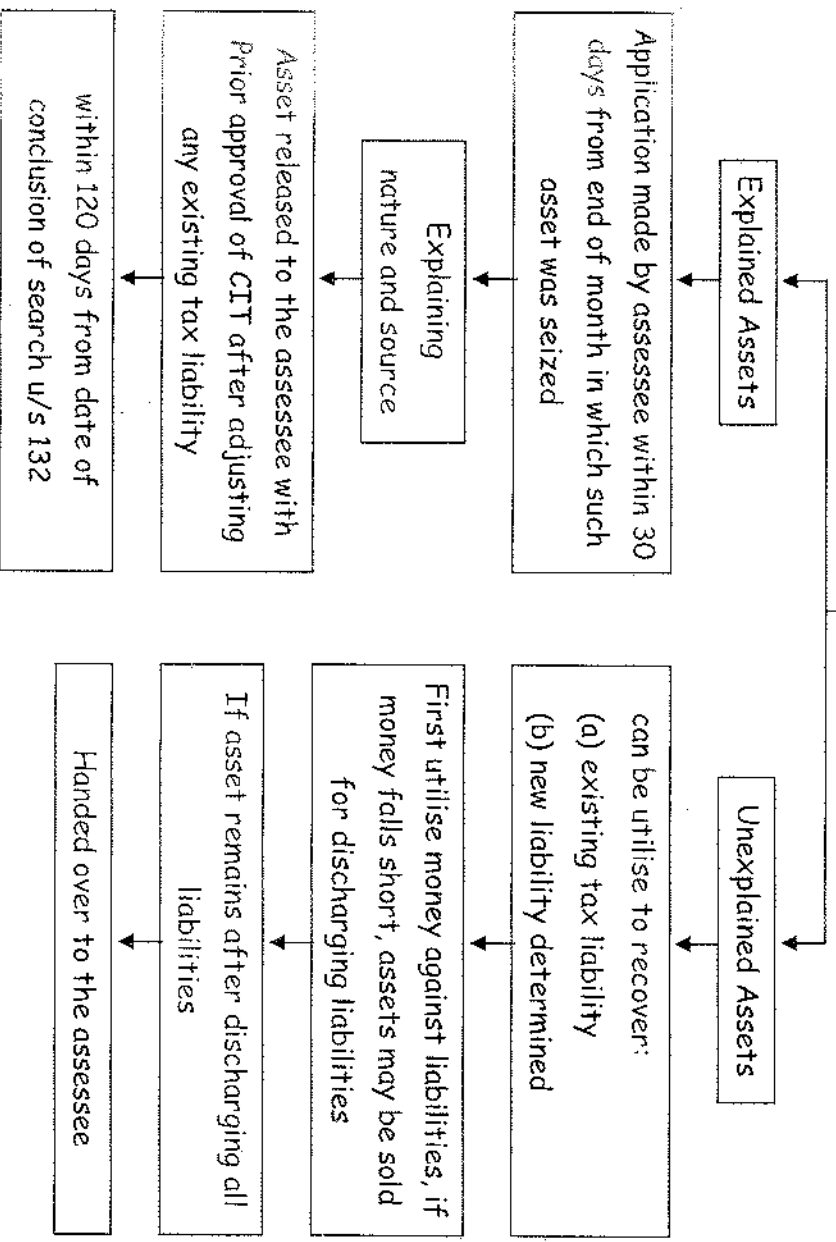
If search conducted by any authority under other law, then authorised officer shall require such authority to deliver books, assets etc. seized to him ASAP.

(10) Application of Books and Assets Seized [section 132B]

(i) Books of Accounts & Documents

Books & documents shall be released within 30 days from date of completion of search assessment [For retaining beyond this period, permission of CIT is required].

(ii) Money, Bullion, Jewellery, Other Valuable Articles



Part II - Return Filing & Self Assessment

Filing of Return of Income [ROI] [Section 139(9)]

Following persons are compulsory required to file ROI:

- (1) Company, Partnership Firm (including LLP)
- (2) Other Assessee: If GTI [before claiming exemption under any section of series 54] exceeds basic exemption limit

(3) Resident Individual (ROI)

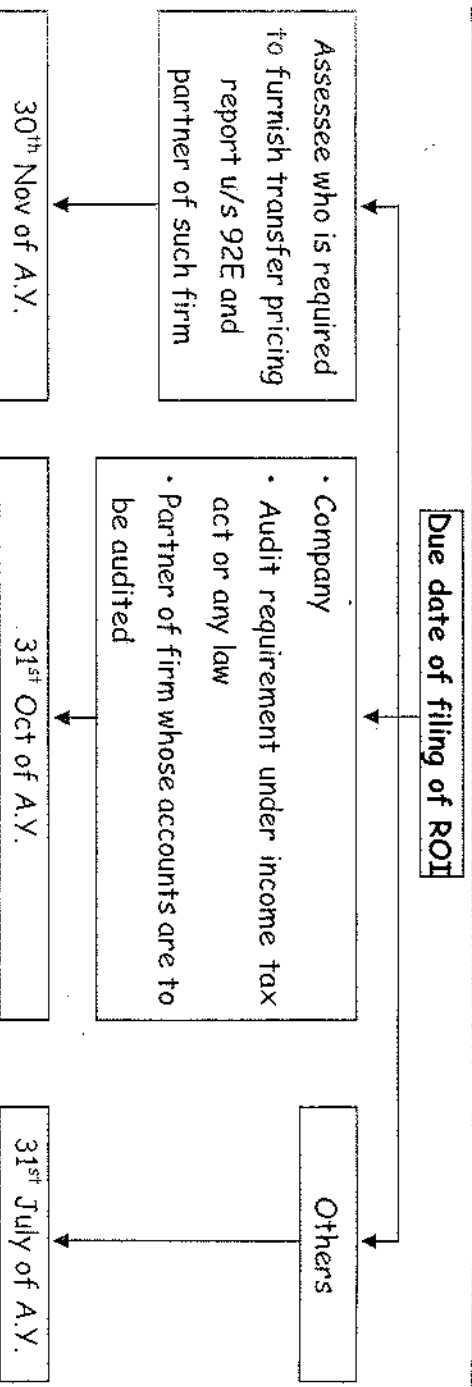
- Beneficial owner of any asset (including financial interest) located outside India
 - Has signing authority in any bank account outside India
- Beneficiary of any asset (including financial interest) located outside India
- [Note: if beneficial owner already includes income from such asset in his ROI, then beneficiary shall not require to file ROI]

(4) Person

- (i) Deposited aggregate more than ₹ 1 cr. in current A/c's of bank/co-operative bank.
- (ii) Incurred foreign travel expenditure of more than ₹ 2 lacs for himself/any other person.
- (iii) Incurred electricity expenditure of more than ₹ 1 lac.
- (iv) Total sales/turnover in business more than ₹ 60 lacs.
- (v) Total gross receipts in profession more than ₹ 10 lacs.
- (vi) Aggregate TDS/TCS is ₹ 25,000 or more [₹ 50,000 or more in case of resident senior citizen]
- (vii) Deposited aggregate ₹ 50 lacs or more in saving bank A/c's.

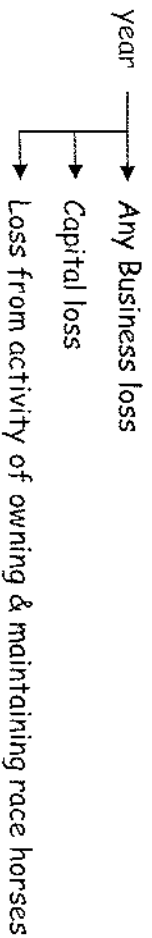
(5) Other Entities

- (i) Trust [139(4A)]: If total income before exemption u/s 11 exceeds basic exemption limit
- (ii) Political Party [139(4B)]: If total income before exemption u/s 13A exceeds basic exemption limit
- (iii) Trade Unions, Institutions etc u/s 10 [139(4C)]: If total income before exemption u/s 10 exceeds basic exemption limit
- (iv) Research Institutes u/s 35 [139(4D)]: Mandatory
- (v) Business Trust [139(4E)]: Mandatory
- (vi) Investment Fund [139(4F)]: Mandatory



Loss Return [Section 139(3)]

ROI is required to be filed upto due date given u/s 139(1) to carry forward following losses of current



Note:

- (i) House property loss & unabsorbed depreciation can be carry forward even if ROI is filed after due date.
- (ii) Loss can be carry forward even if ROI is filed after due date due to genuine reasons and delay is condoned by:

Losses	Authority
Up to ₹ 50 lacs	CIT/PCIT
More than 50 lacs but upto ₹ 3 crores	CCIT/PCIT
More than ₹ 3 crores	CBDT

Belated Return [Section 139(4)]

- If ROI is not filed upto due date, assessee has the option to file belated return.
 - Time limit of filing belated return —→ 3 months prior to end of relevant A.Y. [31st December of A.Y.]
or
Before completion of assessment
- Earlier

Revised Return [Section 139(5)]

- If there is any omission or wrong statement in ROI filed u/s 139(1), 139(3) or 139(4), assessee has the option to file revised return.

Income Tax Authorities, Return Filing and Assessment Procedure

- Time limit of filing revised return — 3 months prior to end of relevant A.Y.
[31st December of A.Y.]
or
Before completion of assessment — Earlier

Note:

- It substitutes original return in all aspects (except date).
- Assessee can revise ROI any number of times.
- ROI can be revised even after receiving intimation u/s 143(1) or refund.
- Revising original return can be done only by way of filing revised ROI u/s 139(5) and not by filing plain letter or revised statement of income.
- Fresh claim before AO can be made only by filing a revised ROI.

Defective Return [Section 139(6)]

- Return can be considered defective if:
 - ROI not filed in prescribed form.
 - Proof of tax payment not attached with ROI.
 - Report u/s 44AB not submitted.
- AO shall intimate defect to assessee and give opportunity to rectify the defect within 15 days or extended time.
- If assessee does not rectify the defect, then ROI shall be treated as invalid [void ab initio].

Permanent Account Number [PAN] [Section 139A]

• Following persons are required to apply for allotment of PAN

- Every person who is assessable to tax [required to file ROI]
- Every person carrying on business & profession and whose total turnover/gross receipts exceeds/likely to exceed ₹ 5 lacs in any P.Y.
- Trust
- Resident person (other than individual) who enters into financial transactions of aggregate ₹ 2,50,000 or more and director/partner/principal officer of such person

• Quoting of PAN is Mandatory

- In all returns.
- In all challans for payment of tax.
- In all documents relating to specified transactions.

• Specified Transactions

- Sale/purchase of motor vehicle other than two wheeler.

- (ii) Opening a current account or cash credit account with bank/co-operative bank/post office.
- (iii) Application for issue of credit/debit card.
- (iv) Opening a demat account.
- (v) Payment to hotel or restaurant in cash exceeding ₹ 50,000.
- (vi) Payment for foreign travel or purchase of foreign currency in cash exceeding ₹ 50,000.
- (vii) Payment to mutual fund for purchase of units exceeding ₹ 50,000.
- (viii) Payment to company/institution for acquiring debentures or bonds exceeding ₹ 50,000.
- (ix) Cash deposit with bank/co-operative bank/post office exceeding ₹ 50,000 in a day.
- (x) Payment of life insurance premium exceeding ₹ 50,000 in F.Y.
- (xi) Sale or purchase of any immovable property exceeding ₹ 10 lacs.
- (xii) Sale or purchase of any goods/services exceeding ₹ 2 lacs per transaction.
- (xiii) Aggregate cash deposit of ₹ 20 lacs or more in a F.Y.
- (xiv) Aggregate cash withdrawal of ₹ 20 lacs or more in a F.Y.

Aadhaar Number [Section 139AA]

- Every person is required to quote Aadhaar number in application form for PAN allotment and in ROI
- If Aadhaar number not available, then person shall quote enrolment ID of Aadhaar application form.
- Every person shall link Aadhaar number with PAN. If person fails to link Aadhaar number with PAN, PAN of such person would become inoperative.
- Every person who is required to furnish/intimate/quote his PAN, may furnish/intimate/quote his Aadhaar number in place of PAN if he has linked/intimated his Aadhaar number to IT Authority.
- Provision of section 139AA shall not apply to following persons:
 - Residing in Assam, Jammu & Kashmir and Meghalaya
 - Non resident
 - Age of 80 years or more at any time during P.Y.
 - Not a citizen of India

Tax Return Preparer [Section 139B]

- Specified class of person can file their ROI through TRP.
- Specified class of person means any person other than ————— Company
 - Audit requirement under any law
- TRP means an individual who is authorised to act as TRP by CBDT other than following:
 - Chartered Accountant
 - Legal practitioner

Income Tax Authorities, Return Filing and Assessment Procedure

- > Officer of scheduled bank
- > Employee of specified class of persons

Verification of Return [Section 140]

ROI is to be verified in all cases by following:

<u>In case of</u>	<u>Verified by</u>
1. Individual	Himself
If individual not present in India or mentally incapacitated	Person competent to verify on his behalf
2. HUF	Karta
If karta not present in India or mentally incapacitated	Any adult member of HUF
3. Partnership Firm	Managing partner
If no managing partner	Any adult partner
4. LLP	Designated partner
If no designated partner	Any partner
5. Company	Managing director
If no managing director	Any other director
Company under liquidation	Liquidator
If corporate insolvency resolution process application admitted	Insolvency professional
6. Political Party	CEO
7. Local Authority	Principal officer
8. Any other person	Person competent to verify

Self-Assessment [Section 140A]

- Assessee is required to pay due tax before filing of ROI along with interest and fees.
- If there is short payment, then amount paid is first adjusted towards fees, then interest a balance towards tax.

Updated Return of Income [Section 139(8A)]

• Furnishing of Updated Return

- > Any person may furnish updated return at any time within 24 months from end of relevant A.
- > It can be submitted by any person whether or not he has furnished ROI u/s 139(1)/(4)/(5).

• **In following cases, Updated Return cannot be submitted:**

- (i) If updated return is a return of loss.
- (ii) If updated return results in refund, decreasing tax or increasing refund for relevant A.Y.
- (iii) If updated return is already furnished for relevant A.Y.
- (iv) Search has been initiated u/s 132 or books/assets requisitioned u/s 132A.
- (v) Survey has been conducted u/s 133A [except TDS/TCS survey].
[In case of search and survey, no updated return for such year & earlier years]
- (vi) Any proceeding is initiated, pending or completed for relevant A.Y.
- (vii) If AO has information in respect of such person under Money Laundering Act, Black Money Act, Benami Property Act, Smugglers Act, Section 90 of Income Tax Act and same has been communicated to him prior to filing of updated return.

• **Tax on Updated Return [Section 140B]**

Calculation of Tax on Updated Return

If assessee has not furnished ROI earlier

Total tax on income as per updated ROI	XX
(+) Interest [234A/B/C]	XX
(-) TDS/TCS/Advance tax	XX
(-) Relief u/s 89/90/91	(XX)
(-) MAT/AMT credit set-off	(XX)
	XX

If assessee has furnished ROI earlier

Total tax on income as per updated ROI	XX
(+) Interest [234A/B/C]	XX
(-) Tax paid as per earlier return	XX
(-) TDS/TCS/Advance Tax	(XX)
(-) Relief u/s 89/90/91	(XX)
(-) MAT/AMT credit set-off	(XX)
(-) Interest paid in earlier return	(XX)
	XX

Additional Tax on Updated Return

If updated return is furnished after expiry of time u/s 139(4)/(5) but before completion of 12 months from end of relevant A.Y.

25% of aggregate of [tax + interest] payable as per updated return

If updated return is furnished after expiry of 12 months but before completion of 24 months from end of relevant A.Y.

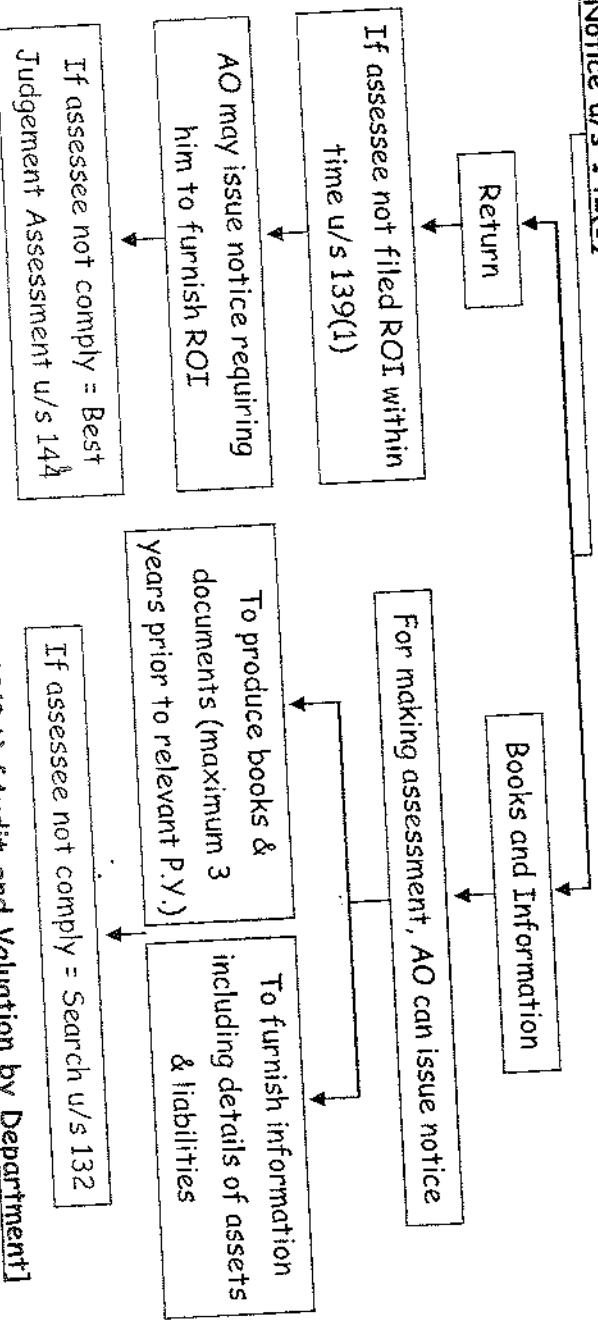
50% of aggregate of [tax + interest] payable as per updated return

Income Tax Authorities, Return Filing and Assessment Procedure

Part III - Assessment Procedure by Department

Inquiry Before Assessment [Section 142]

(1) Notice u/s 142(1)



(2) Special Audit and Inventory Valuation u/s 142(2A) [Audit and Valuation by Department]

- AO may at any stage of proceeding having regard to Complexities in A/c's, Volume of A/c's, Doubts about correctness of A/c's or Multiplicity of transactions in the A/c's and it is in the interest of revenue [department] can direct:
 - Special Audit
 - Inventory Valuation
- Direction can be issued with prior approval of CIT.
- Opportunity of being heard must be given to assessee before directing.
- Direction can be given even if books of accounts already audited u/s 44AB or any other law.
- Books of accounts will be audited by CA nominated by CIT and valuation of inventory will be done by CMA nominated by CIT.
- Remuneration of CA and CMA shall be paid by Central Government.
- Special audit report or inventory valuation report has to be submitted by assessee within time allowed by AO which can be extended but maximum time shall not exceed 180 days from date of direction of special audit or inventory valuation.
- If assessee fails to get special audit or inventory valuation done or fails to furnish report within time allowed, then AO can make best judgement assessment u/s 144.

(3) Reference to Valuation Officer (VO) u/s 142A

- AO may for purpose of assessment make a reference to valuation officer to estimate value of any asset, property or investment.

Income Tax Authorities, Return Filing and Assessment Procedure

- AO can make a reference to VO whether or not he is satisfied about correctness or completeness of accounts of assessee.
- VO shall send copy of valuation report to AO & assessee within 6 months from end of month in which reference was made.
- AO may consider such report after giving opportunity of being heard to the assessee.

Processing of Return / Intimation / Summary Assessment [Section 143(1)]

- All returns shall be processed u/s 143(1) and following adjustments are made in returned income:
 - (i) Arithmetical error
 - (ii) Incorrect claims, such as:
 - Item inconsistent with another entry
 - Deduction exceed limit
 - Information not furnished
 - (iii) Disallowance of loss claimed (If ROI of that year filed after due date)
 - (iv) Disallowance of expenditure or increase in income indicated in audit report but not taken into account in computing Total Income in ROI
 - (v) Disallowance of deduction u/s 10AA & Chapter VI-A heading C if ROI is filed after due date
- After processing, intimation shall be sent to the assessee for refund/demand [Assessee has to respond within 30 days]
- Final Intimation shall be sent to assessee within 9 months from end of F.Y. in which ROI was filed.

Scrutiny Assessment [Section 143(3)]

(1) Notice of Scrutiny u/s 143(2)

- For making scrutiny assessment, AO is required to serve notice u/s 143(2).
- The notice has to be served within 3 months from end of F.Y. in which ROI was filed.

Note:

- (i) Processing of return u/s 143(1) is necessary even notice has been issued u/s 143(2).
- (ii) Issuance of notice u/s 143(2) is mandatory for scrutiny assessment u/s 143(3).

(2) Order of Scrutiny Assessment u/s 143(3)

- Based on material & evidences furnished by assessee in response to notice u/s 143(2), AO shall determine total income of assessee along with determination of tax payable/refundable.
- In case of Institution or Trust u/s 10 or 11, AO shall pass order u/s 143(3) without giving exemption of 10 or 11 only if:
 - He noticed that Institution/Trust has committed any specified violations;

Income Tax Authorities, Return Filing and Assessment Procedure

- He sends reference to PCIT/ CIT to cancel the approval/registration and
- PCIT/ CIT has subsequently cancelled the approval/registration of such Institution/Trust.

(3) Time Limit for Completion of Assessment u/s 143(3)

Assessment shall be completed [order shall be Passed] within 12 months from end of relevant A.Y.

Best Judgement Assessment [Section 144]

(1) AO shall make an assessment to the best of his judgement & knowledge in following cases:

- (i) Failure to furnish ROI u/s 139(1)/139(4)/139(5)/139(8A)
- (ii) Failure to comply with notice u/s 142(1)
- (iii) Failure to comply with directions u/s 142(2A) [special audit or inventory valuation]
- (iv) Failure to comply with notice u/s 143(2) [scrutiny notice]

(2) AO shall issue SCN giving an opportunity of being heard to the assessee [except point (ii)]

(3) Discretionary Best Judgement Assessment

In following cases also, assessment may be completed as per section 144:

- AO is not satisfied about completeness/correctness of books & documents of assessee.
- Correct method of accounting was not regularly followed by assessee.
- ICDS have not been followed by assessee.

(4) Time Limit for Completion of Assessment u/s 144

Assessment shall be completed [order shall be Passed] within 12 months from end of relevant A.Y.

Reference to Dispute Resolution Panel (DRP) [Section 144c]

- To facilitate expeditious resolution of disputes, a panel consisting of 3 Commissioner of Income Tax (CIT) is constituted.
- Eligible assessee who can file objection to DRP:
 - (i) Non Resident/Foreign Company
 - (ii) Any person relating to Transfer Pricing case [If variation arise due to TPO order]
- AO shall forward draft order to eligible assessee.
- Assessee shall within 30 days of receipt of draft order shall either accept the draft order or file objection to DRP against draft order.
- DRP may confirm, reduce or enhance variations of draft order.
- DRP shall issue directions within 9 months from end of month in which draft AO order is forwarded to the assessee.

- DRP shall issue directions after considering following:
 - Draft order
 - Objection filed by assessee
 - Evidence furnished by assessee
 - Reports & other evidences
- Directions issued by DRP shall be binding on AO.
- Order passed by AO on the basis of directions of DRP shall be directly appealable before ITAT.

Note:

- (i) Eligible assessee has two choice —→ File objection before DRP against draft assessment order
OR
Not to exercise this option and file an appeal later before CIT(A) against final assessment order passed by AO

- (ii) Provisions of this section is not applicable on assessment of search cases under Chapter XIV-B.

Income Escaping Assessment [Section 147 to 148]

(1) Assessment of Income Escaping Assessment/Reassessment/Reopening of Cases [Section 147]

- If any income chargeable to tax has escaped assessment for any A.Y.
- AO may assess or reassess such income or recompute loss/allowance/deduction for such A.Y.
- AO may also assess any other income that comes to his notice subsequently during course of proceeding under this section.

(2) Notice for Assessment u/s 147 [Section 148]

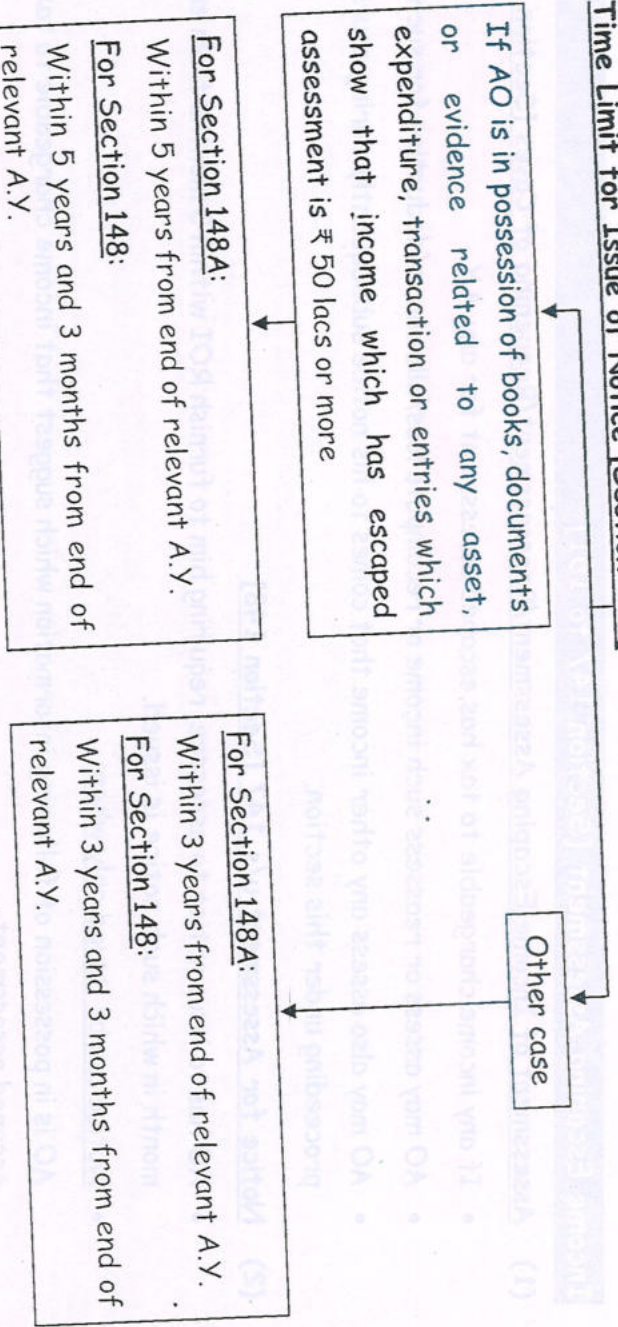
- AO has to issue notice to assessee, requiring him to furnish ROI within 3 months from end of month in which such notice is issued.
- Notice can be issued only when:
 - AO is in possession of following information which suggest that income chargeable to tax has escaped assessment-
 - Any information for Relevant A.Y. as per risk management strategy formulated by CBDT.
 - Any audit objection raised that assessment for Relevant A.Y. has not been made as per provisions of the Act.
 - Any information received under agreement referred in section 90.
 - Any information which requires action as per order of tribunal or court.
 - Any information in case of assessee emanating from survey conducted u/s 133A.
 - Any information made available to AO under faceless collection of information scheme notified u/s 135A.

Income Tax Authorities, Return Filing and Assessment Procedure

(3) Steps before Issue of Notice [Section 148A]

- AO has to follow the following steps before issue of notice u/s 148:
 - Provide an opportunity of being heard to the assessee by serving show cause notice [SCN] as to why notice u/s 148 should not be issued.
 - Such SCN shall be accompanied by information which suggests that income chargeable to tax has escaped assessment in his case for relevant assessment year.
 - On receipt of SCN, assessee may furnish his reply within such period as specified in SCN.
 - AO shall after considering reply of assessee, pass an order with prior approval of specified authority determining whether it is a fit case to issue notice u/s 148.
- Non applicability of section 148A
If AO has received information under faceless collection of information scheme notified u/s 135A.

(4) Time Limit for Issue of Notice [Section 149]



Note: Relevant A.Y. means A.Y. of which escaped income is found.

(5) Permission from Specified Authority [Section 151]

AO has to take permission for issue of notice u/s 148 and 148A from Additional/Joint Commissioner/Director.

(6) Time Limit for Completion of Assessment u/s 147

Assessment shall be completed [order shall be passed] within 12 months from end of financial year in which notice is served u/s 148.

If search has been initiated u/s 132 or books/assets requisitioned u/s 132A upto 31.8.2024, old provisions of sections 147 to 151 shall apply.

(1) Definitions [Section 158B]

Block Period	<u>Block period means period comprising:</u> ▪ 6 preceding previous years from PY in which search was initiated or requisition was made, and ▪ Period starting from 1st April of PY in which search was initiated or requisition was made and ending on date of conclusion of search or requisition.
Undisclosed Income	<u>Undisclosed income includes:</u> ▪ Any money, bullion, jewellery or other valuable article and such asset has not been disclosed/would not be disclosed. ▪ Any expenditure or income based on any entry in books or other documents, which has not been disclosed/would not be disclosed. ▪ Any expense, exemption or deduction claimed which is found to be incorrect.

(2) Assessment of Total Income as a result of Search [Section 158BA]

- If search has been initiated u/s 132 or books/assets requisitioned u/s 132A on or after 1.9.2024, then AO shall proceed to assess or reassess total income of block period as per provisions of this Chapter.
- Pending assessment or reassessment for block period shall abate and shall be deemed to have abated on the date of initiation of search or making requisition.
- If search assessment is annulled in appeal, then assessment or reassessment which was abated shall revive with effect from date of receipt of order of such annulment by PCIT/CIT.

(3) Procedure for Block Assessment and Computation of Total Income of Block Period [Section 158BB and 158BC]

- AO shall issue notice to such person requiring him to furnish ROI within period given in notice (maximum 60 days) declaring his total income including undisclosed income for block period.
- AO shall take prior approval of Additional/Joint commissioner/director before issue of notice
- AO shall proceed to determine the total income including undisclosed income of block period as per section 158BB. Undisclosed income shall be computed on the basis of evidence found from search and other information either available with AO or come to his notice during proceedings.
- AO on determination of total income of block period, shall pass an assessment order and determine the tax payable by assessee.
- Tax shall be charged on income disclosed in return furnished u/s 158BC plus undisclosed income determined by AO.
- No loss (whether brought forward or otherwise) or unabsorbed depreciation can be set-off against undisclosed income found in search.

Income Tax Authorities, Return Filing and Assessment Procedure

(4) Taxability of Total Income of Block Period [Section 113]

Total income of block period determined u/s 158BC shall be taxable at 60% plus surcharge (if any) and cess.

(5) Undisclosed Income of Any Other Person [Section 158BD]

If AO is satisfied that undisclosed income belongs to any other person, then books, assets etc. of other person seized or requisitioned shall be handed over to AO having jurisdiction over such other person and that AO shall proceed against such other person u/s 158BC.

(6) Time-limit for Completion of Block Assessment [Section 158BE]

- Assessment shall be completed [order u/s 158BC shall be passed] within 12 months from end of month in which search u/s 132 or requisition u/s 132A was concluded.
- In case of other person referred u/s 158BD, assessment shall be completed within 12 months from end of month in which notice u/s 158BC in pursuance of section 158BD, was issued to such other person.

