

CA | CMA FINAL

DIRECT TAXATION & INTERNATIONAL TAXATION

COMPACT

MAY / JUNE &
NOV / DEC -
2025 EXAM

3.0
PART-2



CA
BHANWAR
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Handwritten Notes

CA | CMA FINAL

DIRECT TAXATION & INTERNATIONAL TAXATION

COMPACT

PART 2

MAY / JUNE

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2025 EXAM

AMENDED BY FA 2024

Direct Taxation

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Preface

for 18th Edition

"What we learn with pleasure we never forget" - Alfred Mercier

Direct Tax is the one of the most extensive subject in terms of volume and sometimes it may seem to be intimidating as well. Through this book, we have tried to eradicate that fear. Our purpose is to efficiently succinct all important concepts without becoming overwhelmed with voluminous textbooks.

The book is user-friendly and will work as a one stop solution for your CA/CMA Final DT paper. During my exam time, I have struggled a lot because of using multiple books and notes. Due to mad rush in exams, I often used to get confused with what to refer and how to remember. Since that period, I have tried and I'm still trying to make learning simpler and easier for anyone to understand and apply.

I'm highly delighted to introduce a handwritten font book called 'Compact 2.0' which will act as a complete guide for a CA final student. From exam preparation to last minute revision, this book can be your great companion in celebrating your success with you. "Compact 2.0" is amended and updated as per New Syllabus of ICAI.

It took me 45 days to make this edition possible. I would like to express my gratitude to everyone who helped me in bringing this idea alive.

I dedicate this book to each student who is aspiring to become a Chartered Accountant / CMA and contribute in the growth of our country.

Compact is color coded book for easy understanding

- Black : Headings
- Blue : Main Content
- Red : Important Point & Words
- Green : Amendments

Thanks to makemydelivery.com/Pooja Law house to publishing this book. I would also like to thank Aadil & Sneha for their valuable contribution in Compact 2.0.

Topic wise Weightage

Sections	Weightage	Content Area
1.	20% - 23%	PGBP, Capital Gain, IFOS, Clubbing, Setoff & C/F, Deduction u/c VI-A, Alternative Tax Regime u/s 115BAA, 115BAB, 115BAC, 115BAD, 115BAE, MAT, AMT & SEZ
2.	20% - 22%	Taxation of charitable and religious trust and institutions, political parties and electoral trusts, business trusts, securitisation trusts, investment funds, GAAR, VDA, Equalisation Levy
3.	20% - 30%	TDS & TCS, Assessment Procedures, Appeals and Revision, Dispute Resolution, Miscellaneous Provisions, Black Money Act, 2015, Penalties & Tax Audit
4.	30% - 35%	International Taxation Transfer Pricing, NR Taxation, Double Taxation Relief, Advance Ruling, MTC, BEPS, Application and Interpretation of Tax Treaties



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All the Best

Notes

ADVANCE TAX

1. Advance tax means tax paid in the financial year immediately preceding the A.Y. (i.e. P.Y.)
2. Advance tax shall be calculated by estimating the current year income then applying tax rates. **TDS, TCS, MAT/AMT Credit, Foreign Tax Credit, Relief u/s 89 credit shall be deducted** to arrive at Advance tax liability.
3. Assessee is required to pay Advance tax if his liability for advance tax is ₹ 10,000 or more.
Exceptions: Resident Senior citizen not having income under "PGBP", shall not be required to pay advanced tax.
4. Due dates of Advance Tax for All Assessee's

Due Date	Amount of Advance Tax	Important
upto 15 th June of P.Y.	upto 15% of advance tax liability	If Assessee opts for Sec 44AD/ADA (Presumptive PGBP) then due date is 15 th March of P.Y. (100% of Advance tax in 1 instalment)
upto 15 th Sept of P.Y.	upto 45% of advance tax liability	
upto 15 th Dec of P.Y.	upto 75% of advance tax liability	
upto 15 th Mar of P.Y.	upto 100% of advance tax liability	
Note: Tax paid upto 31 st March of P.Y. is treated as advance tax.		

5. Payment of Advance Tax in pursuance of order of A.O (Section 210)
If Assessee has not paid or short paid the advance tax then A.O. may make order u/s 210 and ask assessee to pay advance tax in the instalment/instalments due after the date of the order, A.O. can pass order upto last day of feb. of P.Y. AO shall compute advance tax by taking higher income of:
 - (i) Total assessed income of the latest PY for which assessment has been made, or
 - (ii) Total income declared in ROI of any subsequent P.Y. (i.e. subsequent to the PY for which assessment has been made)

INTEREST u/s 234A, 234B & 234C

- Sec 234A: Interest for delay in Return filing

Tax as per ROI	x	Rate	x	Period
[After Adjustment of TDS/TCS/ Advance tax/ MAT/AMT credit/ Relief u/s 89/90/91] i.e. Tax remaining unpaid on 1 st April of A.Y.		[1 % per month or part of a month]		[From the date after due date of ROI till the date of actual filing of Return]

- Notes:**
1. However as per supreme court decision in Dr. Prannoy Roy, credit will be given of self-Assessment tax, if it is paid upto due date of return filing.
 2. If assessee has not filed the return, then this interest applicable till the date of completion of assessment u/s 144.

➤ Sec 234B : Interest for non / short payment of advance tax

This interest is **not applicable** if assessee paid 90% or more of Advance tax payable.

Advance Tax Short x Rate x Period

Paid as per ROI

[1 % per month or
part of a month]

[From 1st April of A.Y. till the
date of actual payment of Tax]

Note: If there is change in income due to processing of return u/s 143(1) or Assessment u/s 143(3), then tax as per 143(1)/Assessed u/s 143(3) tax shall be taken instead of tax as per ROI.

[This is applicable **only for interest u/s 234A & 234B**]

➤ Sec 234C: Interest for deferment of Advance tax instalments

Deferred Amount x 1% per month or
part of a month x 3 months for all instalments except
last instalment

[For last instalment, Int is applicable
always for 1 month] [16/3 to 31/3]

Notes: 1. Interest u/s 234C **always** calculated on **tax as per ROI**.

2. Interest u/s 234C shall **not be levied** for 1st or 2nd instalment deferment, if Assessee has paid Advance tax upto 12% in 1st instalment, upto 36% in 2nd instalment.

3. Advance tax in case of Capital gain, Winnings, Dividend, PGBP first time

Assessee is not able to estimate **capital gains or winnings or income under PGBP accrues first time or Dividend** so advance tax on such income shall be paid in remaining instalment by assessee after receipt of such income. If no instalment is due [income recd. during 16/3 to 31/3] then Advance tax shall be paid upto 31/3 of P.Y.

In case of above income interest **u/s 234C applicable only from the quarter in which income is received**.

➤ Interest u/s 234A(3) & 234B(3): Assessment/Reassessment u/s 147 after Intimation u/s 143(1) or Assessment u/s 143(3)/144

☞ Interest u/s 234A(3): If assessee filed late return or not filed the return in response to Notice u/s 148 then this interest is applicable on following amount @ 1% per month or part of the month

Amount ₹

Tax on assessed/reassessed Income as per sec 147 xx

Less: Tax as per Intimation u/s 143(1)/earlier assessment xx

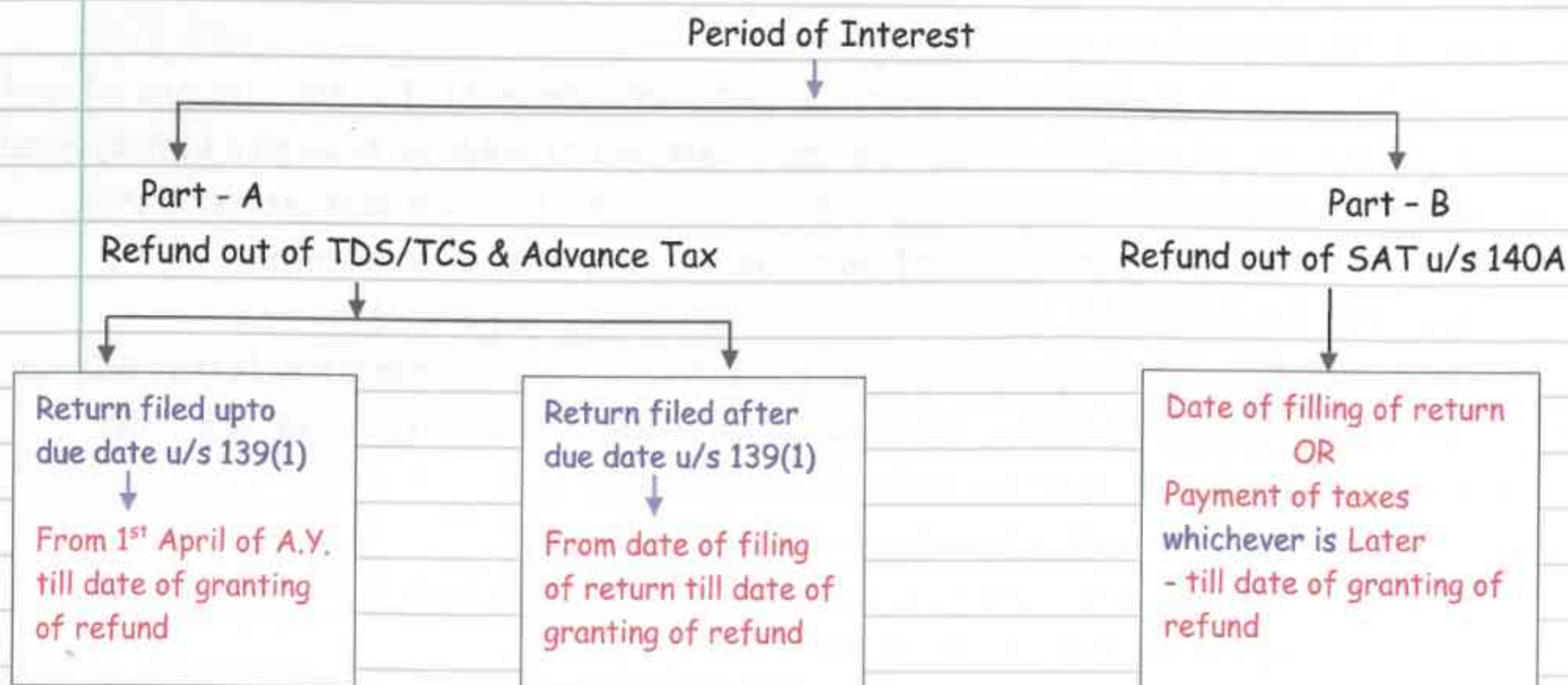
Period xx

Return filed u/s 148	After the expiry of time allowed u/s 148 to file return till the date of filing of return
Return Not filed u/s 148	After the expiry of time allowed u/s 148 to file return till the date of completion of assessment u/s 147

- ☛ Interest u/s 234B(3) : Interest @1% per month or part of the month applicable on amount calculated in 234A(3) from 1st April of AY till the date of completion of assessment u/s 147.
- Sec 234D: Interest on excess refund granted
If refund is granted u/s 143(1) & later on completion of assessment, if either **no refund is found due or the amount refunded is excess**, then the **excess refund** will have to be paid back by assessee along with interest u/s 234D @0.5% per month or part of a month on such excess refund.
Period: From date of granting the refund till date of completion of assessment.
- Sec 234E: Fee for default in furnishing TDS/TCS Statements (Return)
For delayed filing quarterly statement, assessee shall be liable to a mandatory **fees of ₹200 per day** during which default continues. The fees cannot exceed the amount of TDS deductible. The fees shall be paid before filing of quarterly statement.
- Sec 234F: Fee for default in furnishing return of income
Where a person, who is **required to furnish a ROI u/s 139**, fails to do so within the prescribed time limit u/s 139(1), he shall pay, by way of fee, **a sum of ₹ 5000**.
However, if total income of the person does not exceeds **₹ 5 lakhs**, the fees payable **shall not exceed ₹ 1,000**.
- Sec 234G: Fees for default in Filing Statement
Donee Trust/institution referred u/s 35(1)(ii)/(iia)/(iii) or 80G(5) fails to submit statement to PDGIT(System) or certificate of donation to doner **upto 31st May of next FY** then such institution/Trust required to pay **fees of ₹ 200 per day** during which failure continue.
Provided this fees shall **not exceeds amount in respect of which failure occurred**.
- Sec 234H : Fees for default in Linking Aadhar with PAN
If assessee link Aadhar with PAN on or after 01/04/2022 then he is required to pay following fees-
 - Link between 01/04/22 till 30/06/22 - ₹ 500
 - Link on or after 01/07/22 - ₹ 1,000
- Sec 245 : Set off and withholding of refunds in certain cases
If assessee has a refund arising in respect of any AY and demand is payable for another AY, then rather than paying him refund amount, CCIT/PCCIT/CIT/PCIT/AO, may, after intimating assessee about the same, set-off the refund amount of one year against the demands payable for another year.
Where no such amount is set off, and refund becomes due, and AO, having regard to the fact that assessment or reassessment are pending, he may, for reasons to be recorded in writing and with the previous approval of PCIT or CIT, as the case may be, withhold the refund upto 60 days from the date on which such assessment or reassessment is made.

➤ Sec 244A: Interest on refund

Simple interest @ 0.5% per month or part of the month will be paid by Dept. on the amount refunded.



Notes :

1. No interest under A & B, if refund is less than 10% of the tax determined u/s 143(1) or on a regular assessment.
2. Interest on refund is taxable under IFOS.
3. Dept. can set off refund amount against tax payable after intimating assessee.
4. If deductor deposit excess Tax (TDS) to Govt., then he is entitled for refund and he is eligible for interest on such excess @ 0.5% per month or part of the month from the date on which he claim the refund in FORM 26B till the date on which refund is granted.
5. If refund is due to any other reason (except discussed above) then interest is calculated from the date of payment of tax, penalty etc. till the date on which refund is granted.
6. In a case where a refund arises as a result of giving effect to an order u/s 250 or 254 or 260 or 262 or 263 or 264 [otherwise than by making a fresh assessment or reassessment], assessee shall be entitled to receive additional interest @3% p.a. from the date following the date of expiry of the time allowed u/s 153(5) to the date on which the refund is granted.
Provided that where proceedings are pending in respect of an assessee, in computing the period for additional interest payable, period beginning from the date on which such refund is withheld by the AO u/s 245(2) and ending with the date up to which such refund is withheld, shall be excluded.