(7) Interest and Penalties [Section 158BF and 158BFA]

- No interest u/s 234A/B/C or penalty u/s 270A shall be levied on undisclosed income.
- AO or CIT (A) may direct that the person shall pay penalty equal to 50% of tax so leviable on undisclosed income determined by AO [Other than undisclosed income shown in ROI furnished u/s 158BC by assessee].

(8) Authority Competent to Make Assessment of Block Period [Section 158BG]

- Assessment order for block period shall be passed by AO not below the rank of Assistant/Deputy Commissioner/Director.
- AO shall take prior approval of Additional/Joint Commissioner/Director before passing order.

(9) Chapter Not Apply in Certain Circumstances [Section 158BI]

Provisions of this Chapter shall not apply if search has been initiated u/s 132 or books/assets requisitioned u/s 132A before 1.9.2024.

Time Limit for Completion of Assessment [Section 158]

<u>Assessment u/s</u>	<u>Time limit</u>
143(3)/144	Within 12 months from end of relevant A.Y.
147	Within 12 months from end of F.Y. in which notice is served u/s 148
Chapter XIV-B	Within 12 months from end of month in which search was concluded

Note:

- (i) If updated return u/s 139(8A) is furnished, assessment u/s 143(3)/144 shall be completed within 12 months from end of financial year in which such return was furnished.

Income Tax Authorities: Return Filing and Assessment Procedure

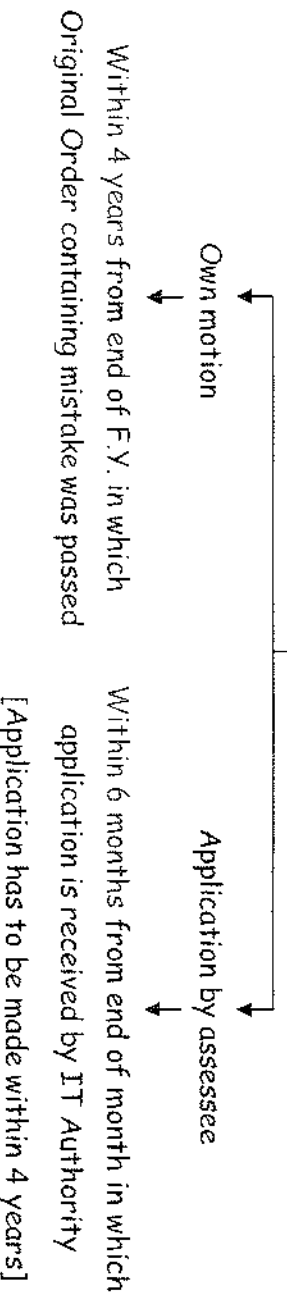
- (ii) If reference is made to TPO u/s 92CA, additional time of 12 months is available in all cases.
- (iii) In computing above time limits, following period shall be excluded:

Cases	From	Till
Specified violations by Institution or Trust and AO made reference to PCIT/CIT	Date on which AO makes reference	Date on which PCIT/CIT order received by AO
Direction for special audit or inventory valuation u/s 142(2A)	Date on which AO directs	Date on which assessee required to file report
Reference made to valuation officer u/s 142A	Date on which AO makes reference	Date on which report received by AO
Application made to Board for advance ruling [BAR]	Date on which application was made	Date on which rejection order/advance ruling received by commissioner
Where reference made for exchange of information u/s 90	Date on which reference made	Date on which information is received
If assessment proceeding stayed by any court	Period of Stay	

Rectification of Mistake [Section 154]

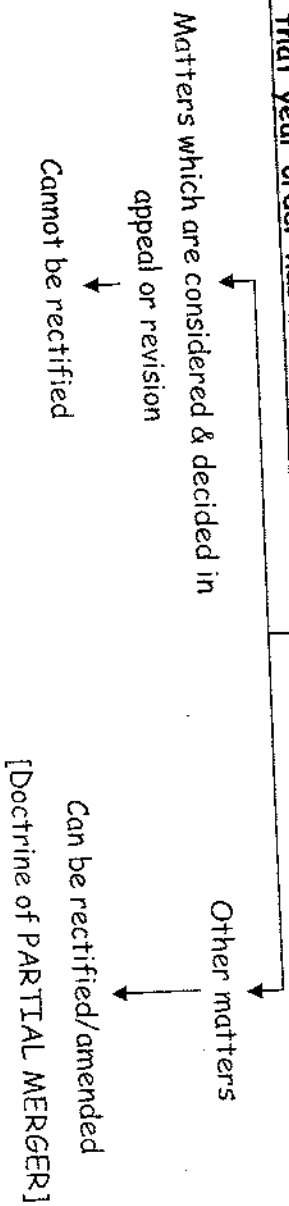
- Income tax authority [AO/CIT/JCIT(A)/CIT(A)] can rectify a mistake which is apparent from record in:
 - Any order passed by authority.
 - Intimation u/s 143(1), TDS/TCS intimation.
- Mistake apparent from record means mistake of fact or law which is self-evident.
- Rectification can be done by IT authority either on own motion or on application made by assessee.
- No fees & form for rectification.

• Time limit for rectification



Income Tax Authorities, Return Filing and Assessment Procedure

If that year order has been decided in appeal or revision



Demand Notice [Section 156]

any tax, interest, penalty or any other sum is payable/due, then AO shall serve demand notice rectifying payment.

Notice of AO Deemed to be Valid in Certain Cases [Section 292BB]

If assessee appeared in any proceedings or co-operated in any inquiry, it shall be deemed that notice has been duly served upon him.

He cannot raise objection after completion of assessment that:

- Notice was not served
- Not served in time
- Served in improper manner
- However, this deeming provision shall not apply if he raised objection about such defect before completion of assessment.

Note:

Non issuance of notice by department is not a curable defect u/s 292BB [i.e., issuance of notice is mandatory].

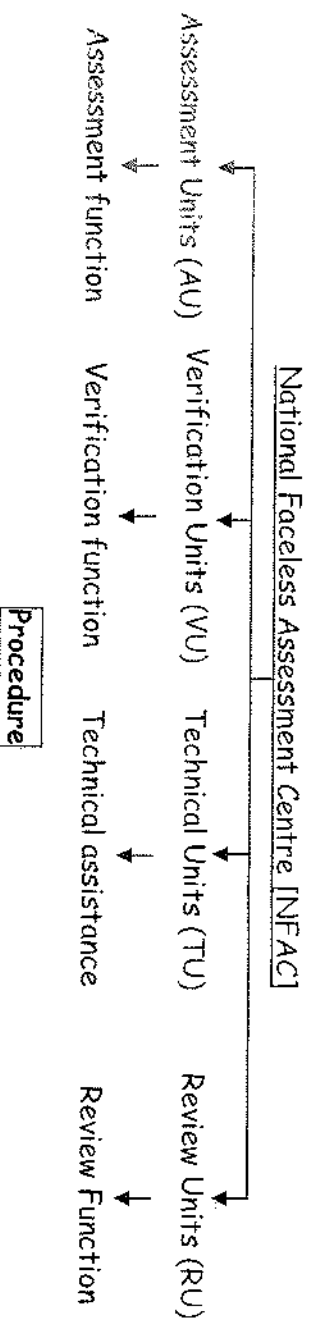
Faceless Collection of Information [Section 135A]

- Section 135A empowers the Central Government to make a scheme for calling or collecting information by income tax authorities in a faceless manner.
- Scheme formulated u/s 135A impart greater transparency and efficiency by:
 - Eliminating interface between income tax authority and assessee/other person to the extent technologically feasible.
 - Optimising utilisation of resources.

Income Tax Authorities, Return Filing and Assessment Procedure

Faceless Assessment [Section 144B]

Assessment Centre & Units



NFAC shall intimate the assessee that assessment in his case would be completed as per this section.

NFAC shall serve notice to assessee.

Assessee may file his response to the notice within the date specified therein to the NFAC.

NFAC shall assign case to a specific AU through automated allocation system [AAS].

AU may make request to NFAC for	- Obtaining information, documents and evidence from assessee/other person. - Conducting inquiry & verification by VU. - Technical assistance from TU.	NFAC issue notice to assessee/other person for submission of information, documents. NFAC will assign to any VU through AAS. NFAC will assign to any TU through AAS.
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On basis of material & evidence, AU shall determine variation in assessee income & forward to NFAC.

NFAC will provide opportunity of being heard to assessee if variation harmful to assessee.

NFAC may assign such variation for review to any RU through AAS.

AU shall after considering such review report, prepare a draft order and send it to NFAC.

NFAC shall convey to AU to pass the final assessment order & send it to NFAC.

NFAC shall serve copy of final assessment order to the assessee along with demand notice.

Note:

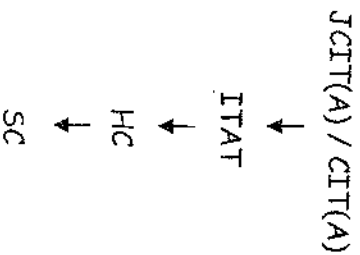
- (i) All communication between NFAC, AU, VU, TU, RU, assessee or any other person shall be exclusively by electronic mode.
- (ii) Personal hearing not allowed in NFAC or any unit. However, NFAC may allow personal hearing through video conferencing in specific cases.
- (iii) NFAC may transfer the case at any stage to jurisdictional AO with prior approval of CBDT.

APPEALS AND REVISION



Basics

• Appellate Hierarchy



No Right of Appeal against following order:

- Order of Interest u/s 234A/B/C
- Revision Order u/s 264
- Order of Dispute Resolution Committee

Appeal to JCIT(A) / CIT(A) [Section 246 to 251]

Following order can be appealable before JCIT(A) if passed by AO below the rank of Joint Commissioner]

- Assessment order [143(3)/144/147]
- Rectification order u/s 154
- Intimation u/s 143(1), TDS/TCS Intimation
- Any other order of AO below the rank of Joint Commissioner

If any appeal against above orders is pending before CIT(A), then CBDT may transfer such appeal to JCIT(A) and vice versa.

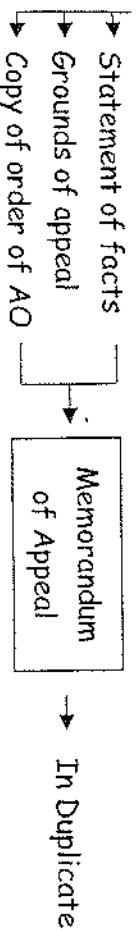
Following order can be appealable before CIT(A) if passed by Joint Commissioner

- Assessment order [143(3)/144/147/Search]
- Rectification order u/s 154
- Intimation u/s 143(1), TDS/TCS Intimation
- Any other order of Joint Commissioner

Filing of appeal before JCIT(A)/CIT(A)

- Appeal before JCIT(A)/CIT(A) can be filed only by assessee.
- Time Limit: within 30 days from service of order [delay can be condoned by JCIT(A)/CIT(A)]

➤ Appeal shall be filed in Form No. 35 along with



• Stay of Demand

JCTT(A)/CIT(A) can grant stay of demand on application made by assessee.

• Power to admit Additional Evidence

JCTT(A)/CIT(A) can admit additional evidence by record reasons in writing in following cases:

- AO refused to admit evidence.
- Assessee was prevented by sufficient cause to produce evidence.
- AO made order without giving opportunity to produce evidence.

• Order of JCTT(A)/CIT(A)

- They may confirm, reduce or enhance assessment. They may also set aside assessment u/s 144.
- JCTT(A)/CIT(A) can pass order within 1 year from end of year in which appeal is filed, if possible.

Appeal to ITAT [Section 252 to 255]

• In ITAT, Appeal can be heard by

- Division Bench [2 Judge: 1 Judicial & 1 Accountant Member]
- Special Bench [more than 2 Judges]
- Single Judge Bench [1 Judge]: If TI upto ₹ 50 lacs

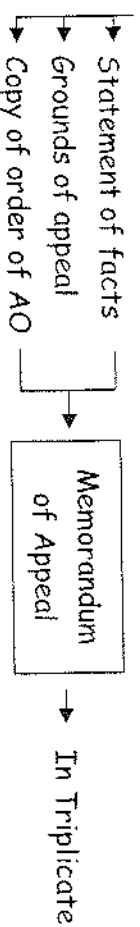
Decision shall be taken based on opinion of majority. If members equally divided on any point, then such point shall be referred to ITAT president. He further refers such point to other member.

• Following orders can be appealable before ITAT

- Order of JCTT(A)/CIT(A)
- Order u/s 144C as per DRP directions
- Revision order u/s 263
- Any other order of CIT/PCIT/CCIT/DIT/DGIT

• Filing of appeal before ITAT

- Appeal before ITAT can be filed by assessee or department or both.
- Time Limit: within 60 days* from end of month of communication of order [delay can be condoned by ITAT]. [*60 days is replaced by 2 months w.e.f. 1.10.24]
- Appeal shall be filed in Form No. 36 along with



Stay of Demand

- > ITAT can grant stay of demand on application made by assessee for maximum 180 days.
- > If ITAT fails to give judgment within 180 days and delay is not due to assessee, then ITAT can extend stay period but [original + extension] shall not exceed 365 days.
- > If such appeal is not disposed within 365 days, order of stay shall stand vacated only if delay in disposing of the appeal is attributable to the assessee.
- > For stay of demand, assessee has to deposit at least 20% amount.

Power to admit Additional Evidence

ITAT can also admit additional evidences.

Memorandum of Cross Objection

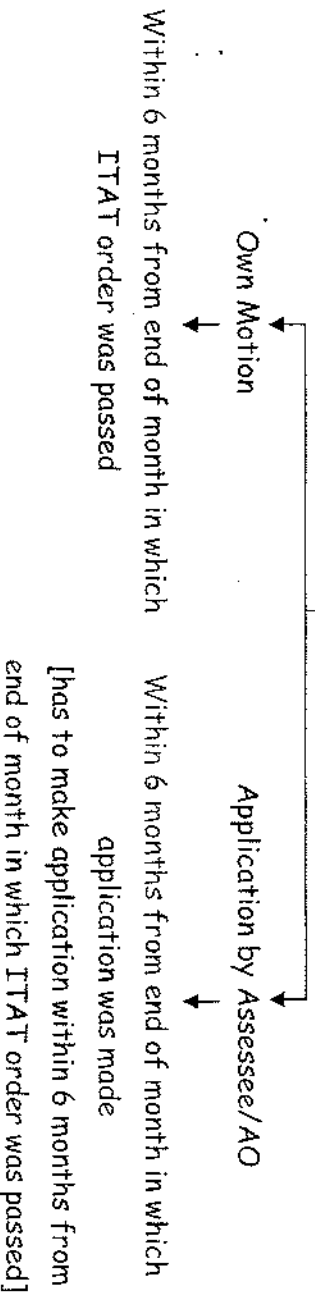
Respondent can file memorandum of cross objection within 30 days of receipt of notice of appeal. There is no filing fees for memorandum of cross objection.

Order of ITAT

- > ITAT may confirm, reduce or setaside the assessment.
- > ITAT can pass order within 4 years from end of year in which appeal is filed, if possible.

Rectification of Mistake by ITAT

ITAT can rectify a mistake in its order which is apparent on record



Appeal filing fees in JCIT(A)/CIT(A) & ITAT

	JCIT(A)/CIT(A)	ITAT
Assessed Income upto ₹ 1 lac	₹ 250	₹ 500
Assessed Income > 1 lac upto 2 lacs	₹ 500	₹ 1500
Assessed Income > 2 lacs	₹ 1000	1 % of Assessed Income [Maximum ₹ 10,000]
Other case	₹ 250	₹ 500
Appeal filed by department to ITAT	—	No Fees

• Comparison between power of JCIT(A)/CIT(A) & ITAT

Powers	JCIT(A)/CIT(A)	ITAT
▪ Power to make inquiries	✓	✓
▪ Power to condone delay	✓	✓
▪ Power to grant stay of demand	✓	✓
▪ Power to admit additional grounds of appeal	✓	✓
▪ Power to admit additional evidence	✓	✓
▪ Power to confirm or reduce the assessment	✓	✓
▪ Power to enhance the assessment	✓	X
▪ Power to setaside & refer back to AO for fresh assessment	X	✓
▪ Power to rectification of mistake apparent from records	✓	✓
▪ Power to recall own order solely for rectification of mistake apparent from records	✓	✓
▪ Power to recall own order to rehear entire order on merits	X	X
▪ Power to review own order	X	X
▪ Power to admit additional claims of assessee [even without filing revised ROI by assessee]	✓	✓

Appeal to High Court [Section 260A & B]

- Appeal against ITAT order can be filed to HC only if there is Question of Law.
- Determination of Arm's Length Price (ALP) is considered as a substantial question of law. So, HC can examine the correctness of determination of ALP.
- Time Limit: within 120 days from date of receipt of order
- HC have power to review its order if grounds for review are:
 - Discovery of new & important evidence
 - Mistake apparent on record
 - Any other sufficient reason

Appeal to Supreme Court [Section 261 & 262]

- Appeal against HC order
- SC has power to review its order.
- If there are two irreconcilable decisions of two benches of similar strength of SC, decision later in time shall prevail.

- Decision (including additional observations, remarks and opinions) of SC is binding on all lower courts, tribunals and authorities in all cases.

Special Provision for Appeal by Department [Section 268A]

- CBDT can fix monetary limit to regulate appeal by department to avoid litigation in small cases.
- Department can file appeal only if the Tax Effect is more than following amount:
 - For appeal to ITAT → More than ₹ 50 lacs
 - For appeal to HC → More than ₹ 1 crore
 - For appeal to SC → More than ₹ 2 crores
- If department has not filed appeal on a particular issue in case of a particular assessee in a particular year due to above limit, it shall not stop the department from filing appeal on same issue:
 - In case of same assessee in another year
 - In case of another assessee in any year

Revision of Orders Prejudicial to the Interest of Revenue [Section 263]

• Orders prejudicial to the Interest of Revenue

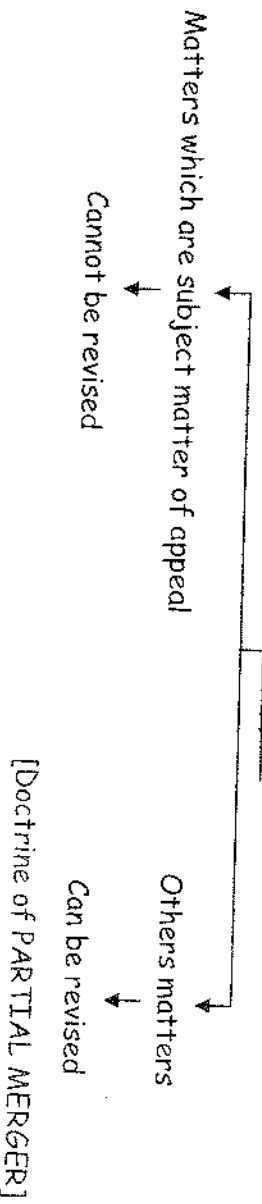
Cases where order is prejudicial to interest of revenue, if in opinion of CIT/PCIT/CCIT/PCIT:

- Order is passed without making inquiries/verification which should have been made.
- Order is passed allowing any relief without inquiring into claim.
- Order was not made as per instructions/directions issued by CBDT.
- Order was not passed as per decision given by HC/SC prejudicial to assessee.

• Procedure

- Examination of Records: Commissioner may call and examine all records which are available at the time of examination by Commissioner.
- Opportunity of being heard must be given to assessee before passing revision order.
- Commissioner can enhance, modify or cancel the assessment and direct for fresh assessment.
- Time limit for passing Revision Order: within 2 years from end of F.Y. in which AO/TPO order was passed.

• If AO order has been considered and decided in appeal



Revision of Other Orders [Section 264]

- CIT/PCIT/CCIT/PCCIT may on own motion or on application by Assessee revise AO order which is prejudicial to interest of assessee.
- Assessee can either prefer an appeal to JCIT(A)/CIT(A) or can apply to Commissioner for revision u/s 264.
- Assessee can apply for revision u/s 264 only if time limit to file appeal to JCIT(A)/CIT(A) has been expired [30 days].
- Assessee shall make an application within 1 year from communication of AO order.
- Time limit for passing Revision Order
 - Own motion: within 1 year from date of passing of AO order
 - Application by assessee: within 1 year from end of F.Y. in which application was made by assessee
- No appeal can be filed against Revision Order u/s 264.
- If AO order is in/has been decided in appeal

Revision u/s 264 is not possible on any matter [Doctrine of TOTAL MERGER]

DISPUTE RESOLUTION



Dispute Resolution Committee [DRC] [Section 245MA]

(1) Constitution of Dispute Resolution Committee

- Constituted by Central Government.
- To resolve dispute of specified persons who opt for dispute resolution in respect of dispute arising from variation in specified order.
- Each DRC shall consist of 3 members [2 members shall be retired IRS officers and 1 serving officer not below the rank of CIT].

(2) Specified Order

means any order [including draft order]:

- (i) Aggregate variations in order does not exceed ₹ 10 lacs.
- (ii) Such order is not based on:
 - Search u/s 132 or requisition u/s 132A
 - Survey u/s 133A
 - Information received under agreement referred in section 90
- (iii) Total Income as per ROI for such year does not exceed ₹ 50 lacs.

(3) Specified Person

Who fulfilled following specified conditions:

He is not a person:

- (a) Against whom detention order has been made under conservation of Foreign Exchange and Prevention of Smuggling Activities Act.
- (b) Against whom prosecution has been instituted and convicted for any offence under:
 - Indian Penal Code
 - Unlawful Activities (Prevention) Act
 - NDPS Act
 - Prevention of Benami Transactions Act
 - Prevention of Corruption Act
 - Prevention of Money Laundering Act
- (c) Against whom prosecution has been initiated by Income Tax Authority under this Act.
- (d) Who is notified u/s 3 of Special Court Act.
- (e) Against whom proceedings have been initiated under Black Money Act for A.Y. for which resolution of dispute is sought.

(4) Application for resolution of dispute

- Assessee has to make application for resolution of dispute before DRC along with fees of ₹ 1,000.
- Time limit for filing application: Within one month from the date of receipt of specified order

(5) Procedure to be followed by the DRC

- Screening of application by DRC: Either reject the application or admit the application
- Calling for records for further examination
- Seeking report from AO

(6) Termination of dispute resolution proceedings

DRC may terminate the dispute resolution proceedings if:

- Assessee fails to cooperate during proceedings.
- Assessee fails to respond or to submit information.
- Assessee has concealed any material information or given false evidence.
- Assessee fails to pay the demand as given in notice of demand.

(7) Decision of DRC

- To make or not to make modifications to variations in specified order.
- To give or not to give grant of immunity from prosecution and waiver of penalty.
- DRC shall pass order within six months from the end of month in which application is admitted by DRC.
- No appeal will lie against such order.

(8) Power of Dispute Resolution Committee

- Reduce or waive any penalty impossible under Income Tax Act, 1961.
- Grant immunity from prosecution for any offence punishable under Income Tax Act, 1961.

(9) Conditions for grant of waiver of penalty or immunity from prosecution

If such person has:

- paid the tax due in full and
- co-operated with DRC

PENALTIES, OFFENCES AND PROSECUTION

Part I - Penalties

Penalty for Under Reporting of Income [Section 270A]

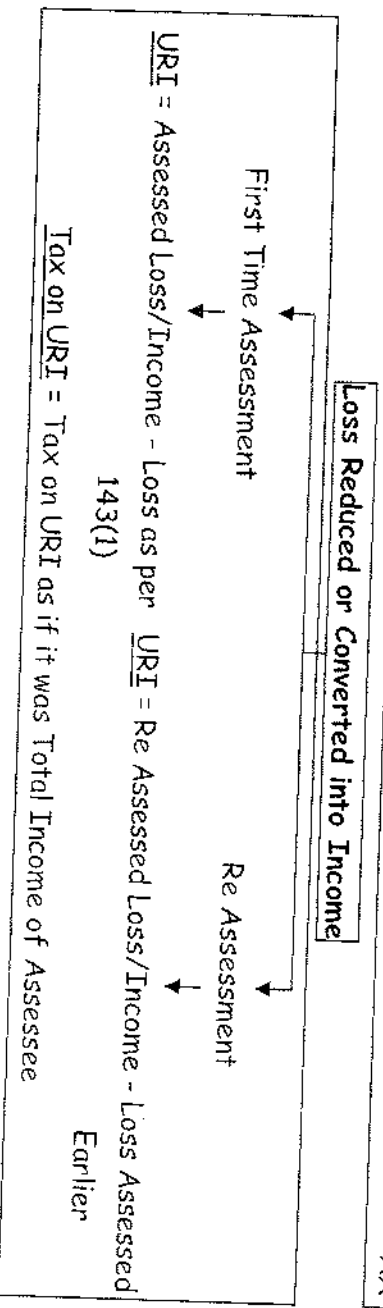
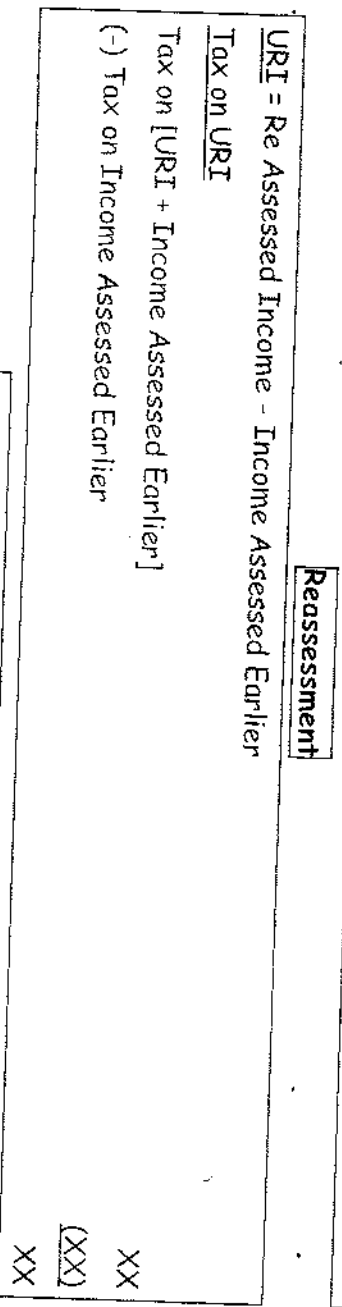
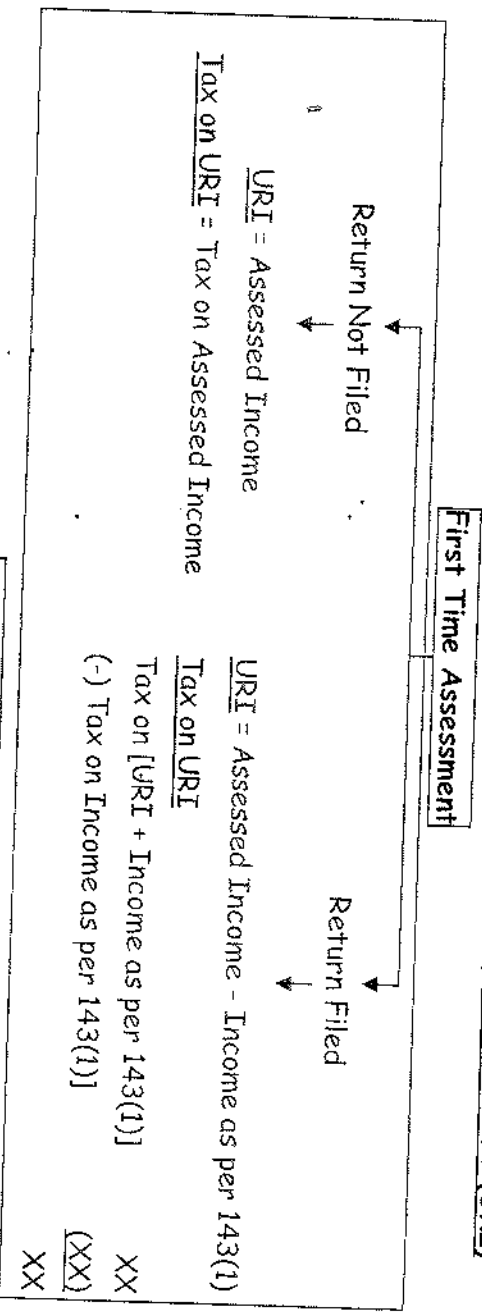
- (1) Under Reporting: Increase in Income/Decrease in Loss in Assessment or Reassessment.
- (2) Quantum of Penalty

Under Reporting: 50% of Tax on Under Reported Income ☒

If Under Reporting is due to Misreporting: 200% of Tax on Under Reported Income

Note: Tax include surcharge (if any) & cess

- (3) Calculation of Under Reported Income (URI) and Tax on Under Reported Income (URI)



(4) Cases in which Under Reporting is treated as Misreporting

- Misrepresentation or suppression of facts
- Fails to record investment in books of accounts
- Claim of expenditure not substantiated by any evidence
- Recording of any false entry in books
- Fails to records any receipt in books having bearing on Total Income
- Fails to report International Transaction/Specified Domestic Transaction [Transfer Pricing case]

(5) Application for Immunity from Penalty u/s 270A and Prosecution u/s 276C before AO

- If Assessee ————— Pays tax and interest payable as per AO order within time specified and
 Does not prefer an appeal against such order
- He can file application for immunity from penalty and prosecution before AO.
- Immunity shall be granted by AO only if it is not a case of Misreporting.

Other Penalties

Section	Nature of Default	Quantum of Penalty	Other Points
221	Fails to pay Tax, TDS, TCS, demand etc. within 30 days of demand notice	Maximum upto amount of tax in arrears	-
271A	Fails to keep or maintain books of accounts u/s 44AA	₹ 25,000	-
271AAB	Undisclosed Income found in search	30% or 60% of undisclosed income	(i) If following conditions are fulfilled, penalty will be 30%: ▪ Assessee admits such income in statement ▪ Specifies manner in which such income was earned ▪ Pays tax & interest on such income ▪ Furnish ROI declaring such income upto due date (ii) No penalty u/s 270A on

Penalties, Offences and Prosecution

			undisclosed income found in search
271AAC	Undisclosed Income u/s 68, 69, 69A to 69D	10% of tax u/s 115BBE	- No penalty, if such income declared in ROI & tax paid - No penalty u/s 270A
271AAD	Making false entry/omission of entry in books to evade tax liability	Equal to aggregate amount of false entry or omitted entry	Penalty is levied on: - Person who makes false entry or omits entry - Other person who caused the person to make false entry or omits entry
271B	Fails to get accounts audited or to furnish report upto due date u/s 44AB	0.50% of turnover /gross receipt [Maximum ₹ 1.50 lacs]	If books are not maintained, penalty u/s 271A will be levied & not u/s 271B
271C	Fails to deduct or pay TDS or ensure payment of TDS	Amount of TDS not deducted or paid	Penalty impossible by JC
271CA	Fails to collect TCS	Amount of TCS not collected	Penalty impossible by JC
271D	Fails to comply with provision of 269SS	Amount of loan/deposit taken	Penalty impossible by JC
271DA	Fails to comply with provision of 269ST	Amount received	Penalty impossible by JC
271E	Fails to comply with provision of 269T	Amount of loan/deposit repaid	Penalty impossible by JC
271FA	Fails to furnish Statement of Financial Transactions [SFT] or Reportable Accounts within prescribed time [31 st May of next F.Y.]	₹ 500 per day till period specified in notice ₹ 1000 per day after that period	-
271FAA	Furnishing Inaccurate SFT or Reportable Accounts	₹ 50,000	No penalty, if person informs about inaccuracy within 10 days to Tax Authorities
271J	Furnishing of incorrect information in any report or certificate by CA/Merchant	₹ 10,000 for each such report or certificate	-

Penalties, Offences and Prosecution

	Banker/Registered Valuer		
272A(1)	▪ Fails to answer questions put by Income Tax Authority ▪ Fails to sign statement in proceeding ▪ Non Compliance with summon u/s 131 ▪ Fails to comply with notice u/s 142(1) & 143(2) ▪ Fails to comply with directions u/s 142(2A)	₹ 10,000 for each such default or failure	-
272A(2)	▪ Fails to furnish information u/s 133 ▪ Fails to furnish ROI u/s 139(4A)/(4C)	₹ 500 per day till default continues	-
272B	Fails to quote PAN or quoting false PAN as per Section 139A	₹ 10,000 for each such default	-

Penalties, Offences and Prosecution

Part II - Offences & Prosecution

Section	Nature of Offence	Rigorous Imprisonment
275B	Fails to afford necessary facility to Authorised Officer to inspect books u/s 132	Upto 2 Years (+) Fine
276B/ 276BB	Fails to deposit TDS/TCS with Government	3 Months to 7 Years (+) Fine No prosecution u/s 276B/276BB: ▪ If there is reasonable cause for failure. ▪ If assessee suo moto deposited TDS/TCS along with interest before receiving notice from department. ▪ If assessee deposited TDS on or before due date of furnishing TDS statement/return.
276C	Willful attempt to evade payment of tax, penalty, interest or under reports income	If tax evaded exceeds ₹ 25 lacs: 6 Months to 7 Years Other case: 3 Months to 2 Years (+) Fine
276CC	Willful fails to furnish ROI upto due date	If tax evaded exceeds ₹ 25 lacs: 6 Months to 7 Years Other case: 3 Months to 2 Years (+) Fine No prosecution u/s 276CC: ▪ If tax payable of a person [other than company] is upto ₹ 10,000
276D	Willful fails to comply with requirement of Section 142(1) and 142(2A)	Upto 1 Year (+) Fine

In case of following persons, Individual who is deemed to be guilty of offence

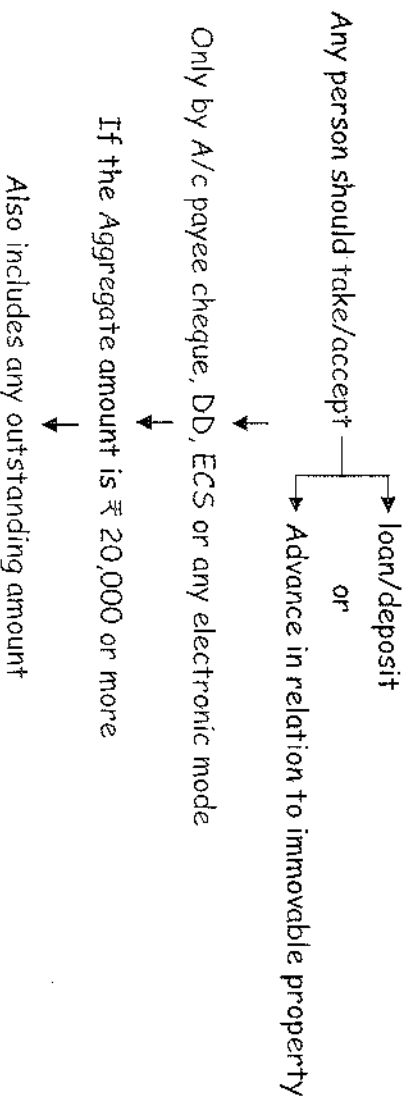
Company	:	Every person in charge of affairs, Director, Manager, Secretary
Firm	:	Partner
AOP/BOI	:	Member
HUF	:	Karta or Member

Note: If individual proves that offence was committed without his knowledge or he exercised all due diligence to prevent such offence, then such individual is not liable to any punishment.

MISCELLANEOUS PROVISIONS

Mode of Taking or Accepting Loans, Deposit or Advance [Section 269SS]

• Provision for Taking or Accepting Loans/Deposit/Advance



- Higher limit of ₹ 2,00,000 is applicable if loan/deposit is taken from/by primary agricultural credit society or a primary cooperative agricultural and rural development bank by/from its member.

• Non Applicability

- If loan/deposit/advance taken from/by:
 - Government
 - Banks/Co-operative Bank/Post Office (not NBFC)
 - Government Company
 - Corporation established by Central, State, Provincial Act
- Cases where persons involved in the transaction derives income only from agriculture.

• Penalty

If assessee fails to comply with above provisions, penalty will be 100% of loan/deposit/advance taken in cash/bearer cheque/cross cheque. It shall be imposed by Joint Commissioner (JC).

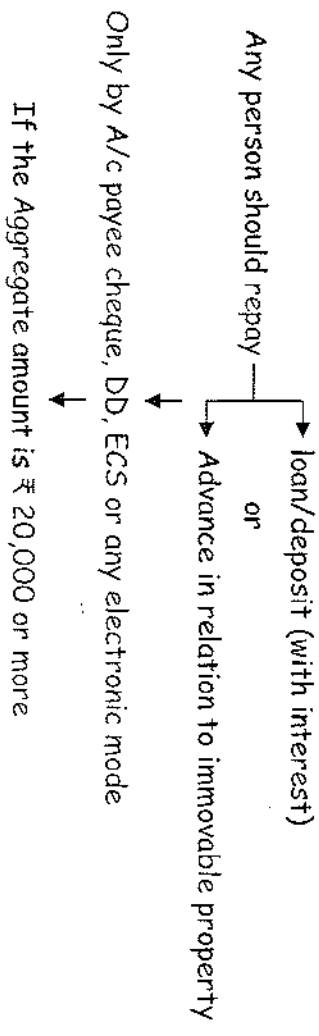
Example

Mr. A accept following amount from Mr. B							
Case 1		Case 2		Case 3		Case 4	
Loan & Deposit in Cash		Loan in Cash		Loan		Loan	
↓		↓		↓		↓	
Loan on 10.10.24	14000	5.5.24	14000	5.5.24	14000 (A/c payee)	5.5.24	14000 (Cash)
Deposit on 10.10.24	15000	8.11.24	16000	8.11.24	16000 (Cash)	8.11.24	16000 (A/c payee)

Violation	Violation	Violation	No Violation
Penalty = 29000	Penalty = 30,000	Penalty = 16000	No Penalty

Repayment of Loan, Deposit or Advance [Section 269H]

• Provision for Repayment of Loans/Deposit/Advance



Also includes any outstanding amount

- Higher limit of ₹ 2,00,000 is applicable if loan/deposit is repaid to/by primary agricultural credit society or a primary cooperative agricultural and rural development bank by/to its member.

• Non Applicability

If loan/deposit/advance taken from:

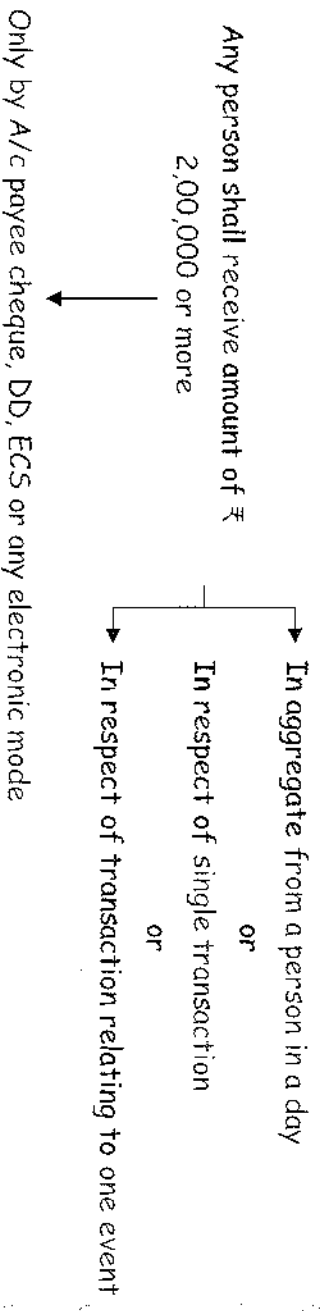
- Government
- Banks/Co-operative Bank/Post Office (not NBFC)
- Government Company
- Corporation established by Central, State, Provincial Act

• Penalty

If assessee fails to comply with above provisions, penalty will be 100% of loan/deposit/advance repaid in cash/bearer cheque/cross cheque. It shall be imposed by JC.

Mode of Undertaking Transactions [Section 269S(i)]

• Provision for receiving Amount regarding Transaction



• **Non Applicability**

- (i) Transactions covered u/s 2695S
- (ii) Any receipt by government, bank, co-operative bank, post office
- (iii) Cash withdrawals by any person from bank, co-operative bank, post office

• **Penalty**

If assessee fails to comply with above provisions, penalty will be 100% of such cash/bearer cheque/cross cheque receipt. It shall be imposed by JC.

Example

Mr A receives following amount from Mr. B in Cash			
Case 1	Case 2	Case 3	
5 Transaction @ ₹ 50,000 each	Single Transaction of ₹ 3 Lacs	Single Event (Marriage) Transaction 1 [Garden Rent] = ₹ 1,40,000 Transaction 2 [Decoration] = ₹ 1,50,000	
Receive ₹ 2,50,000 on 10.10.24	<u>Receive</u> ₹ 1,00,000 on 1.7.24 ₹ 1,00,000 on 10.8.24 ₹ 1,00,000 on 1.11.24	Receive on different dates	
Violation Penalty = 2,50,000	Violation Penalty = 3,00,000	Violation Penalty = 2,90,000	

Providing Facility for Acceptance of Payment through Prescribed Electronic Modes [Section 2695U]

- Every person carrying on business shall provide facility for accepting payment through prescribed electronic modes in addition to other electronic modes, If turnover/gross receipts in business exceeds ₹ 50 crores in preceding P.Y.

• **Prescribed Electronic Modes**

- Debit card powered by Rupay
- UPI/Bhim UPI
- UPI QR code/Bhim UPI QR code

• **Penalty**

If assessee fails to comply with above provision, penalty will be ₹ 5,000 per day during which failure continues.

Transfers to Defraud Revenue Void [Section 281]

- If Assessee transfers his asset during proceedings or after completion to defraud revenue, such transfer shall be deemed to be void.
- Transfer shall not be void if [Non applicability]:
 - Tax or any other sum payable is upto ₹ 5,000, or
 - Value of asset transferred is upto ₹ 10,000, or
 - Transfer made for adequate consideration, or
 - Transfer made with permission of AO

Provisional Attachment to Protect the Interest of Revenue [Section 281B]

- If any assessment/reassessment proceeding is pending before AO, AO can attach any property of assessee by order in writing if in opinion of AO, such attachment is necessary for protecting the interest of revenue.
- Prior approval of CIT shall be obtained by AO.
- Provisional attachment shall be valid for 6 months from date of such order.
- Period can be extended by CIT by record reasons in writing. However, extension period shall not exceed

2 years
 ↓
 or
 60 days from completion of assessment

]
 ↓
 Later
- AO shall revoke such provisional attachment of property if assessee furnishes bank guarantee from scheduled bank for amount equal to FMV of property.
- Circumstances where AO can invoke bank guarantee
 - Failure to pay amount specified in demand notice within specified time.
 - Failure to renew or fails to furnish new guarantee 15 days before expiry of such guarantee.
- Membership card of stock exchange is not property of assessee, therefore cannot be attached u/s 281B.

Service of Notice [Section 282]

- Service of notice/summon/order can be made by delivering a copy:
 - By post or courier
 - In manner provided in code of civil procedure, 1908
 - In form of any electronic record
 - By any other means of transmission as provided by CBDT
- Notice to be addressed & served upon

Assessee	Addressee
Individual	Individual Himself
Deceased Person	Legal Heirs of Deceased
Existing HUF	Manager or Any Adult Member
Partitioned HUF	Last Manager, If dead - All Adult Member
Existing Firm	Any Partner
Dissolved Firm	Any Adult person who was partner immediately before dissolution
Company/Local authority	Principal Officer
Any other person	Person in charge

Appearance by Authorised Representative [Section 286]

- Proceeding before income tax authorities can be attended by assessee himself or through authorised representative [A person authorised by assessee in writing to appear on his behalf].
- However, assessee has to appear himself in case of examination on oath.
- Who can be authorised representative:
 - Person who is relative or regular employee of assessee
 - Officer of scheduled bank
 - Legal practitioner
 - CA in practice
 - Any person who passed any accountancy exam or acquired such qualifications as specified by CBDT
 - Any other person as prescribed

ROI etc. Not to become Invalid [Section 292B]

ROI, notice, summon, assessment order etc. shall not become invalid due to any clerical mistake.

Statement of Financial Transaction (SFT) or Reportable Account [Section 285BA]

- This statement is obtained to cross verify the information in ROI etc.
- Due date of filing: upto 31st May of next F.Y.
- Cases in which SFT or Reportable Account is required to be filed

	Nature and Value of Transaction	Reporting Person
(i)	Receipt from any person of aggregate ₹ 10 lacs or more for acquiring bonds or debentures	Company or Institution issuing bonds or debentures

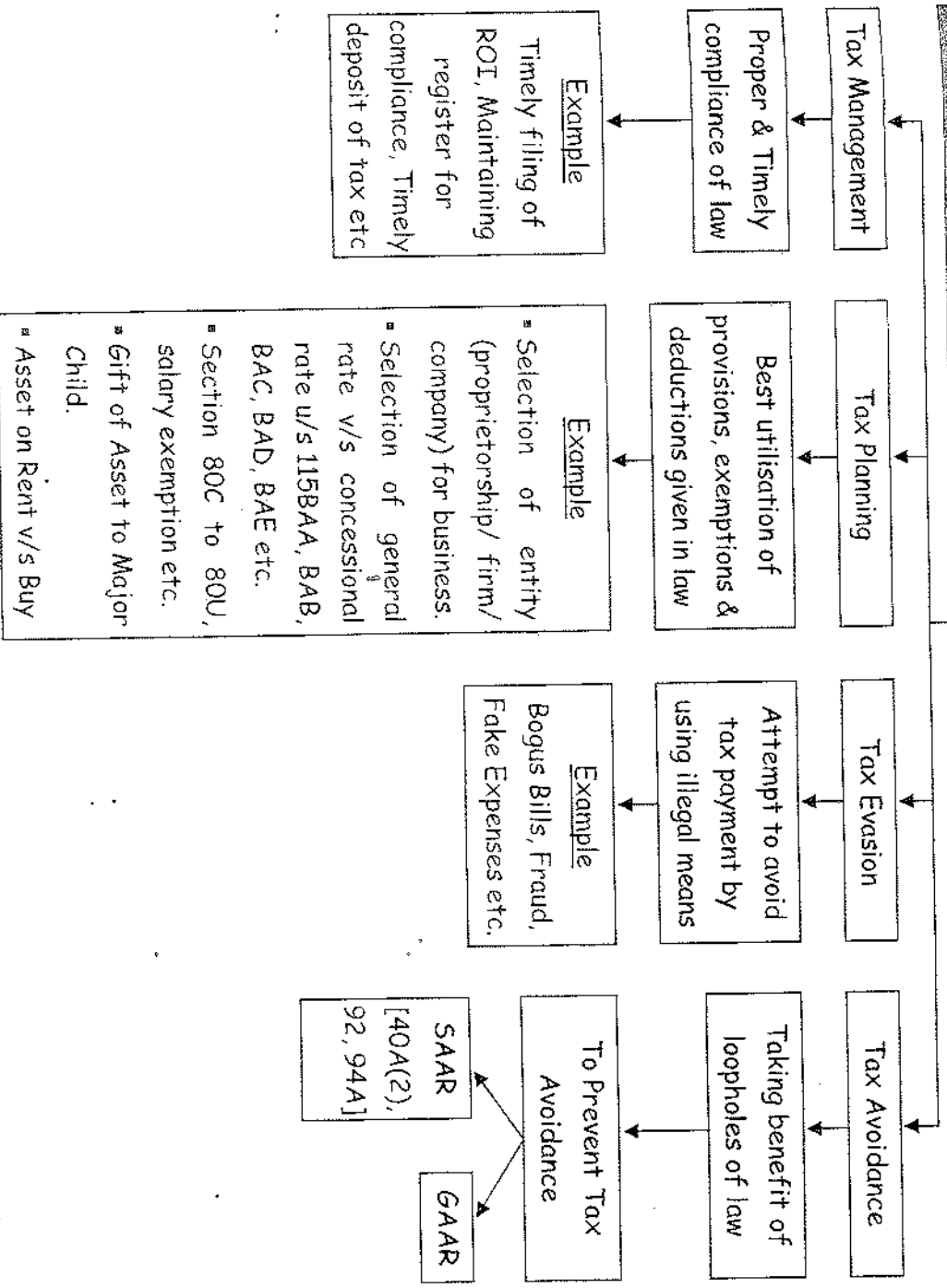
Miscellaneous Provision

(ii)	Receipt from any person of aggregate ₹ 10 lacs or more for acquiring shares	Company issuing shares
(iii)	Buyback of shares from any person of aggregate ₹ 10 lacs or more	Listed Company
(iv)	Receipt from any person of aggregate ₹ 10 lacs or more for acquiring mutual fund unit	Trustee of Mutual Fund
(v)	Receipt from any person of aggregate ₹ 10 lacs or more for sale of foreign currency	Authorised Dealer
(vi)	Purchase/sale of immovable property by any person of ₹ 30 lacs or more	Registrar
(vii)	Receipt of cash payment exceeding ₹ 2 lacs for sale of goods/services from any person	Seller/Service Provider who is liable for audit u/s 44AB
(viii)	▪ Cash deposits or cash withdrawals of aggregate ₹ 50 lacs or more in current A/c's of a person ▪ Cash deposits of aggregate ₹ 10 lacs or more in saving A/c's of a person ▪ Fixed/Time deposits of aggregate ₹ 10 lacs or more of a person (other than FD made through renewal of another FD) ▪ Payment made in cash for purchase of bank drafts/pay orders/banker's cheque/pre-paid instruments of aggregate ₹ 10 lacs or more ▪ Payment made by any person against bills raised in respect of credit cards of aggregate ₹ 1 lac (in cash) or ₹ 10 lacs (in any other mode)	Banking Company/Co-operative Bank

TAX PLANNING, TAX EVASION AND TAX AVOIDANCE



Tax Management, Planning, Evasion and Avoidance



General Anti Avoidance Rule [GAAR]

(1) Applicability of GAAR [Section 95]

- An arrangement entered into by assessee may be declared to be an "impermissible avoidance arrangement".
- Arrangement means any transaction/agreement/scheme/understanding.
- GAAR provisions overrides other provisions of Income Tax Act and also DTAA.
- GAAR provisions shall not apply if aggregate tax benefit to all parties of transaction in A.Y. is upto ₹ 3 crores.
- GAAR Provisions are applicable with effect from 1.4.2017. If investment made prior to 1.4.2017, GAAR will not be applicable.

(2) Impermissible Avoidance Arrangement [Section 96]

It is an arrangement whose main purpose is to obtain Tax Benefit.

AND

Satisfies any one of the following conditions:

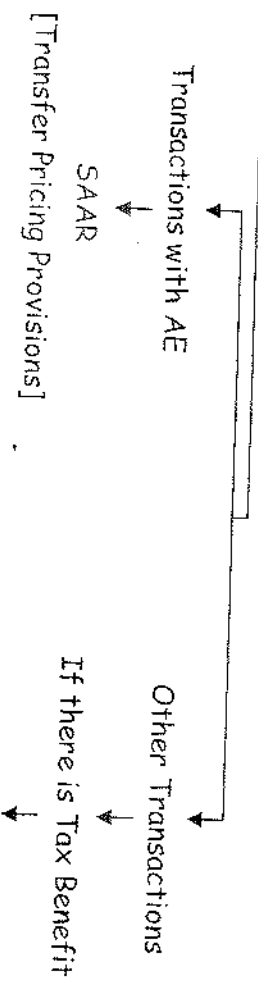
- (i) Not at arm's length, or
- (ii) Results directly/indirectly in misuse or abuse of provisions of the Act/DTAA, or
- (iii) Entered in a manner which are not ordinarily employed for bonafide purpose, or
- (iv) Lacks commercial substance or deemed to lack commercial substance.

(3) Tax Benefit

- Reduction/avoidance/deferral of tax or other amount payable under this Act.
- Reduction in total income/increase in losses.
- Increase in refund.

(4) Conditions

(i) Not at Arm's length



- (ii) Results directly/indirectly in misuse or abuse of provisions of the Act/DTAA
Unintended use of Income Tax Act/DTAA provision and Obtain Tax Benefit: GAAR Invoked
- (iii) Entered in a manner which are not ordinarily employed for bonafide purpose
Entered in Abnormal Manner and Obtain Tax Benefit: GAAR Invoked
- (iv) Lacks commercial substance or deemed to lack commercial substance
 - Round trip financing for tax benefit.
 - Transaction involving accommodating party for obtaining tax benefit.
 - Location of asset/transaction/place of residence is selected for obtaining tax benefit.
 - It does not effect the business risk or net cash flow of any party but only providing tax benefit.

(5) Consequences of Impermissible Avoidance Arrangement

Denial of tax benefit

TAX AUDIT AND ETHICAL COMPLIANCES



Tax Audit of Books of Accounts [Section 44AB]

Tax audit is compulsory in following cases:

(i) In case of business

If turnover exceeds ₹ 1 crore in P.Y.

However, limit will be ₹ 10 crores, if:

➤ Aggregate amount received for sales during P.Y. in cash/bearer cheque/cross cheque does not exceed 5% of total amount received.

and

➤ Aggregate payment made for expenses during P.Y. in cash/bearer cheque/cross cheque does not exceed 5% of total payment made.

(ii) In case of profession

If gross receipts exceed ₹ 50 lacs during P.Y.

(iii) If assessee covered by section 44AD or 44ADA and assessee claims income less than 8%/6% or 50% of turnover/gross receipts and his total income is more than basic exemption limit.

(iv) If assessee covered by section 44BB, 44BBB, 44AE and assessee claims income less than profit deemed under these sections.

Computation of turnover to determine eligibility of tax audit

- Any discount allowed in sales invoice is to be deducted from turnover.
- Special rebate to customer can be deducted from turnover if it is in the nature of trade discount. If it is in the nature of commission on sales, it cannot be deducted from turnover.
- Sales return is to be deducted from turnover even if returns are from sales made in earlier years.
- Sale proceeds of fixed assets or any investment property will not form part of turnover.

Tax Audit Report

- Audit must be done by CA.
- Tax audit report shall be furnished in Form 3CA/3CB alongwith statement of particulars is annexed in Form 3CD.
- Due date of furnishing tax audit report: 1 month prior to due date of furnishing ROI u/s 139(1).

	ROI Filing Due Date	Due Date of Furnishing Tax Audit Report
Normal Tax Audit	31 st October of A.Y.	30 th September of A.Y.
Transfer Pricing	30 th November of A.Y.	31 st October of A.Y.
Other Case	31 st July of A.Y.	-

Tax Audit and Ethical Compliances

Form 3CA and Form 3CB

Form 3CA	Form 3CB
Tax audit report is to be furnished in Form No. 3CA, if books of accounts are audited under any other law like Companies Act or LLP Act.	Tax audit report is to be furnished in Form No. 3CB, if there is no requirement of audit under any other law.
In this case, tax auditor is not required to give his opinion whether accounts give a true and fair view or not.	In this case, tax auditor is required to give his opinion whether accounts audited by him give a true and fair view or not.
Tax auditor is required to give his opinion whether particulars furnished in Form 3CD are true and correct, subject to observations and qualifications, if any.	Tax auditor is also required to give his opinion whether particulars furnished in Form 3CD are true and correct, subject to observations and qualifications, if any.

Form 3CD – Statement of Particulars Required to be Furnished u/s 44AB

Clause	Details to be Furnished
1 Name	Name of the assessee shall be given.
2 Address	In case of a company – address of registered office In case of other assessee – address of principal place of business
3 PAN	Permanent Account Number (PAN) allotted to the assessee shall be indicated.
4 GST No.	If assessee is liable to pay indirect tax like excise duty, service tax, sales tax, GST, customs duty, etc., furnish registration or GST number.
5 Status	Status of assessee is to be mentioned – Individual, HUF, Company, Firm, AOP/BOI, Local Authority or Artificial Juridical Person.
6 & 7	Previous Year and Assessment Year
8 44AB Clause	Indicate relevant clause of section 44AB under which audit has been conducted.
8a Concessional Tax Rates	- Mention whether individual/HUF/AOP/BOI has opted to shift out of the default regime u/s 115BAC. - In case of companies/co-operative societies, mention whether they have opted for concessional tax rates u/s 115BAA/115BAB/115BAD/115BAE.
9 Partners & PSR	(a) In case of Firm/AOP, indicate name of partners/members and their PSR. (b) If any change in partners/members or PSR, details of such change.

10	(a) Mention nature of business or profession. (b) If any change in nature of business or profession, details of such change.
11 Nature of B&P	(a) If books are prescribed u/s 44AA, give list of books so prescribed. (b) Lists of books of account maintained and address at which books are kept.
12 Books of Accounts	If P&L A/c includes any profit assessable on presumptive basis, indicate amount & section (44AD, 44ADA, 44AE, 44B, 44BB, 44BBA, 44BBB, 44BBC, Tonnage).
13 Presumptive Tax	(a) State method of accounting employed in P.Y. (Cash or Mercantile) (b) If any change in method of accounting, give details of such change and effect on P&L. (c) If any adjustment is required for complying with ICDS, give details of such adjustments ICDS wise.
14 Method of Accounting and ICDS	(a) State method of valuation of closing stock employed in P.Y. (b) Details of deviation from method prescribed u/s 145A and effect on P&L.
15 Valuation of Stock	Mention following details of capital asset converted into stock-in-trade: ▪ Description of capital asset ▪ Date of acquisition ▪ Cost of acquisition
16 Conversion of Capital Asset into Stock in Trade	Indicate amounts not credited to P&L A/c, being - ▪ Amounts falling within scope of section 28 ▪ Drawbacks, refund of indirect taxes ▪ Escalation claims accepted during P.Y. ▪ Capital receipt, if any
17 Income not Credited to P&L	If any land or building is transferred during P.Y. for consideration less than Stamp Duty Value (SDV), furnish following details: ▪ Details of property ▪ Consideration amount ▪ Value adopted or assessed or assessable (SDV)
18 Section 43CA/50C	Mention particulars of depreciation allowable as per Income-tax Act, 1961 in respect of each block of asset.
19 Depreciation	State amount admissible under following sections: 33AB, 33ABA, 35, 35ABB, 35AD, 35CCC, 35CCD, 35D, 35DD, 35DDA
20 Section 33 to 35	(a) Indicate bonus or commission paid to employees. (b) Mention details of employees contribution received for various funds as per section 36(1)(va) namely, nature of fund, sum received from employees, due date of deposit and actual date of deposit.
Bonus & Employee Contribution	

Tax Audit and Ethical Compliances

21	Indicate following inadmissible amounts:
Amounts Inadmissible	(a) Amount inadmissible u/s 37 being in nature of capital, personal, advertisement expenditure, penalty for violation of law etc. (b) Amount inadmissible u/s 40(a)(i)/(ia) on which TDS not deducted or after deduction, TDS has not been paid on or before due date u/s 139(1). (c) Amount inadmissible u/s 40(b)/40(ba) being, interest, salary, bonus, commission or remuneration to partner/member. (d) Amount inadmissible u/s 40A(3)/40A(3A) being cash payments (e) Provision for gratuity not allowable u/s 40A(7) (f) Particulars of any contingent liability debited to P&L A/c. (g) Expenditure relating to exempt income which is not allowed as deduction. (h) Amount inadmissible under proviso to section 36(1)(iii)
22	Indicate amount of interest inadmissible u/s 23 of MSMED Act, 2006.
MSMED Act	
23	Mention particulars of payments made to specified persons (relatives) u/s 40A(2).
Section 40A(2)	
24	Report the deemed income chargeable as PGBP under circumstances specified in section 33AB/33ABA.
Deemed Income u/s 33AB/33ABA	
25	Indicate amount of profit chargeable to tax u/s 41 and computation thereof
Section 41	
26	Indicate amount of expenditure not allowable as per section 43B.
Section 43B	
27(a)	Indicate amount of GST credit (ITC) availed or utilised during P.Y. and its treatment in P&L A/c.
GST ITC	
27(b)	Mention particulars of prior period income or expenditure credited or debited to P&L A/c.
Prior Period Items	
29A	Indicate advance money forfeited in the course of negotiations for transfer of capital asset.
Advance Forfeit	
29B	Indicate whether any amount is taxable under IFOS as per section 56(2)(x).
Gift Taxation	
30	Indicate details of amount borrowed on hundi (including interest) and repayment otherwise by account payee cheque.
Hundi (Sec. 69D)	

30A Transfer Pricing Adjustment	If primary adjustment to transfer price made during P.Y., give following details: ▪ Amount of primary adjustment. ▪ Whether excess money has been repatriated to India within prescribed time. ▪ Interest income (if excess money has not repatriated within prescribed time.
30B Section 94B	Mention details of interest expenditure exceeding ₹ 1 crore incurred during P.Y. in respect of debt issued by a non-resident AE u/s 94B.
30C 6AAR	If assessee has entered into impermissible avoidance arrangement as referred in section 96 during P.Y., furnish following details: ▪ Nature of impermissible avoidance arrangement ▪ Aggregate amount of tax benefit arising to all parties of arrangement
31 Section 269SS, 269ST and 269T	(1) Furnish following particulars of each loan/deposit/advance for amount exceeding limit specified in section 269SS taken or accepted during P.Y. ▪ Name, address and PAN or Aadhaar of lender ▪ Amount of loan/deposit/advance taken or accepted ▪ Maximum amount outstanding at any time during P.Y. ▪ Whether loan/deposit/advance was taken or accepted by a/c payee cheque, DD, ECS or any other electronic mode (2) Furnish following particulars of each receipt of amount exceeding limit specified in section 269ST during P.Y. ▪ Name, address and PAN or Aadhaar of payer ▪ Nature of transaction ▪ Amount of receipt ▪ Date of receipt (3) Furnish following particulars of each repayment of loan/deposit/advance of amount exceeding limit specified in section 269T made during P.Y. ▪ Name, address and PAN or Aadhaar of payee ▪ Amount of repayment ▪ Maximum amount outstanding at any time during P.Y. ▪ Whether repayment was made by a/c payee cheque, DD, ECS or any other electronic mode
32 Losses	Furnish following details: (a) Brought forward loss or depreciation allowance to the extent available. (b) Change in shareholding of company taken place during P.Y. due to which losses incurred prior to P.Y. is not allowed to be c/f as per section 79. (c) Speculation loss incurred by assessee during P.Y. (d) Specified business loss incurred by assessee during P.Y.

Tax Audit and Ethical Compliances

33 VIA & 10AA	Provide section-wise details of deductions admissible under Chapter VIA or Section 10AA.
34 TDS/TCS	(a) If assessee is required to deduct or collect tax as per TDS/TCS provisions, furnish details of TAN no., section no., nature of payment, amount of payment or receipt, TDS/TCS amount etc. (b) If assessee is required to furnish TDS/TCS statement, furnish details of type of form, due date of furnishing and actual date of furnishing. (c) Furnish details of interest on TDS/TCS along with date of payment.
35	In case of trading or manufacturing concern, provide quantitative details of principal items of goods such as opening stock, purchase, sale, closing stock etc.
Quantitative Detail	
36A Deemed Dividend	Mention whether assessee has received deemed dividend u/s 2(22)(e)
37 Cost Audit	If cost audit was carried out, give details of disqualification or disagreement on any matter/item/value/quantity as reported/identified by cost auditor.
38 Excise Audit	If excise audit was conducted, give details of disqualification or disagreement on any matter/item/value/quantity as reported/identified under such audit.
40 Accounting Ratios	Provide following details for P.Y. and preceding P.Y: ▪ Total turnover of assessee ▪ Gross profit/turnover ▪ Net profit/turnover ▪ Stock-in-trade/turnover ▪ Material consumed/ finished goods produced
41 Demand or Refund	Provide details of demand raised or refund issued during P.Y. under any tax laws other than Income-tax Act, 1961.
42 Statement of Financial Transactions (SFT)	If assessee is required to furnish statement in Form No. 61/61A/61B, give following details: ▪ Reporting Entity Identification Number ▪ Type of form ▪ Due date of furnishing ▪ Date of furnishing (if furnished)
43 CBC Report	Mention whether assessee or its parent entity or alternate reporting entity is liable to furnish CBC report as referred in section 286.
44 Expense Breakup	Provide break-up of total expenditure of entities registered or not registered under GST.