Tax Deducted at Source (TDS)

1. TDS requirement arise :
 - (i) at the time of payment, OR
 - (ii) at the time crediting the A/c of payee, whichever is **earlier**

But in following cases TDS deducted only at the **time of payments**:

 - (i) Salary - Sec 192
 - (ii) EPF Payment - Sec 192A
 - (iii) Dividend - Sec 194
 - (iv) Winnings - Sec 194B, 194BB, 194BA (withdrawal from Online game user A/c)
 - (v) Maturity of life insurance policy - Sec 194DA
 - (vi) Compensation on compulsory acquisition of property - Sec 194LA
 - (vii) Cash withdraw from bank - Sec 194N

2. All TDS rates are Fixed rates i.e. 1%, 2%, 5%, 10% etc. but if payment made to **NR / Foreign Co.** or payment of **salary** then surcharge & HEC shall be considered.

3. Sec 206AA: If payee **does not furnish his PAN** to the payer, the TDS rate shall be:-
 - (i) Rate as per respective section, OR
 - (ii) Rate @ 20%*

Whichever is higher

*For sec 194-O/194-Q rate is **5%** instead of **20%**

Note: This section **does not apply to NR or Foreign Company payee** not having PAN in respect of payment in the nature of **interest, dividend, royalty, fees for technical services and payment on transfer of capital asset**, if payee furnishes the following details and documents to the deductor:-

 - ✓ Name, E-mail id & Contact Number
 - ✓ Address in the country outside India of which payee is a resident
 - ✓ Certificate of his being resident of foreign country from Govt. of that country
 - ✓ Tax identification no of payee in the foreign country, in case no such number is available then a unique number on the basis of which the payee is identified in foreign.

4. If the payment is made by payer without TDS, then payee shall be responsible to make payment of tax directly. However, if the tax has been deducted by payer, but not deposited with Government, then payee cannot be called upon to pay that much tax.

Section	Nature of Payment	Payer	Payee	Rate
192	Salary	Any Person	Employee (R/NR)	Slab Rate

Additional Points

- Employer required to deduct TDS only **at the time of Payment**.
- If employee **intend to opt out from default taxation** u/s 115BAC & submitted declaration to employer then employer shall deduct TDS as per normal rates, otherwise as per Sec 115BAC.
- Employer shall **consider details of other income, deduction & TDS/TCS** of employee if furnished by Employee. Employee has to submit evidences of such deductions, exemptions & losses.
- Employer shall **not consider losses** of employee except loss under the head house property.
- If employer bear the **tax on non-monetary perquisites**, then this need not be deducted from the salary of the employee. Amount borne shall not be allowed to employer u/s 40(a)(v) and the same will be exempted in the hands of employee u/s 10(10CC). Also, the **tax so borne will be treated as TDS in the hands of employee and credit of the same can be availed by employee**.
- Where the employee has worked with **more than 1 employer** during the year or employee changed the job during the year, he may furnish the details of his salary & TDS deducted by one employer to other/current employer.
- Where firm pays salary to partner, section 192 is **not attracted** as it is taxable in hands of partner under PGBP but from 1st April 25 TDS applicable u/s 194T if remuneration or interest more than 20,000 in a F.Y.

☞ **ITC Ltd (2016)(SC):** If tips are paid directly to the waiters, same is NOT salary; and there would be no obligation on employer to deduct TDS. Even if tip is paid through employer (like in present case, by credit card in the bill), same would not be a part of salary and the employer shall NOT be required to deduct TDS.

Section	Nature of Payment	Payer	Payee	Rate
192A	Accumulated balance of PF	Any Person	Employee (R/NR)	10%

Additional Points

- TDS required to be deducted only at the **time of Payment**.
- No need to deduct TDS if aggregate amount of payment is **less than ₹ 50,000**.

Section	Nature of Payment	Payer	Payee	Rate
193	Interest on Securities	Any Person	Resident Person	10%

Additional Points

No TDS if interest is paid:

- For **Debenture** issued by a **public company to Individual/HUF** if interest does not exceed ₹ 5,000 during the PY and the same is paid by a/c payee cheque.

- To LIC, GIC or other insurers.
- National Development Bonds.
- 7 Year National Savings Certificate (IV-Issue).
- Sec 54EC CG Bonds issued by Power Finance Corp. Ltd. or Indian Railway Finance Corp. Ltd.
- On Govt. Security [**Exception** - Interest on 8% Savings (Taxable) Bonds, 2003 or 7.75% Savings (Taxable) Bonds, 2018 or **Floating Rate Savings Bonds, 2020** or **any other notified security**, if interest is more than ₹ 10,000 during the PY then TDS applicable]
- To a business trust by a special purpose vehicle on any security.

Section	Nature of Payment	Payer	Payee	Rate
194	Dividend	Domestic Company	Resident Person	10%

Additional Points

1. TDS required to be deducted only at the **time of Payment**.
2. No TDS if payment made to **Individual** by any mode other than cash and payment is **upto ₹ 5,000 in a PY**.
3. TDS also required to be deducted on deemed dividend u/s 2(22)(a) to 2(22)(f). [**2(22)(f) w.e.f. 1/10/24**]
4. No TDS if **dividend to LIC, GIC or any other insurer** provided the shares are owned by them, or they have full beneficial interest in such shares.
5. No TDS if Dividend Paid/credited by **SPV to Business Trust**.
6. **No TDS** if dividend paid by any unit of IFSC, primarily engaged in the business of leasing of an aircraft to a company, being a Unit of an IFSC primarily engaged in same business. [As this dividend is exempt in hands of recipient u/s 10(34B)]

Section	Nature of Payment	Payer	Payee	Rate
194A	Interest other than Security interest	Any Person other than Individual & HUF [Ind/HUF required to deduct TDS, if last year T/O > ₹ 1 Cr in case of business or G/R > ₹ 50 Lakhs in case of profession]	Resident Person	10%

Additional Points

No TDS in following cases

- a. Interest by Bank/Co. Op. Bank/Post office on **time deposit upto ₹ 40,000** (₹ 50,000 for Resident senior citizen).
- b. Interest by any other person **upto ₹ 5,000**.
- c. Interest on **Saving Bank Account**.
- d. Interest by **Firm to Partners**.
- e. Interest on **Income Tax Refund**.
- f. Interest on **Zero Coupon Bonds**.



- g. Interest to Banks, Co-op. banks, Financial Corporations, LIC, Insurance Co., UTI, National Skill Development Fund, Housing and Urban Development Corporation. [Remember - NBFC not covered]
 - h. Interest by a Co-operative Society (other than Co. op. Bank) to another Co-operative Society or to any of its Members.
 - i. Interest by a Co-operative Society being bank to another co-op. society.
 - j. Interest on deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank
- Note: In case of point 8 to 10 TDS required to be deducted if T/O or G/R of Co-op. Society in last year more than ₹ 50 Crores and interest paid/credited is more than ₹ 40,000 or in case of senior citizen ₹ 50000.
- k. Interest Credited on the compensation amount awarded by the Motor Accidents Claims Tribunal (MACT).
 - l. Interest on the compensation amount awarded by the MACT paid during the FY does not exceed ₹ 50,000.
 - m. Interest on "Mahila Samman Savings Certificate, 2023" of Govt.

➤ Some issues related to Section 194A

- 1. In case of banks following CBS Software, NO TDS should be made on Interest which is credited to a provision account on a daily or monthly basis only for the purpose of macro monitoring by CBS software since no amount is actually credited to depositor's a/c. Thus, TDS is to be made at the time of actual credit given to depositor's a/c and Further, the limit of ₹ 40,000 shall be check bank-wise not branch-wise.
- 2. Interest income accrued to minor child, where both the parents have deceased [N/N. 05/2017]: TDS is required to be deducted and reported against PAN of the minor child unless a declaration is filed that credit for tax deducted has to be given to another person.
- 3. Interest on Capital Gains Accounts Scheme A/c, where depositor has deceased:-
 - a. TDS on interest accrued upto the death of the depositor is required to be deducted & reported against PAN of the depositor, and
 - b. TDS on int accrued for the period after death of the depositor is required to be deducted and reported against PAN of the legal heir, unless a declaration is filed that credit for tax deducted has to be given to another person.
- 4. UCO Bank (2014)(Del): The HC directed that the disputed amount be deposited in a bank FDR. Bank issued the FDR in the name of Registrar General of HC. It was held that in this case, since the amount is disputed, the actual payee is NOT ascertainable, and the person in whose name interest is credited (Registrar General) is NOT the person who is liable to pay tax. No TDS is required to be deducted. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of Sec. 194A will apply to the recipient of the income.

Section	Nature of Payment	Payer	Payee	Rate
194B	Winnings from lotteries, crossword puzzles etc.	Any Person	Any Person	30%
194BB	Winnings from Horse Races	Any Person	Any Person	30%

Additional Points

1. TDS required to be deducted only at the **time of Payment**.
2. No TDS if winning is **upto ₹ 10,000** during the F.Y.
3. If the winning is wholly in **kind or it is partly in kind** & partly in cash and the cash balance is not sufficient enough to meet the TDS liabilities, then Payer shall **release the prize only after ensuring that tax on such winning is paid to Govt.**
4. In cases where the book-maker paying the winnings, credits such winnings and debits the losses to the punter, tax has to be **deducted @30% on winnings before set-off of losses**. Thereafter, the net amount, after deduction of tax and losses, has to be paid to the winner.

Section	Nature of Payment	Payer	Payee	Rate
194BA	Winnings from Online Games	Any Person	Any Person	30%

Additional Points

1. TDS required to be deducted at the time of withdrawal during the PY from user account as well as at the end of Financial Year.
2. Computation of Net Winning for the purpose of Sec 115BBJ: **(A+D) - (B+C)**

A	Aggregate amount withdrawn from user account during the FY
D	Closing balance of user account at the end of the FY
B	Aggregate amount of non-taxable deposit made in user account by the assessee during the FY
C	Opening balance of user account at the beginning of the FY

Example

Mr. Tararam Dewasi is online fantasy game addict. He's having user account with My11circle App.

Opening Balance as on 01/04/24: ₹ 60,000

Amount deposited during PY 24-25 in user account: ₹ 1,50,000

Amount withdraw during PY 24-25 from user account: ₹ 3,37,000

Closing Balance as on 31/03/25: ₹ 72,000

In this case for the purpose of sec. 115BBJ taxable new winning is $(3,37,000 + 72,000) - (1,50,000 + 60,000)$: 1,99,000 taxable @30%



3. Computation of Net winning for the purpose of TDS u/s 194BA - **First withdrawal: A - (B + C)**

A	Amount withdrawn from user account
B	Aggregate amount of non-taxable deposit made till the time of withdrawal
C	Opening balance of user account

Subsequent withdrawal: $A - (B + C + E)$

A	Aggregate amount withdrawn from user account till the date of subsequent withdrawal
B	Aggregate amount of non-taxable deposit made till the time of subsequent withdrawal
C	Opening balance of user account
E	Net winning on which TDS already deducted at the time of earlier withdrawal

Net winning at the end of FY: $(A + D) - (B + C + E)$

A	Aggregate amount withdrawn from user account during the FY
D	Closing balance of user account at the end of the FY
B	Aggregate amount of non-taxable deposit made in user account by the assessee during the FY
C	Opening balance of user account at the beginning of the FY
E	Net winning on which TDS already deducted at the time of withdrawal

Example:

From following information calculate TDS required to be deducted by My11circle from the winning of Mr Tararam Dewasi. Opening balance of his My11circle account is ₹ 60,000 & closing balance in account is ₹ 72,000.

Deposits in User Account			Withdrawal from User Account		
Date	Particular	Amount	Date	Particular	Amount
14/4/24	Transfer from Bank A/c	50,000	30/4/24	Transfer to Bank A/c	80,000
19/5/24	Transfer from Bank A/c	70,000	19/7/24	Transfer to Bank A/c	92,000
13/6/24	Bonus from My11circle	11,000	10/2/25	Transfer to Bank A/c	75,000
18/8/24	Transfer from Bank A/c	30,000	15/3/25	Transfer to Bank A/c	90,000

TDS Requirement as per Sec 194BA as follows

30/4/24	First withdrawal	$80,000 - (50,000 + 60,000) = \text{Nil}$ (No need to deduct TDS)
19/7/24	Subsq. withdrawal	$(80,000 + 92,000) - (50,000 + 70,000 + 60,000) = \text{Nil}$ (No need to deduct TDS)
10/2/25	Subsq. withdrawal	$(80,000 + 92,000 + 75,000) - (50,000 + 70,000 + 30,000 + 60,000) = 37,000$ (TDS @ 30% applicable on 37,000 on 10/2/25)
15/3/25	Subsq. withdrawal	$(80,000 + 92,000 + 75,000 + 90,000) - (50,000 + 70,000 + 30,000 + 60,000 + 37,000) = 90,000$ (TDS@30% applicable on 90,000 on 15/3/25)
31/3/25	End of the Year	$(80,000 + 92,000 + 75,000 + 90,000 + 72,000) - (50,000 + 70,000 + 30,000 + 60,000 + 37,000 + 90,000) = 72,000$ (TDS@30% applicable on 72,000 on 31/3/25)

4. **Multiple user accounts:** In case of multiple user accounts of same user, each user account shall be considered for the purposes of calculating net winnings and the deposit, withdrawal or balance in the user account shall mean aggregate of deposit, withdrawal or balance in **all user accounts**. Transfer from one account to another **will not be treated** as deposit or withdrawal.

5. **Payment in cash or kind:** Whenever there is payment to the user in kind or in cash, or partly in kind and partly in cash, which is **not from the user account**, the provisions shall apply to calculate net winnings by deeming that the money equivalent to such payment has been **deposited as taxable deposit** in the user account and the equivalent amount has been **withdrawn** from the user account at the same time and shall accordingly be included in amount A.

Mr. Chetan won Mahindra Thar on My11circle. FMV of car is ₹ 12,00,000. In this case ₹ 12 lakhs treated as taxable deposit in user account and same time it is treated as withdrawal. TDS @30% applicable on ₹ 12,00,000 u/s 194BA.