Ethical Compliances and Implications

Ethical Compliances

- If there is any difference in opinion of tax auditor and assessee for any information furnished in Form No. 3CD, tax auditor may consider stating both view points and also relevant information related to matter to enable tax authority to take a decision in the matter.
- Tax auditor shall report such difference of opinion appropriately as an observation in Form 3CA /3CB.
- Tax auditor shall qualify his report in Form 3CA/3CB on matters for which information is not furnished or inadequate information furnished by the assessee.

Ethical Implications

- If tax auditor does not comply with:
 - Reporting requirements under these clauses, or
 - Fails to mention difference of opinion appropriately as an observation, or
 - Fails to qualify his report on matters for which information is not furnished or inadequate information furnished by the assessee
- he shall be deemed to be guilty of professional misconduct under clause (7) or clause (8) of Part I of Second Schedule to the Chartered Accountants Act, 1949.
- As per clause (7) of Part I of Second Schedule, a CA in practice is deemed to be guilty of professional misconduct if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.
- As per clause (8) of Part I of Second Schedule, a CA in practice is deemed to be guilty of professional misconduct if he fails to obtain sufficient information which is necessary for expression of opinion or its exceptions are sufficiently material to negate the expression of opinion.

THE BLACK MONEY & IMPOSITION OF TAX LAW



Basis and Change of Black Money Tax

- Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 provides for stringent taxation of any undisclosed foreign income and assets.
- Undisclosed foreign income and asset of every assessee is taxable @30% in Relevant P.Y.
- Meaning of certain terms

Undisclosed Foreign Income	Income from source located outside India which is not disclosed in ROI.
Undisclosed Foreign Asset	Any asset of assessee (including financial interest in entity) located outside India for which assessee has no explanation of source or explanation offered by assessee is unsatisfactory as per AO.
Assessee	A person: ▪ Who is resident in Relevant P.Y. or ▪ Who is RNOR/NR in Relevant P.Y. but was resident in P.Y. in which he earns or acquires undisclosed foreign income or asset
Relevant P.Y.	P.Y. in which undisclosed foreign asset comes to the notice of AO.

Value of Undisclosed Foreign Asset

Value of Undisclosed Foreign Asset = FMV of Asset on Valuation Date	
Assets	FMV
Quoted Shares & Securities	Higher of Cost of Acquisition or Average of lowest and highest price on valuation date in established securities market [If no trading on valuation date, then immediately preceding valuation date]
Unquoted Equity Shares	Higher of Cost of Acquisition or $\frac{A + B - L}{PE} \times PV$ A = Book value of all assets [other than covered in B] B = FMV of shares, securities, immovable property, bullion, jewellery, precious stone

	[Ignore TDS/TCS/Adv. Tax/Deferred Revenue Expenses] L = Book value of liabilities but not include following: ➤ Paid up equity share capital ➤ Reserves & Surplus ➤ Dividend ➤ Provision for tax ➤ Provision for unascertained liabilities ➤ Contingent liabilities PE = Total paid up equity share capital of company PV = Paid up value of equity shares held by assessee
Interest of a person in Firm/LLP/AOP	Net Assets = A + B - L ▪ First distribute net assets among partners/members in proportion of capital contribution ▪ Then, distribute balance net assets in PSR Example A firm has 3 partners having equal PSR. Net Assets of firm = ₹ 30 lacs. Capital of Partner A ₹ 11 lacs, Partner B ₹ 8 lacs, Partner C ₹ 5 lacs <u>Value of Interest in Firm</u> A = ₹ 11 lacs + ₹ 2 lacs = ₹ 13 lacs B = ₹ 8 lacs + ₹ 2 lacs = ₹ 10 lacs C = ₹ 5 lacs + ₹ 2 lacs = ₹ 7 lacs
Bank Account	▪ Sum of all deposits made in bank account since date of opening of a/c ▪ If any deposit is made from any withdrawal from account, such deposit shall not be taken
▪ Unquoted Shares & Securities [Other than Equity Share] ▪ Immovable Property ▪ Any Other Asset	<u>Higher of</u> Cost of Acquisition or Open Market Value as per valuation report of valuer
FMV of asset transferred before valuation date	<u>Higher of</u> Cost of Acquisition or Sale Price or FMV on date of Transfer

Note:

If new asset is acquired out of consideration received from transfer of old asset or withdrawal from bank account, FMV of old asset/bank account shall be reduced by amount invested in new asset.

Example

House A (purchased in year 1995) for ₹ 15 lacs. It was sold in year 2000 for ₹ 22 lacs. This amount was deposited in a bank account. In year 2001 another House B was purchased for ₹ 35 lacs. The investment in House B was made through withdrawal from bank account. House B value on valuation date is ₹ 48 lacs. Assume that value of bank account as computed as per rule is ₹ 60 lacs.

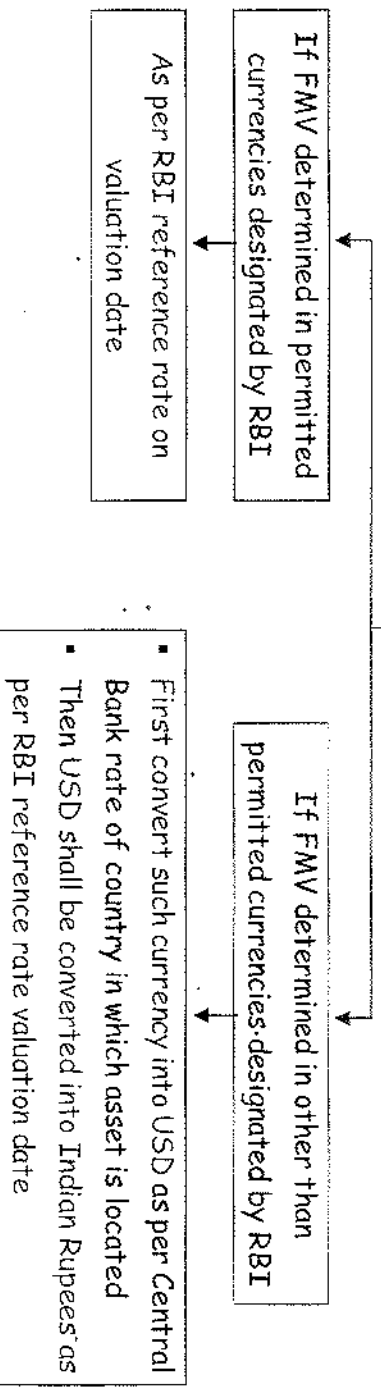
Calculation of FMV

FMV of House A = ₹ 22 lacs (higher of ₹ 15 lacs and ₹ 22 lacs) - ₹ 22 lacs (invested in bank) = Nil
 FMV of Bank account = ₹ 60 lacs - ₹ 35 lacs (invested in House B) = ₹ 25 lacs
 FMV of House B = Higher of ₹ 35 lacs and ₹ 48 lacs = ₹ 48 lacs

Valuation Date

1st April of Relevant P.Y.

Conversion Rate used to Convert FMV of Asset determined in Foreign Currency to INR



Deduction of Expenditure from Undisclosed Foreign Income and Asset

- From undisclosed foreign income
- No deduction of any expenditure or no set-off of any loss.
- From FMV of undisclosed foreign asset

- If any asset (other than immovable property) is acquired from white money (income already assessed to tax) then such white money investment will be reduced.

Example

Mr. A purchased foreign company shares for ₹ 20 lacs. Out of investment of ₹ 20 lacs, ₹ 4 lacs were already assessed to tax in earlier years. FMV of shares = 55 lacs.
 Value of shares chargeable to tax will be ₹ 51 lacs (₹ 55 lacs - ₹ 4 lacs)

- (ii) In case of immovable property, following amount shall be reduced = FMV of asset x white money investment/total cost of asset.

Example

Mr. A purchased house property in year 2014 for ₹ 60 lakh. Out of investment of ₹ 60 lakh, ₹ 35 lacs were already assessed to tax in earlier years. FMV of house property is ₹ 120 lacs. Amount to be reduced from FMV will be ₹ 70 lacs (₹ 120 lacs x 35/60)
Value of house property chargeable to tax will be ₹ 50 lacs (₹ 120 lacs - ₹ 70 lacs)

Penalties

Failure/Default	Quantum of penalty
Where tax has been computed in relation to undisclosed foreign income and asset	3 times of tax so computed
Failure to furnish ROI relating to foreign income & asset by ROR or Failure to furnish information in ROI or furnishing inaccurate information about foreign asset by ROR	₹ 10 lakh
Default in payment of tax arrears [Assessee in default]	Equal to amount of tax arrears
- Fails to answer questions put by Tax Authority - Fails to sign statement in proceeding - Non Compliance of summon issued to produce books/documents	₹ 50,000 to ₹ 2 lakh

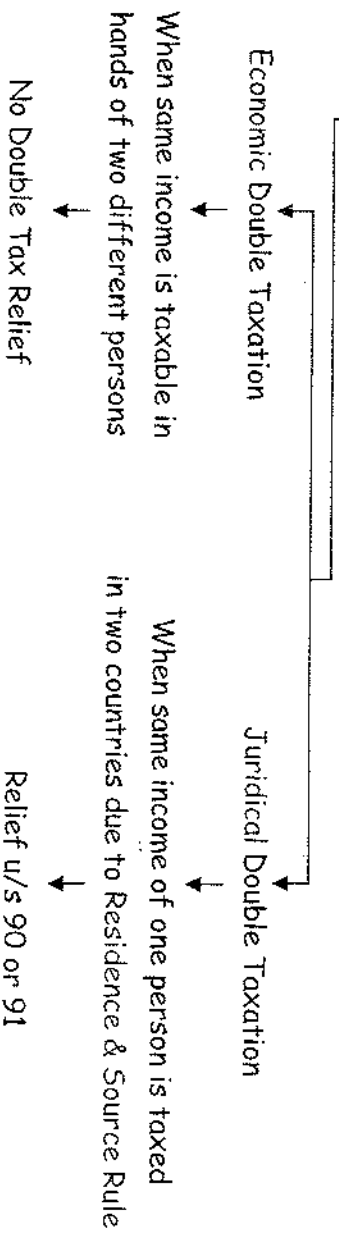
Offences and Prosecution

Nature of Offence	Rigorous Imprisonment
Willful failure to furnish ROI in relation to foreign income and asset before expiry of A.Y. by ROR or Willful failure to furnish information in ROI about foreign asset by ROR	6 Months to 7 years (+) Fine
Willful attempt to evade tax, penalty or interest under this Act	3 to 10 years (+) Fine
Make or deliver false statement in verification	6 Months to 7 years (+) Fine
Induce a person to make/deliver false statement or to evade tax	6 Months to 7 years (+) Fine
Second and subsequent offence	3 to 10 years (+) Fine: ₹ 5 lakh to ₹ 1 crore.

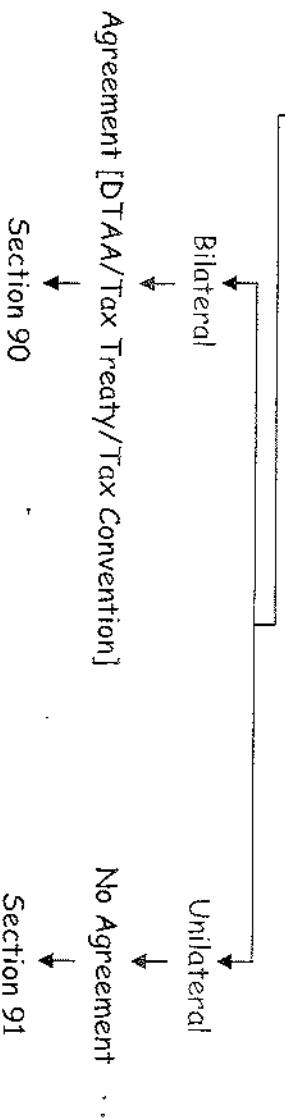
DOUBLE TAXATION RELIEF

Basics of Double Taxation Relief

- Double Taxation: When one income is taxed twice
- Types of Double Taxation



- Types of Relief



Biateral Relief [Section 90]

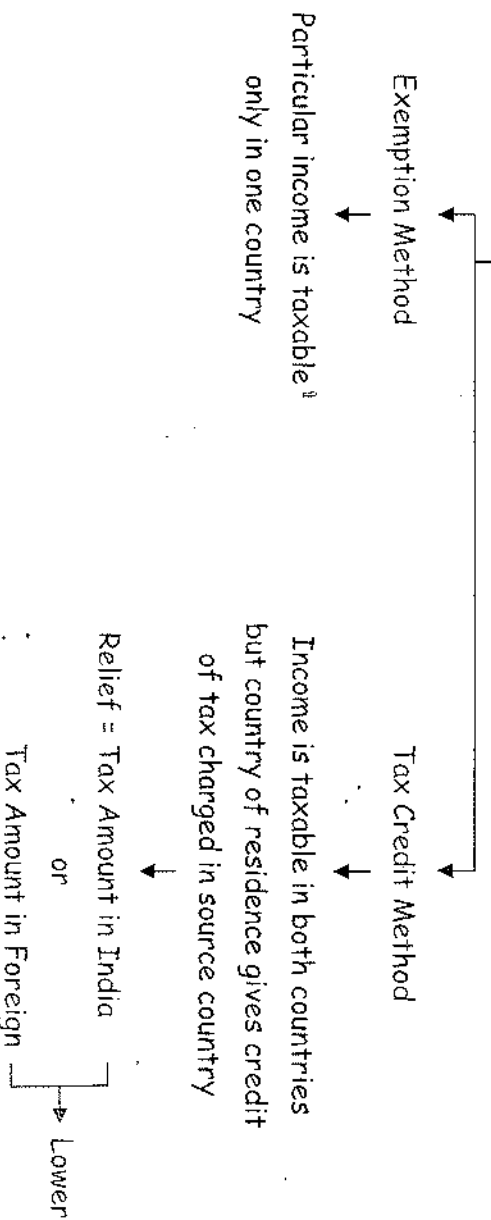
- Double-Taxation Avoidance Agreement

- (i) Central Government may enter into an agreement with Government of Foreign Country for:
- > Avoidance of double taxation
 - > Exchange of information
 - > Recovery of Income Tax
- (ii) If there is DTA, then DTA provisions will override Income Tax Act to the extent they are more beneficial to the Assessee
- i.e. Provisions of DTA
or
Income Tax Act [Except GAAR provisions]
- ```
graph TD; A[Provisions of DTA] --- B[Income Tax Act [Except GAAR provisions]]; A --- C[More Beneficial]; B --- C; C --> D[Apply to Assessee]
```
- (iii) However, in respect of General Tax Rate of Foreign Company, the rate shall not be treated as less favourable. In other words, beneficial provision will not apply for General Tax Rate of Foreign Company.

(iv) Meaning of Terms used in DTAA:

- If given in DTAA : DTAA Meaning
- If given in Income Tax Act but not in DTAA : Income Tax Act Meaning
- If not given in Income Tax Act & DTAA : Notification Meaning
- (v) Non Resident can claim relief under DTAA only after furnishing TRC [Tax Residency Certificate] along with following information:
  - Status
  - Nationality
  - Tax Identification Number (TIN)
  - Period for which Residential Status is applicable
  - Address outside India

• Methods of Bilateral Relief



Unilateral Relief [Section 91]

• Assessee would be granted relief u/s 91, if following all conditions are fulfilled:

- (i) Assessee is Resident in India during P.Y.
- (ii) Income earned/arise outside India.
- (iii) Income subject to tax in foreign country.
- (iv) Assessee has paid tax on such income in foreign country.
- (v) There is No Agreement of relief u/s 90 between India & such foreign country.

• Computation of Relief and Net Tax Payable

| Compute Taxable/Total Income and Tax Liability in India |  |    |
|---------------------------------------------------------|--|----|
| Indian Income                                           |  | XX |
| Foreign Income                                          |  | XX |

## Double Taxation Relief

|                                                                              |    |
|------------------------------------------------------------------------------|----|
| Gross Total Income                                                           | XX |
| (-) Deductions under Chapter VI-A                                            | XX |
| Total Income                                                                 | XX |
| Total Tax in India [Including surcharge (if any) & cess]                     | XX |
| (-) Relief u/s 91 [W.N.] [Given by way of deduction from Indian Tax Payable] | XX |
| Net Tax Payable                                                              | XX |

### Working Note

Relief u/s 91 = Doubly Taxed Income × Indian Rate  
or  
Foreign Rate } → Lower

Doubly Taxed Income = Income which is taxable in both countries

[Net of special deduction and loss of foreign country set-off]

$$\text{Indian Rate} = \frac{\text{Total Tax in India}}{\text{Total Income}} \times 100$$

$$\text{Foreign Rate} = \frac{\text{Foreign Tax}}{\text{Foreign Income}} \times 100$$

### Example 1

Mr Rohit (Indian Resident)

|                               |   |            |
|-------------------------------|---|------------|
| Income earned in India        | = | ₹ 5,00,000 |
| Income earned in Pakistan     | = | ₹ 4,00,000 |
| Tax paid/deducted in Pakistan | = | ₹ 40,000   |

No DTA between India & Pakistan

Calculate Net Tax Payable by Mr. Rohit in India. (Ignore Section 115BAC)

### Solution

| Computation of Total Income & Tax Payable |     |          |
|-------------------------------------------|-----|----------|
| Indian Income                             |     | 5,00,000 |
| Foreign Income                            |     | 4,00,000 |
| Gross Total Income                        |     | 9,00,000 |
| (-) Deduction VI-A                        | Nil |          |
| Total Income                              |     | 9,00,000 |
| Total Tax in India                        |     | 96,200   |
| (-) Relief u/s 91 [W.N.]                  |     | (40,000) |
| Net Tax Payable                           |     | 56,200   |

**Working Note**

$$\text{Relief u/s 91} = \text{Doubly Taxed Income} \times \text{Indian Rate} \times \text{Foreign Rate}$$

or

$$\text{Relief u/s 91} = \text{Doubly Taxed Income} \times \text{Lower Rate}$$

Doubly Tax Income = 4,00,000

$$\text{Indian Rate} = \frac{96,200}{9,00,000} \times 100 = 10.689\%$$

$$\text{Foreign Rate} = \frac{40,000}{4,00,000} \times 100 = 10\%$$

Relief = 4,00,000 × 10% = 40,000

**Example 2**

Suppose in Example 1, Income from Pakistan is royalty income from literary books.

**Solution**

| Computation of Total Income & Tax Payable |            |
|-------------------------------------------|------------|
| Indian Income                             | 5,00,000   |
| Foreign Income                            | 4,00,000   |
| Gross Total Income                        | 9,00,000   |
| (-) Deduction u/s 80QQB                   | (3,00,000) |
| Total Income                              | 6,00,000   |
| Total Tax in India                        | 33,800     |
| (-) Relief u/s 91 [W.N.]                  | (5,633)    |
| Net Tax Payable                           | 28,167     |

**Working Note**

Doubly Tax Income = 1,00,000 [4,00,000 - 3,00,000]

$$\text{Indian Rate} = \frac{33,800}{6,00,000} \times 100 = 5.633\%$$

$$\text{Foreign Rate} = \frac{40,000}{4,00,000} \times 100 = 10\%$$

Relief = 1,00,000 × 5.633% = 5,633

**Example 3**

Suppose in Example 1, Rohit paid LIC premium of ₹ 1,00,000.

**Solution**

| Computation of Total Income & Tax Payable |          |
|-------------------------------------------|----------|
| Indian Income                             | 5,00,000 |

## Double Taxation Relief

|                          |            |
|--------------------------|------------|
| Foreign Income           | 4,00,000   |
| Gross Total Income       | 9,00,000   |
| (-) Deduction u/s 80C    | (1,00,000) |
| Total Income             | 8,00,000   |
| Total Tax in India       | 75,400     |
| (-) Relief u/s 91 [W.N.] | (37,700)   |
| Net Tax Payable          | 37,700     |

### Working Note

Doubly Tax Income = 4,00,000

$$\text{Indian Rate} = \frac{75,400}{8,00,000} \times 100 = 9.425\%$$

$$\text{Foreign Rate} = \frac{40,000}{4,00,000} \times 10\% = 10\% \quad \left. \begin{array}{l} \text{Indian Rate} \\ \text{Foreign Rate} \end{array} \right\} \rightarrow \text{Lower} = 9.425\%$$

$$\text{Relief} = 4,00,000 \times 9.425\% = 37,700$$

### Other Special Points

(i) If Income is from more than one Foreign Country

- Calculate relief separately for each foreign country income, i.e., Calculate foreign rate and doubly taxed income separately.
- Calculate total relief by adding all.

#### Example 4

Mr. Raj [Indian Resident]

Income earned in India = ₹ 5,00,000

Income earned in US = ₹ 6,00,000, Tax paid = ₹ 1,20,000

Income earned in UK = ₹ 3,00,000, Tax paid = ₹ 30,000

No DTA between India & US, India & UK

Calculate Net Tax Payable. (Ignore Section 115BAC)

#### Solution

| Computation of Total Income & Tax Payable |           |
|-------------------------------------------|-----------|
| Indian Income                             | 5,00,000  |
| US Income                                 | 6,00,000  |
| UK Income                                 | 3,00,000  |
| Gross Total Income/Total Income           | 14,00,000 |

## Double Taxation Relief

|                          |          |
|--------------------------|----------|
| Total Tax in India       | 2,41,800 |
| (-) Relief u/s 91 [W.N.] | 1,33,626 |
| Net Tax Payable          | 1,08,174 |

### Working Note

|                                                       | US                                                     | UK                                               |
|-------------------------------------------------------|--------------------------------------------------------|--------------------------------------------------|
| Doubly Taxed Income                                   | 6,00,000                                               | 3,00,000                                         |
| Foreign Rate                                          | $\left(\frac{1,20,000}{6,00,000}\right)$               | $\left(\frac{30,000}{3,00,000}\right)$           |
| Indian Rate $\left(\frac{2,41,800}{14,00,000}\right)$ | 20%                                                    | 10%                                              |
|                                                       | 17.271% $\downarrow$<br>Lower                          | 17.271% $\downarrow$<br>Lower                    |
| Relief u/s 91                                         | $6,00,000 \times 17.271\%$<br>$\downarrow$<br>1,03,626 | $3,00,000 \times 10\%$<br>$\downarrow$<br>30,000 |
|                                                       | 1,33,626                                               |                                                  |

### (ii) SLAB Rate to be followed for calculation of Tax in India of Individual:

If he follows default tax regime If he opt out/shift out of the default tax regime  
 $\downarrow$   $\downarrow$

Section 115BAC Slab ☒

Finance Act Slab

(iii) Important deductions under Chapter VI-A for Double Tax Relief Questions (in case of Finance Act Slab): 80C, 80CCC, 80D, 80DD, 80QQB, 80RRB, 80TTA, 80TTB

(iv) Check Age of Assessee at the time of Indian Tax Calculation (in case of Finance Act Slab).

(v) Single Foreign Rate for each foreign country. If more than one foreign rate is given for one foreign country, then we have to convert it in single foreign rate.

(vi) Generally, calculation of Indian Rate and Foreign Rate will be upto 3 Decimals.

(vii) Calculation will be done in Rupees. If income given in foreign currency, then convert it in Rupees:

If one conversion rate is given

If more than one conversion rate is given

Convert by using that rate

Convert by using Rule 115 [Annexure]

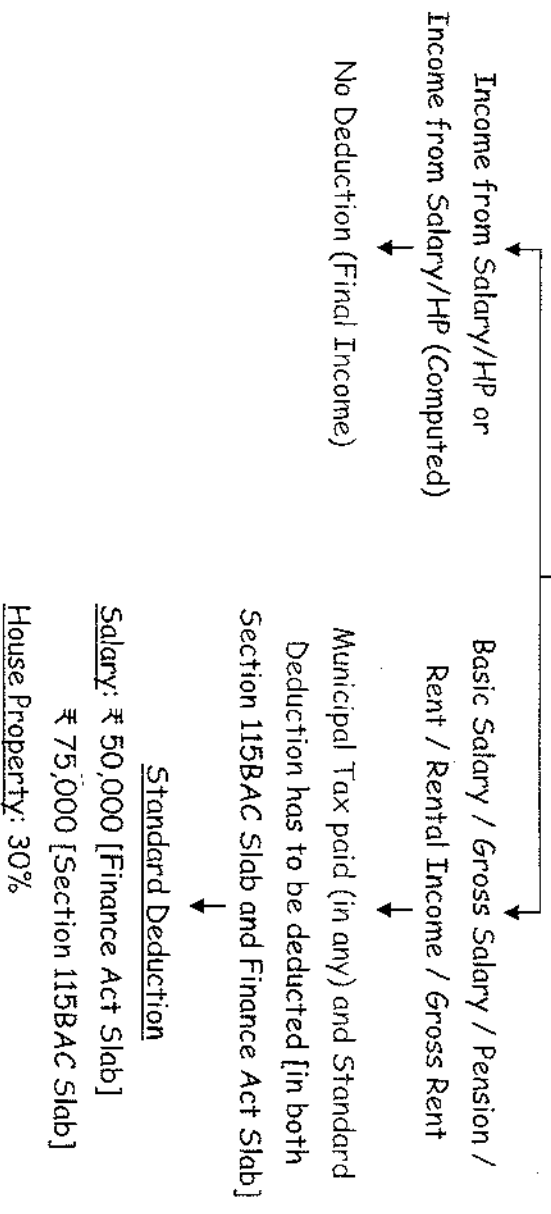
(viii) Gross up of Income  $\rightarrow$  If 'Income' word / 'Gross' word given = No Grossing

$\rightarrow$  If only 'Received' word given = Grossing will be done

[Example - Dividend Received from Indian Company etc.]

(ix) Foreign tax laws are irrelevant while calculating income and tax in India.

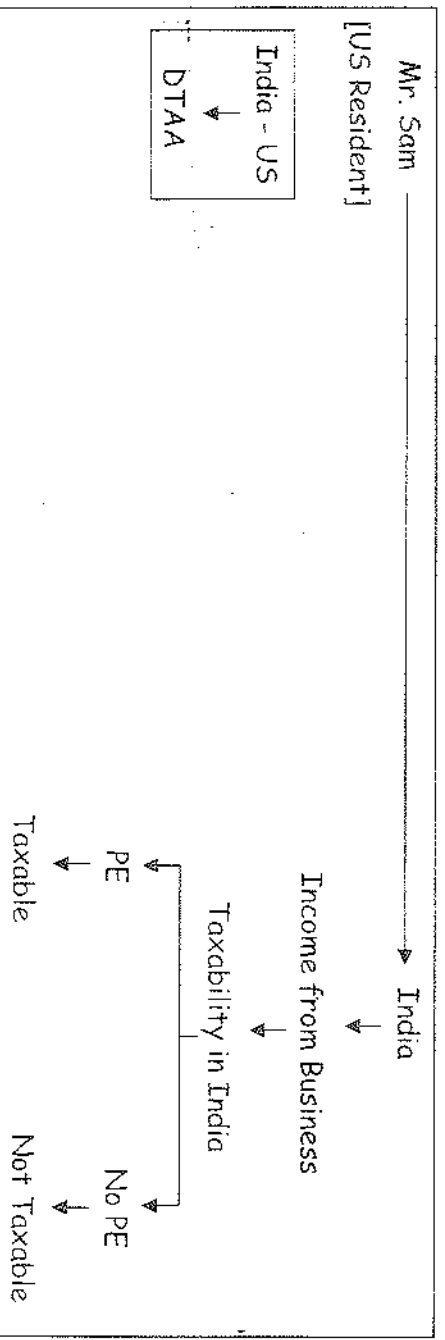
(x) Special Point in case of Salary and House Property Income:



**Permanent Establishment (PE)**

- PE means a fixed place of business through which business is wholly or partly carried on.
- PE includes:
  - Branch
  - Office
  - Factory
  - Workshop
  - Sales Outlet
  - Place of Extraction of Natural Resources
- As per DTAA, Business Income of person will be taxable is Source Country only if such person has PE in Source Country.

**Example**

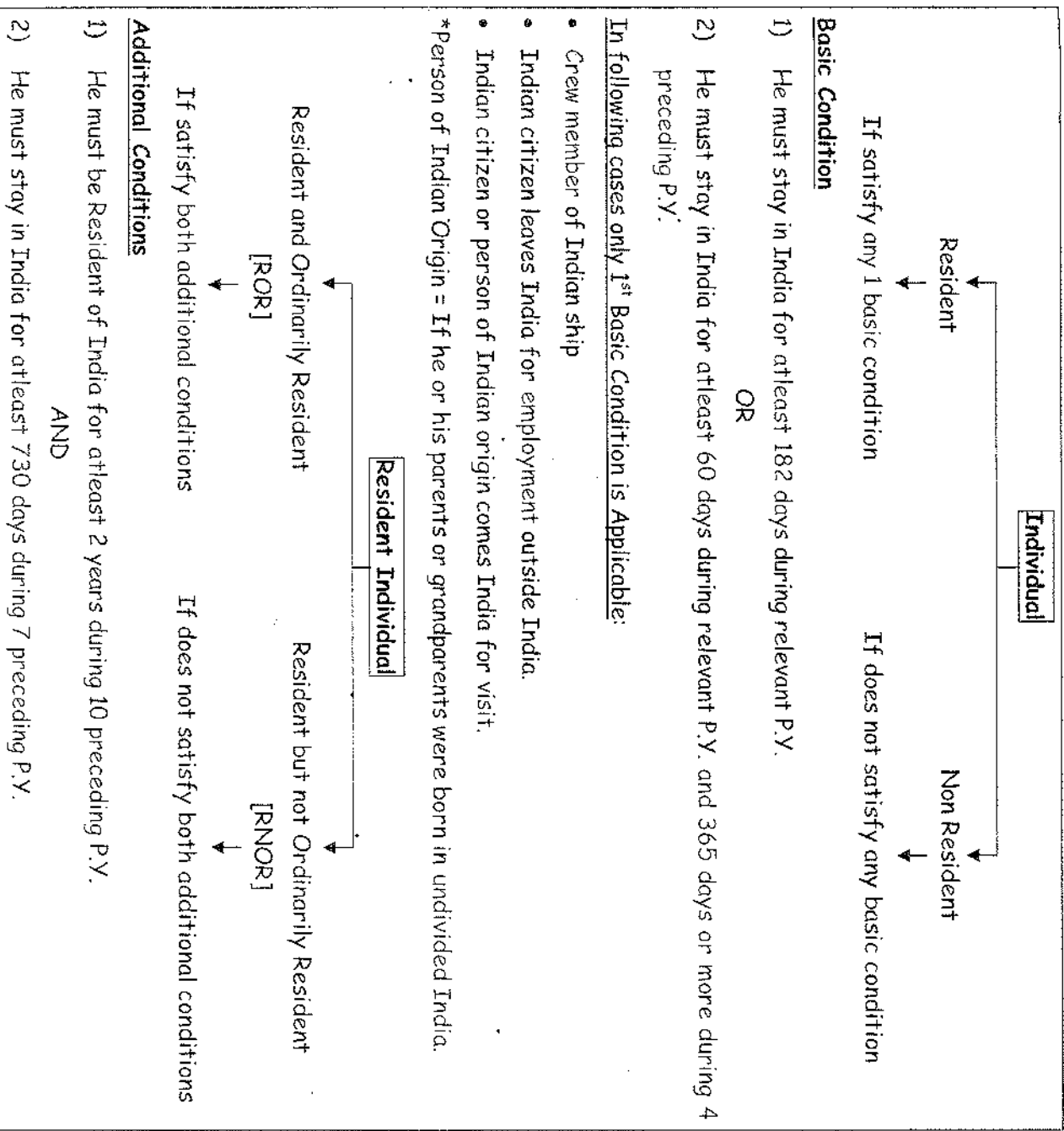


# NON RESIDENT TAXATION



**Residential Status [Section 6]**

**Residential Status of Individual**



## Special Provision

- In case of Indian citizen or person of Indian origin who comes India for visit having income from Indian sources [other than income earned & received outside India] exceeds ₹ 15 lacs in P.Y. shall also become [RNOR] if:

**CA ATUL AGARWAL (AIR 1)**

## Non Resident Taxation

He stays in India for atleast 120 days during relevant P.Y. and 365 days or more during 4 preceding P.Y.

- In case of Indian citizen having income from Indian sources exceeds ₹ 15 lacs in P.Y. shall be treated as **Deemed RNOR** if:

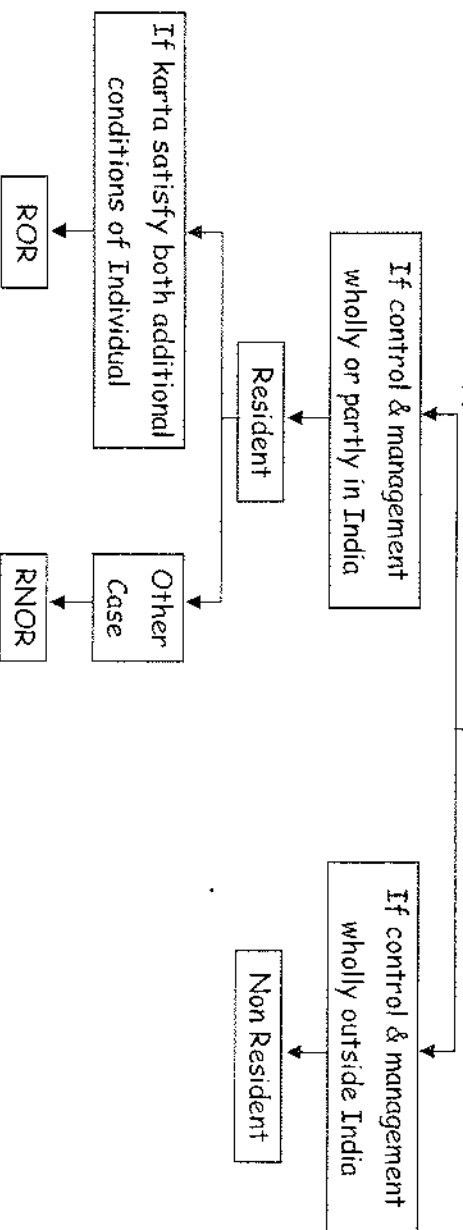
He is not liable to pay tax in other country.

### Other Points

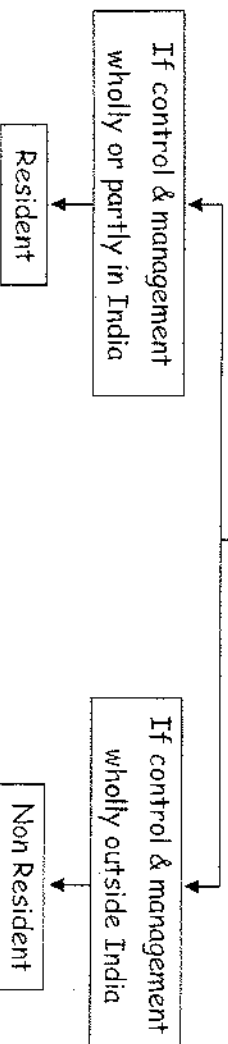
- Residential status is to be determined on year to year basis.
- Stay in India includes stay in Territorial Waters of India [TWI] [upto 12 nautical miles from baseline].
- For considering stay in India, both date of departure and date of arrival are considered to be in India.
- In case of Residential Status of Crew Member of Indian Ship, following period shall be taken outside India:

|                                                                                         |                                                                               |
|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|
| From date entered into continuous discharge certificate at the time of joining the ship | To date entered into continuous discharge certificate at the time of sign off |
|-----------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|

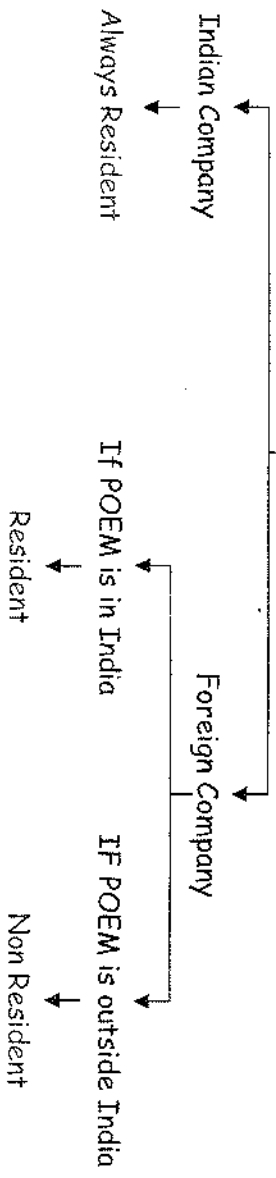
### Residential Status of HUF



### Residential Status of Firm / AOP / BOI / Local Authority / Artificial Juridical Person



### Residential Status of Company



### Determination of POEM

#### Place of Effective Management [POEM]

POEM means a place where key management & commercial decisions which are necessary to conduct business are made.

#### Active Business Outside India [ABOI] Test

A company shall be said to be engaged in active business outside India, if following all conditions are fulfilled:

- 1) Passive income is not more than 50% of its total income.
- 2) Less than 50% of total assets are situated in India.
- 3) Less than 50% of total employees are situated in India or resident in India.
- 4) Payroll expenses incurred on Indian employees is less than 50% of total payroll expenses.

#### Determination of POEM

If ABOI Test Pass [All Conditions Fulfilled]

Other Case

POEM outside India, if majority of board meeting are held outside India

- Identify person who makes key management & commercial decisions.

[However, if decisions are not taken by BOD but by holding company or any person resident in India, POEM shall be in India]

- Determine place where these decisions are made.

Such place will be POEM

#### Meaning of Certain Terms

#### (i) Total Income

- As per tax law of country of incorporation.
- As per books of accounts [If income as per tax law not available]

#### (ii) Passive Income

Aggregate of:

- Income from transactions where BOTH purchase & sale is from/to Associate Enterprise.

## Non Resident Taxation

- Income by way of Royalty, Interest, Dividend, Capital Gains, Investment and Rental Income.

[Note: Interest is not passive income in case of banking company and public financial institution]

### (iii) Value of Assets

| In case of depreciable asset | Average value as per tax law at beginning and end of year |
|------------------------------|-----------------------------------------------------------|
| Any other asset              | Closing value as per books                                |

### (iv) Number of Employees

Average number of employees at beginning & end of year.  
Employees also include person who is not directly employed by company but perform task similar to employees [contract employees].

### (v) Payroll Expenses

All emoluments payable to employees.

### Other Points

- POEM guidelines shall not apply to a company having turnover of ₹ 50 crores or less in a F.Y.
- Each subsidiary of company has to be examined separately.

## Scope of Total Income [Section 5]

| Scope & Taxability                                                                                                                   |                |     |      |    |
|--------------------------------------------------------------------------------------------------------------------------------------|----------------|-----|------|----|
|                                                                                                                                      |                | ROR | RNOR | NR |
| Income earned/deemed to be earned in India [Received anywhere]                                                                       |                | T   | T    | T  |
| Income received/deemed to be received in India [Earned anywhere]<br>[Received means first receive in India [not remittance/transfer] | Indian Income  | T   | T    | T  |
| Income earned & received outside India but business & profession controlled or setup in India                                        | Foreign Income | T   | T    | X  |
| Income earned, received & controlled outside India                                                                                   |                | T   | X    | X  |

**Note:** Past foreign income brought to India is not taxable.

## Income Deemed to be Earned [Accrue or Arise] in India [Section 9]

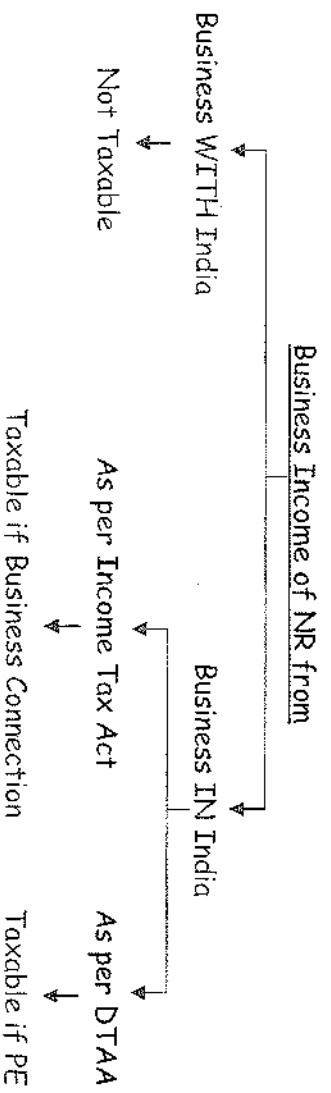
### Section 9(1)(i)

Any income accrue/arise outside India to any assessee through or from:

- Any business connection in India.
- Any property, asset or source of income in India.

- (3) Transfer of capital asset situated in India. shall be deemed to be earned/arise in India.

(1) Business Connection in India



| Business Connection                            |                                                                                                                                                                                                  |
|------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Non Resident                                   |                                                                                                                                                                                                  |
| ↓                                              | Business Activity [Includes through PE]                                                                                                                                                          |
| Appoints                                       | ↓                                                                                                                                                                                                |
| Person in India                                | <ul style="list-style-type: none"> <li>▪ Conclude contract in India, or</li> <li>▪ Maintain stock in India for delivery, or</li> <li>▪ Secures order in India mainly or wholly for NR</li> </ul> |
| [Acting on behalf of NR]                       |                                                                                                                                                                                                  |
| Then such NR has business connection in India. |                                                                                                                                                                                                  |

**Note:**

- (i) Business connection shall not be established if NR carries business through broker/general commission agent or any independent agent (who does not work mainly or wholly for NR).
- (ii) Significant economic presence of NR in India shall also constitute business connection. Significant economic presence means:
- Any transaction (including download of data or software) by NR with any person (including independent agent) in India, if aggregate amount of such transaction in P.Y. exceeds ₹ 2 crores.
  - Engaging in interaction with users in India if number of users are atleast 3 lacs.
- (iii) In following cases income shall not be treated as deemed to be earned in India:
- Purchase of goods in India for export.
  - Collection of news in India for transmission outside India.
  - Shooting of films in India by NR non citizen.
  - Activities relating to display of uncut & unsorted diamonds in SNZ by foreign company.

(2) Income from any property, asset or source of income in India

Example: Rent outside India from any building located in India.

(3) Income through transfer of capital asset situated in India

Example: Mr. Sam (NR) sold his land situated in India to Mr. Ricky (NR) outside India. In that case capital gain arising to Mr. Sam shall be deemed to be earned in India.

Amendment due to Vodafone Case

Share of foreign company shall be deemed to be situated in India, if foreign company share derive substantially its value from asset located in India.

Note:

(i) Substantially meaning

If on "Specified Date", Value of Indian Asset:

➤ Exceeds ₹ 10 crores  
and

➤ Represent atleast 50% of total value of all assets of foreign company.

(ii) Value of Assets

FMV without reduction of liabilities

(iii) Specified Date

| Normal Case                                                                                                    | = | Last Balance Sheet<br>Date preceding transfer |
|----------------------------------------------------------------------------------------------------------------|---|-----------------------------------------------|
| [If book value of asset on transfer date exceeds by atleast 15% from book value as on last Balance Sheet date] | = | Transfer Date                                 |

(iv) Taxable Income

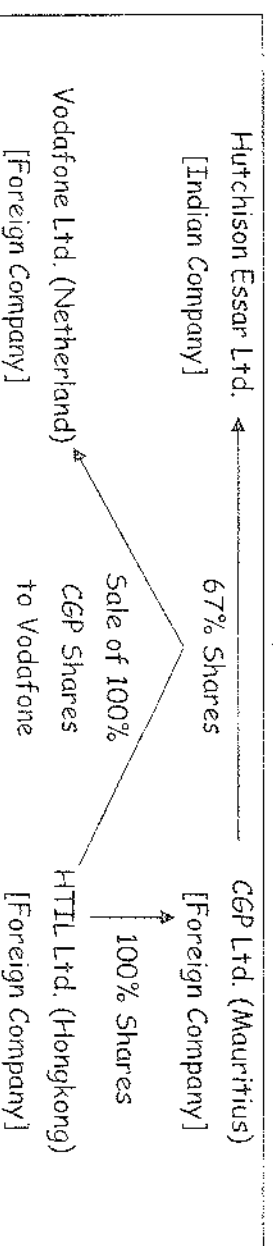
Income taxable only proportionate to Indian asset

$$\text{Taxable Capital Gain} = \text{Total Capital Gain} \times \frac{\text{FMV of Indian Asset}}{\text{FMV of Total Asset}}$$

(v) Non Applicability

- Above provision shall not apply if transferor holds upto 5% share capital in such foreign company.
- Dividend declared and paid by such foreign company outside India shall not be deemed to be earned in India.

Example



Share of CGP shall be deemed to be situated in India, if CGP shares derive substantially its value from asset located in India [i.e. Hutchison Essar]

Suppose CGP Ltd. Assets FMV on specified date is:

|                                              | FMV                                       | Conditions                                                    |
|----------------------------------------------|-------------------------------------------|---------------------------------------------------------------|
| Investment in Hutchison Essar [Indian Asset] | 400 cr.                                   | ✓ More than 10 cr.                                            |
| Other Assets                                 | $\frac{100 \text{ cr.}}{500 \text{ cr.}}$ | ✓ $\frac{400 \text{ cr.}}{500 \text{ cr.}} \times 100 = 80\%$ |
|                                              | 500 cr.                                   |                                                               |

Suppose HTTL sold shares of CGP to Vodafone for ₹ 1100 crores. [Purchase Price = ₹ 300 cr.]

Capital Gain =  $1100 - 300 = ₹ 800 \text{ cr.}$

Taxable Capital Gain in India =  $800 \text{ cr.} \times \frac{400 \text{ cr.}}{500 \text{ cr.}} = ₹ 640 \text{ cr.}$

Suppose HTTL holds only 5% share capital in CGP = Provision will not apply

#### Section 9(1)(ii)

Salary Income from services rendered in India shall be deemed to be earned in India.

#### Section 9(1)(iii)

Salary payable by Indian Government to Indian Citizen for services rendered outside India shall be deemed to be earned in India.

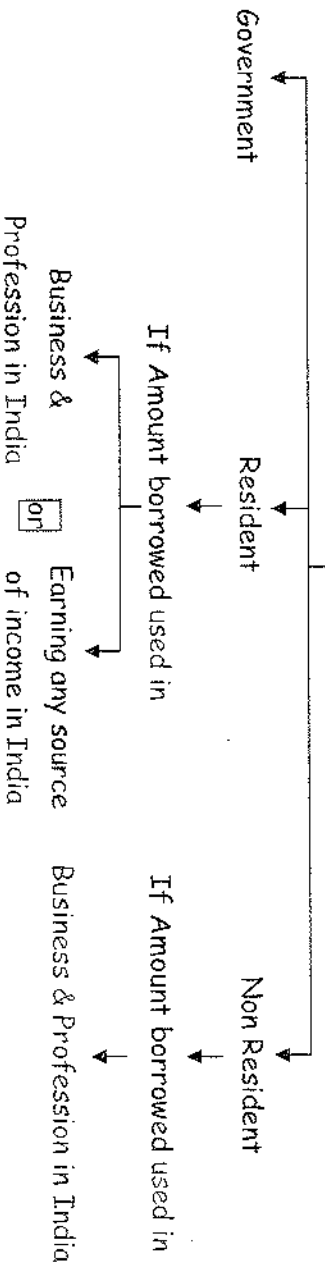
**Note:** Allowances & Perquisites paid outside India is Exempt u/s 10(7).

#### Section 9(1)(iv)

Dividend paid by Indian company outside India shall be deemed to be earned in India.

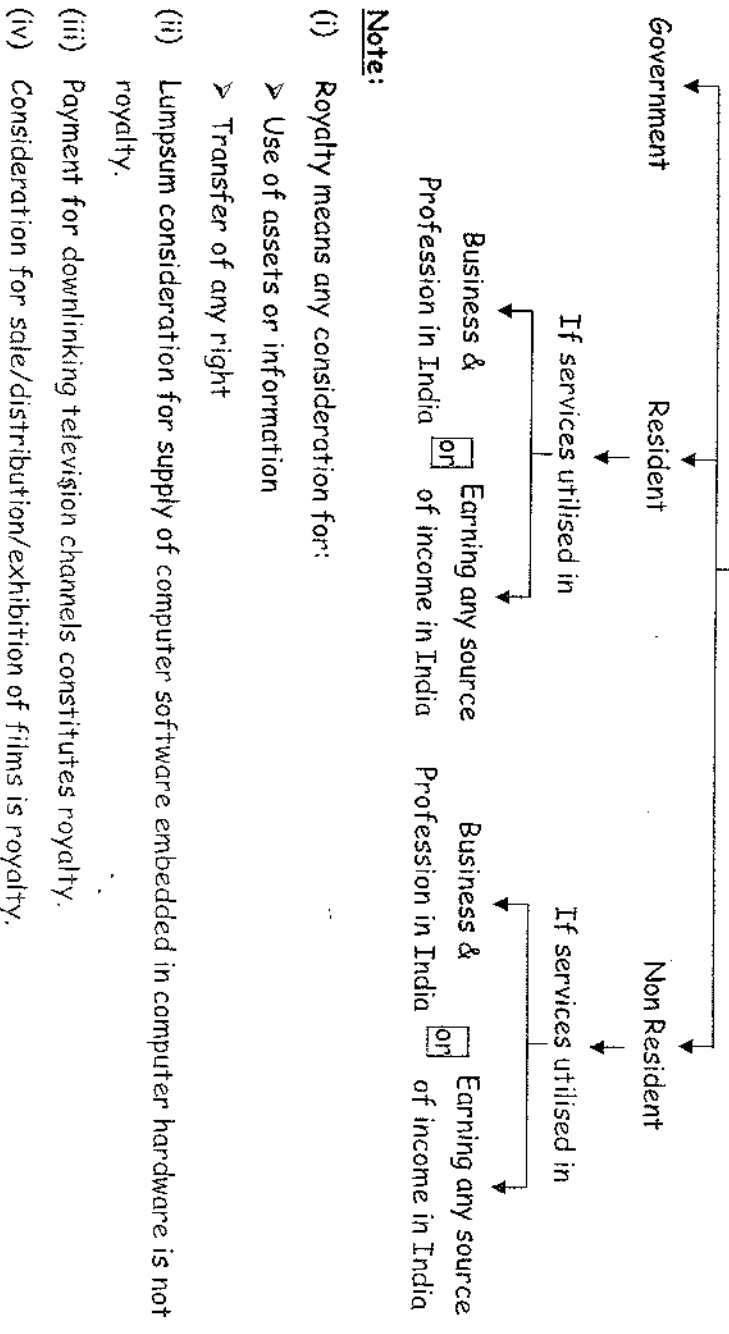
#### Section 9(1)(v)

Interest Income shall be deemed to be earned in India if it is payable by:



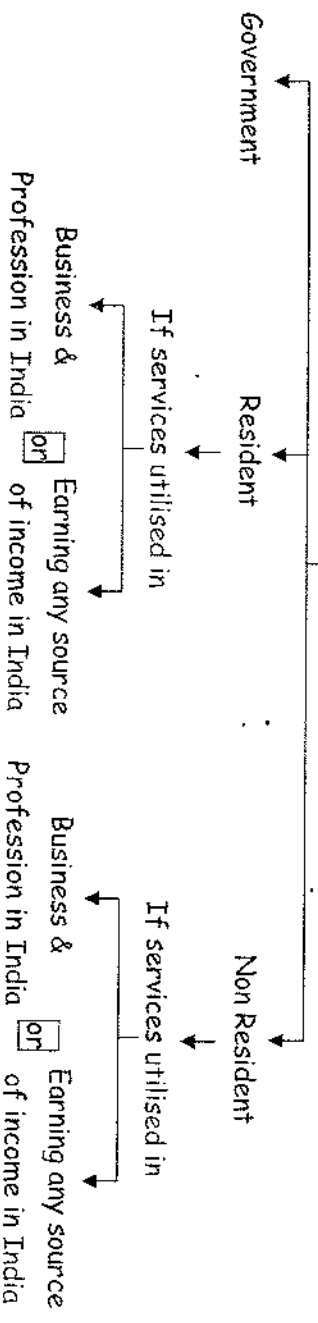
**Section 9(1)(vi)**

Royalty Income shall be deemed to be earned in India if it is payable by:



**Section 9(1)(vii)**

Fees for Technical Service [FTS] shall be deemed to be earned in India if it is payable by:



**Note:**

- (i) FTS means rendering of any managerial, technical and consultancy service.
- (ii) Payment towards drawings & designs are in the nature of fees for technical service.

**Section 9(1)(viii)**

Gift in Money paid by Resident to RNOR/NR/FC shall be deemed to be earned in India if aggregate amount exceed ₹ 50,000.

**Note:** Movable and Immovable property not covered.

**Exempt Income of Non Resident**

| Exempt Income                                                                     | Eligible Person                 | Conditions                                                                                                                                                                                                          |
|-----------------------------------------------------------------------------------|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Interest on Non Resident External [NRE] A/c from any Bank in India                | Individual                      | If he is: <ul style="list-style-type: none"> <li>▪ Non Resident as per FEMA, or</li> <li>▪ Permitted by RBI to maintain such A/c</li> </ul>                                                                         |
| Remuneration/Salary received by officials of Embassies etc. of Foreign Country.   | Individual [not Indian citizen] | Remuneration received by our corresponding government officials resident in such foreign country shall be Exempt.                                                                                                   |
| Salary received by employee of Foreign Enterprise for services rendered in India. | Individual [not Indian citizen] | <ul style="list-style-type: none"> <li>▪ Foreign Enterprise is not engaged in any Business &amp; Profession in India, and</li> <li>▪ Aggregate stay of employee in India does not exceed 90 days in P.Y.</li> </ul> |
| Salary received by Individual for services rendered in Foreign Ship               | Individual [not Indian citizen] | <ul style="list-style-type: none"> <li>▪ Aggregate stay of Individual in India does not exceed 90 days.</li> </ul>                                                                                                  |
| Interest payable by unit located in IFSC for money borrowed by it                 | Any Non Resident                | -                                                                                                                                                                                                                   |

**Presumptive Taxation for Non Resident**

Calculation of PGBP Income of Non Resident on the basis of Certain % of Gross Receipts.

**Regular Shipping Business other than Cruise Shipping [Section 44B] - Compulsory**

**Presumptive Income**

7.5% of Following:

- Amount charged for carriage of passengers, livestock, mail or goods from any port in India.
- Amount received in India for carriage of passengers, livestock, mail or goods from any port outside India.

[Above includes demurrage or handling charges]

**Other Points**

- Section 28 to 43A shall not apply.
- No deduction of any expenditure.

**Occasional Shipping Business [Section 172] - Compulsory**

**Presumptive Income**

7.5% of:

Amount charged for carriage of passengers, livestock, mail or goods from any port in India [includes demurrage or handling charges]

**Other Points**

- Such income is taxable at the rate applicable to foreign company.
- No deduction of any expenditure.
- Master of ship shall furnish ROI along with tax before departure of ship.
- ROI may be filed within 30 days from departure of ship if:
  - AO satisfies that it is not possible to file ROI before departure of ship.
  - Master of ship has made satisfactory arrangement for payment of tax & filing of ROI.
- AO shall pass assessment order within 9 months from end of F.Y. in which ROI was filed.

**Aircraft Business [Section 44BBA] - Compulsory**

**Presumptive Income**

5% of Following:

- Amount charged for carriage of passengers, livestock, mail or goods from any port in India.
- Amount received in India for carriage of passengers, livestock, mail or goods from any port outside India.

**Other Points**

- Section 28 to 43A shall not apply.
- No deduction of any expenditure.

**Cruise Shipping Business in India [Section 44BBC] - Compulsory**

**Presumptive Income**

20% of amount charged/received for carriage of passengers by assessee or any person on his behalf.

**Other Points**

- Section 28 to 43A shall not apply.
- No deduction of any expenditure.
- Lease rent of cruise ships received by foreign company from above cruise shipping business company is exempt, if such foreign company and cruise shipping business company are subsidiaries of same holding company.

**Business of providing services relating to supply of plant & machinery on hire used in prospecting, extraction or production of mineral oils [Section 44BB] - Optional**

**Presumptive Income**

10% of Gross Receipts [Receipts earned in India or received in India]

**Other Points**

- No deduction of any expenditure and no set-off of unabsorbed depreciation or b/f loss.
- If assessee wants to claim lower profit, then maintain books of accounts and audit.

## Non Resident Taxation

**Foreign Company engaged in business of civil construction or erection of plant & machinery relating to turnkey power projects [Section 44BBB] - Optional**

### Presumptive Income

10% of Gross Receipts [Receipts earned in India or received in India]

### Other Points

- Applicable only to Foreign Company.
- No deduction of any expenditure and no set-off of unabsorbed depreciation or b/f loss.
- If assessee wants to claim lower profit, then maintain books of accounts and audit.

### Deduction in respect of Head Office Expenses of Non Resident [Section 44C]

Business Income of PE of Non Resident in India shall be computed as per Section 28 to 44D.

### Head Office Expenses

Expenses incurred by assessee [head office] outside India attributable to business & profession [PE] in India.

### Deduction in respect of HO Expenses to PE in India

Actual head office expenses allocated to PE in India

or

5% of Adjusted Total Income [ATI] of PE in India

→ Lower

### Adjusted Total Income [ATI] of PE in India

|                                        |    |
|----------------------------------------|----|
| Total Income of PE in India            | XX |
| Add back                               |    |
| Allowance under this section [44C]     |    |
| Unabsorbed Depreciation                |    |
| Capital Expenditure on Family Planning |    |
| B/f Losses Set-off                     |    |
| Deduction under chapter VI-A           |    |
| ATI                                    | XX |

**Note:** If ATI is a loss, then last 3 years average ATI shall be taken.

### Capital Gain Taxation in case of Non Resident

#### (1) Taxability of Capital Gain in hands of NR

Capital Gain shall be taxable in hands of NR if:

- There is Capital Asset situated in India

and

> Transfer of such capital asset during P.Y.

(2) Transactions not regarded as Transfer in case of NR

- (i) Transfer of shares held in an Indian company by amalgamating foreign company to amalgamated foreign company.
- (ii) Transfer of shares held in an Indian company by demerged foreign company to resulting foreign company.
- (iii) Transfer of Bonds, GDR or Rupee denominated bonds of an Indian company by a NR to another NR outside India.

(3) Special Provision for Computation of Capital Gain [First Proviso to Section 48]

- Applicable on Transfer of shares or debentures of an Indian Company by NR.
- Applicable if NR invest foreign exchange to acquire such capital asset [Only if TTBR\* and TTSR\* is given in question]
- \* TTBR/TTSR = Telegraphic Transfer Buying/Selling Rate of State Bank of India.
- Calculation of Capital Gain in Foreign Currency

|                                                                                                |      |
|------------------------------------------------------------------------------------------------|------|
| Sale Consideration in Foreign Currency<br>[By Avg. of TTBR & TTSR on Date of Transfer]         | XX   |
| (-) Transfer Expense in Foreign Currency<br>[By Avg. of TTBR & TTSR on Date of Transfer]       | (XX) |
| Net Sale Consideration                                                                         | XX   |
| (-) Cost of Acquisition in Foreign Currency<br>[By Avg. of TTBR & TTSR on Date of Acquisition] | (XX) |
| STCG/LTCG in Foreign Currency                                                                  | XX   |
| Now, reconvert STCG/LTCG into Indian Rupees by TTBR on date of Transfer                        |      |

- This provision shall not apply if section 112A is applicable [LTCG on listed equity shares].

Special Provision for Non Resident Indian [NRI] [Chapter XXI-A, 115C to 115J]

(1) Applicability

- This provision is Optional.
- Applicable to NRI who derives Investment Income and LTCG from Forex Asset

(2) Meaning of certain terms

NRI

Indian Citizen or Person of Indian Origin Plus Non Resident

Forex Asset

Following assets purchased in convertible foreign currency:

- Shares of Indian Company
- Debenture/Deposits of Indian Public Company
- Central Government Security

Investment Income

Interest/Dividend Income from forex asset

LTCG

Capital Gain from transfer of long term forex asset

(3) Tax Rate on NRI

| Income            | Tax Rate                                     |
|-------------------|----------------------------------------------|
| Investment Income | 20%<br>[Gross Basis without Deduction]       |
| LTCG              | 12.5%<br>[10%, if transfer before 23.7.2024] |
| Other Income      | Normal Provisions                            |

(4) Exemption on LTCG

If Sale Consideration invested in other forex asset within 6 months from date of transfer,

$$\text{Exemption} = \text{LTCG} \times \frac{\text{Investment in New Forex Asset}}{\text{Net Sale Consideration}}$$

However, if new forex asset is transferred within 3 years of acquisition, then exemption allowed earlier shall be taxable as LTCG.

(5) Exemption from filing of ROI

ROI is not required to be filed if:

- NRI Income consist of only Investment Income and LTCG from Forex Asset.
- and
- TDS has been deducted on such Income.

(6) Continuance of benefit if NRI becomes Resident

He may furnish declaration in writing for taking benefit of Chapter XII-A even after he becomes resident.