In this case My11circle will release the car only after ensuring that tax on such winning is paid to Govt. [How to ensure ? - will discuss with Sec 194R]



6. **Taxable Deposit in form of Bonus:** If taxable deposit in the form of bonus, referral bonus, incentives, promotional money, discount etc. and such deposit can only be **used for playing the online games and not for withdrawal**, such deposit shall be **ignored** for the purposes of calculation of net winnings and shall not be included in amount B or C or D but if in future they are recharacterized and allowed to be withdrawn, they shall be **deemed as taxable deposit at the time of such recharacterization** and it shall be deemed that the equivalent amount has been deposited in the user account at that time.

7. If user borrows some money and deposits in his user account, will it be considered taxable deposit or non-taxable deposit?

Answer: For non-taxable deposit it is necessary that the amount deposited by the user is not taxable i.e., it is from already taxed income. In a case where user borrows the money and deposit in his user account, it shall be considered as non-taxable deposit.

8. In order to remove difficulty in deducting TDS for insignificant withdrawal, it is clarified that tax may not be deducted on withdrawal on satisfaction of all of the following conditions:-

- (i) Net winnings comprised in the amount withdrawn **does not exceed ₹ 100 in a month;**
- (ii) tax not deducted on account of this concession is **deducted at a time when the net winnings comprised in withdrawal exceeds ₹ 100** in the same month or subsequent month or if there is no such withdrawal, at the end of the FY; and
- (iii) the **deductor undertakes responsibility of paying the difference** if the balance in the user account at the time of tax deduction u/s 194BA is not sufficient to discharge the tax deduction liability calculated.

Section	Nature of Payment	Payer	Payee	Rate
194C	Contracts & sub-contracts [carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract]	Any Person other than Individual, HUF, AOP, BOI [Ind/HUF/AOP/BOI required to deduct TDS, if last year T/O > ₹ 1 Cr in case of business or G/R > ₹ 50 Lakhs in case of profession]	Resident Person	Payee:- Ind/HUF 1% Others 2%

Additional Points

- No TDS if :-
 - Single contract is upto ₹ 30,000 or
 - Aggregate of contract in PY is upto ₹ 1,00,000.
- No TDS if contract is for personal purpose of Individual/HUF.
- Work includes:
 - Advertising, Broadcasting, Telecasting (including production of programmes),
 - Carriage of goods or passengers by any mode other than by railways,
 - Catering,
 - Manufacturing or supplying a product as per specification of customer using material supply/sale by such customer or its associate of customer covered u/s 40A(2) (Job Work).
- Work excludes:
 - Manufacturing or supplying a product as per specification of customer using material purchased from any person, other than customer or its associate, or
 - Any sum already covered u/s 194J.
- No TDS if payment made to transporter owning not more than 10 vehicles at any time in the PY and who furnishes a declaration to this effect along with his PAN.
- In case of Job Work, TDS shall be applied on the invoice value excluding the value of material purchased from the customer/associate, provided bifurcation is given in the invoice. If no bifurcation is given, then TDS shall be applied on the entire amount.
- Payments by client to Advt. agency - It is treated as work and TDS applicable u/s 194C.

Client (BB Virtuals) Payment to Ad. Agency TDS u/s 194C apply	Ad. Agency (Global Advertiser) Payment of collection from Ad. After retaining say 15% No TDS u/s 194C No TDS u/s 194H	TV Channel 
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8. **Cold Storage charges**, which involves providing of **refrigeration facility** as well as storage facility, shall also be **subject to TDS u/s 194C** as a contract charge only and not u/s 194-I (Rent).

9. Payments by broadcasters or Telecasters (TV channels) to production houses for production of content for broadcasting / telecasting

Where the **content is produced as per the specifications** of broadcaster/telecaster and the copyright of the content is also transferred to them (e.g. Production of New Ramayan)

Such contract is covered by the definition of the term 'work' u/s 194C and

↓
Subject to TDS u/s 194C

Where telecaster/broadcaster, **acquires only the telecasting/ broadcasting rights of the content already produced by the production house** (getting right of original Ramayan)

there is no contract for carrying out any work, as required u/s 194C

↓
NO TDS u/s 194C

10. Payment for transportation of gas [Circular 9/2012]

If Seller sells as well as transports the gas to the buyer till the point of delivery, nature of such contract which remains 'contract for sale' and not a 'works contract' irrespective of fact whether the transportation charges are included in the cost of gas or shown separately.

However, if transportation charges paid to a third-party transporter, then TDS shall be made u/s 194C.

11. Japan Airlines Co. Ltd. /Singapore Airlines Ltd. (2015) (SC)

Landing and parking charges paid by airline co. to airport authority are not merely for the use of land but it is also for various other facilities provided like air traffic services, ground safety services, aeronautical communication facilities. Hence, these charges are **not liable for TDS u/s 194-I**. In this case **TDS applicable u/s 194C**.

Section	Nature of Payment	Payer	Payee	Rate
194D	Insurance Commission	Any Person	Resident Person	5% (10% if payee Dom. Co.)
194G	Commission on sale of lottery tickets	Any Person	Any Person	5% (2% w.e.f. 1/10/24)
194H	Commission and Brokerage	Any Person other than Individual & HUF [Ind/HUF required to deduct TDS, if last year T/O > ₹ 1 Cr in	Resident Person	5% (2% w.e.f. 1/10/24)

case of business or G/R > ₹ 50 Lakhs in case of profession]

Additional Points

1. No TDS in above sections if Commission or Brokerage is upto ₹ 15,000.
2. No TDS u/s 194H on Payments by BSNL or MTNL to their public call office franchises.
3. No TDS u/s 194H if commission or brokerage related to security like commission to underwriter, brokerage on public issue etc.

4. Case Laws

- Ahmedabad Stamp Vendors Association (2012) (SC): Stamp vendors take the stamps from Court at a lower value and give it to the people at the value engraved in the stamp. It was held that the margin of the Stamp Vendors was NOT their commission, but was discount given to them by the court as the Stamp Vendors deal on principal to principal basis.

- Prasara Bharati (2018)(SC): Doordarshan appointed various agent in India to procure advertisement. As per agreement between assessee and agents, states that agency would retain 15% of commission out amount collected from customers and remaining paid to assessee. In agreement its clearly mentioned that amount retain by agency is commission in nature and TDS is applicable on such commission. SC held then here is this case there is a principal-agent relationship so TDS u/s 194H applicable.

If you see point no 6 in section 194C, in that case there was no such agreement and advertisement agency and TV Channels working on principal-principal relationship basis so TDS not applicable as clarified by CBDT.

- Singapore Airlines Ltd/ KLM Royal Dutch Airlines/ British Airways Plc: TDS u/s 194H applicable on primary as well as supplementary commission given by Airlines company to Travel agents.

Base Fare (Max. Fare) for Indigo	Net fare (Set by the airline)	Actual fare (Set by the travel agent Makemytrip.com)	Standard commission (7% of the base fare)	Supplementary commission (Actual fare - Net fare)
₹ 1,00,000	₹ 60,000	₹ 80,000	₹ 1,00,000 × 7% = ₹ 7,000	80,000 - 60,000 = ₹ 20,000
Selling price	Income of the Indigo	₹ 20,000 left after payment of net fare to the Indigo	Income of the MMT	Additional Income of the MMT

In the above case, TDS u/s 194H is required to be deducted both on the standard commission of ₹ 7,000 and on the supplementary commission of ₹ 20,000. TDS will be deduct by Indigo @5% on total commission of ₹ 27,000 of MMT.

➤ Bharti Cellular Ltd. [2024](SC)

Is Airtel required to deduct TDS u/s 194H on the difference between the discounted price at which it sold start-up kits and recharge vouchers to distributors and the sale price at which these products were subsequently sold by the distributors?

TDS arises when the legal relationship of principal and agent is established. Agency is a triangular relationship between the principal, agent and the third party.

To decide whether a contracting party acts for himself as an independent contractor (and not as an agent), it needs to be examined whether in the course of work, he intends to make profits for himself, or is entitled to receive pre-arranged remuneration. If party acting for himself and making the max. profits possible, he is usually regarded as a buyer, or an independent contractor and not as an agent of the principal. Legal position of a distributor is generally regarded as different from that of an agent. The distributor buys goods on his account and sells them in his territory. The profit made is the margin of difference between the purchase price and the sale price. Unlike an agent, he does not act as a communicator or creator of a relationship between the principal and a third party. As per SC TDS **not applicable u/s 194H** in this case.

Section	Nature of Payment	Payer	Payee	Rate
194DA	Maturity of Life Insurance Policy	Any Person	Resident Person	5% (2% w.e.f. 1/10/24)

Additional Points

1. TDS required to be deducted only at the **time of Payment**.
2. No TDS if maturity amount is less than ₹ 1,00,000.
3. No TDS if maturity amount **exempted u/s 10(10D)**. [In case of LIP maturity amount taxable in case of Keyman Ins. Policy or ULIP taken on or after 1.2.21 & premium paid > ₹2,50,000 in a year or LIP taken on or after 1.4.23 & premium paid > ₹5,00,000 in a year or Premium more than limit of 10%, 15%, 20% of policy value prescribed u/s 80C]
4. In this section TDS applicable on **income component** i.e. maturity amount minus premium paid.

Section	Nature of Payment	Payer	Payee	Rate
194E	Payment to NR sports person/ Sports Association/ Entertainer	Any Person	NR Sport person or NR entertainer (who is not a citizen of India) or NR sport association	20.8% (20% + 4%)

Additional Points

1. Income received by NR Sportsmen (who is not a citizen of India) by way of:
 - ✓ **Participation in any game** or sport in India.
 - ✓ **Advertisement**.
 - ✓ **Contribution of article** in newspapers, magazines, journals relating to game or sports in India.



2. Guarantee Income received by NR sports association or institution in relation to any game or sports played in India.
3. Income received for performing in India by NR entertainer (who is not a citizen of India).

Section	Nature of Payment	Payer	Payee	Rate
194-I	Rent of P&M, Equipment's, Building, Furniture & Land	Any Person other than Individual & HUF [Ind/HUF required to deduct TDS, if last year T/O > ₹ 1 Cr in case of business or G/R > ₹ 50 Lakhs in case of profession]	Resident Person	P&M, Equipment's -2% Land, Building & Furniture - 10%

Additional Points

1. **No TDS** if rent is **upto ₹ 2,40,000** to a person in F.Y.
2. **No TDS on 'Refundable Deposits'**. However, 'Non-Refundable Deposits' shall attract TDS under this section.
3. Arrears of Rent received during the current year shall also be considered for the purpose of deducting TDS u/s 194I.
4. Even **Advance Rent** shall also be **subject to TDS** in the year of payment.
5. **Warehousing charges** shall also be **subjected to TDS** under this section.
6. It is **not necessary that the Payee must be the owner** of any of the above-mentioned assets.
7. CBDT circular-Lumpsum lease premium or onetime upfront lease charges which are not adjustable against periodic rent and which are paid for acquisition of long term lease rights - are not in the nature of rent within the meaning of sec 194-I, therefore NO TDS.
8. **Passenger Service fees (PSF)** paid by Airline's Company to Airport Operator is **not treated as rent** so TDS not applicable u/s 194-I [Circular No. 21/2017].
9. **No TDS** on payment in the nature of **lease rent**, made by a lessee to a lessor (being a Unit located in IFSC), for lease of an **aircraft or ship for 10 AY's** in which lessor claiming deduction u/s 80LA.
10. **Case Laws**
 - **Indus Towers Ltd (2014)(Del)**: Payment made for use of mobile towers was for use of technical and specialized equipment used by the Assessee. The towers are neutral platform without which mobile operators could not operate. The dominant intention was the use of P&M and use of premises was only incidental. Hence, although the transaction is renting, it is renting of P&M and hence, TDS @ 2% u/s 194-I is applicable.
 - **Senior Manager, SBI (2012) (All.)**: Since the payment of rent is made to each co-owner by way of separate cheque and their share is definite, the threshold limit ₹ 2,40,000 in sec 194-I has to be seen separately for each co-owner.
 - **Shree Mahalaxmi Transport Co. (2011) (Guj.)**: Assessee was engaged in the business of transportation of building material, salt, black trap, iron, etc. During the PY, the assessee made

payment for hiring of dumpers and deducted TDS u/s 194C. According to AO TDS should be deducted u/s 194-I. HC held that assessee have given sub-contract and not hired any P&M., liable for TDS u/s 194C and not u/s 194-I.

Section	Nature of Payment	Payer	Payee	Rate
194-IA	Transfer of Immovable property (other than rural agriculture land)	Any Person (Buyer)	Resident Person (Seller)	1 % of Consideration or SDV, whichever is higher

Additional Points

1. TDS is applicable only if **Consideration or SDV is ₹ 50,00,000 or more.**
2. **Where there is more than one transferor or transferee in respect of any immovable property, then the consideration shall be the aggregate of the amounts paid or payable by all the transferees to the transferor or all the transferors for transfer of such immovable property. [Added w.e.f. 1/10/24]**
3. Consideration for transfer of immovable property includes club membership fees, car parking fees, electricity or water facility fees, maintenance fees, advance fees or any other similar charges incidental to transfer of immovable property.

Section	Nature of Payment	Payer	Payee	Rate
194-IB	Rent of Immovable property	Individual/HUF (Not covered u/ s 194-I)	Resident Person	5% (2% w.e.f. 1/10/24)

Additional Points

1. **No TDS** if rent is **upto ₹ 50,000 per month** or part of the month.
2. In this section **TDS required** to be deducted only at the time of credit or actual payment of the **last month rent**, whichever is earlier. [Here last month of year or tenancy as the case may be]
3. Where the payee fails to furnish his PAN, TDS shall be deducted at the rate of 20%. However, in any case, such deduction cannot exceed the rent of the last month.

Section	Nature of Payment	Payer	Payee	Rate
194-IC	Consideration under Joint development agreement (JDA)	Any Person	Resident Person	10%

Additional Points

In this case TDS applicable only for cash/money consideration u/s JDA as specified u/s 45(5A).