**Special Rates of Tax for Non Resident or Foreign Company****Tax Rate on Interest, Dividend, Royalty, FTS Income of NR/FC [Section 115A]****Tax Rate on Interest and Dividend Income**

| Income                                                                                                                                                                                                          | Tax Rate                 | TDS            |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|----------------|
| Interest from Infrastructure Debt Fund                                                                                                                                                                          | 5%                       | TDS u/s 194LB  |
| Interest distributed by Business Trust to NR unitholders                                                                                                                                                        | 5%                       | TDS u/s 194LBA |
| Interest from Indian Company or Business Trust on money borrowed by them in foreign currency under loan agreement made upto 30.6.23                                                                             | 5%                       | TDS u/s 194LC  |
| Interest from Indian Company or Business Trust on money borrowed by them by issue of long-term bond or rupee denominated bond which is listed on recognised stock exchange located in IFSC on or after 1.7.2023 | 9%<br>[4%, upto 30.6.23] | TDS u/s 194LC  |
| Interest received by FII or QFI on: <ul style="list-style-type: none"> <li>Rupee Denominated Bonds</li> <li>Government Securities</li> <li>Municipal Debt Securities</li> </ul>                                 | 5%                       | TDS u/s 194LD  |
| [Investment made in above assets by FII/QFI upto 30.6.23]                                                                                                                                                       |                          |                |
| Interest from Government or Indian concern on money borrowed by them in foreign currency                                                                                                                        | 20%                      | TDS u/s 195    |
| Dividend Income from Indian Company                                                                                                                                                                             | 20%                      |                |
| Dividend Income from unit located in IFSC                                                                                                                                                                       | 10%                      | TDS u/s 195    |
| Income from units of UTI/Mutual Funds                                                                                                                                                                           | 20%                      | TDS u/s 195    |

**Tax Rate on Royalty and FTS Income [As per Agreement approved/entered by Government]**

| IF PE in India                                                                                                                                                                                              | If No PE in India               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
| ↓                                                                                                                                                                                                           | ↓                               |
| Taxable u/s 44DA                                                                                                                                                                                            | Taxable u/s 115A                |
| ↓                                                                                                                                                                                                           | ↓                               |
| Normal Provisions and Rate                                                                                                                                                                                  | Taxable @ 20%                   |
|                                                                                                                                                                                                             | [Gross Basis without Deduction] |
| <ul style="list-style-type: none"> <li>Expenses incurred by PE wholly &amp; exclusively for earning such income allowed as deduction</li> <li>Required to maintain books of accounts &amp; audit</li> </ul> |                                 |

## Non Resident Taxation

**Income from Units of UTI / Mutual Funds to Overseas Financial Organisation [Offshore Funds] [Section 115AB]**

Income from units of UTI/Mutual Funds = Taxable @ 10%

LTCG on units of UTI/Mutual Funds = Taxable @ 12.5%

**Income from Bonds or GDR of Indian Company Purchased in Foreign Currency by NR [Section 115AC]**

Interest/Dividend = Taxable @ 10%

LTCG on Transfer = Taxable @ 12.5%

**Income of Foreign Institutional Investor (FII) [Section 115AD]**

### Tax Rate on Income of FII

| Income                                                                                                                                              | Tax Rate                                        |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------|
| Interest on Rupee Denominated Bonds, Govt. Securities, Municipal Debt Securities u/s 115A [Investment made in above assets by FII/QFI upto 30.6.23] | 5%                                              |
| Interest on Securities [other than 115A]                                                                                                            | 20%                                             |
| Dividend                                                                                                                                            | 20%                                             |
| STCG u/s 111A                                                                                                                                       | 20%                                             |
| STCG on other Securities                                                                                                                            | 30%                                             |
| LTCG u/s 112A                                                                                                                                       | Upto ₹ 1.25 lacs Exempt, Excess Taxable @ 12.5% |
| LTCG on other Securities                                                                                                                            | 10%                                             |
| Other Income                                                                                                                                        | Normal Provisions                               |

**Casual Income [Section 115BB]**

Taxable @ 30% to both Resident & Non Resident

TDS u/s 194B/194BB

**Tax Rate on Certain Income of Non Resident [Non Citizen] Sportsman, Sports Association and Entertainer [Section 115BBA]**

(1) Nature of Income

## Non Resident Taxation

|                                                       |                                                                                                                                                                                                                      |
|-------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sportsmen:<br>[Match Referee &<br>Umpire not covered] | <ul style="list-style-type: none"> <li>Income from participation in any sports in India [other than 115BB]</li> <li>Advertisement in India</li> <li>Contribution of Articles in Newspaper, Magazines etc.</li> </ul> |
| Sports Association:                                   | Amount guaranteed to be paid to such Association                                                                                                                                                                     |
| Entertainer:                                          | Income from performance in India                                                                                                                                                                                     |

### (2) Tax Rate

|                 |                                                      |
|-----------------|------------------------------------------------------|
| On above Income | 20%                                                  |
| Balance Income  | [Gross Basis without Deduction]<br>Normal Provisions |

### (3) Exemption from filing of ROI

ROI is not required to be filed if:

- Income consist of only section 115BBA nature income.
- TDS has been deducted on such income.

### Common Points for Section 115A, 115AB, 115AC, 115AD, 115BB, 115BBA

- Special rates will apply on income mentioned in above sections, balance income will be taxable as per normal provisions.
- No deduction of any expenditure under section 28 to 44C and section 57 from above income.
- Deduction under chapter VI-A is not available from above income.
- Benefit of basic exemption limit is not available from above income.
- Above provisions are mandatory.
- Benefit of Indexation on LTCG in above sections is not available [Transfer Expenses Allowed]. LTCG in above sections was taxable @ 10% without indexation [if transfer before 23.7.2024]

### Stationary / Deemed Agent of Non Resident [Section 163]

It means any person in India:

- Who is employed by NR
- Who has any business connection with NR
- Through whom NR is in receipt of any income
- Who is trustee of NR
- Any person (whether resident or non-resident) who has acquired any capital asset in India from such NR

# TRANSFER PRICING



## Why Transfer Pricing

### Example

|                                                                  |                |                                             |  |                           |  |
|------------------------------------------------------------------|----------------|---------------------------------------------|--|---------------------------|--|
|                                                                  |                | Nestle Group - MNC                          |  |                           |  |
| Nestle Swiss Ltd. [Switzerland]                                  |                | Sale of chocolates                          |  | Nestle India Ltd. [India] |  |
| ↓                                                                |                | → Transaction = ₹ 10,00,000                 |  | ↓                         |  |
| Low Tax/Tax heaven [Tax Rate 5%]                                 |                | → Market Price = ₹ 3,00,000                 |  | High Tax [Tax Rate 30%]   |  |
| ↓                                                                |                |                                             |  | ↓                         |  |
| P&L of Nestle Swiss                                              |                | P&L of Nestle India                         |  |                           |  |
|                                                                  | Sale ₹ 10 lacs | Purchase ₹ 10 lacs                          |  |                           |  |
| Profit increased by ₹ 7 lacs                                     |                | Profit reduced by ₹ 7 lacs                  |  |                           |  |
| Extra Tax is Switzerland = 7 lacs x 5% = 35,000                  |                | Tax Save in India = 7 lacs x 30% = 2,10,000 |  |                           |  |
| Net Benefit to Nestle Group = ₹ 2,10,000 - ₹ 35,000 = ₹ 1,75,000 |                |                                             |  |                           |  |

## Charging Section [Section 92]

Associate Enterprise [AE] → Section 92A  
 ↓  
 International Transaction → Section 92B  
 ↓  
 Arm's Length Price [ALP] → Section 92C

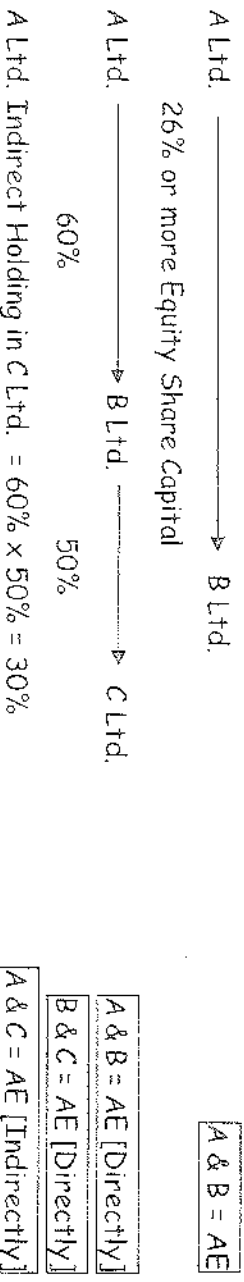
## Associate Enterprise [Section 92A]

**Enterprise:** means any person engaged in any business activity

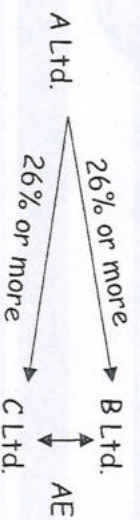
### Associate Enterprise:

Two enterprises are deemed to be Associate Enterprise if at any time during P.Y:

(1) One enterprise holds directly or indirectly 26% or more voting power in other enterprise.

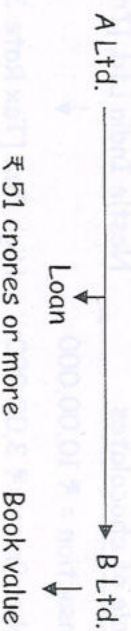


- (2) Any person holds 26% or more voting power in each of two enterprise.



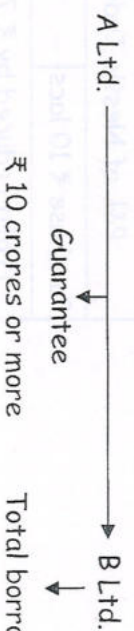
A & B = AE [Point (1)]  
A & C = AE [Point (1)]  
B & C = AE [Point (2)]

- (3) Loan advanced by one enterprise constitutes 51% or more of book value of total assets of other enterprise.



A & B = AE

- (4) One enterprise guarantees 10% or more of total borrowings of other enterprise.

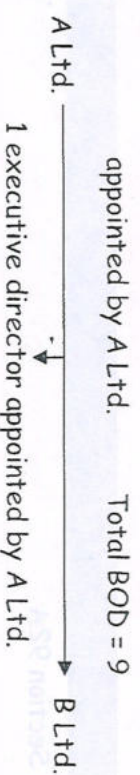


A & B = AE

- (5) One enterprise appoints more than half of board of directors or at least one executive director of other enterprise.

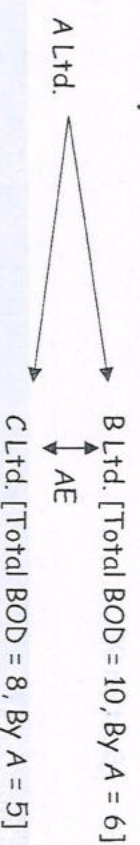


A & B = AE



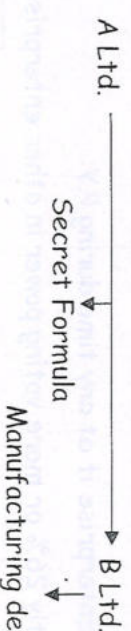
A & B = AE

- (6) Any person appoints more than half of board of directors or at least one executive director of each of two enterprise.



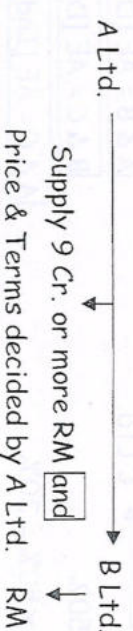
A & B = AE [Point (5)]  
A & C = AE [Point (5)]  
B & C = AE [Point (6)]

- (7) Manufacturing or processing of one enterprise is wholly dependent on intangible asset [knowhow, patent, copyright, secret formula etc.] of other enterprise.



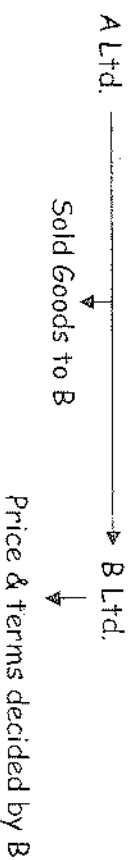
A & B = AE

- (8) 90% or more raw material/consumable requirement of one enterprise is supplied by other enterprise and price & terms decided by such other enterprise.



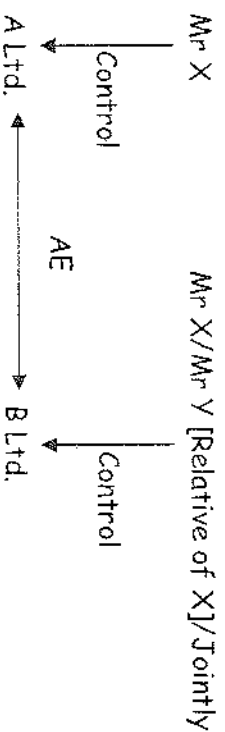
A & B = AE

- (9) Goods manufactured by one enterprise is sold to other enterprise and price & terms decided by such other enterprise.



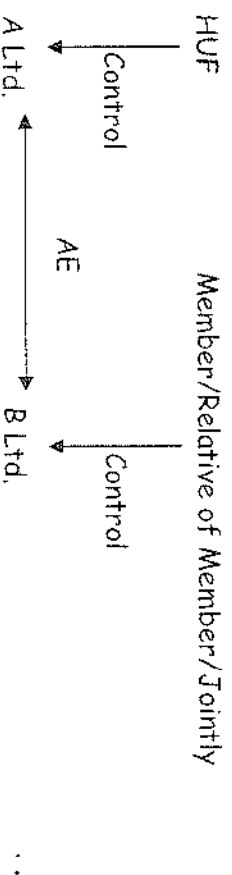
**A & B = AE**

- (10) If one enterprise is controlled by an individual, other enterprise is controlled by individual or his relative or jointly.



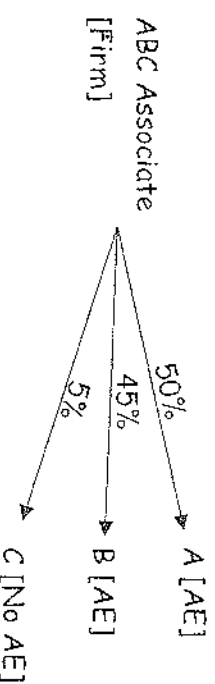
**A & B = AE**

- (11) If one enterprise is controlled by HUF, other enterprise is controlled by member of HUF or relative of member or jointly.



**A & B = AE**

- (12) If one enterprise is Firm/AOP/BOI, other enterprise holds at least 10% Profit Share Ratio [PSR] in such enterprise.



- (13) There exist any relationship of mutual interest between enterprise.

Example - Joint Venture

### International Transaction [Section 92B]

- It means a transaction between Two or more AE in which at least 1 shall be Non Resident.

|    | Transaction | AE | International Transaction |
|----|-------------|----|---------------------------|
| AE | →           | AE |                           |
| R  | →           | NR | Yes                       |
| R  | →           | R  | No                        |
| NR | →           | NR | Yes                       |

- Such transaction should be in the nature of:
  - Purchase, sale or lease of property
  - Provision of service
  - Lending or borrowing of money
  - Allocation of cost or expense
  - Any other transaction which effects profit
- Such international transaction must be done at Arm's Length Price [ALP], If not done at ALP, it requires Adjustment of Income [Primary Adjustment].
- The above adjustment shall result in Increase in Income of assessee. If adjustment results in Decrease in Income of assessee, transfer pricing provision shall not apply [Ignore such adjustment].

**Example**

|                                                                   |         |                                                                |         |
|-------------------------------------------------------------------|---------|----------------------------------------------------------------|---------|
| Nestle India Ltd. = Total Income before TP Adjustment = ₹ 50 lacs |         |                                                                |         |
| Case I                                                            |         | Case II                                                        |         |
| Nestle India [AE]                                                 | →       | Nestle US [AE]                                                 |         |
| Sale @ ₹ 8,00,000                                                 |         | Sale @ ₹ 20,00,000                                             |         |
| ALP = ₹ 14,00,000                                                 |         | ALP = ₹ 16,00,000                                              |         |
| TI before adjustment                                              | 50 lacs | TI before adjustment                                           | 50 lacs |
| (+) Increase in income due to TP adjustment [14 - 8]              | 6 lacs  | TP adjustment [Ignore, since it results in decrease in income] | Nil     |
|                                                                   | 56 lacs |                                                                | 50 lacs |

**Deemed International Transaction [Section 92B(2)]**

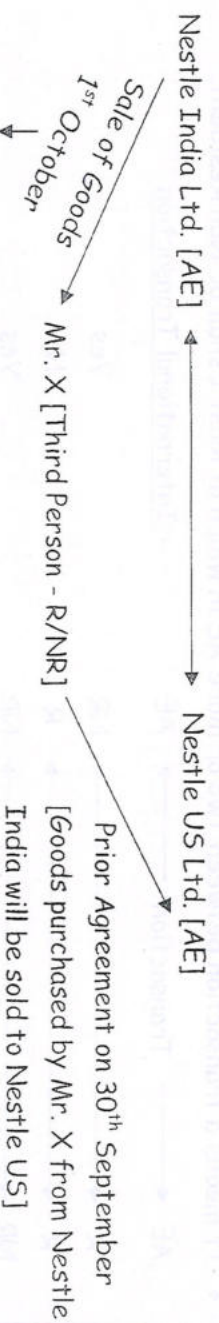
If transaction entered into by enterprise with third person [Not AE]

and

There exist a prior agreement between third person and AE of such enterprise

Such transaction between enterprise & third person shall be deemed as international transaction [whether such third person is resident or non-resident]

**Example**



Deemed International Transaction

### Computation of Arm's Length Price [Section 92C]

ALP shall be determined by any of the following methods:

- (1) Comparable uncontrolled Price Method [CUPM]
- (2) Resale Price Method [RPM]
- (3) Cost Plus Method [CPM]
- (4) Profit Split Method [PSM]
- (5) Transactional Net Margin Method [TNMM]

Most Appropriate Method shall be selected

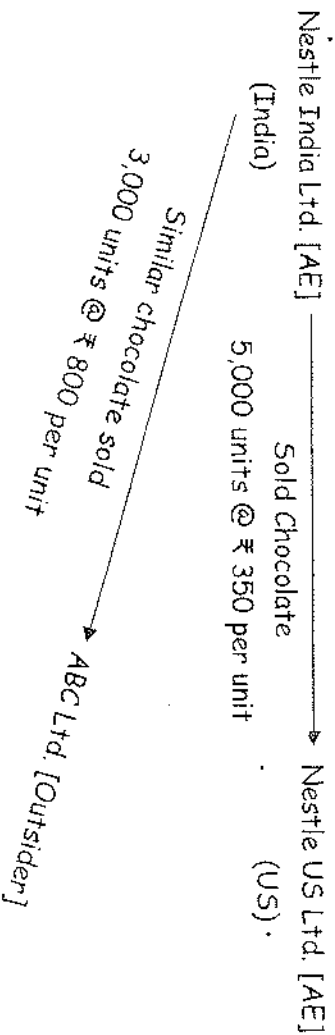
## Comparable Uncontrolled Price Method (CUP)

- Compare transaction with AE with similar uncontrolled transaction [i.e. similar transaction with outsiders/unrelated]

- Calculation of ALP

|                                                           |           |
|-----------------------------------------------------------|-----------|
| Price charged/paid in Comparable Uncontrolled Transaction | XX        |
| (±) Functional Difference Adjustment                      | <u>XX</u> |
| ➤ FOB & CIF                                               |           |
| ➤ Warranty/After Sales Support                            |           |
| ➤ Quantity Discount                                       |           |
| ALP                                                       | XX        |

### Example



## Functional Difference

- (i) Sale to AE is on CIF basis, while Sale to ABC Ltd. is on FOB. Cost of insurance & freight = ₹ 40 per unit.

|                                                                    |                                                          |
|--------------------------------------------------------------------|----------------------------------------------------------|
| <u>↓</u>                                                           | <u>↓</u>                                                 |
| <u>    CIF to AE    </u>                                           | <u>    FOB to ABC Ltd.    </u>                           |
| Insurance & freight cost bear by seller<br>(ie. Nestle India Ltd.) | Insurance & freight cost bear by buyer<br>(ie. ABC Ltd.) |

- (ii) Nestle India Ltd. gives warranty to AE for 6 months but not to ABC Ltd. Cost of warranty =

₹ 70 per unit per annum.

(iii) Since sales to AE is high in quantity, discount of ₹ 60 per unit is to be given.

**Solution**

| Calculation of ALP                                                         | ₹ (p.u.)  |
|----------------------------------------------------------------------------|-----------|
| Price charged in Comparable Uncontrolled Transaction                       | 800       |
| (±) Functional Adjustment                                                  |           |
| FOB & CIF                                                                  | + 40      |
| Warranty $[70 \times \frac{6}{12}]$                                        | + 35      |
| Discount                                                                   | - 60      |
| ALP                                                                        | 815       |
| Increase in Income of Nestle India Ltd. = $[815 - 350] \times 5,000$ units | 23,25,000 |

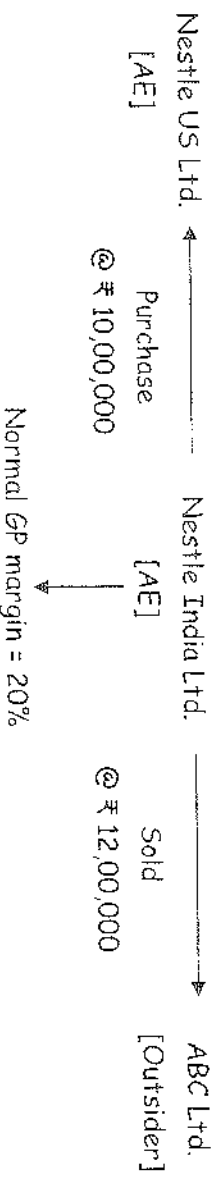
**Resale Price Method**

- When item purchase from AE and resale as it is to outsider.

• **Calculation of ALP**

|                                                    |      |
|----------------------------------------------------|------|
| Resale Price to Outsider of item purchased from AE | XX   |
| (-) Normal GP Margin                               | (XX) |
| (±) Functional Difference Adjustment               | XX   |
| ALP                                                | XX   |

**Example**



**Functional Difference**

Nestle US Ltd. has a brand Value which gives benefit @ 1% of sale price.

**Solution**

| Calculation of ALP                                 | (₹)        |
|----------------------------------------------------|------------|
| Resale Price to Outsider of item purchased from AE | 12,00,000  |
| (-) Normal GP Margin $[12,00,000 \times 20\%]$     | (2,40,000) |

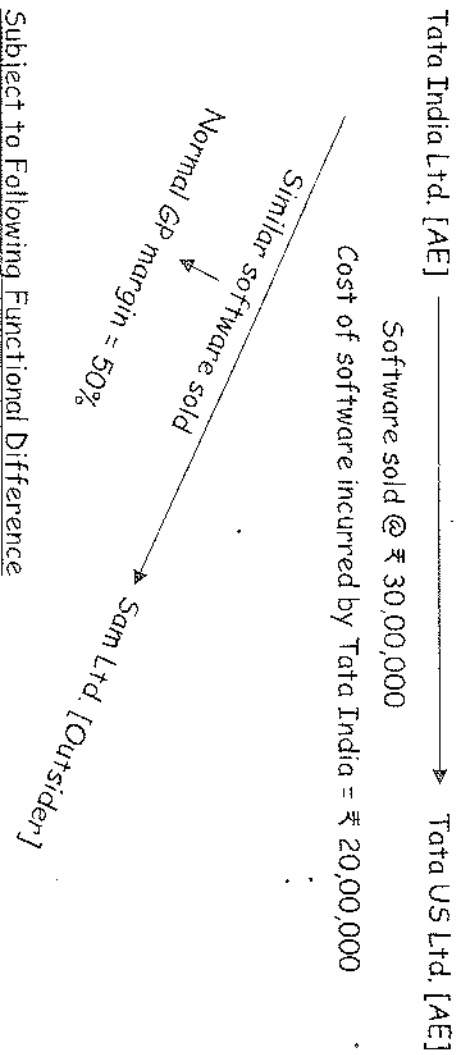
|                                                                |          |
|----------------------------------------------------------------|----------|
| (±) Functional Difference Adjustment                           | 9,60,000 |
| Brand Value of AE [12,00,000 × 1%]                             | + 12,000 |
| ALP                                                            | 9,72,000 |
| Increase in Income of Nestle India Ltd. [10,00,000 - 9,72,000] | 28,000   |

#### Cost Plus Method

- When item manufactured by enterprise is sold to its AE.
- Calculation of ALP**

|                                                   |    |    |
|---------------------------------------------------|----|----|
| Direct & Indirect Cost of item sold to AE         |    | XX |
| Add: Normal GP Margin                             | XX |    |
| (±) Functional Difference Adjustment in GP Margin | XX |    |
| Technical Support                                 | XX |    |
| Quantity Discount                                 | XX |    |
| Credit Period                                     | XX |    |
| ALP                                               |    | XX |

#### Example



#### Subject to Following Functional Difference

- Tata US Ltd. gives technical support to Tata India Ltd. but Sam Ltd. does not give any support. Value of technical support = 8% of GP margin.
- Work for Tata US Ltd. is huge, so quantity discount is to be given to Tata US Ltd. @ 6% of GP margin.
- Tata India Ltd. given credit period to Tata US Ltd. but not to Sam Ltd. Cost of credit period = 2% of normal billing rate.

#### Solution

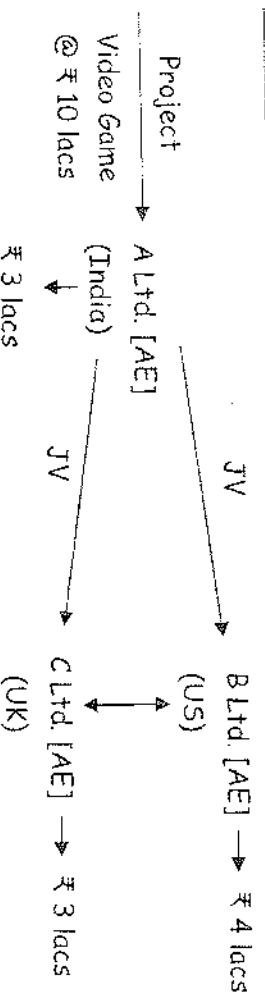
| Calculation of ALP                                                                                                                     |  | ₹                         |
|----------------------------------------------------------------------------------------------------------------------------------------|--|---------------------------|
| Direct & Indirect cost of item sold to AE                                                                                              |  | 20,00,000                 |
| (+) GP Margin<br>(±) Functional Difference Adjustment<br>Technical Support [8% X 50%]<br>Quantity Discount [6% X 50%]<br>Credit Period |  | 50%<br>- 4%<br>- 3%<br>2% |
| ALP                                                                                                                                    |  | 16,36,364*                |
| Increase in Income of Tata India Ltd. = 36,36,364 - 30,00,000                                                                          |  | 36,36,364                 |
| * $\left[\frac{45}{55} \times 20 \text{ lacs}\right]$                                                                                  |  | 6,36,364                  |

**Note:**

If only 'GP Margin' is given, then it is assumed as GP on Sales i.e., GP Margin = GP on Sales  
 GP Margin on Cost = GP on Cost

**Profit Split Method**

- Used in Joint Venture
- Profit/Contribution split on the basis of given ratio of capital employed, manpower, risk taking etc.
- Computation of ALP
  - Calculate combined Net Profit of project
  - Divide Net Profit in given contribution ratio
  - ALP = Cost Incurred + Net Profit share

**Example**

Contribution ratio on the basis of capital employed, manpower, risk taking etc. among A, B and C respectively = 50:25:25

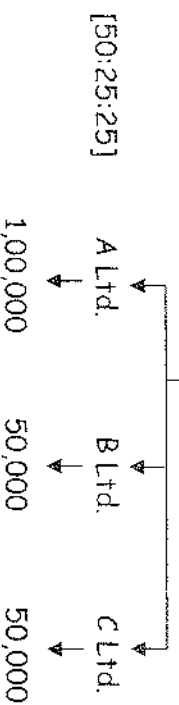
Total cost incurred on project = ₹ 8,00,000

Cost incurred by A Ltd. = ₹ 2,50,000

Compute ALP for A Ltd.

**Solution**

Combined Net Profit of Project = 10,00,000 - 8,00,000 = **2,00,000**



ALP for A Ltd. = 2,50,000 + 1,00,000 = 3,50,000

**Transactional Net Margin Method [TNMM]**

- Operating profit margin of other enterprises in similar industry shall be taken for computing ALP.

• **Calculation of ALP**

|                                                                            |    |
|----------------------------------------------------------------------------|----|
| Cost Incurred                                                              | XX |
| (+) Operating Profit Margin of Other Enterprise in Similar Industry        | XX |
| OP Margin = $\frac{\text{Operating Profit}}{\text{Total Cost}} \times 100$ |    |
| ALP                                                                        | XX |

**Example**

Infosys India Ltd. [AE]  $\xrightarrow{\text{Software support service @ ₹ 50,00,000}}$  Infosys US Ltd. [AE]  
 $\searrow$  Cost Incurred for such service = ₹ 40,00,000

Wipro Ltd. = Operating Profit Margin on similar service = 30%

**Solution**

Infosys India OP Margin

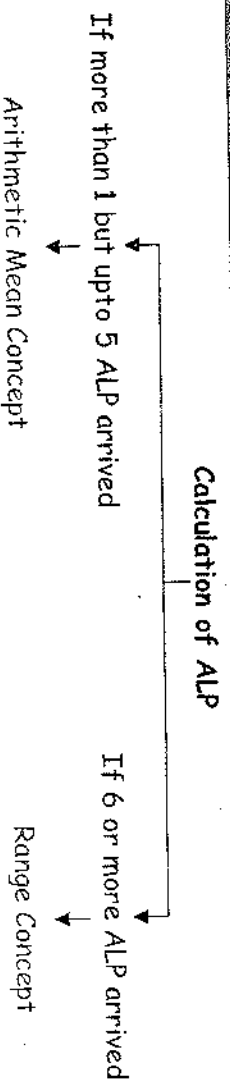
50,00,000 - 40,00,000 = 10,00,000

OP Margin (%) =  $\frac{10,00,000}{40,00,000} \times 100 = 25\%$

| Calculation of ALP                                          |             |
|-------------------------------------------------------------|-------------|
| Cost Incurred by Infosys India                              | ₹ 40,00,000 |
| (+) OP margin of Wipro [30% x 40,00,000]                    | 12,00,000   |
| ALP                                                         | 52,00,000   |
| Increase in income of Infosys India [52,00,000 - 50,00,000] | 2,00,000    |

**Transfer Pricing Functional Adjustments Shortcut****Shortcut to solve ALP questions**

|                                          |        |
|------------------------------------------|--------|
| <u>Warranty/After Sales Support</u>      |        |
| Warranty/Extra Warranty [AE]             | : Add  |
| Warranty/Extra Warranty [Outsider]       | : Less |
| <u>Credit Period</u>                     |        |
| Credit/Extra Credit [AE]                 | : Add  |
| Credit/Extra Credit [Outsider]           | : Less |
| <u>Brand Value</u>                       |        |
| AE Brand Value                           | : Add  |
| Outsider Brand Value                     | : Less |
| <u>Quantity Discount</u>                 |        |
| Discount [AE]                            | : Less |
| Discount [Outsider]                      | : Add  |
| <u>Technical Support</u>                 |        |
| Technical Support [AE]                   | : Less |
| Technical Support [Outsider]             | : Add  |
| <u>FOB &amp; CIF</u>                     |        |
| FOB to AE & CIF to Outsider              | : Less |
| CIF to AE & FOB to Outsider              | : Add  |
| <u>Marketing Cost</u>                    |        |
| No Marketing Cost incurred on Sale to AE | : Less |

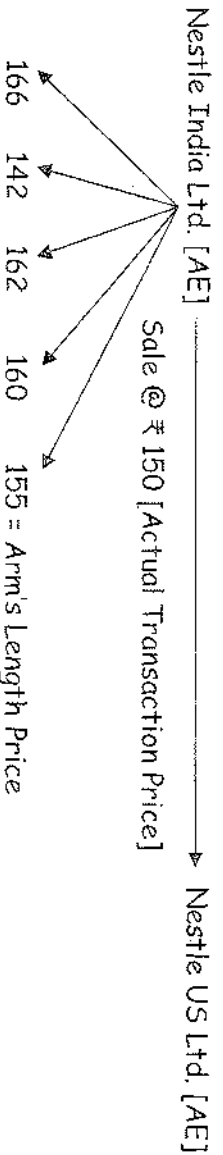
**If more than 1 ALP is arrived by Most Appropriate Method****Arithmetic Mean Concept**Calculate Average ALP

If difference between Actual Transaction Price and Average ALP is upto 3% of Actual Transaction Price

ALP = Actual Transaction Price

ALP = Average ALP

**Example**



**Solution**

|                                                 |       |
|-------------------------------------------------|-------|
| Actual Transaction Price                        | 150   |
| Difference/tolerance band [ $150 \times 3\%$ ]  | 4.5   |
| Average ALP ( $166 + 142 + 162 + 160 + 155/5$ ) | 154.5 |
|                                                 | 157   |

If difference between Average ALP & Actual TP is upto 3% [if average ALP is upto 154.5] in above example, then Actual TP will be ALP.