Section	Nature of Payment	Payer	Payee	Rate
194J	a) Fees for professional Service (FPS) b) Fees for Technical Services (FTS) c) Remuneration to directors d) Royalty e) Non-compete fees (NCF)	Any Person other than Individual & HUF [Ind/HUF required to deduct TDS, if last year T/O > ₹ 1 Cr in case of business or G/R > ₹ 50 Lakhs in case of profession]	Resident Person	10%

Additional Points

- In following cases TDS rate is **2% instead of 10%** :-
 - ✓ Payment to any call centre.
 - ✓ Fees for Technical service (not being professional service).
 - ✓ Royalty paid for sale distribution or exhibition of cinematographic film.
- No TDS if amount is **upto ₹ 30,000 p.a.**, limit of ₹ 30,000 p.a. is applicable separately for each nature of payment (i.e. ₹ 30,000 each for FPS, FTS, Royalty, Non-compete). No limit for director fees (TDS to be deducted mandatorily).
- No TDS on FPS by **Individual/HUF** if made exclusively for **personal purposes**.
- Individual/HUF**, if last year T/O > ₹ 1 Cr or GR > ₹ 50 Lakhs, are required to deduct TDS only from **FPS and FTS**. No need to deduct TDS on royalty or NCF even last year TO/GR more than prescribed limit.
- CBDT Notification**: Payments made to Sportsperson, Sports Columnist, Umpire, Commentator, Referee, Physiotherapist, Team Physician, Anchor, Event Manager will also be regarded as FPS and accordingly be liable to TDS u/s 194J.
- Consideration paid for **acquisition of software** falls within the definition of royalty and hence, would be liable for TDS u/s 194J. However, **no TDS** would be attracted in cases of subsequent transfers if the transfer is made **without any modification** and TDS has already been deducted u/s 194J or 195 in the earlier transfers & transferor submit declaration along with PAN for same.
- CBDT Circular**: Third Party Administrators (TPA) making payments on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. are liable to deduct TDS u/s 194J.
- Kotak Securities Ltd (2016) (SC)**: Service charges paid by members of stock exchange to BSE for their BSE Online Trading (BOLT). AO held that it was a payment for fees for technical services. SC held, 'Technical services' like 'Managerial and Consultancy service' would denote seeking of services to cater to the special needs of the consumer/user as may be felt necessary and the making of the same available by the service provider. It is the above feature that would distinguish/identify a service provided from a facility offered. While the former is special and exclusive to the seeker of the service, the latter, even if termed as a service, is available to all

and would, therefore, stand out in distinction to the former. The service provided by the Stock Exchange for which transaction charges are paid fails to satisfy the aforesaid test of specialized, exclusive and individual requirement of the user or consumer who may approach the service provider for such assistance/service.

Section	Nature of Payment	Payer	Payee	Rate
194K	Income from UTI or Mutual Fund Units	Any Person (UTI/MF)	Resident Person	10%

Additional Points

No TDS if payment is upto ₹ 5,000 in a P.Y.

Section	Nature of Payment	Payer	Payee	Rate
194LA	Compensation on compulsory acquisition of Immovable Property	Any Person	Resident Person	10%

Additional Points

1. TDS required to deduct only at the time of payment.
2. No TDS if payment is upto ₹ 2,50,000 in a P.Y.
3. No TDS if the Immovable Property is an 'Urban or Rural Agricultural Land' in India.

Section	Nature of Payment	Payer	Payee	Rate
194M	Work pursuance contract, Commission / Brokerage, Fees for Professional service	Individual/HUF (other than required to deduct TDS u/s 194C, 194H, 194J)	Resident Person	5% (2% w.e.f. 1/10/24)

Additional Points

1. No TDS if amount is upto ₹ 50,00,000.
2. TDS u/s 194C, 194H & 194J in case of Ind/HUF payer applicable only if last year TO/GR more than prescribed Limit and u/s 194C & 194J TDS not applicable in case of personal nature contract or FPS so in those cases TDS required to be deducted u/s 194M if amount more than ₹50 lakhs.
3. Note for Sec 194-IA, 194-IB, 194M: In these sections payer not required to opt TAN numbers and TDS required to deposit online to Govt. along with TDS return in Form 26QB, 26QC and 26QD within 30 days from the end of the month in which TDS was deducted.

Section	Nature of Payment	Payer	Payee	Rate
194N	Cash withdraw from Bank, Co.op. Bank, Post office	Bank, Co.op. Bank, Post office	Any Person	2% (refer point 3)

Additional Points

1. TDS is required to be deducted only at the **time of payment**.
2. No TDS if cash withdraw is upto ₹ 1 Crore in a PY. If cash withdraw more than ₹ 1 crore than TDS applicable **only on excess amount over ₹ 1 crore**. Where the recipient is a co-operative society, limit of ₹ 3 crores is applicable for cash withdrawals.
3. If payee has not filed return **for all 3 preceding PY's** for which due date u/s 139(1) already expired then TDS shall be deducted as follows:
 - ☛ **2%** on cash withdraw in excess of ₹ 20 lakhs upto ₹ 1 crore and
 - ☛ **5%** on cash withdraw in excess of ₹ 1 crore.

Note: Here we will check ROI of PY20-21, PY21-22 & PY22-23 for the TDS liability in PY 24-25.

4. **No TDS** if cash withdrawal by :
 - ☛ Government (SG/CG),
 - ☛ Banks, Co-op. Bank, Post office and their business correspondent,
 - ☛ White label ATM operator of Banks or Co-op. Bank,
 - ☛ Cash Replenishment Agencies (CRA's) and franchise agents of White Label ATM Operators in respect of withdrawal made from a separate bank a/c maintained **only for replenishing cash** in ATM,
 - ☛ Registered Commission agent/trader operating under Agriculture Produce Market Committee (APMC) and certifies that withdrawal is made for the purpose of **making payments to farmers**,
 - ☛ Authorised dealer, Full Fledged Money changer (FFMC), their franchise agent and sub-agent in respect of withdrawal made for **purchasing foreign currency from NR/ foreign tourist visiting India or resident Indians on their return to India or for disbursement of inward remittances** to recipient beneficiaries in India in cash under Money Transfer Service Scheme.

Section	Nature of Payment	Payer	Payee	Rate
194-O	E-Commerce (Sale of Goods/Service)	Any Person (E-com. operator who owns, operate or manage E-Facility or platform) Ex. Amazon, Flipkart etc.	Resident Person (E-com. participant who selling goods or service through E-com. operator facility or platform)	1% (Gross amount of sale i.e., Price collected from Customer by E-com. operator) (0.1% rate w.e.f. 1/10/24)

Additional Points

1. No TDS if ALL the following conditions are satisfied:
 - ☞ The e-com. Participant is **an Ind or HUF**.
 - ☞ The gross amount of such sale or services or both during the PY **upto ₹ 5 lakh**.
 - ☞ The e-com. participant has **furnished his PAN or Aadhaar** to the e-com. operator.
2. Any payment made by a purchaser of goods or services **directly to an e-com. participant** but sale facilitated by e-com. operator, shall deemed to be the amount paid/ credited by e-com. operator to e-com. participant and shall be **included in gross amount for the purpose of TDS**.
3. If **TDS deducted** u/s 194-0 (or not deductible due to ₹ 5 lakhs limit), TDS **cannot be deductible** under any other section. However this rule is not applicable if amount received by e-commerce operator for hosting advertisement or providing any other services which are not related to sale of goods/services.
4. This section include sale of **goods as well as service** and service includes fees for professional and technical service also. If any professional service or technical service provided through online mode then this section applicable.
5. CBDT Clarifications:
 - ✓ Payment gateway will not be required to deduct tax u/s 194-0, if the tax has been deducted by the e- com. operator u/s 194-0 of the Act, on the same transaction.
 Example : BB Virtuals sales COMPACT Books through makemydelivery.com a E-Com. operator. MMD using payment gateway of CcAvenue. Now in this case MMD is required to deduct TDS of BB Virtuals and CcAvenue not required to deduct TDS of MMD provided CcAvenue takes undertaking from MMD regarding deduction of tax by MMD.
 - ✓ **Applicability of on insurance agent or insurance aggregator:** In years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between insurance company and the buyer of insurance policy, he would not be liable to deduct tax u/s 194-0 for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.
 Example: ICICI Lombard sales insurance policy through PolicyBazaar.com. Suppose in current year policybazaar.com collected insurance premium of ₹ 2 Crores for first year of insurance so in this case policybazaar.com required to deduct TDS of ICICI Lombard. In subsequent years policy holder directly making payment to ICICI Lombard then PolicyBazaar.com not required to deduct TDS however ICICI Lombard required to deduct TDS u/s 194D on commission paid to Policybazaar.com.

- ✓ TDS shall not apply in e-auction activities carried out by e-auctioneers if all facts are satisfied:-
 - (a) The e-auctioneer conducts e-auction in its e-portal **only for the price discovery** for the client and not responsible for purchase and sale.
 - (b) Price so discovered is **not necessarily the price at which the transaction takes place.**
 - (c) **Transaction takes place** directly between the buyer and the seller party **outside the e-portal.**
 - (d) Payments for the transactions are carried out directly between the buyer and the seller and the e-auctioneer **does not have any info.** about the quantum and the schedule of payment.
 - (e) For payment made to e-auctioneer for providing e-auction services, the client deducts TDS under respective section.

Further, it is clarified that the buyer and seller would still be liable for TDS/TCS as per 194Q or 206C(1H), as the case may be.

6. CBDT Clarifications on ONDC (Open Network for Digital Commerce)

- ✓ Tax Deduction in case of multiple E-commerce operators (ECO) involved in transactions like ONDC Platform;

If multiple E-Com. Operators (Seller Side & Buyer Side E-Com Operator) are involved in a single transaction, the responsibility for section 194-O compliance depends on whether the seller-side ECO is the actual seller or not.

Situation-1: If the seller side ECO is not the actual seller, the compliance u/s 194-O of the Act, is to be done by the seller side ECO, who finally makes the payment to the seller for goods or services sold or provided.

Situation-2: If the seller side ECO is the actual seller, the compliance u/s 194-O of the Act, is to be done by the buyer side ECO which finally makes the payment to the seller.

- ✓ Inclusion of several fees in gross amount;

(a) Convenience fees, commissions, logistic charges, and delivery fees should be included in the "gross amount" for TDS purposes because in this section TDS applicable on Gross amount of sale Value.

(b) Payments made to platform providers for transaction facilitation are included if linked to the transaction.

- ✓ Treatment of discounts;

(a) **Seller Discount:** Where discounts are given by the seller (E-commerce participant) then such amount would be reduced from the "Gross amount" for the purpose of TDS.

E.g.: If the label-price of a product is ₹ 100, and the seller offers a discount of ₹ 10, ₹ 90 will be receivable from the buyer. In this case, the seller will invoice the buyer for ₹ 90 and hence TDS will be calculated on ₹ 90.

(b) **Buyer ECO & Seller ECO Discount:** where a discount is given by the buyer ECO/seller ECO, usually the seller receives full consideration of the product. Thus, in such instances, the TDS must be deducted from the "gross amount" without giving effect to the discount offered by such ECOs. E.g.: If the price quoted by the seller is ₹ 100 and the buyer ECO gives a discount of ₹ 10, ₹ 90 (i.e. 100-10) will be collected from the buyer and remitted to the seller, and the buyer ECO will pay the remaining ₹ 10 to the seller via seller ECO. The invoice on the buyer will be raised for ₹ 100 and tax will be deducted by the seller-side ECO on ₹ 100, which is the gross amount of sales. TDS applicable on ₹ 100.

Section	Nature of Payment	Payer	Payee	Rate
194P	TDS by Bank in case of senior citizen	Specified Bank	Resident Individual age 75 Years or more in PY	Slab Rate

Additional Points

1. This section apply only if individual having income in the **nature of pension** and no other income **except the income in the nature of interest** from any account maintained in the same specified bank in which he is receiving his pension and has furnished a declaration to the specified bank containing such particulars, in paper FORM 12BBA and duly verified.
2. Once the declaration is furnished by senior citizen, the bank would be required to compute the income of such senior citizen. For computing total income deduction u/s 80C to 80U should be given (if assessee opted out from 115BAC) along with rebate u/s 87A. The bank shall deduct tax on such total income on the basis of slab rate after considering any TDS deducted on pension.
3. "Specified bank" means a schedule bank which has been appointed as agent of RBI u/s 45 of RBI Act, 1934.

Section	Nature of Payment	Payer	Payee	Rate
194-Q	Purchase of Goods more than ₹ 50 Lakhs in a PY	Any Person (Buyer) whose last year T/O more than ₹ 10 Crore	Resident Person (Seller)	0.1% of sum in excess of ₹ 50 Lakhs

Additional Points

1. In this section TDS required to deduct only on **excess amount over ₹ 50 lakhs**.
2. TDS is **not required to be deducted** under this section, if -
 - ✓ TDS is deductible under any other section;
 - ✓ TCS is collectible u/s 206C [other than section 206C(1H)].
3. In case of a transaction to which **both sec. 206C(1H) and 194Q applies**, TDS deducted u/s 194Q.
4. In case of a transaction to which **both sec. 206C(1)/(1F)/(1G) and 194Q applies**, TCS to be collected u/s 206C(1)/(1F)/(1G).
5. In case of a transaction to which both sec. 194-O and 194Q applies, **TDS deducted u/s 194-O**.