In this case, since difference is more than 3%, so ALP = Average ALP = 157

**Range Concept**

- Range Concept is not applicable in case of profit split method.
- It is applicable only if number of values in dataset is 6 or more [i.e. ALP is 6 or more]

**Steps for Range Concept**

- Arrange values in dataset in ascending order.
- Calculate 35% and 65% of total number of values in dataset.
- Range will start from 35% value and end at 65% value.
- If actual transaction price falls within range, then ALP = Actual Transaction Price
- If actual transaction price doesn't fall within range, calculate median [50%] of total number of values in dataset.
- Median value will be ALP.

**Note:**

- If 35%/65%/50% is not a whole number, then value of next whole number will be considered.
- If 35%/65%/50% is a whole number, then take average of value of that whole number and value of next whole number.

**Example 1**

Tata India Ltd. [AE] \_\_\_\_\_ → Tata US Ltd. [AE]

Sale @ ₹ 150 [Actual Transaction Price]

ALP = [151, 146, 140, 155, 160, 169, 165]

**Solution**Arrange values in dataset [ALP] in ascending order

|   |     |             |
|---|-----|-------------|
| 1 | 140 |             |
| 2 | 146 |             |
| 3 | 151 | Range Start |
| 4 | 155 |             |
| 5 | 160 | Range End   |
| 6 | 165 |             |
| 7 | 169 |             |

Calculate 35% and 65% $7 \times 35\% = 2.45$  (Not a whole number) = 3 [Next whole number] $7 \times 65\% = 4.55$  (Not a whole number) = 5 [Next whole number]Range = 151 - 160

If actual transaction price falls within range, then ALP = Actual Transaction Price

Since Actual TP is 150, it does not fall within range, so we have to calculate Median [50%]

Median =  $7 \times 50\% = 3.5$  (Not a whole number) = 4 [Next whole number]

Median value [50%] will be ALP, so ALP = 155

**Example 2**

Actual Transaction Price = 150

ALP in ascending order

|    |     |    |     |
|----|-----|----|-----|
| 1  | 140 | 11 | 174 |
| 2  | 146 | 12 | 177 |
| 3  | 151 | 13 | 178 |
| 4  | 155 | 14 | 180 |
| 5  | 160 | 15 | 189 |
| 6  | 165 | 16 | 191 |
| 7  | 169 | 17 | 193 |
| 8  | 170 | 18 | 194 |
| 9  | 171 | 19 | 198 |
| 10 | 172 | 20 | 200 |

→ 169.5 Range Start

→ 179 Range End

$$20 \times 35\% = 7 \text{ (whole number)} = (169 + 170)/2 = 169.5$$

$$20 \times 65\% = 13 \text{ (whole number)} = (178 + 180)/2 = 179$$

$$\text{Range} = 169.5 - 179$$

$$\text{Median [50\%]} = 20 \times 50\% = 10 \text{ (whole number)} = (172 + 174)/2 = 173$$

$$\text{So, ALP} = 173$$

#### Circumstances where AO may determine ALP [Section 92C(3)]

- If assessee fails to compute ALP as per most appropriate method.
- Data used in computation of ALP is not reliable or correct.
- Documents specified in section 92D not maintained.
- Documents called by AO is not furnished within time.

#### Consequences of ALP determined by AO [Section 92C(4)]

- Deduction under chapter VI-A or section 10AA shall not be allowed from income enhanced by AO.

#### Example

| Tata India Ltd. [SEZ] = Transfer pricing provisions apply |              |              |  |
|-----------------------------------------------------------|--------------|--------------|--|
|                                                           | As Per ROI   | As Per AO    |  |
| PGBP [Export Profit]                                      | 100 crores   | 160 crores   |  |
| GTI                                                       | 100 crores   | 160 crores   |  |
| (-) Deduction u/s 10AA                                    | (100 crores) | (100 crores) |  |
| TI                                                        | .            | 60 crores    |  |

- If income of one AE is increased by AO, income of other AE will not change.

#### Example

|                                                                                                                                                                                                                                                                                                                                                                                                 |                                          |                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|---------------------------|
| Tata India Ltd. [AE]<br>(India)                                                                                                                                                                                                                                                                                                                                                                 | Patent<br>Royalty Payment = ₹ 300 crores | Tata US Ltd. [AE]<br>[US] |
| <p>➤ Royalty payment made by Tata India to Tata US is deemed to be income earned in India and taxable @ 20% in the hands of Tata US.</p> <p>➤ AO has determined ALP of such royalty payment as ₹ 250 crores. Hence, AO has increased income of Tata India by ₹ 50 crores.</p> <p>➤ However, royalty income in the hands of Tata US will not change (It will remain same i.e. ₹ 300 crores).</p> |                                          |                           |

**Reference to Transfer Pricing Officer (TPO) [Section 92CA]**

- Option to make reference to TPO is given to AO but not to assessee.
- Before making reference, prior permission of CIT shall be taken.
- TPO can call upon assessee to produce documents & evidence.
- TPO can also determine the ALP of other international or specified domestic transactions identified subsequently during proceedings.
- Order of TPO is binding upon AO and AO shall compute total income of assessee in conformity with ALP determined by TPO.

**Safe Harbour Rules [Section 92CB]**

- To reduce transfer pricing disputes, CBDT can make safe harbour rules.
- If Assessee declares minimum margin as given in safe harbour rules, then AO shall accept the transfer price declared by assessee.
- Safe harbour rules are not notified by CBDT till yet.

**Advance Pricing Agreement (APA) [Section 92CC & 92CD]**

**(1) APA Basics**

- An APA is an agreement between Assessee & CBDT for determination of ALP of an International Transaction as per method & manner given in agreement.
- CBDT can enter into APA with applicant [assessee] only after approval of Central Government.
- If APA exist and assessee follows APA, section 92C & 92CA shall not apply.
- APA shall be valid for maximum 5 consecutive previous years from application year.
- APA shall be binding on
  - Applicant
  - Income tax authority upto the level of CIT
  - In respect of transaction for which APA was entered

- If APA entered by assessee by fraud or misrepresentation of facts, CBDT may declare such APA to be void ab initio.

**(2) Rollback Provisions for APA**

- A person who makes application for APA can apply for rollback for maximum 4 preceding P.Y. from application year.
- **Conditions for Applying for Rollback**
  - Assessee has to make application for Rollback in Form No. 3CEDA along with fees of ₹ 5 lacs.
  - Application request has been made by assessee for all 4 Rollback years.

- International transaction is same as mentioned in APA.
- ROI for Rollback years is furnished by assessee on or before due date.

• Non Applicability of Rollback

- (i) Determination of ALP is subject matter of appeal before ITAT and ITAT pass order before signing of APA.
- (ii) Rollback has the effect of reducing Total Income as declared in ROI.

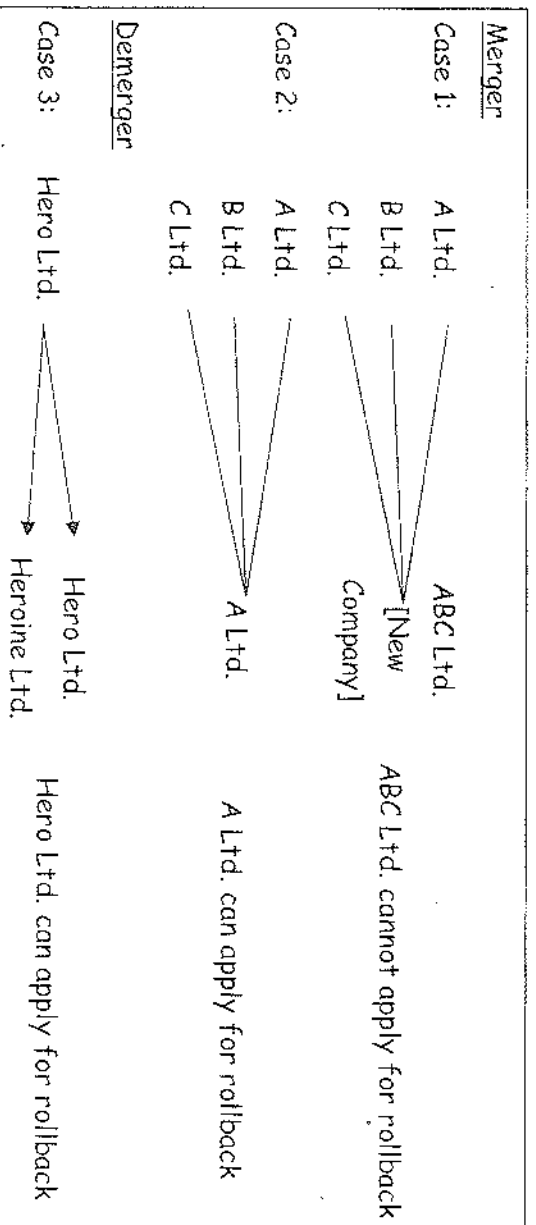
Example

| Total Income |            |                           |                        |              |
|--------------|------------|---------------------------|------------------------|--------------|
|              | ↓          | ↓                         | ↓                      |              |
|              | As Per ROI | As Per AO<br>[Assessment] | As per Rollback<br>APA | Final Income |
| Case I       | 30 cr.     | 35 cr.                    | 32 cr.                 | 32 cr.       |
| Case II      | 30 cr.     | 35 cr.                    | 25 cr.                 | 30 cr.       |
| Case III     | 30 cr.     | No Assessment             | 26 cr.                 | 30 cr.       |

• Rollback Provision in case of Merger or Demerger

Only the companies which exist in Rollback Years at the time of making APA application after Merger/Demerger are entitled for Rollback. . .

Example



(3) Effect of APA

- If ROI already filed for any P.Y. to which APA/Rollback applies, modified ROI is to be filed within 3 months from end of month in which APA was entered.
- If assessment of any P.Y. to which APA/Rollback applies already completed, AO shall reassess such year assessment as per APA.

## Transfer Pricing

- If assessment of any P.Y. to which APA/Rollback applies is pending, AO shall complete assessment of such year as per APA.

### Secondary Adjustment [Section 92CE]

#### (1) Basics

|                                |                                                                                                                                              |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Primary Adjustment:            | Increase in Income of assessee due to ALP adjustment                                                                                         |
| Secondary Adjustment:          | Treating 'Excess Money' as deemed loan and calculating Interest Income on such excess money<br>Excess Money = ALP - Actual Transaction Price |
| Forms of Secondary Adjustment: | Dividend, Equity or Loan<br>India follows deemed loan approach                                                                               |

#### (2) Cases where Secondary Adjustment has to be made

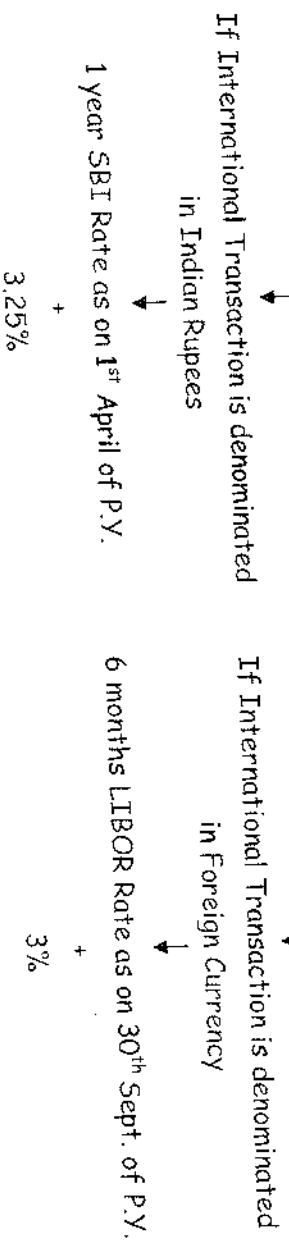
Where primary adjustment of transfer price has been:

- Made suo-moto by assessee in ROI
- Made by AO/Appellate Authority and accepted by assessee
- Determined by APA
- Made due to safe harbour rules

#### (3) Excess Money Repatriation

- Excess Money available with AE shall be repatriate to India from any AE within 90 days from:
  - Date of Order [If primary adjustment made by AO/Appellate Authority]
  - Due date of ROI [other cases]
- If not repatriated within 90 days, excess money shall be treated as deemed loan/advance given to AE and Interest Income on such advance shall be computed from Next Day of:
  - Date of Order [If primary adjustment made by AO/Appellate Authority]
  - Due date of ROI [other cases]

#### (4) Interest Rate for Secondary Adjustment



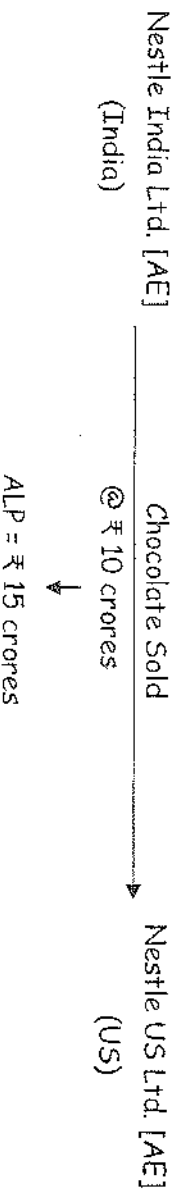
#### (5) Option to pay Additional Income Tax, if the excess money is not repatriated

- Assessee has option to pay Additional Income Tax @ 20.9664% [18% Tax + 12% SC + 4% Cess] on such excess money.
- If assessee paid additional income tax, he will not require to make secondary adjustment and there is no interest income from date of payment of such tax.

**(6) No Requirement of Secondary Adjustment in Following Cases:**

- If amount of primary adjustment is upto ₹ 1 crore.
- or
- If primary adjustment is made in respect of A.Y. 2016-17 or earlier.

**Example**



Increase in Income of Nestle India Ltd. by AO order dated 1.6.2024 = ₹ 5 crores. The AO order is accepted by Nestle India Ltd.

The amount of Primary Adjustment should be repatriated to India upto 1.6.2024 + 90 days = 30.8.2024

Assume not repatriated upto 31.3.2025

1 Year SBI Rate as on 1.4.2024 = 8%

**Solution**

$$\text{Interest Income for P.Y. 24-25} = 5 \text{ cr.} \times 11.25\% \times \frac{303^*}{365} = 46,69,521$$

\*From 2.6.2024 To 31.3.2025 = 303 days

If assessee opts to pay additional Income Tax on 1.4.2025,

$$\text{Additional Income Tax} = 5 \text{ cr.} \times 20.9664\% = 1,04,83,200$$

If assessee paid additional tax on such excess money, in that case there is no need to repatriate excess money and there is no interest income from 1.4.2025.

**Documents to be Maintained [Section 92D]**

- Every person who enters into an international transaction is required to maintain documents & records as prescribed [TP study report].
- TP study report is to be maintained for period of 8 years from end of relevant A.Y.
- TP study report is not required to be maintained if aggregate value of International Transaction is upto ₹ 1 crore.
- If any document is required by AO/TPO/CTT(A) during any proceeding, it shall be furnished within 10 days [additional time of 30 days].

### Audit Report [Section 92E]

- Every person who enters into an international transaction is required to obtain report from Chartered Accountant in Form No. 3CEB.
- Due date of filing Audit Report is 31<sup>st</sup> October of A.Y. [i.e. one month prior to due date of filing of ROI].

### Penalties

| Nature of Default                                                                                                                                                                                                                                                                                 | Penalty                                                                                                                                                                            |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Failure to report International Transaction at ALP [Misreporting of Income u/s 270A]                                                                                                                                                                                                              | 200% of tax on under reported income<br>Note: If assessee maintains document u/s 92D, declare International Transaction and disclose all facts = No penalty u/s 270A<br>₹ 1,00,000 |
| Failure to furnish audit report u/s 92E                                                                                                                                                                                                                                                           | [If reasonable cause of failure, then no penalty]                                                                                                                                  |
| <ul style="list-style-type: none"> <li>▪ Fails to report International Transaction</li> <li>▪ Fails to keep &amp; maintain documents u/s 92D</li> <li>▪ Fails to furnish documents required by AO/CIT(A) within time</li> <li>▪ Maintain or furnish incorrect information or documents</li> </ul> | 2% of value of International Transaction<br>[If reasonable cause of failure, then no penalty]                                                                                      |

### Country by Country [CbC] Reporting Requirement [Section 286]

#### (1) Reporting u/s 286

- By Action Plan 13 of BEPS
- Three level of documentation
  - Local File: TP Study Report
  - Master File: Contains group overview [submitted by Constituent Entity]
  - Country by Country [CbC] Report: Contains detail information regarding profit, assets, employees etc. [submitted by Parent Entity]
- Parent Entity = Ultimate Holding Company [CFS prepare]
- Constituent Entity = AE of such parent entity

#### (2) Master File

- Master File contains group overview.
- Master file shall be furnished by constituent entity resident in India upto due date of ROI.

- Master file is required to be furnished if consolidated group revenue exceeds ₹ 500 crores.
- If Master file is not filed within time, penalty = ₹ 5,00,000

### (3) Country by Country [CbC] Report

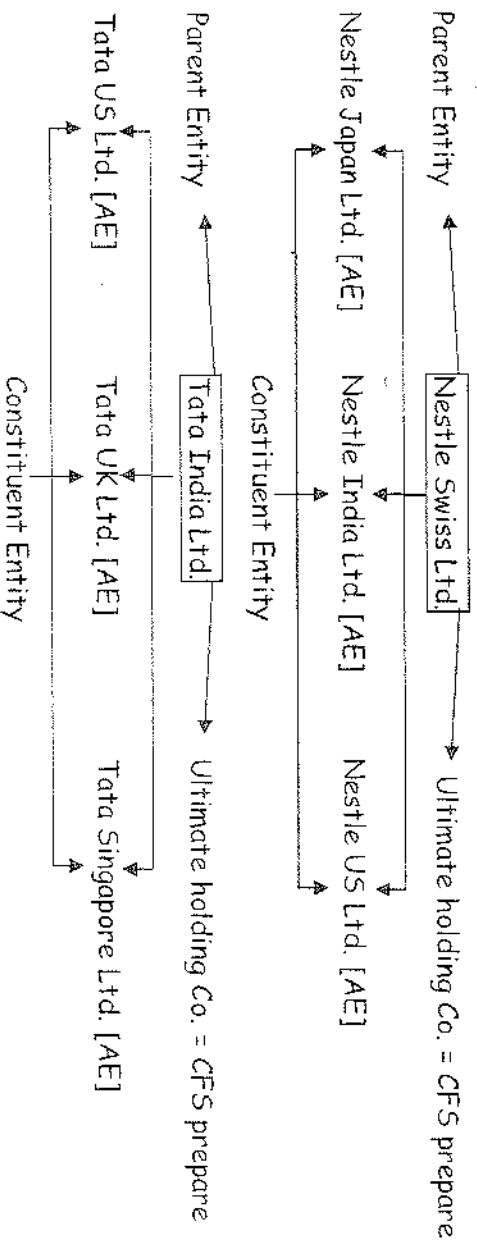
- CbC report contains details of multinational group for each country in which they do business regarding:
  - Profit before Tax
  - Income Tax
  - Capital Employed/Assets
  - Employees
- It is submitted by parent entity to the tax authority in its country of residence.
- Parent entity resident in India shall be required to furnish CbC report to Joint Director [JD] for every accounting Year within 12 months from end of said year.
- CbC report is required to be furnished if consolidated group revenue exceeds ₹ 6,400 crores.
- Constituent entity resident in India shall be required to furnish CbC report, if:
  - Parent entity is resident of country where no obligation to file CbC report.
  - Parent entity is resident of country with which India has no information sharing agreement.
  - There is a systematic failure.

#### • Penalty for Non furnishing of CbC Report on time

| Period of Delay                      | Penalty                             |
|--------------------------------------|-------------------------------------|
| Not more than one Month              | ₹ 5,000 per day                     |
| Beyond one Month                     | ₹ 15,000 per day [beyond 1 month]   |
| Continuing default ever after notice | ₹ 50,000 per day [from notice date] |

- Penalty for submission of inaccurate information in CbC report = ₹ 5,00,000

#### Example



### Domestic Transfer Pricing

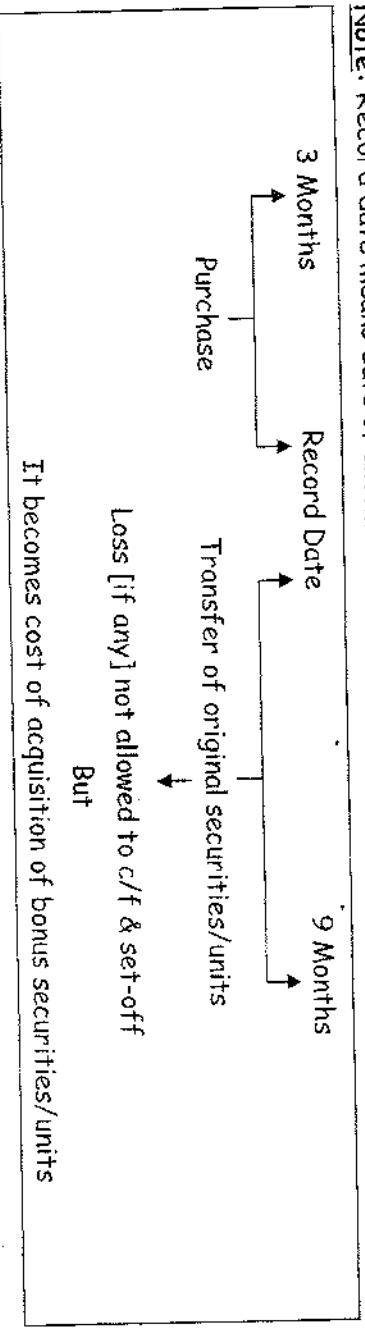
- Applicable on specified domestic transaction [Transaction between two or more AE in which both are residents].
- Specified domestic transaction:
  - Shifting of profit to tax holiday enterprise
  - Shifting of profit to loss making enterprise
- Applicable only if aggregate value of specified domestic transactions exceeds ₹ 20 crores.
- Section 92A, 92C, 92CA, 92D, 92E, penalties shall apply as it is.

### Special Provision for Avoidance of Tax by Certain Transactions in Securities [Section 94]

#### Bonus Stripping Transactions [Section 94(B)]

- If any person buys any securities or units within 3 months prior to the record date.  
and
- Such person is allotted Bonus securities or units on such date.  
and
- Such person transfers original securities or units within 9 months from record date but continue to hold bonus securities or units.  
then
- Loss arising on transfer of original securities or units shall be completely ignored.  
and
- Such loss shall be deemed to be cost of acquisition of bonus securities or units.

**Note:** Record date means date of allotment of bonus securities or units



### Transaction with Person located in Notified Unincorporated Area (NTUA) [Section 94A]

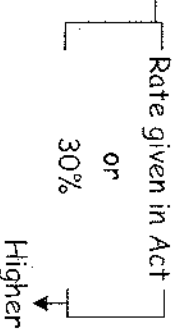
#### • Meaning of NTUA

- Central Government may notify any country as NTUA which do not have effective information exchange mechanism with India.

- Earlier, Central Government declared Cyprus as NJA, but later on Central Government by notification removed Cyprus as NJA.

- **NJA Provisions**

- Any transaction with person located in NJA shall be deemed to be an International Transaction [Whether such person is AE or not] and transfer pricing provision shall apply.
- Benefit of 3% [variation in case of arithmetic mean concept] is also not available in respect of such transaction.
- Any amount received from person located in NJA shall be deemed to be income of recipient, if recipient does not explain source of such amount.
- Rate of TDS for any payment made to person located in NJA shall be —



**Limitation of Interest Deduction [Section 94B]**

- By Action Plan 4 of BEPS to remove thin capitalisation (i.e. preference of debt over equity).

- **Applicable to**

Indian Company  
or  
PE of Foreign Company in India

Who incurs interest expenditure on any debt taken from Non Resident AE  
[Operating/Financial/Long Term/Short Term]

- **Interest Expenditure Meaning**

Interest includes interest, discount, other financial charges such as commission, fees, brokerage etc. related to any debt taken from Non Resident AE.

- **Excess Interest would be disallowed**

Interest to AE - 30% of EBITDA  
or  
Interest to AE

Lower  
↓  
Disallowed

In other words, Interest to AE upto 30% of EBITDA is allowed.

EBITDA = Earnings before Interest, Tax, Depreciation and Amortisation

**Example**

EBITDA = 100 cr.

Interest to Non Resident AE = 48 cr.

**Solution**

Excess Interest would be disallowed

48 cr. —  $[30\% \times 100 \text{ cr.}] = 18 \text{ cr.}$

or

48 cr.

→ Lower → 18 cr. will be disallowed

- Carry forward and Set-off of Disallowed/Excess Interest

Excess Interest can be c/f for maximum 8 A.Y. and can be claimed/set-off as deduction under PGBP head upto that limit.

- Special Point

Where debt is given by other person which is not AE, but

- AE either provides guarantee to other person for such debt or
  - Deposit matching & corresponding amount with such other person
- Such debt shall be deemed to be taken from AE.

- Non Applicability of Section 94B

- (i) If total interest to Non Resident AE is upto ₹ 1 Crore in P.Y.
- (ii) If borrower is Banking Company, Insurance Company, Finance Company located in any IFSC or NBFC.

# ADVANCE RULINGS



## Advance Ruling [Section 245N to 245W]

- Advance Ruling means judgement taken in advance.
- If application made to BAR [Board for Advance Ruling] than BAR will give its ruling [Judgement] in relation to transaction undertaken/proposed to be undertaken by Assessee.
- Such judgement may be related to question of fact or law.

## Board for Advance Ruling [BAR]

- Constituted by Central Government.
- Consist of 2 members, not below the Rank of Chief Commissioner.
- Vacancy or defects in constitution of BAR shall not invalidate proceedings of BAR.

## Application for Advance Ruling

| Application by/Applicant                      | Application for                                                                                                                                   |
|-----------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------|
| (i) Non Resident                              | For determination of tax liability of transaction undertaken/proposed to be undertaken by him.                                                    |
| (ii) Resident                                 | On behalf of NR for determining tax liability of such NR.                                                                                         |
| (iii) Resident                                | For determination of tax liability of transaction undertaken/proposed to be undertaken by him.<br>[If Transactions Value is ₹ 100 Crores or more] |
| (iv) Resident Public Sector Undertaking (PSU) | For issue relating to computation of total income pending before Income Tax Authority or ITAT.                                                    |
| (v) Any Person                                | For determining whether an arrangement which is proposed to be undertaken is Impermissible Avoidance Arrangement or not.                          |

### Note:

- An Applicant may withdraw application within 30 days of application.
- BAR on receipt of application will send copy to CIT and call for relevant records.

## Application Fees

- Resident Public Sector Undertaking/Impermissible Avoidance Arrangement Case = ₹ 10,000

## Advance Rulings

### • Any Other Case

- If transaction value is upto ₹ 100 crores = ₹ 2 Lacs
- If transaction value exceeds ₹ 100 crores but upto ₹ 300 crores = ₹ 5 Lacs
- If transaction Value exceeds ₹ 300 crores = ₹ 10 Lacs

Cases where Application shall not be Allowed/Application will be Rejected by BAR

- (i) Issue relating to determination of FMV.
- (ii) Issue/Case Pending before Income Tax Authority/ITAT/Any Court [Except Resident Public Sector Undertaking case pending before Income Tax Authority/ITAT].
- (iii) Transaction designed for Avoidance of Tax [Except Proposed Impermissible Avoidance Arrangement].

### Advance Ruling to be Void

- If Advance Ruling obtained by applicant by Fraud or Misrepresentation of facts, BAR may declare such ruling to be void-ab-initio.
- Provisions of Act shall apply as if such ruling had never been made.

### Pronouncement of Advance Ruling

- BAR shall pronounce Advance Ruling within 6 months from receipt of application.
- Copy of Advance Ruling shall be sent to 

↓

Applicant  
↓  
CIT

### Powers of BAR

BAR shall have all the powers of Civil Court:

- Discovery & Inspection
- Enforcing attendance and examining on oath
- Compelling production of books & documents
- Issuing commissions [summon]

### Appeal against BAR Order

Any person aggrieved by Order/Ruling of BAR may appeal to the High Court within 60 days of communication of Order/Ruling [If sufficient cause, Additional 30 days]

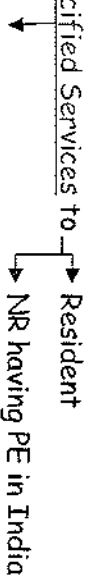
# TAXATION OF DIGITAL TRANSACTIONS [EQUALISATION LEVY]

## Equalisation Levy

- By BEPS Action Plan 1 - Digital Economy
- By Finance Act, 2016 - Equalisation Levy on Specified Services [Section 165 of Finance Act, 2016]

## Equalisation Levy on Specified Services

### (1) Applicability and Rate

- Non Resident having No PE in India providing Specified Services to 
  - (i) Online Advertisement
  - (ii) Any provision for digital advertising space & similar services
- Equalisation Levy @ 6% shall be levied on amount of consideration for specified services.

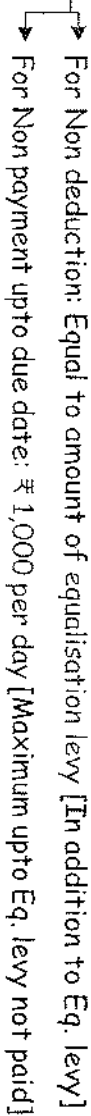
### (2) Payment to Government

- Person who are paying for such specified services has to deduct equalisation levy from payment made to such Non Resident.
- After deduction, he shall pay the levy to Central Government on or before 7<sup>th</sup> of next month.

### (3) Circumstances where equalisation levy is not applicable

- If Non Resident providing specified services have PE in India.
- If aggregate consideration for specified services does not exceed ₹ 1,00,000 in P.Y.
- Where payment made for specified services is not for Business & Profession.

### (4) Interest & Penalty

- Interest on delayed payment of equalisation levy: Interest @ 1% per month or part of month after due date till date of payment.
  - Penalty 
    - For Non deduction: Equal to amount of equalisation levy [In addition to Eq. levy]
    - For Non payment upto due date: ₹ 1,000 per day [Maximum upto Eq. levy not paid]
- No Penalty shall be imposed, if there is reasonable cause of failure.

## Furnishing of Statement

- Statement of equalisation levy shall be furnished by person receiving specified services in Form No. 1 on or before 30<sup>th</sup> June immediately following Financial Year.
- Penalty for failure to furnish statement on time = ₹ 100 per day

## Taxation of Digital Transactions [Equalisation Levy]

### Relevant Provisions in Income Tax Act relating to Equalisation Levy

#### **(1) Section 10(50)**

To avoid double taxation, Income from specified services chargeable to equalisation levy is Exempt in the hands of NR providing specified services.