6. If PAN of payee is not available, tax will be deducted u/s 194-O & 194Q at the rate of 5%.
7. CBDT Clarifications:
 - ✓ Applicability on transactions carried through various Exchanges: Section 194-O, 194Q & 206C(1H) shall not apply in relation to transactions in securities and commodities which are traded through recog. stock exchanges or cleared and settled by the recog. clearing corp., including RSE or RCC located in IFSC or transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges.
Example: Mr. BB purchased 10,000 shares of Bajaj Finance Ltd @ ₹ 3800 through ICICI Direct Broker at BSE. In this case section 194-O, 194Q or 206C(1H) not applicable.
 - ✓ If any goods mentioned u/s 206C(1) purchased and used by buyer for manufacture of any product or power generation and buyer submit declaration for same then TCS not applicable but TDS u/s 194Q may apply if other conditions of 194Q are satisfied.
 - ✓ GST/VAT/Sales tax/CST/Excise Duty (IDT): TDS u/s 194Q NOT applicable on IDT amount if it is separately indicated in invoice but if advance payment is made then TDS should be deducted on total advance payment as we are not aware that what will be IDT amount in invoice.
 - ✓ Purchase Return: TDS deducted at the time of crediting the party or payment, whichever is earlier, so at the time of purchased TDS already deducted by Buyer. In case of purchase return there is no need to return TDS amount and it can be adjusted against future purchase from same seller. In case of replacement of Goods, no adjustment required.
 - ✓ Non-Resident Buyer: Sec. 194Q NOT applicable in case of NR buyer except where NR having PE in India and purchased relates to that PE.
 - ✓ Exempt Income of Seller: If seller whole Income is exempt under IT Act [like 10(23A), 10(44)], then TDS u/s 194Q NOT applicable. Similarly, if Buyer whole income exempt then TCS u/s 206C(1H) NOT applicable.
 - ✓ First year of Incorporation: TDS required to be deducted only if buyer's last year T/O more than ₹ 10 Crores. Since in case of first year of incorporation last year T/O is nil so this section NOT applicable in first year of Incorporation.
 - ✓ Last Year T/O: While checking last year T/O of buyer it should include only Business T/O or G/R and it should be more than ₹ 10 Crores. Non-Business T/O not to be counted.

- ✓ CG or SG shall not be considered as 'seller' and no tax is to be deducted by the buyer, in cases where any Dept. of Govt. are seller of goods. Any other person, such as a PSU or corp. established under Act or any other such body, authority or entity, shall be required to comply with the provisions of 194Q & TDS applicable.

Section	Nature of Payment	Payer	Payee	Rate
194R	Any benefit or perquisite, whether converted into money or not, arising from business or profession	Any Person other than Individual & HUF [Ind/HUF required to deduct TDS, if last year T/O > ₹ 1 Cr in case of business or G/R > ₹ 50 Lakhs in case of profession]	Resident Person	10%

Additional Points

- No TDS if amount of benefit or perquisite provided to a person is upto ₹ 20,000 in PY.
- If the benefit or perquisite is wholly in kind or it is partly in kind & partly in cash and the cash balance is not sufficient enough to meet the TDS liabilities, then Payer shall release the benefit or perquisite only after ensuring that tax is paid on such benefit or perquisite by way of
 - He has collected the amount equivalent to TDS amount from the Payee, or
 - He paid TDS from his own pocket, or
 - He insists the Payee to make the payment of TDS on his own by way of advance tax & submit the proof to the Payer.
- CBDT Clarifications:**
 - ✓ Payer is not required to check that the benefit or perquisite is taxable in the hands of recipient or not. Thus, the deductor is required to deduct tax u/s 194R of the Act in all cases where benefit or perquisite (of whatever nature) is provided so even if capital nature benefit is provided like car or land etc. then also TDS is applicable.
 - ✓ Sales discount, cash discount and rebates: No TDS on sales discount, cash discount and rebates allowed to customers.
 - ✓ Kohinnor Garments shop having ongoing offer to buy units 10 get 2 units free offer on the occasion of Diwali. Price of each unit is ₹ 15,000. In this case total selling price of seller would be ₹1,50,000 for 12 products. In this case it is difficult for seller to deduct TDS on benefit or perquisite so TDS NOT applicable but in case of free samples TDS applicable.



✓ TDS required to be deducted u/s 194R in following cases

- (i) Incentives in the form of cash or kind such as car, TV, gold coin, mobile phone etc.
- (ii) Sponsors a trip for the recipient and his/her relatives upon achieving certain targets.
- (iii) Provides free ticket for an event.
- (iv) Medicine samples free to medical practitioners.

Note: If receiver use such asset for his business or profession purpose then Actual cost of asset shall be FMV on which he already paid taxes. Depreciation can be claimed on such FMV.

✓ Free Samples by Pharmaceuticals Company to Dr/Hospitals

Situation-1: Cipla Ltd provided free sample worth ₹ 50,000 to Dr. Bin who is employee of M/s Bharti Hospitals Mumbai. In this case benefit/perquisite is provided to the doctor on account of him being the employee of the hospital so Cipla required to deduct TDS u/s 194R of Hospital. Hospital may subsequently treat this benefit/perquisite as the perquisite given to its employee's u/s 17 & deduct tax u/s 192 of the Act thus ultimately its taxable in hands of Dr. Bin.

Situation-2: Suppose in above situation Dr. Bin is a consultant of hospital instead of an employee - In this case Cipla will deduct TDS u/s 194R of Hospital and Hospital will deduct u/s 194R of Dr. Bin. Alternatively, Cipla can directly deduct TDS of Dr. Bin u/s 194R.

Situation-3: TDS u/s 194R shall not apply if the benefit/perquisite is being provided to a Government entity, like Government hospital, not carrying on business/profession.

✓ Calculation of value of benefit /perquisite; -

- (i) Provider has purchased the benefit/perquisite before providing it to the recipient - **Purchase Price.**
- (ii) Provider manufactures such items - **Price that it charges to its customers for such items.**
- (iii) In any other case- **FMV of benefit/perquisite.**

Note: GST will **not be included** for the purposes of valuation for TDS purpose.

E.g.: Samsung India Pvt Ltd., on 24/04/2024, had given a Phone (Valuing ₹16,000) to Mr. Ashish Chanchlani (social media influencer) for advertising. Further on 16/10/2024, Mr. Ashish was given another one costing ₹ 18,000.

In this case, If the products are: -

- (a) Retained by Ashish - **TDS applicable u/s 194R.**
- (b) Return to Samsung after marketing - **TDS not applicable as it's not a benefit.**

Assume products retained by Ashish, since the total benefit (16000 + 18000 = ₹34000) in a PY exceeds ₹ 20,000, TDS is required to be deducted. TDS to be deducted = ₹ 34,000 x 10% = ₹3400.



- ✓ AB & Associates (Kolkata), Auditor of BB Ltd. (Mumbai) goes to client's place for audit (12/11/2024). Travelling expenses (not invoiced in Client's name) invoicing ₹ 32,000 are paid by the client. In this case BB Ltd required to be deducted TDS u/s 194R on the Travelling Expenses borne i.e;
- $$\text{TDS} = ₹ 32000 \times 10\% = ₹ 3200$$

There would have been **no requirement** to deduct TDS if-

- (i) The **client had not borne** this expenditure or,
- (ii) **Invoice was in the name of the client** and expense was paid directly or re-imbursed by it.

Notes:

1. If out of pocket expenses (reimbursement) are already part of the consideration and TDS deducted u/s 194C/194J on total consideration then TDS not applicable u/s 194R on such out-of-pocket expenses reimbursed by client.
2. If any expenditure is incurred by "Pure Agent" on behalf of any "other person" and GST credit also availed by such "other person" then it is not treated as benefit /perquisite to "Pure Agent".

- ✓ The expenditure pertaining to dealer/business conference **would not be considered as benefit/perquisite**, in case conference is for:

- (a) New product being launched
- (b) Discussion as to how the product is better than others
- (c) Obtaining orders from dealers/customers
- (d) Teaching sales techniques to dealers/ customers
- (e) Addressing queries of the dealers/customers
- (f) Reconciliation of accounts with dealers/customers.

- ✓ In following cases expenditure on dealer/business conference would be treated as perquisite/benefit:

- (i) Expense attributable to **leisure trip or leisure component**, even if it is incidental to the dealer/business conference.
- (ii) Expenditure incurred for **family members accompanying** the person attending dealer/ business conference.
- (iii) Expenditure on participants of dealer/business conference for **days which are on account of prior stay or overstay beyond the dates** of such conference. However, a day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as over stay.

Note: It is clarified that if benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key, the benefit/perquisite provider may at **his option not claim the expense**, representing such benefit/perquisite, as deductible expenditure for calculating his total income. If he decides to opt

so, he will not be required to deduct TDS u/s 194R and therefore he will not be treated as assessee in default u/s 201.

- ✓ In case of **waiver or settlement of loan** by Schedule bank, Co. op. Bank, PFI, NBFC, SFC, SIIC, Public company engaged in long term loan or asset reconstruction company is not treated as benefit/perquisite for the purpose of section 194R and **not required to deduct TDS**.
- ✓ An embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state **not required** to deduct TDS under this section.
- ✓ TDS u/s 194R **not required in case of Bonus shares** issued by any company to all the shareholders and in case of Right shares by widely held company to all shareholders also out of scope from this section.

Section	Nature of Payment	Payer	Payee	Rate
194LB	Interest from Infrastructure Debt Fund	Infrastructure Debt Fund referred u/s 10(47)	NR/Foreign Co.	5% + HEC
194LC	Interest on money borrowed in foreign currency under loan agreement or issue of long-term bonds or rupee denominated bond upto 30.6.23	Indian Company or Business Trust	NR/Foreign Co.	5% + HEC
		Note: Issue of any long-term bond or RDB between 1.4.20 and 30.6.23, which is listed only on a recognised stock exchange located in any IFSC then TDS rate is 4%. Issued on or after 1.7.23 and listed at IFSC stock exchange then TDS rate 9%.		
194LD	Interest on RDB of Indian Company or Govt. securities or municipal debt securities	Any Person	FII or a QFI	5% + HEC
196A	TDS on Income in respect of Units	Any Person (UTI/MF)	NR/Foreign Co.	20% + HEC
196B	TDS on Income or LTCG referred u/s 115AB	Any Person	Offshore Fund	10% + HEC
196C	TDS on Interest or Dividend or LTCG on Bonds/GDR referred u/s 115AC	Any Person	NR	10% + HEC
Amendment: w.e.f. 23/07/2024 TDS rate in case of LTCG u/s 196B & 196C is 12.5%.				

196D	TDS on Income (Interest / Dividend) referred u/s 115AD	Any Person	FII	20% + HEC
			Specified Fund	10% + HEC
195	Any sum payable to NR/Foreign Co.	Any Person	NR/Foreign Co.	Rate in Force or DTAA rate

Additional Points for Sec. 195

1. Liability to deduct tax u/s 195 applies to all person, whether Resident or Non-resident, irrespective of whether the NR has a Residence or a Place of Business or Business Connection in India or not.
2. Case Laws:
 - V.S. Dempo & Co P Ltd (2016) (Bom): No TDS u/s 195 on the demurrage charges paid to a foreign shipping company which is governed by sec 172 for the purpose of levy and recovery of tax.
 - Wizcraft International Entertainment (P) Ltd (2014) (Bom): Commission paid to an overseas agent for bringing artists into India does not accrue/arise in India as the services were rendered completely from outside India and payment also received outside India. Hence, the same is not taxable in India and there lies no obligation to deduct TDS u/s 195.

Miscellaneous Provisions

- ☞ Sec 196: TDS not applicable if payee is Government, RBI, Statutory Corporation, Mutual Fund, New Pension Trust.
- ☞ CBDT Circular: TDS **NOT** applicable in case of "GST on services" separately indicated in Invoice.
- ☞ Sec 197 - Lower Deduction Certificate: Where assessee's Total Income or receipts of income is not liable to tax or taxable at lower rate in current year (it may be due to b/f losses) then assessee can apply to AO for issue of certificate for No Deduction or Low deduction of TDS. If AO satisfied with application of assessee then he may issue such certificate. In this case assessee's TDS will be deducted as per rate given in certificate.
- ☞ 197A: Declaration in Form 15G/15H: Where the total income of the Resident (other than company & firm) is below basic exemption limit during the year, no TDS shall be deducted u/s 192A, 193, 194, 194A, 194D, 194DA, 194-I, 194K if Assessee furnishes a self-declaration to the payer in Form 15G.
Exception: Benefit will not be available, if the incomes referred to in the above sections itself is beyond basic exemption limit.
However, in case of Resident Senior Citizen, he may furnish Form-15H requesting for non-deduction as long the tax payable during the year is NIL (even by way of rebate u/s 87A).

Example: Rent received by Mr Kunal is ₹ 3,60,000 and he has invested ₹ 1,20,000 u/s 80C. Now his NTI is less than basic exemption then also Kunal can't furnish 15G but suppose he is Senior Citizen then he can furnish 15H.

☞ Sec 198: TDS shall also be deemed to be the income of the Payee, except TDS paid by Employer on Non-monetary perquisite or TDS deducted u/s 194N.

☞ Sec 199: TDS credit available to a person from whose income deduction is made except:-

- ✓ In case of clubbing credit available to a person in whose hands the income is ultimately taxable.
- ✓ In case of tax paid by employer from own pocket on non-monetary perquisite employee can take credit.

☞ Due date of payment of TDS and TCS

TDS deducted/ TCS collected month	TDS Due date	TCS Due date
During April to February months	7 th of Next month	7 th of Next month
March month	30 th April of next FY	7 th April of next FY

Note: If TDS deducted u/s 194-IA, 194-IB or 194M then it should be deposited to Govt. within 30 days from end of the month in which deducted along with return in Form 26QB, 26QC, 26QD.

☞ Due date of TDS/TCS Returns/Statements

Quarter Ended	TDS Return	TCS Return
30 th June	31 st July	15 th July
30 th September	31 st October	15 th October
31 st December	31 st January	15 th January
31 st March	31 st May	15 th May

Notes:

- (i) Fees of ₹ 200 per day of default u/s 234E applicable if TDS/TCS return after due dates.
- (ii) If TDS/TCS return filed after 1 year of prescribed date the penalty u/s 271H ranging from a min. of ₹ 10,000 to a max. of ₹ 1,00,000 shall also be applicable.

☞ Sec 200A/206CB: Processing of TDS/TCS Returns (Intimation by CPC)

1. TDS/TCS returns filed shall be processed electronically and the following adjustment can be made:
 - (a) Rectification of any Arithmetical errors;
 - (b) Incorrect claim apparent on record.
2. An Intimation will be prepared specifying the amount of demand/refund along with interest, fees (if any) and sent to the deductor/collector within 1 year from the end of the FY in which return was filed.



☞ **Sec 201 - Assessee in default:** If payer not deducted TDS or after deduction not paid to Govt. then such person is treated as assessee in default and required to pay penalty u/s 221 and that can be maximum 100% of TDS amount. AO shall pass order to treat assessee in default within 7 years from end of FY in which payment/credit is made if payment made to resident without TDS. If payment is made to NR without TDS or TDS deducted but not paid to Govt. then there is no time limit in law to treat assessee in default.

Exception: Payer shall not be treated as assessee in default if payments made / credited to Payee without TDS, if such Payee fulfils all the following 4 conditions:

- ✓ He has furnished his ROI u/s 139;
- ✓ Such sum has been taken into account by him, in such ROI;
- ✓ He has paid the tax due on income declared by him in his ROI; and
- ✓ Payer has furnished a Certificate in this regard from a CA in Form 26A.

☞ **Sec 201(1A): Interest on Late deduction or Late payment of TDS**

- ✓ **Late Deduction:** Interest @ 1 % per month or part of the month on amount of TDS from the date on which TDS was deductible till the date on which TDS actually deducted.
- ✓ **Late Payment:** Interest @1.5% per month or part of the month on amount of TDS from the date on which TDS actually deducted till the date on which such tax actually paid.

❖ Case Laws

- ✓ **Sun Outsourcing Solutions Private Limited [2018](T&AP):** Interest u/s 201(1A) is automatically attracted for failure to deduct TDS and does not require a proof of wilful default unlike Penalty u/s 221. Hence, if no deduction was made even on a bonafide belief that no TDS is applicable, nevertheless the company is liable to pay interest u/s 201(1A).
- ✓ **Pioneer Overseas Corporation USA (India Branch) (2022) (SC):** Merely raising the dispute before any authority cannot be a ground not to levy the interest and/or waiver of interest u/s 220. Otherwise, each and every assessee may raise a dispute and thereafter, may contend that since the litigation was bona fide, no interest is leviable. It is required to be noted that u/s 220, the levy of simple interest on non-payment of the tax at 1% p.a. is mandatory. (if assessee not paid demand notice u/s 156 within 30 days then interest u/s 220 apply from 31st day)



☞ **Sec 206AB/206CCA: TDS/TCS rate in case of Non-Filers**

In case of TDS/TCS if payee/collectee has **not filed return** of income for **last year for which due date u/s 139(1) already expired** before the current PY and TDS deducted & TCS collected in that year was ₹ 50,000 or more, then TDS/TCS in current year shall be applicable at following rates:-

- (a) Twice the TDS/TCS rate, or
- (b) 5%

Whichever is higher.

Notes:

- (i) This section not applicable in case of TDS deductible u/s 192, 192A, 194B, 194BA, 194BB, 194-IA, 194-IB, 194LBC, 194M and 194N.
- (ii) This section not applicable in case of NR payee/collectee not having PE in India or a person not required to file ROI for relevant AY as notified by CG.
- (iii) If payee/collectee has not furnished PAN/ Aadhar also then TDS/TCS shall be deducted/collected at rates higher of this section and section 206AA in case of TDS and 206CC in case of TCS.
- (iv) For applicability of this section in current year we have to check that return was filed for PY 21-22 or not.
- (v) From 1/7/2023 for TCS maximum rate under this section can be 20%.

☞ **Sec 239A: Refund for denying liability to deduct tax in certain cases**

- (1) Where under an arrangement, in writing, TDS on any income, (other than interest), u/s 195 is to be borne by payer, and such payer paid such tax to CG claims that no tax was required to be deducted, may, within a period of 30 days from the date of payment of such tax, file an application before AO for refund of such tax in Form 29D.
- (2) AO shall, by an order in writing, allow or reject (after giving opportunity of being heard) the application.
- (3) AO may, before passing an order, make such inquiry as he considers necessary.
- (4) Order shall be passed within **6 months from the end of the month** in which application is received.

Case Laws

➤ Air India Ltd. [2023](SC)

Can section 206AA override the DTAA that specify a lower rate of tax?

High Court noted that sec. 90(2) provides that the provisions of DTAA would override the prov. of the Act in cases where DTAA are more beneficial to the assessee. Even the charging sections 4 and 5 of the Act, which deal with the principle of ascertainment of total income under the Act, are also subordinate to the principle enshrined in sec. 90(2). Thus, in so far as the applicability of the scope/rate of taxation with respect to the payments made to NR is concerned, no fault can be found with the rate of taxation invoked by the assessee based on the DTAA, which prescribed for a beneficial rate of taxation.

Sec. 195 of TDS would apply only to sums that are chargeable to tax under the Act. Provisions of DTAA, along with sections 4, 5, 9, 90 & 91 of the Act, are relevant while applying the provisions of TDS. Therefore, sec. 206AA cannot be understood to override charging sections 4 and 5 of the Act.

Accordingly, HC upheld ITAT ruling which held that where the tax has been deducted on the strength of the beneficial provisions of DTAA, the provisions u/s 206AA cannot be invoked to insist on the tax deduction @ 20%, having regard to the overriding nature of the provisions of section 90(2). Apex Court upheld the decision of HC, resulting in the dismissal of the SLP filed by the Revenue.

➤ BDR Finvest Pvt. Ltd. [2024] (Delhi)

Is the deductee entitled to claim credit for TDS if the amount of TDS is not reflected in Form 26AS because the deductor has not deposited it with the Govt.?

As per section 199(1), any amount of TDS and paid to the Govt. shall be treated as a payment of tax on behalf of the person from whose income the deduction was made.

Section 205 provides that where tax is deductible at the source, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

Accordingly, the High Court held that section 199 cannot come in the way of the deductee in case deductor failed to deposit the TDS. Therefore, the deductee should be given credit for TDS though it was not reflected in form 26AS and no recovery towards TDS could be made from the assessee in terms of the provisions of section 205.

The assessee had followed the regime put in place in the Act for collecting tax albeit, through an agent (deductor) of the Government. The recovery proceedings could only be initiated against the deductor as the deductor, an agent for collecting tax had failed to deposit the tax with the Government.

Tax Collection at Sources (TCS)

Section	Nature of Transaction	Rate	Collector (Seller)	Collectee (Buyer)
206C(1)	Sale of Goods ➤ Tendu Leaves ➤ Timber & other forest products ➤ Alcoholic liquor for human consumption ➤ Scrap ➤ Minerals being Coal, Lignite, Iron ore	5% 2.5% 1% 1% 1%	Any Person other than Individual and HUF [Ind/HUF required to collect TCS, if last year T/O > ₹ 1 Cr in case of business or G/R > ₹ 50 Lakhs in case of profession]	Any person other than : 1. Buyer who buys such goods for his personal consumption; 2. Public sector Co; 3. CG, SG, Embassy, High comm., legation, consulate, trade representation and clubs.

Additional Points

1. **No TCS if resident buyer** furnishes a declaration to the seller that "goods" are to be utilized in **manufacturing/production** of any article or for the purpose of **generation of power**.
2. If buyer T/o of last year more than ₹ 10 crores then Buyer required to deduct TDS u/s 194Q.
3. Scrap means waste from the manufacture or mechanical working of materials & which is definitely not usable as such because of breakage, cutting up, wear and other reasons.
4. **Priya Blue Industries (P) Ltd (2016) (Guj)**: In case of an assessee engaged in ship breaking activity, certain items/products are finished products obtained from such activity which are usable as such and hence, are not 'waste and scrap' though commercially known as scrap. Hence no TCS u/s 206C.

Section	Nature of Transaction	Rate	Collector (Licensor)	Collectee (Licensee)
206C(1C)	Leasing or licensing or transferring any right or interest in any- ✓ Parking lot or ✓ Toll plaza or ✓ Mine or quarry for the purpose of business	2%	Same as section 206C(1)	Any person other than public sector company

Note: For the purpose of this section "mining and quarrying" shall not include mining and quarrying of "mineral oil" includes petroleum and natural gas.

Section	Nature of Transaction	Rate	Collector (Seller)	Collectee (Buyer)
206C(1F)	Sale of a motor vehicle or any other goods may be notified, of the value exceeding ₹10 lakhs [Amended w.e.f. 1/1/25]	1 %	Same as section 206C(1)	Any person other than mentioned in Note-1

Notes:

- Public Sector Co engaged in the business of carrying passengers, CG, SG, Embassy, High comm, legation, consulate, trade representation, Local authority.
- TCS will apply only in case of **sale of motor vehicle at retail level**. No TCS under this section on sale by manufacturers to dealers/distributors.
- Threshold limit of **₹10 lakhs has to be looked at on each individual purchase** and not on aggregate purchases made during the year.

Section	Nature of Transaction	Purpose	Rate	Collector (Seller)
206C(1G)	Remittance of money more than ₹ 7 lakhs under Liberalised Remittance Scheme (LRS) of RBI	Education or Medical	5% of amount in excess of ₹ 7 lakhs (Note: 2)	Authorized dealer
		Other Purpose	20% of amount in excess of ₹ 7 lakhs	
	Sale of overseas tour program package (OTPP)	5% of sale value upto ₹ 7 lakhs and 20% above ₹ 7 lakhs.		Seller of OTPP

Additional Points

- No TCS** if buyer is :
 - ☞ Deducted TDS under any section;
 - ☞ CG, SG, Embassy, High comm., legation, consulate and trade representation, Local authority;
 - ☞ Non Resident Visiting India.
- In case of LRS if remitted amount is out of **Educational Loan (referred u/s 80E) taken from Financial Institution** then TCS rate shall **be 0.5% instead of 5%**.
- "OTPP" means any **tour** package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.
- Authorised dealer shall not collect TCS on an amount in respect of which TCS has been collected by the seller.

5. CBDT Clarifications

- ✓ Payment through overseas credit card not counted in LRS. No TCS applicable on expenditure through international credit card while being overseas till further order.
- ✓ Threshold of ₹ 7 lakh, for LRS is **combined threshold** for applicability of the TCS on LRS irrespective of the purpose of the remittance. (like education, medical or others)
- ✓ Medical treatment shall include remittance for purchase of tickets of patient and his attendant, his medical expense and other day to day expenses required for such purpose.
- ✓ Education purpose shall include remittance for purchase of tickets, tuition and other fees to be paid to educational institute and other day to day expenses required for undertaking such study.
- ✓ Only overseas flight ticket is booked or only hotel booked not covered in "OTPP".

Examples

1. Mr. BB wants to transfer ₹ 10 lakhs on 15/9/24 & ₹ 12 lakhs on 14/2/25 to USA for buying property through AB Ltd. (an authorized dealer) under LRS scheme of RBI.
Sol.- In this case AB Ltd require to collect TCS from Mr. BB @ 20% of ₹ 3 lakhs i.e. ₹ 60,000 on 15/9/24 & @20% of 12 lakhs i.e. 2.4 lakhs on 14/2/25.
2. Suppose in Q 1, Mr. BB wants to transfer only ₹ 5 lakhs instead of ₹ 22 lakhs.
Sol.- In this case TCS NOT applicable as it applies only if amount is more than ₹ 7 lakhs.
3. Suppose in Q 1, Mr. BB wants to transfer for the purpose of Education or Medical treatment.
Sol.- In this case AB Ltd require to collect TCS from Mr. BB @ 5% of ₹ 3 lakhs i.e. ₹ 15,000 on 15/9/24 & @ 5% of ₹ 12 lakhs i.e. ₹ 60,000 on 14/2/25.
4. Suppose in Q 1, Mr. BB wants to transfer for the purpose of Education and this amounts is out of educational loan taken from IDFC First Bank.
Sol.- In this case AB Ltd require to collect TCS from Mr. BB @ 0.5% of ₹ 3 lakhs i.e. ₹ 1500 on 15/9/24 & @ 0.5% of ₹ 12 lakhs i.e. ₹ 6000 on 14/2/25.
5. Suppose in Q 1, Mr. BB remitted ₹ 10 lakhs through AB Ltd. (dealer) and ₹ 12 lakhs through JJ Ltd (dealer).
Sol.- As per CBDT clarification limit of ₹ 7,00,000 applicable on total LRS remittance made by any person in a PY. In this case TCS applicable as per answer given in point 1. In this case JJ Ltd. will take self-declaration from Mr. BB about his earlier remittance through AB Ltd.
6. Mr. Devam purchased Singapore tour package from Thomas Cook for ₹ 2,50,000 on 16/6/24.
Sol.- In this case Thomas cook required to collect TCS@ 5% of ₹ 2,50,000 i.e. ₹ 12,500.
7. Suppose in above example Devam deducted TDS of Thomas Cook u/s 194C.
Sol.- If TDS deducted under any provisions of IT then TCS not apply u/s 206C(1G).
8. Mr. SS purchased Thailand tour package from MMT for ₹ 15,00,000 on 10/12/24.
Sol.- In this case MMT required to collect TCS@ 5% of ₹ 7,00,000 i.e. ₹ 35,000 & 20% of ₹ 8,00,000 i.e. ₹ 1,60,000. Total TCS amount is ₹ 1,95,000



Section	Nature of Transaction	Rate	Collector (Seller)	Collectee (Buyer)
206C(1H)	Sale of Good [other than export & covered u/s 206C(1)/(1F)/(1G)]	0.1% of consideration in excess of ₹ 50 lakhs	Any person whose last year T/O is more than ₹ 10 Crore	Any person other than mentioned in Note-1

Additional Points

1. CG, SG, an embassy, High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority or a person importing goods into India or any other notified person.
2. If buyer deducted TDS under any section then TCS not applicable under this section.
3. If buyer not submit PAN or Aadhar then TCS rate is 1% instead of 0.1% in this section.
4. Under this section TCS collected only at the time of receiving consideration in excess of ₹ 50 lakhs in PY.

5. CBDT Clarifications

- ✓ In case of Motor vehicle if section **206C(1F) not applicable** (like manufacturer to distributor) then section **206C(1H) applicable** if other condition of this section satisfied.
- ✓ In case of sale of **fuel to NR Airlines companies** at Indian Airport **not liable for TCS** under this section.
- ✓ **No need of any adjustment for GST or sale return** as TCS under this section applicable on receipt of consideration.

6. Example: Navneet Motors, Mumbai is an authorised dealer of BMW & KIA Motors. T/O of last year is 25 Crores.

Case-A: Sale of a car Kia Seltos to Mr Ravi (a salaried employee) for ₹ 9,60,000 (including GST) - In this case TDS u/s 206C(1H) & (1F) not applicable.