#### **(2) Section 40(a)(ib)**

- Any amount [consideration for specified services] paid or credited to NR on which equalisation levy is deductible
    - But equalisation levy has not deducted during P.Y.
    - or
    - Deducted but not paid to Government upto due date of ROI.
- Then such amount/payment = 100% disallowed in current P.Y.
- Allowed in P.Y. of deposit to Government [If deducted in subsequent year or deposit after due date of ROI]

# FUNDAMENTALS OF BEPS



## BASE EROSION AND PROFIT SHIFTING (BEPS)

|                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Meaning of BEPS                                                 | BEPS refers to tax strategy that exploits gaps and mismatch in tax rules to make profit disappear or to shift profit where there is no tax/low tax.                                                                                                                                                                                                                                                                                                                                                                                                                          |
| Adverse Effects of BEPS                                         | <ul style="list-style-type: none"> <li>➤ Government has to cope with less revenue &amp; higher cost.</li> <li>➤ It leads to underfunding of public investment that fosters economic growth.</li> <li>➤ Individual tax payers have to bear greater share of burden of tax.</li> <li>➤ Enterprise in domestic market may face difficulty in competing with MNC.</li> </ul>                                                                                                                                                                                                     |
| Need for International Collaboration to Protect Tax Sovereignty | <p>There is a need for countries to collaborate on tax matters so that they are able to get their due share of taxes due to following reasons:</p> <ul style="list-style-type: none"> <li>➤ Interaction of separate sets of domestic laws enforced by countries causes frictions for MNC.</li> <li>➤ It also causes gaps in cases where corporate income is untaxed in both residence and source country or is taxed only at nominal rates.</li> <li>➤ BEPS relates primarily to instances where interaction of different tax rules leads to double non-taxation.</li> </ul> |
| Action Plans to Address BEPS                                    | OECD recommend 15 Action Plans to address BEPS.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Fundamental Pillars of Action Plans                             | <p>Action Plans were structured around three fundamental pillars:</p> <ol style="list-style-type: none"> <li>(a) Introducing coherence in domestic rules.</li> <li>(b) Reinforcing of substance requirements in international standards.</li> <li>(c) Improving transparency and tax certainty.</li> </ol>                                                                                                                                                                                                                                                                   |

## Action Plan 1: Addressing the Challenges of Digital Economy

|                     |                                                                                                                                                                                                                                                                                                                                                                                                      |
|---------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| OECD Recommendation | <ul style="list-style-type: none"> <li>▪ <u>Modifying existing PE rule</u>: Significant digital presence of enterprise should also constitute PE.</li> <li>▪ <u>Virtual fixed place of business</u>: If enterprise maintains website on server of another enterprise, it should be treated as PE.</li> <li>▪ <u>Imposition of final withholding Tax</u>: Imposition of Equalisation Levy.</li> </ul> |
| In India            | <ul style="list-style-type: none"> <li>▪ Equalisation Levy in Finance Act, 2016</li> <li>▪ Significant Economic Presence in Section 9(1)(i) of Income Tax Act, 1961</li> </ul>                                                                                                                                                                                                                       |

**Action Plan 2: Neutralise the Effects of Hybrid Mismatch Arrangement**

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Meaning</b>             | <ul style="list-style-type: none"> <li>▪ <b>Hybrid Mismatch</b><br/>It is an arrangement that exploits a difference in tax treatment of an entity or an instrument under two tax jurisdictions to achieve double non taxation. These arrangements are used to achieve double non-taxation by creation of two deductions, deductions without income inclusion, exemption regimes etc.</li> <li>▪ <b>Branch Mismatch</b><br/>Rules for allocating income &amp; expense between branch &amp; head office result in escaping charge of tax in both branch and residence jurisdiction.</li> </ul> |
| <b>OECD Recommendation</b> | Amend tax law and tax treaty.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

**Action Plan 3: Strengthen Controlled Foreign Corporation (CFC) Rules**

|                            |                                                                                                                                                                                        |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Meaning</b>             | CFC are entities incorporated in low tax jurisdiction and controlled by resident of high tax jurisdiction. Parent entity transfers passive income (such as royalty, rent etc.) to CFC. |
| <b>OECD Recommendation</b> | Implement and strengthen Controlled foreign company (CFC) rules that respond to the risk of taxpayers shifting income into CFC.                                                        |
| <b>In India</b>            | POEM Concept in Income-tax Act, 1961                                                                                                                                                   |

**Action Plan 4: Interest Deduction and Other Financial Payments**

|                            |                                                                                                                             |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| <b>Meaning</b>             | Entities in high tax jurisdiction took high loan & claim interest deduction from entities in no tax/low tax jurisdiction.   |
| <b>OECD Recommendation</b> | Limit interest deduction based on EBITDA by following three elements: Fixed ratio rule, Group ratio rule and Targeted rule. |
| <b>In India</b>            | Section 94B in Income-tax Act, 1961: Addressing Thin Capitalization                                                         |

**Action Plan 5: Counter Harmful Tax Practices**

|                            |                                                                                                                                                                                                                                                                                                                                |
|----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>OECD Recommendation</b> | <ul style="list-style-type: none"> <li>▪ Income from Intellectual Property should be taxable in the jurisdiction where substantial R &amp; D Activities are undertaken.</li> <li>▪ Benefit of low tax rate shall provide only if majority of R &amp; D expense/value creating activity is incurred in that country.</li> </ul> |
| <b>In India</b>            | Section 115BBF in Income-tax Act, 1961                                                                                                                                                                                                                                                                                         |

**Action Plan 6: Preventing Treaty Abuse / Treaty Shopping**

|                            |                                                                                                                                                                                                                                                                            |
|----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Meaning</b>             | Treaty Abuse/Treaty Shopping means taking benefit of other country treaty which is not made for that person.                                                                                                                                                               |
| <b>OECD Recommendation</b> | <ul style="list-style-type: none"> <li>▪ <u>Title &amp; Preamble</u>: Clear statement that "This treaty is for avoidance of double taxation and not for treaty shopping."</li> <li>▪ <u>LOB and PPT Rule</u>: Limitation of Benefit and Principal Purpose Test.</li> </ul> |
| <b>In India</b>            | LOB Rule in India - Singapore Treaty' and India - Mauritius Treaty'                                                                                                                                                                                                        |

**Action Plan 7: Prevent the Artificial Avoidance of Permanent Establishment (PE) Status**

|                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>OECD Recommendation</b> | <p><u>Review definition of PE to prevent tax avoidance</u></p> <ul style="list-style-type: none"> <li>▪ <u>By way of Commissioner Arrangements</u><br/>Include a person who habitually plays principal role to conclude contracts in definition of agent.</li> <li>▪ <u>By way of Fragmentation of business activities</u><br/><u>Anti Fragmentation Rule</u>: Aggregate all activities carried on by enterprise through different offices to check whether they are preparatory or auxiliary.</li> </ul> |
| <b>In India</b>            | Expand scope of business connection u/s 9(1)(i) of Income-tax Act, 1961.                                                                                                                                                                                                                                                                                                                                                                                                                                  |

**Action Plan 8 – 10: Transfer Pricing (High Risk Transaction)**

|                            |                                                                                                                                                                                                                              |
|----------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Meaning</b>             | Action Plan 8: Relating to transfer pricing of intangibles.<br>Action Plan 9: How to allocate risk & return for calculation of contribution ratio.<br>Action Plan 10: Limitation on certain intra group services between AE. |
| <b>OECD Recommendation</b> | Risk and return to be allocated between parties based on their capacity.                                                                                                                                                     |

**Action Plan 11: Measuring and Monitoring BEPS**

| <b>Six Indicators of BEPS Activity</b> |                                                                                                 |
|----------------------------------------|-------------------------------------------------------------------------------------------------|
| (i)                                    | Profit rate of MNE in low tax country is higher than their group average worldwide profit rate. |
| (ii)                                   | Effective tax rate paid by MNE is lower than paid by domestic entity.                           |
| (iii)                                  | Foreign direct investment is increasingly concentrated.                                         |
| (iv)                                   | Location of value creating activity & profit taxability is different.                           |
| (v)                                    | Royalty received by entities located in low tax countries is 3% of total royalty.               |
| (vi)                                   | Debt from both related & third party is more concentrated in high tax countries.                |

## Fundamentals of BEPS

### Action Plan 12: Disclosure of Aggressive Tax Planning Arrangements

|                     |                                                                                                                                                         |
|---------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| Objective           | Providing tax department with early information regarding potentially aggressive tax planning, so that tax payer may think into entering such planning. |
| OECD Recommendation | Include disclosure requirements in tax laws to increase transparency.                                                                                   |

### Action Plan 13: Re-Examine Transfer Pricing Documentation

|                     |                                                                                                                                                                                                                                                                                                                                                                                                                 |
|---------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| OECD Recommendation | <ul style="list-style-type: none"> <li>Revise standards for transfer pricing documentation by annual country-by-country reporting of income, taxes paid and economic indicators.</li> <li><u>It mandates following three-tier structure for transfer pricing documentation</u> <ul style="list-style-type: none"> <li>(i) Local File</li> <li>(ii) Master File</li> <li>(iii) CBC Report</li> </ul> </li> </ul> |
| In India            | Section 92D (Master file) and 286 (CbC reporting) in Income-tax Act, 1961                                                                                                                                                                                                                                                                                                                                       |

### Action Plan 14: Making Dispute Resolution More Effective

|                     |                                                                                                                                                                                                                                                                                                    |
|---------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| OECD Recommendation | <u>Minimise risk of uncertainty and unintended double taxation through:</u> <ul style="list-style-type: none"> <li>Proper implementation of tax treaties.</li> <li>Effective and timely resolution of disputes regarding their interpretation through Mutual Agreement Procedure [MAP].</li> </ul> |
| In India            | Detailed guidance note on MAP                                                                                                                                                                                                                                                                      |

### Action Plan 15: Developing a Multilateral Instrument (MLI)

|                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Meaning and Applicability | <ul style="list-style-type: none"> <li>MLI helps fight against BEPS by implementing tax treaty related measures of OECD in existing bilateral treaties in efficient manner.</li> <li>MLI provisions are applicable if both parties of DTAA ratified the MLI.</li> <li>MLI modifies DTAA that are "Covered Tax Agreements" (CTA).</li> <li>A CTA is a DTAA agreement that is in force between parties to MLI and both parties have made a notification that they wish to modify DTAA using MLI.</li> </ul> |
| OECD Recommendation       | Develop a multilateral instrument which contains all changes and amendments in tax treaty.                                                                                                                                                                                                                                                                                                                                                                                                                |
| In India                  | MLI was developed and ratified by India to prevent BEPS.                                                                                                                                                                                                                                                                                                                                                                                                                                                  |

# APPLICATION AND INTERPRETATION OF TAX TREATIES



## Provisions given for Court by International Court of Justice

- International Convention
- International Customs
- General Principles recognised by civilised nations
- Judicial Decisions of various nations

## Source of International Tax Law

- Domestic Tax Law
- Double Taxation Avoidance Agreements (DTAA)
- Customary International Law and General Principles of Law
- Vienna Convention on Law of Treaties (VCLT)

## Double Taxation and Connecting Factors

|                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Double Taxation</b>          | Double Taxation means when one income is taxed twice.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Connecting Factors</b>       | There are two types of connecting factors which lead to double taxation: "Residence and Source". It means a person can be subject to tax either on his residence link or his source link with a country. If a person is earning income in host/source country, then, besides being taxed in home country on basis of his residence link, he will also be taxed in source country on basis of his source link. <ul style="list-style-type: none"> <li>▪ <u>Economic Double Taxation</u></li> </ul> <p>When same income is taxable in hands of two different persons. No double tax relief is available in this case.</p> <ul style="list-style-type: none"> <li>▪ <u>Juridical Double Taxation</u></li> </ul> <p>When same income of one person is taxed in two countries due to Residence &amp; Source Rule. Relief u/s 90 (Bilateral/DTAA) or 91 (Unilateral/ No DTAA) is available in this case.</p> |
| <b>Types of Double Taxation</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

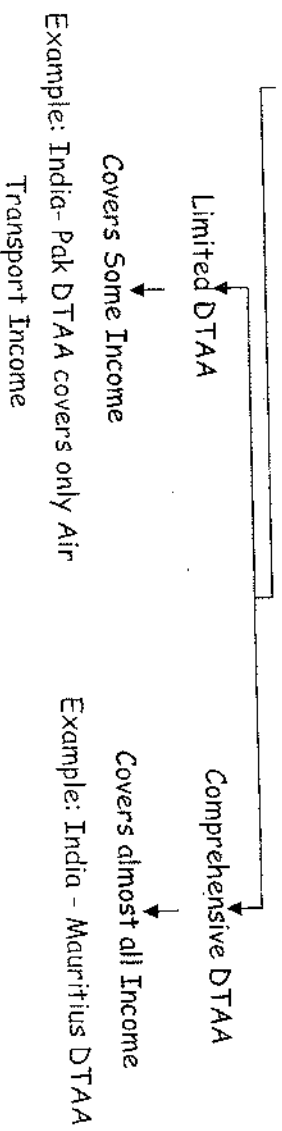
## Overview of Tax Treaties / DTAA / Tax Conventions

### (1) Meaning of Treaty

Treaty is an International Agreement concluded between states in Written Form and governed by International Law whether as single instrument or in two or more related instrument.

## Application and Interpretation of Tax Treaties

### (2) Types of DTAA



### (3) Directive Principles Setout in Indian Constitution regarding Treaty

At the time of entering into International Agreement, State shall endeavour to:

- Promote international peace & security.
- Maintain just & honourable relations among nations.
- Foster respect of international law & treaty.
- Encourage settlement of international disputes by arbitration.

### (4) Need/Objectives of Tax Treaty

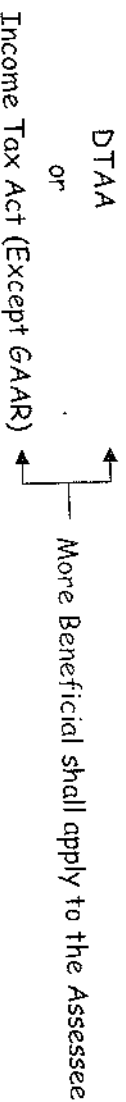
In addition to allocating tax rights and eliminating double taxation, other objectives and consideration are:

- Non-discrimination between Resident & Non-Resident
- Resolution of disputes
- Providing assistance in collection of tax
- Equity & Fairness
- Neutrality and Efficiency [Capital Export Neutrality and Capital Import Neutrality]
- Promotion of mutual economic relation, trade and investment

### (5) Tax Information Exchange Agreements [TIEA]

Agreement between two states only for Exchange of Information.

### Application of Tax Treaties



### Interpretation of Tax Treaties

#### (1) Basic Principles of Interpretation of Tax Treaties

|                                        |                                                                                                   |
|----------------------------------------|---------------------------------------------------------------------------------------------------|
| Golden Rule [Objective Interpretation] | Any term/word of treaty should be interpreted by objective/ordinary/literal meaning of that word. |
|----------------------------------------|---------------------------------------------------------------------------------------------------|

## Application and Interpretation of Tax Treaties

|                                         |                                                                                                                                                                       |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Subjective Interpretation               | Treaty is to be interpreted according to common intention of parties at the time of conclusion of treaty. Example: Speech of Finance Minister at the time of signing. |
| Purposive/ Teleological Interpretation  | Treaty is to be interpreted to achieve aims and objectives of treaty.                                                                                                 |
| Principle of Effectiveness              | Interpret in a way that it does not become void.                                                                                                                      |
| Principle of Contemporanea Exposito     | Meaning of terms is to be taken at the time of conclusion of treaty. However, this is not a universal principle.                                                      |
| Liberal Construction                    | Treaty shall be liberally construed so as to carry out apparent intention of parties.                                                                                 |
| Treaty as a whole — Integrated Approach | Entire treaty should be read as a whole to arrive at its object and purpose.                                                                                          |
| Reasonableness and Consistency          | Reasonable and consistent meaning should be taken.                                                                                                                    |

### (2) Extrinsic Aids to Interpretation of Tax Treaty

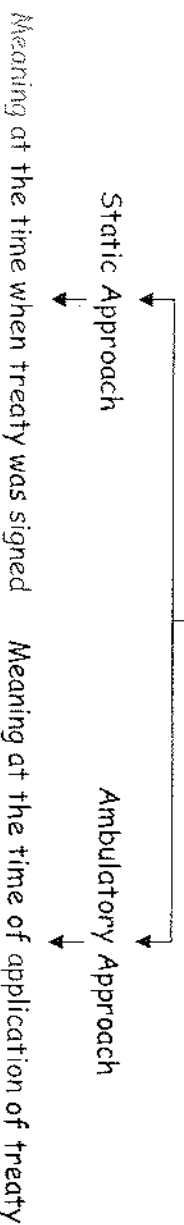
|                                                                                                                                                                                                                                                                                                                                                                                   |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>* Protocols and Preamble</li> <li>* Subsequent Agreement between the parties regarding interpretation of treaty</li> <li>* Subsequent Conduct of Parties</li> <li>* Other Treaties in Pari Materia or Provisions in Parallel Tax Treaties</li> <li>* Mutual Agreement Procedure [MAP]</li> <li>* International Articles/Reports</li> </ul> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

### (3) Protocol and Preamble

|          |                                                                                                                                                                                                                                                                                                                      |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Protocol | <ul style="list-style-type: none"> <li>▪ Supplement to the treaty.</li> <li>▪ Integral Part of treat and has same binding force as main clauses therein. One must refer to Protocol before arriving at any final conclusion.</li> <li>▪ Annexed at the end of treaty to put certain matters beyond doubt.</li> </ul> |
| Preamble | <ul style="list-style-type: none"> <li>▪ Guide in interpretation of tax treaty.</li> <li>▪ Integral part of treaty.</li> <li>▪ Annexed at the beginning of treaty.</li> </ul>                                                                                                                                        |

### (4) Ambulatory v/s Static Approach

Meaning of term not defined in treaty shall be taken as per domestic law.



## Application and Interpretation of Tax Treaties

### Vienna Convention Law of Treaty [VCLT]

- Multilateral Agreement
- Ratified by 116 Countries
- Provides basic rules of Interpretation of any International Agreement

| S.N. | Principles in VCLT                                                 | Explanation                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|------|--------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.   | Pacta Sund Survanda                                                | Treaty shall be followed in good faith.                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 2.   | Non-Retroactivity of Treaties                                      | Treaty cannot have retrospective application.                                                                                                                                                                                                                                                                                                                                                                                                                      |
| 3.   | Territorial Scope of Treaties                                      | Apply on entire territory unless otherwise provided.                                                                                                                                                                                                                                                                                                                                                                                                               |
| 4.   | General Rule of Interpretation as per VCLT                         | <ul style="list-style-type: none"> <li>▪ Treaty shall be interpreted in good faith as per ordinary meaning of term and as per object of treaty.</li> <li>▪ For interpretation, it comprises preamble &amp; annexure.</li> <li>▪ Any agreement/instrument made at the time of conclusion of treaty.</li> <li>▪ Any subsequent agreement and practice.</li> <li>▪ Relevant rules of international law.</li> <li>▪ Special meaning if parties so intended.</li> </ul> |
| 5.   | Supplementary Means of Interpretation.                             | At the time of preparatory work of treaty or conclusion of treaty, if ordinary meaning is ambiguous or unreasonable, then use supplementary meaning.                                                                                                                                                                                                                                                                                                               |
| 6.   | Interpretation of Treaty authenticated in two or more language     | <ul style="list-style-type: none"> <li>▪ Equally authenticated in each language.</li> <li>▪ Version in other language other than above shall be considered only if treaty provides.</li> <li>▪ If difference in meaning in both authenticated language, meaning which meet object &amp; purpose shall be taken.</li> </ul>                                                                                                                                         |
| 7.   | General Rule regarding Third State                                 | No right and No obligation of third state.                                                                                                                                                                                                                                                                                                                                                                                                                         |
| 8.   | Validity & Continuance in force of Treaties                        | As per treaty provisions.                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 9.   | Termination or Suspension of Operation of Treaty in case of Breach | <ul style="list-style-type: none"> <li>▪ Material breach of bilateral treaty by one party may entitle other to terminate/suspend operation of treaty.</li> <li>▪ Material breach of multilateral treaty by one party may entitle others to terminate/suspend operation of: <ul style="list-style-type: none"> <li>➤ Whole treaty</li> <li>➤ Defaulting state</li> <li>➤ Between party effected &amp; defaulting state</li> </ul> </li> </ul>                       |

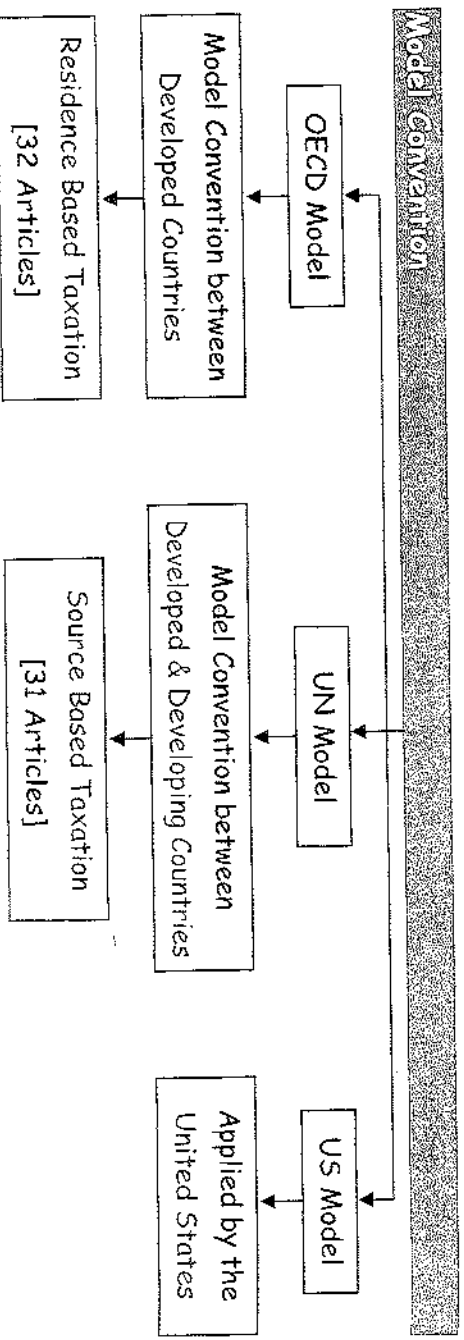
## Application and Interpretation of Tax Treaties

|     |                                            |                                                                                                                     |
|-----|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------|
| 10. | Supervening Impossibility of Performance   | Suspend operation of treaty.                                                                                        |
| 11. | Fundamental Change of Circumstances        | Treaty cannot be terminated/suspend due to fundamental change unless existence of these circumstances is essential. |
| 12. | Emergence of New Norm of International Law | Existing treaty will become void.                                                                                   |

### Most Favoured Nation (MFN) clause or Tax Parity clause in Tax Treaties

| Meaning                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MFN clause is usually found in Protocols. Under this clause a country agrees to extend benefits to residents of other country, which it had promised to residents of third country. It tries to avoid discrimination between residents of different countries.                                                                                                                                                                                                                                             |
| <b>Clarification regarding MFN Clause in Protocol to India's DTAA's with Certain Countries</b>                                                                                                                                                                                                                                                                                                                                                                                                             |
| CBDT clarified that applicability of MFN clause and benefit of lower rate for certain incomes provided in India's DTAA's with third country will be available to first country only when all following conditions are met:                                                                                                                                                                                                                                                                                 |
| <ul style="list-style-type: none"> <li>(i) Second treaty (with third country) is entered after treaty between India and first country.</li> <li>(ii) Second treaty is entered between India and country which is OECD member at time of signing.</li> <li>(iii) India limits (reduces) its taxing rights in second treaty in relation to rate or scope of taxation.</li> <li>(iv) Separate notification is issued by India, importing benefits of second treaty into treaty with first country.</li> </ul> |

# OVERVIEW OF MODEL TAX CONVENTIONS



## OECD and UN Model

### Title

"Convention between State 'A' and State 'B' for elimination of double taxation on Income and Capital and prevention of Tax Evasion & Tax Avoidance."

### Preamble

This convention is for avoidance of double taxation and not for treaty shopping.

### Article 1: Persons Covered

This convention shall apply to persons who are resident of one or both contracting states.

### Article 2: Taxes Covered

- This convention shall apply to taxes on income and capital.
- Also apply on any similar or identical tax imposed after signature of convention.

### Article 4: Resident

- Determine Residential Status of a person as per respective domestic laws of contracting state.
- If person becomes resident of both countries, then his Residential Status will be determined as follows: [Tie Breaker Rule]

**For Individual**

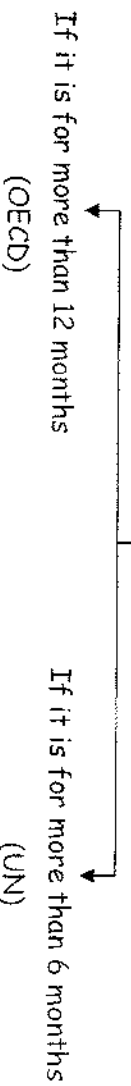
- He shall be deemed to be resident of contracting state in which he has permanent home available.
- If he has permanent home in both states, he shall be deemed to be resident of contracting state with which his personal & economic relation are close.
- If his personal & economic relations cannot be determined or if he has no permanent home in both states, he shall be deemed to be resident of contracting state in which he has habitual abode.
- If he has habitual abode in both states, he shall be deemed to be resident of contracting state of which he is a national.
- If he is a national of both states or neither of them, competent authorities determine his status by mutual agreement.

**For Other Persons**

Competent authorities will determine status as per mutual agreement.

**Article 5: Permanent Establishment (PE)**

- PE means a fixed place of business through which enterprise business is wholly or partly carried on.
- PE includes:
  - Branch
  - Office
  - Factory
  - Workshop
  - Sales Outlet
  - Place of Extraction of Natural Resources
- PE also includes building site, construction or installation project:



- As per UN Model, PE also includes furnishing of services through employees/other persons, if activities continue for aggregate more than 183 days in F.Y. [Service PE]
- UN Model has additional Article 5(6) regarding insurance enterprise which is absent in OECD Model.
- **PE shall not Include:**

- (i) Maintenance of fixed place of business for purchasing or collecting information
- (ii) Maintenance of fixed place of business only for preparatory or auxiliary activities subject to Anti Fragmentation Rule
- (iii) Advertising and promotional activities

## Overview of Model Tax Conventions

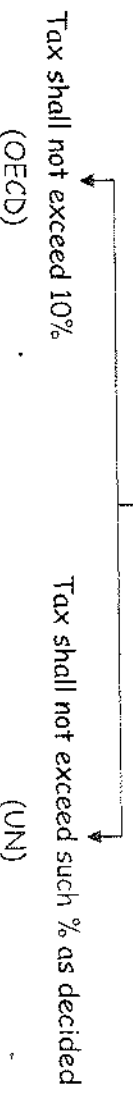
- (iv) Independent Agent [but Dependent Agent may be treated as PE]
- (v) Website [but Server may be treated as PE]
- (vi) Subsidiary, Associates etc. [Separate Legal Entity]

### Article 7: Business Profits

- Business Profit of enterprise of a contracting state shall be taxable in resident state.
- It shall also be taxable in source state only if enterprise has PE in source state.
- Force of Attraction Rule (Only in UN Model): When enterprise sets up PE in source state, profit earned in source state whether through PE or not (direct sale/export from head office to source state), it shall be deemed to be profit of PE and taxable in source state.

### Article 11: Interest Income

- "Interest" means income from debt claims of every kind whether or not secured by mortgage and income from securities, bonds or debentures.
- Interest income arising to person of contracting state shall be taxable in resident state.
- Interest income may also be taxed in source state



### Article 12 / 12A: Royalty / FTS

- "Royalty" means consideration for use of:
  - Any copyright of literary, artistic or scientific work including cinematograph films.
  - Any patent, trademark, design, plan or secret formula.
  - Industrial, commercial or scientific equipment.(OECD Model does not include rentals for films and industrial, commercial or scientific equipment)
- "FTS" means payments for managerial, technical or consultancy services (Only in UN Model).
- Royalty/FTS income arising to person of contracting state shall be taxable in resident state.
- Royalty/FTS income may also be taxed in source state, but tax shall not exceed such % as decided (Only in UN Model).

### Article 12B: Income from Automated Digital Services (only in UN Model)

- "Automated digital services" mean any service provided on the Internet or another electronic network, requiring minimal human involvement from service provider.

• Automated digital services include:

- (a) online advertising services
- (b) online supply of user data
- (c) online search engines
- (d) online intermediation platform services / social media platforms
- (e) digital content services
- (f) online gaming
- (g) cloud computing services
- (h) online teaching services
- Income from automated digital services arising in contracting state may be taxed in resident state.

**Article 13. Capital Gains**

- Capital gains may be exclusively taxable in resident state or shared between resident & source state.
- Capital gains from immovable property may be taxable in contracting state where such property is situated.

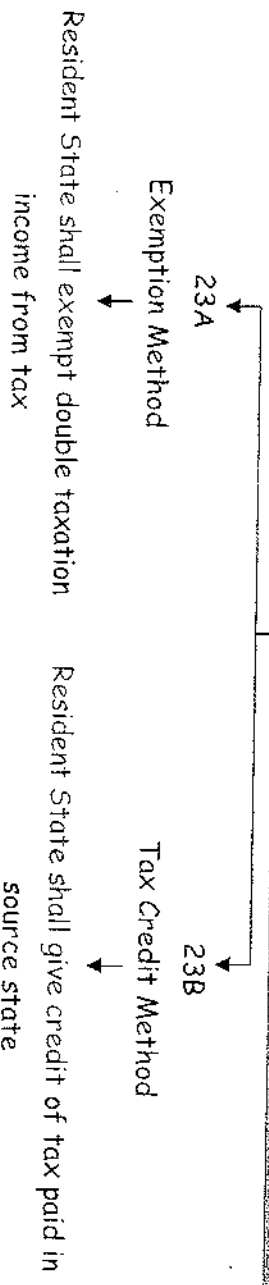
**Article 14. Independent Personal Service (only in UN Model)**

- Income from professional service shall be taxable in resident state.
- It shall also be taxable in source state if:
  - Person has fixed base [PE] in source state, or
  - Person stays in source state exceeds 183 days.

**Article 21. Other Income**

Other Income shall be taxable only in resident state.

**Article 23. Methods for Elimination of Double Taxation**



## Overview of Model Tax Conventions

### Article 25: Mutual Agreement Procedure (MAP)

- This Article requires competent authorities of both countries to resolve conflict by engaging in bilateral negotiations (MAP).
- MAP is an agreement through which tax authorities of contracting state resolve disputes of taxpayers regarding any article/income of DTAA.
- Dispute Resolution in MAP

| OECD Model                                               | UN Model                                                                                                       |
|----------------------------------------------------------|----------------------------------------------------------------------------------------------------------------|
| Taxpayer may make a request to either contracting state. | Alternative A - Taxpayer has to approach residence state.<br>Alternative B - Reference to arbitration process. |

### Article 26: Exchange of Information

- In order to complete tax cases, a country may require certain information which may be available with treaty partner. Article 26 provides for information which may be exchanged and the manner in which such request has to be made.
- Importance/Purpose of Article 26
  - Facilitates effective exchange of information between contracting states.
  - Curtails cross-border tax evasion and avoidance.
  - Curtails capital flight that is often accomplished through tax evasion & avoidance.
- A contracting state cannot be expected to provide confidential information to another state unless it has confidence that information will not be disclosed to unauthorized persons.

## ANNEXURE



Rule of Exchange for Conversion into Rupees of Income in Foreign Currency [Rule 115]

Income in Foreign Currency will be converted into Indian Rupees by TTBR of SBI on Specified Date.  
Specified Date

| Income                               | Specified Date                                                                                |
|--------------------------------------|-----------------------------------------------------------------------------------------------|
| Salary                               | Last day of month immediately preceding month in which salary is due.                         |
| Interest on Securities               | Last day of month immediately preceding month in which interest is due.                       |
| Dividend                             | Last day of month immediately preceding month in which dividend is declared/distributed/paid. |
| Shipping Business                    | Last day of month immediately preceding month in which such income arises.                    |
| Capital Gain                         | Last day of month immediately preceding month in which capital asset is transferred.          |
| House Property/PGBP/Any Other Income | Last day of previous year of assessee.                                                        |

Foreign Tax Credit [Rule 128]

- Already covered in Double Tax Relief Chapter. [Calculation of Relief u/s 90 and 91]
- Conversion of Tax paid in Foreign Currency to Indian Rupees  
By TTBR of SBI on last day of month immediately preceding month in which tax was paid or deducted.

## Working Notes

CA ATUL AGARWAL (AIR 1)

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