Case-B: Sale of 7 cars Kia Seltos to Mr Ravi for ₹ 9,60,000 each (including GST) & received ₹ 67,20,000 by dealer - In this case TCS u/s 206C(1F) not applicable but TCS u/s 206C(1H) is applicable dealer will collect TCS@ 0.1% of amount in excess of ₹ 50,00,000 i.e. ₹ 17,20,000.

Case-C: Sale of a car BMW GT to Mr Kavi for ₹ 92,00,000 (including GST) - In this case TCS u/s 206C(1F) applicable & dealer will collect TCS@ 1% of ₹ 92,00,000.

Case-D BMW India Ltd. sold 200 cars to Navneet Motors in PY 24-25 and total consideration received is ₹ 150 Crores. In this case Navneet motors will deduct TDS of BMW India Ltd @0.1 % in excess of ₹ 50 lakhs u/s 194Q.

Case-E Navneet Motors sold a Kia Carnival to MR Devam and consideration is as follows:

Base Price :	23,00,000
Add: Luxury Tax:	4,60,000
Add: GST 28%:	6,44,000
Total	<u>34,04,000</u>

In this case Navneet motors will collect TCS u/s 206C(1F) on ₹ 34,04,000.

Miscellaneous Provisions

- ☞ Time of Collection TCS: TCS has to be collect at the time of debiting the party or receiving the consideration, whichever is earlier but in case of section 206C(1F) & (1H) it has to collected only at the time of receive the consideration.
 - ☞ Sec 206C(7) Interest on late collection/deposit TCS: In case of any delay, interest shall be calculated @ 1 % per month or part thereof from date on which TCS was collectible to date on which TCS is actually paid. [w.e.f. 01/04/25 on late payment of TCS interest applicable @ 1.5% p.m. or part of the month]
 - ☞ Sec 206CC: If the collectee has not provided PAN or Aadhaar to the collector, then TCS rate shall be
 - (a) Twice of the rate or
 - (b) 5% [1 % in case of sub-section (1H)]
 Whichever is higher
- Note: From 1.7.23, the higher rate of TCS leviable for non-furnishing of PAN should not exceed 20%.



Sec 139(1): Filing of Return of Income (ROI) [Normal return]

- A. For Company & Partnership Firm (including LLP) - Return filing is **compulsory**.
- B. For other Assessee - If GTI (before claiming exemption u/s 54, 54B, 54D, 54EC, 54F, 54G, 54GA) more than Basic exemption, **then return filing is compulsory**.
- C. Following persons compulsory required to file the return.
 1. Resident Individual - Resident (other than R but NOR)



Note: If income already included in the income of person "A" then "B" not required to file ROI.

- ✓ Beneficial Owner - Individual providing consideration for the asset directly or indirectly for the immediate or future benefit for himself or any other person.
 - ✓ Beneficiary - Individual deriving benefit from the asset, consideration for which has been provided by any other person.
2. Person (other than Company and Firm) not covered in above points required to file ROI, if
 - Assessee has **deposited** an aggregate amount **exceeding ₹ 1 crore rupees** in one or more **current accounts** maintained with a bank or a co-operative bank or **deposited ₹ 50 lakhs or more** in one or more **savings accounts**.
 - Assessee has incurred **foreign travel expenditure** of an aggregate amount **exceeding ₹ 2 lakhs** for himself or any other person.
 - Assessee has incurred expenditure of an aggregate amount **exceeding ₹ 1 lakh** towards consumption of **electricity**.
 - Assessee's total sales, turnover or gross receipts, as the case may be, in the **business exceeds ₹ 60 lakhs** during the PY or total gross receipts in **profession exceeds ₹ 10 lakhs** during the PY.
 - Assessee's aggregate of **TDS and TCS** during the PY, is **₹ 25,000 or more** (in case of senior citizen **₹ 50,000**).

❖ Due Dates of Return Filing

Assessee	Due Dates
Person require to furnish Transfer Pricing Audit report u/s 92E including the partners* of the firm	30 th Nov. of AY
☞ Company , other than above ☞ Person whose Books of Accounts are required to be audited under any law ☞ Partner* of a firm, where firm's Books of Accounts are required to be audited under any law	31 st Oct. of AY
Person other than the above	31 st July of AY

* or the spouse of such partner if the provisions of section 5A applies to such spouse.

Note: As per section 5A if individual govern by Portuguese Civil Code of 1860 in Goa, Dadra and Nagar Haveli and Daman and Diu then Income shall be equally distributed between husband and wife except Salary.

Sec 139(1C): Central Govt may exempt class of person to file ROI

Central Government may by notification specify such class or classes of persons who will be **exempted** from the requirement of **filing of return** :-

1. **NR/Foreign Co.**, having income only from **Investment fund set up in IFSC** are exempted from furnishing return provided tax on such income has been deducted u/s 194LBB and paid to the CG. However, no exemption will be available where a notice u/s 142(1) or Sec 148 has been issued by the AO for filing a return of income.
2. **NR/Foreign company**, having only Income **from specified Fund referred u/s 10(4D)** & provisions of obtain PAN not applicable for such assessee.
3. **NR**, being an eligible foreign investor having income only from **transfer of capital asset referred to in section 47(viia)** of the said Act, which are listed on RSE in IFSC and the consideration is paid or payable in foreign currency & provisions of obtain PAN not applicable for such assessee.

Sec 139(3): Loss Return

As per sec 80, assessee required to file the **return upto due date u/s 139(1)** for carry forward of following losses:

- ✓ **Business loss** u/s 72(1)
- ✓ Speculation business loss u/s 73(2)
- ✓ Loss from specified business u/s 73A(2)
- ✓ Loss under the head "**Capital Gains**" u/s 74(1)
- ✓ Loss from the activity of **owning and maintaining race horses** u/s 74A(3)



Notes:

1. Loss can be set-off even if return filed after due date.
2. House property losses & unabsorbed depreciation can be Carry Forward even if return late filed.
3. The condition stipulated/ enumerated in sec. 80 applies only for the year in which the loss was sustained/incurred. It does not apply to the ROI of the year in which carry forward is claimed.
4. Govind Nagar Sugar Ltd. (2011) (Delhi): Unabsorbed depreciation will be allowed to be c/f to subsequent year even though the ROI of the current AY was not filed within the due date u/s 139(1).
5. As per CBDT Circular, Loss can be c/f even if ROI filed after due date and delay in filing of loss return in case of genuine hardship can be condoned by:

❖ Monetary limits w.e.f. 1.6.2023 vide Circular No. 7/2023:

Authority	Return Losses
CIT/ PCIT	upto ₹ 50 lakhs
CCIT	> ₹ 50 lakhs upto ₹ 2 Crores
PCCIT	> ₹ 2 Crores upto ₹ 3 Crores
CBDT	> ₹ 3 Crores

6. Condonation application can be made within 6 years from end of AY. IT Authority will dispose application within 6 month from end of the month in which application is received.

Sec 139(4): Belated Return

If Assessee fails to File return within due date then he can file belated return with in following time limit:

- ✓ Before the three months prior to end the of the relevant AY (31st Dec. 25 for AY 25-26)
- OR
- ✓ Before completion of Assessment
- Whichever is earlier

❖ Consequences of belated return

- ⊗ No carry forward of specified loss as per sec 80.
- ⊗ No deduction of certain Income u/c VI-A (80-IA to 80RRB) and u/s 10AA as per 80AC.
- ⊗ Interest u/s 234A i.e. 1% pm or part of the month.
- ⊗ Late filing fees u/s 234F i.e. ₹ 5,000/1000.
- ⊗ Interest on refund u/s 244A calculated from the date of filing of ROI and not from 1st April of AY.

Sec 139(5): Revised Return

Any person filed return u/s 139(1) or 139(3) or 139(4), if discover any omission or wrong statement in such ROI Filed earlier, then such person can file revised return within following time limit :-

- ✓ Before the three months prior to end the of the relevant AY (31st Dec. 25 for AY 25-26)



OR

✓ Before completion of Assessment

Whichever is earlier

Notes:

1. Belated return filed u/s 139(4) can be revised u/s 139(5).
2. Revised return substitutes original return from the date the original return was filed.
3. Assessee can revise return any no. of times within time limit.
4. Return can be revised even after receiving intimation or refund under sec.143(1) as sec.143(1) is not completion of assessment.
5. Orissa Rural Housing Development Corpn. Ltd. (2012) (Orissa): Assessee cannot revise the particulars filed in the original return of income by filing a revised statement of income. He has to file a revised return u/s 139(5). AO has no power to entertain a fresh claim made by the assessee after filing of the original return except by way of filing a revised return.

Sec 139(4A): Return of Trust

If total income before giving exemption u/s 11 & 12 is more than basic exemption, then trust is required to file returns.

Note: If Trust file late return then penalty of ₹ 500 per day u/s 272A for default period also applicable in addition to fess u/s 234F.

Sec 139(4B): Return of Political Parties

If total income before giving exemption u/s 13A more than basic exemption, then political party is required to File the return.

Sec 139(4C): Return of Certain Institutions

If total income before giving exemption u/s 10 more than Basic exemption, then Hospitals, Medical Institutions, Infrastructure debt fund, Mutual fund, Securitisation Trust, Venture capital Co. Venture capital funds, Research association, News agency, Trade union, Investor protection fund, Fund for the welfare of employees and their dependents, Core settlement guarantee fund are required to file return.

Note: If above institution file late return then penalty of ₹ 500 per day u/s 272A for default period also applicable in addition to fess u/s 234F.

Sec	Assessee	Return Filing
139(4D)	College, University or Educational Institution approved u/s 35	Return Filing is mandatory
139(4E)	Business Trust (REIT/Invit)	
139(4F)	Investment Fund (AIF Cat. I & II)	



Sec 139(6): Particulars to be furnished with the ROI

The ITR form may require assessee to file details of Exempt Income, Assets of specified nature & value, Bank a/c & Credit card, Expenditure more than specific limits in prescribed head.

Sec 139(6A): Particulars to be furnished with the ROI for Assessee engaged in Business

The ITR form shall require following when assessee engaged in Business or Profession :-

- ☞ Tax Audit Report u/s 44AB
- ☞ Location and Style of Principal Place and Branches
- ☞ Name and address or partners/members of Firm/AOP/BOI.

Sec 139(9): Defective Return

Return shall be considered as defective, if -

- (a) Return not Filed in **prescribed form**,
- (b) **Proofs of tax** not attached with return,
- (c) Report u/s **44AB** not submitted,

If return treated as defective, A.O. shall intimate the defect to assessee & give him an opportunity to rectify the defect **within 15 days or extended time** if assessee does not rectify the defect then return shall be treated as invalid return (void-ab-initio).

Sec 139A: Permanent Account Number (PAN)

S.No.	Persons required to apply for PAN	Time limit for application
1.	Every person, if his total income or the total income of any other person in respect of which he is assessable exceeds Basic exemption .	upto 31st May of the AY
2.	Every person carrying on Business or Profession whose Turnover or Gross receipts are or is likely to exceed ₹ 5 lakhs in any PY	Upto end of PY
3.	Trust required u/s 139(4A)	Upto end of PY
4.	Resident , other than an individual, which enters into a financial transaction of an amount aggregating to ₹ 2,50,000 or more in a FY	upto 31st May of the AY
5.	MD, director, partner, trustee, author, founder, karta, CEO, principal officer or office bearer of person referred in (4)	upto 31st May of the AY
6.	Person intends to enter into following transactions	At least seven days before the date on which he intends to enter into the said transaction.
(a)	Cash deposits aggregating ₹ 20 lakhs or more in a FY, in one or more a/c with a Bank or a co-op. bank	
(b)	Cash withdrawals aggregating ₹ 20 lakhs or more in a FY, in one or more account with a Bank or a co-op. bank	
(c)	Opening of a current a/c or cash credit a/c with a Bank /Co-op. bank	



Note: If a person entering into specified transaction (above point 6) required to apply for PAN. In case of NR or foreign company entering into this transaction in IFSC Banking units and such NR/FC not having any income in India not required to apply for PAN.

Cases where PAN to be quoted in Transactions

S.No.	Nature of transaction	Value of transaction
1.	Sale or purchase of a motor vehicle, other than two-wheeler	All such transactions
2.	Opening an account [other than FD referred in 12 and a Basic Savings Bank Deposit Account] with a Bank or Co-Op. Bank	All such transactions
3.	Making an application to Bank or Co-Op. Bank or to any other company or institution, for issue of a Credit or Debit card	All such transactions
4.	Opening of a D-Mat account	All such transactions
5.	Payment to a hotel or restaurant against a bill or bills at any one time	Cash of > ₹ 50,000
6.	Payment in connection with travel to any foreign country or for purchase of any foreign currency at any one time	Cash of > ₹ 50,000
7.	Payment to a Mutual Fund for purchase of its units	Amount > ₹ 50,000
8.	Payment to Company or Institution for acquiring debentures or bonds issued by it	Amount > ₹ 50,000
9.	Payment to RBI for acquiring bonds issued by it	Amount > ₹ 50,000
10.	Deposit with Bank or Co-Op. Bank or post office	Cash deposit > ₹ 50,000 during any one day
11.	Purchase of bank drafts or pay orders or banker's cheques from a Bank or Co-Op. Bank	Cash payment > ₹ 50,000 during any one day
12.	FD with Bank or Co-Op. Bank or post office or Nidhi or NBFC	Amount > ₹ 50,000 or aggregating to more than ₹ 5 lakhs during a FY
13.	Payment for one or more pre-paid payment instruments of Bank or Co-Op. Bank or to any other company or institution	Amount > ₹ 50,000
14.	Payment as life insurance premium to Insurer	Amount > ₹ 50,000 in FY
15.	A contract for sale or purchase of securities (other than shares)	Amount > ₹ 1 lakh per transaction
16.	Sale or purchase of Unlisted shares of a company	
17.	Sale or purchase of any immovable property	Amount or SDV > ₹ 10 lakhs
18.	Sale or purchase of any goods or services (other than covered above)	Amount > ₹ 2 lakhs per transaction

Following person not required to obtain PAN:

- Minor not having any income taxable in his own hands, can enter into the above transactions by quoting the PAN of his parents or guardian.
- In case of NR, earn only income from investment in specified fund (AIF I & II located in IFSC) in PY & specified fund deducted TDS u/s 194LBB.



3. In case of **NR eligible foreign investor**, earn only income from transaction made in **capital assets referred u/s 47(viib)**, which were listed on a recognised stock exchange in IFSC & consideration on transfer shall be paid or payable in foreign currency.

Common points for Point 2 & 3:

- I. The NR/Foreign investor furnishes the following details and documents to the Specified fund/stock broker, namely:
- ☞ name, e-mail id, contact number
 - ☞ address in the foreign country of which he is a resident
 - ☞ a declaration that he is a resident of a foreign country
 - ☞ Tax Identification Number in the country of his residence, if not available then a unique number on the basis of which the NR is identified in that country.
- II. The Specified fund/Broker files quarterly statement for the quarter in which, the above details are received in Form 49BA to PDGIT/DGIT(Systems) and upload declarations received within 15 days from the end of the quarter to which statement relates.
- Form 60 requirement in case of Foreign Company enters into transactions in IFSC banking unit
- Foreign company who does not have any income chargeable to tax in India and does not have PAN and enters into following transactions, in IFSC banking unit, has to make declaration in Form No. 60.
- | | | |
|----|--|--|
| 1. | Opening an Account [other than FD & Basic Saving A/c] with Bank or Co-Op. Bank | All such Transactions |
| 2. | FD with Bank or Co. op Bank or Post Office or Nidhi or NBFC | Amount > ₹50,000 or aggregating to more than ₹5 lakhs during a FY. |
- PAN & Aadhar Interchangeable
1. Every person who is required to intimate/quote his PAN **may quote his Aadhaar** if he:
 - ☞ has not been allotted a PAN but possesses the Aadhaar (PAN will be allotted automatically by dept. without any documents & Fees), or
 - ☞ has been allotted a PAN and has already linked Aadhar & PAN.
 2. Every person entering into prescribed transaction (**point 6 of sec.139A**) shall be required to authenticate the PAN or Aadhaar quoted. Also, every person receiving such documents should ensure that PAN or Aadhaar is quoted on the documents and authenticated.

E.g. - Suppose Mr. BB deposited cash of ₹ 25 lakhs with HDFC Bank and BB submitted his PAN/Aadhar then BB require to authenticate that PAN/Aadhar belongs to him. In this case HDFC Bank also require to authenticate that PAN/Aadhaar belongs to BB only.

Note: Provided that the provision of above point 2 shall not apply where the person, depositing or withdrawing money or opening a current a/c or cash credit a/c, is the CG, SG or the Consular Office.

➤ Sec. 272B: Penalty for failure to comply with section 139A

S.No.	Failure	Penalty ₹
1.	Fails to comply with provisions of sec 139A	10,000
2.	If a person requires to quote his PAN or Aadhar, in any document referred u/s 139A, quotes a false number	10,000 for each default
3.	Person entering into prescribed transactions fails to authentic PAN or Aadhar in documents	10,000 for each default
4.	Person receiving such documents fails to ensure that PAN or Aadhar quoted and fails to authentic	10,000 for each default

Sec 139AA: Aadhar Number

A. Every person who is eligible to obtain Aadhaar number shall, on or after the 1st, July, 2017, quote Aadhaar number -

(i) in the application form for allotment of PAN;

(ii) in the return of income

If Aadhar No. not available then that person should quote Aadhar Enrolment ID. From 1/10/24 Enrolment ID option not available and if any person applied for PAN on the basis of Enrolment ID then he mandatorily required to intimate his Aadhar No. in prescribed manner.

B. Every person already holding PAN on 1st July 2017, shall link Aadhar with PAN till 31/03/2022 otherwise PAN shall be made inoperative.

Note: As per C.G Notification, Sec. 139AA not apply to an individual who does not possess the Aadhar number or Enrolment ID and is :

(i) Residing in the states of J&K, Meghalaya and Assam

(ii) NR as per IT Act, 1961

(iii) Age of 80 years or more at any time during the P.Y.

(iv) Not a citizen of India

➤ Where a person fails to link his Aadhaar No. with PAN upto 31/03/2022, the PAN shall become inoperative till the same is linked and until such date it shall be deemed that the person has not quoted his PAN in any transaction, thus becoming liable for penalty u/s 272B. Pan No. will be operative from the date on which its linked with Aadhar.

➤ If assessee link Aadhar with PAN on or after 01/04/2022 then he is required to pay fees as per sec. 234H (given in advance tax topic)

- If assessee fails to link till 31/03/22 then PAN will be inoperative but as per CBDT **negative consequences** of not quoting or not furnishing PAN shall be **applicable from 01/07/23**.

Sec 139B: Tax Return Preparer (TRP)

- (1) CBDT to frame a scheme whereby a **specified class** of persons can file their ROI through TRPs.
- (2) A TRP means an **Individual** who is authorised to act as TRP by CBDT, other than following persons:
 - ☞ A Chartered Accountant;
 - ☞ A Legal Practitioner;
 - ☞ An Officer of Scheduled Bank with which assessee maintains an account;
 - ☞ Employee of specified class of person.
- (3) Specified class of persons means any persons **who is required to file ROI**, other than :-
 - (a) A Company
 - (b) Person whose, BOA are required to be audited u/s 44AB or under any other law
- (4) As per CBDT, scheme only Individual and HUF can file their return through TRP.
- (5) Individual holding bachelor degree from recognised Indian university or passed inter exam of ICAI/ICSI/ICAI(CMA) can become TRP.

Sec 139C: Annexure-Less ROI

CBDT to make rules providing for persons who shall not be required to furnish any Certificate, Audit Report, any Document or a Receipt etc. along with their ROI.

Empowers CBDT to make rules for the followings:

- (a) A class of person who shall be required to furnish their ROI mandatorily on a computer readable media (i.e., e-filing of ROI)
- (b) The terms and the manner and the form in which such return can be filed electronically
- (c) CBDT may require the persons who are not required to attach any documents along with ROI, to furnish such documents whenever required by an AO. [Sec. 139D]

Sec 140: Verification of Return

S.No.	In case of	Verified by
1.	Individual ☞ Individual not present in India or Mentally incapacitated	Himself Competent to verify on behalf of Individual
2.	HUF ☞ Karta not present in India or karta mentally incapacitated	Karta Any adult member HUF
3.	Partnership Firm ☞ If there is no managing partner	Managing Partner Any adult Partner
4.	LLP ☞ If there is no designated partner	Designated Partner Any Partner or *any other person may be prescribed

5.	Company ☞ No MD ☞ Co. under liquidation ☞ Application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under the IBC, 2016	MD Any other Director or *any other person may be prescribed Liquidator Insolvency professional appointed by such Adjudicating Authority
6.	Political Party	CEO
7.	Local Authority	Principal officer
8.	Any other person	Person competent to verify

*Person, appointed by the Adjudicating Authority for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the IBC, 2016

Note: If return not verified then it is treated as return void-ab-initio (invalid return).

Sec 140A: Self-Assessment Tax (SAT)

Assessee is required to **pay taxes** before Filing of return [after considering advance tax, TDS, TCS, MAT, AMT credit, relief (include relief u/s 89) any tax, interest payable u/s 191(2)] along with interest & Fees.

If there is short payment then the amount so paid is **first adjusted towards Fees, there after towards interest & balance towards taxes.**

Sec 139(8A): Updated Return (Added by FA 2022 w.e.f. 01/04/2022)

- **Updated return:** Any person may furnish an updated return of his income (or the income of any other person in respect of which he is assessable). This section applicable from 1st April, 2022.
- **Time-limit:** Updated return can be submitted **within 24 months from the end of the relevant AY.**
E.g.:- Updated return for the AY 25-26 can be submitted on or before 31st March, 2028.
- **Who can submit updated return:** Updated return can be submitted by any person whether (or not) he has furnished a return u/s 139(1)/(4)/(5) for an AY.
- **Other points:** The following points should be noted: -
 1. If a person has sustained a loss for any PY and he has **already submitted return of loss** for that year within due date u/s 139(1), he can furnish an updated return **where such return is a return of income.**
 2. If as a result of submitting updated return, the quantum of carried forward loss (or unabsorbed depreciation or MAT/AMT credit) is to be reduced for any subsequent year, then an updated return shall be furnished for each such subsequent year.



- When updated return **cannot** be submitted:-
1. If updated return is a **return of a loss**.
 2. If updated return has the effect of **decreasing the total tax liability** determined on the basis of return furnished u/s 139(1)/(4)/(5) or **results in refund** or **increases the refund** due on the basis of return furnished u/s 139(1)/(4)/(5), of such person for the RAY.
 3. A person shall not be eligible to furnish an updated return, if -
 - (a) **Search** has been initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A in the case of such person, or
 - (b) **Survey** has been conducted u/s 133A [**other than TDS/TCS survey**] of that section in the case of such person, or
 - (c) a notice has been issued to the effect that any **money, bullion, jewellery or valuable article** or thing, seized or requisitioned **u/s 132 or 132A** in the case of any other person **belongs to such person**, or
 - (d) a notice has been issued to the effect that any **books of account or documents**, seized or requisitioned u/s 132 or 132A in the case of any other person, pertain or pertains to, or any other information contained therein, **relate to, such person**.

Note: This provision is for the AY relevant to the PY in which such search is initiated, or survey is conducted or requisition is made and any AY preceding such AY. For instance, if search is initiated on 10th May, 25, then updated return cannot be submitted for the AY26-27 or any preceding AY.
 4. **No updated return** shall be furnished by any person for the RAY, where, -
 - (a) **Updated return** has been furnished by him **u/s 139(8A) for the RAY**, or
 - (b) Proceeding for assessment/reassessment/re-computation/revision of income is **pending or has been completed** for the RAY in his case, or
 - (c) AO has **information** in respect of such person for the RAY in his possession under the Prevention of Money Laundering Act, 2002 or the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 or the Prohibition of Benami Property Transactions Act, 1988 or The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 and the **same has been communicated to him, prior to the date of his filing of ROI u/s 139(8A)**, or
 - (d) Information for RAY has been received under an agreement **u/s 90 or 90A** in respect of such person and the same has been **communicated to him, prior to the date of his filing of ROI u/s 139(8A)**, or
 - (e) **Prosecution proceedings u/c XXII** have been **initiated** for the RAY in respect of such person, prior to the date of his filing of return u/s 139(8A), or
 - (f) He is a person or belongs to a class of persons, as may be notified by CBDT.
- Updated return to be accompanied by proof of payment of tax and additional income-tax - updated return cannot be submitted unless it is accompanied by proof of payment of tax u/s 140B (ie, tax and additional income-tax).

➤ How to calculate tax on updated return [Sec. 140B] - Mode of computation of tax (including additional tax) is given by section 140B as follows: -

☞ Where assessee has not furnished return earlier- Where no return of income u/s 139(1)/(4) has been furnished by an assessee, he shall before furnishing updated return is liable to pay the tax due together with interest and fee payable for any delay in furnishing return or any default or delay in payment of advance tax, along with the payment of additional tax. The tax payable shall be computed after considering the following :-

- any advance tax (already paid);
- any TDS/TCS;
- any relief of tax claimed u/s 89/90/90A/91;
- any AMT/MAT credit u/s 115JAA/115JD.

Such updated return shall also be accompanied by proof of payment of such tax, additional tax, interest and fee u/s 234F.

☞ Where assessee has furnished return earlier- If an assessee has furnished return u/s 139(1)/(4)/(5) (referred to as earlier return), he (before submitting updated return) is liable to pay the tax due together with interest payable for any default or delay in payment of advance tax, along with the payment of additional tax, as reduced by the amount of interest paid in the earlier return. The tax payable shall be computed after considering the following:-

- the amount of relief or tax, referred u/s 140A(1), credit for which has been taken in the earlier return;
- TDS/TCS on any income which is subject to such deduction or collection, and which is taken into account in computing total income and which has not been claimed in the earlier return;
- any relief of tax or deduction of tax claimed u/s 90/90A/91 which has not been claimed in the earlier return;
- any MAT/AMT credit claimed, to be set off which has not been claimed in the earlier return.

The aforesaid tax shall be increased by the amount of refund, if any, issued in respect of earlier return. The updated return shall be accompanied by proof of payment of such tax, additional tax, interest and fee.

☞ Computation of Additional Tax

If updated return is furnished after expiry of time available u/s 139(4)/(5) but before 12 months from the end of the RAY	25% of aggregate of tax (+SC+ HEC) and interest as computed above
If updated return is furnished after the expiry of 12 months but before 24 months from the end of the RAY	50% of aggregate of tax (+SC+ HEC) and interest as computed above



- How to calculate interest u/s 234B where an earlier return is furnished: - Where an earlier return has been furnished, interest payable u/s 234B shall be computed on an amount equal to the assessed tax. For this purpose, "assessed tax" means the tax on the total income as declared in updated return after considering the following: -
- the amount of relief or tax, referred u/s 140A(1), the credit for which has been taken in the earlier return;
 - TDS/TCS on any income declared in updated return and which has not been claimed in the earlier return;
 - any relief u/s 90/90A/91 which has not been claimed in the earlier return;
 - any AMT/MAT credit, which has not been claimed in the earlier return.
- The aforesaid tax shall be increased by the amount of refund, if any, issued in respect of such earlier return.

➤ **Other points** - The following points should be noted

1. If no earlier return is furnished, interest payable u/s 234A shall be calculated on the basis of tax on total income as declared in the updated return.
2. If earlier return is furnished, interest payable u/s 234C shall be computed after considering the total income furnished in the updated return as the returned income.

Example

Mr. X would like to furnish his updated return for the A.Y. 23-24. In case he furnished his updated return of income, he would be liable to pay ₹ 2,50,000 towards tax and ₹ 35,000 towards interest after adjusting tax and interest paid at the time filing earlier return. You are required to examine whether Mr. X can furnish updated return- (i) as on 31.3.25 (ii) as on 28.2.26 (iii) as on 31.5.26
If yes, compute the amount of additional income-tax payable by Mr. X at the time of filing his updated return.

Would your answer be different with respect to filing of updated return in case of (ii) above, where he has received a notice u/s 147 for the said A.Y. 23-24 on 23.7.25.

Mr. X may furnish an updated return of his income for A.Y. 23-24 at any time within 24 months from the end of AY i.e., 31.3.27. Accordingly, Mr. X can furnish updated return as on 31.3.25 and 28.2.26. However, he cannot furnish such return as on 31.5.26.

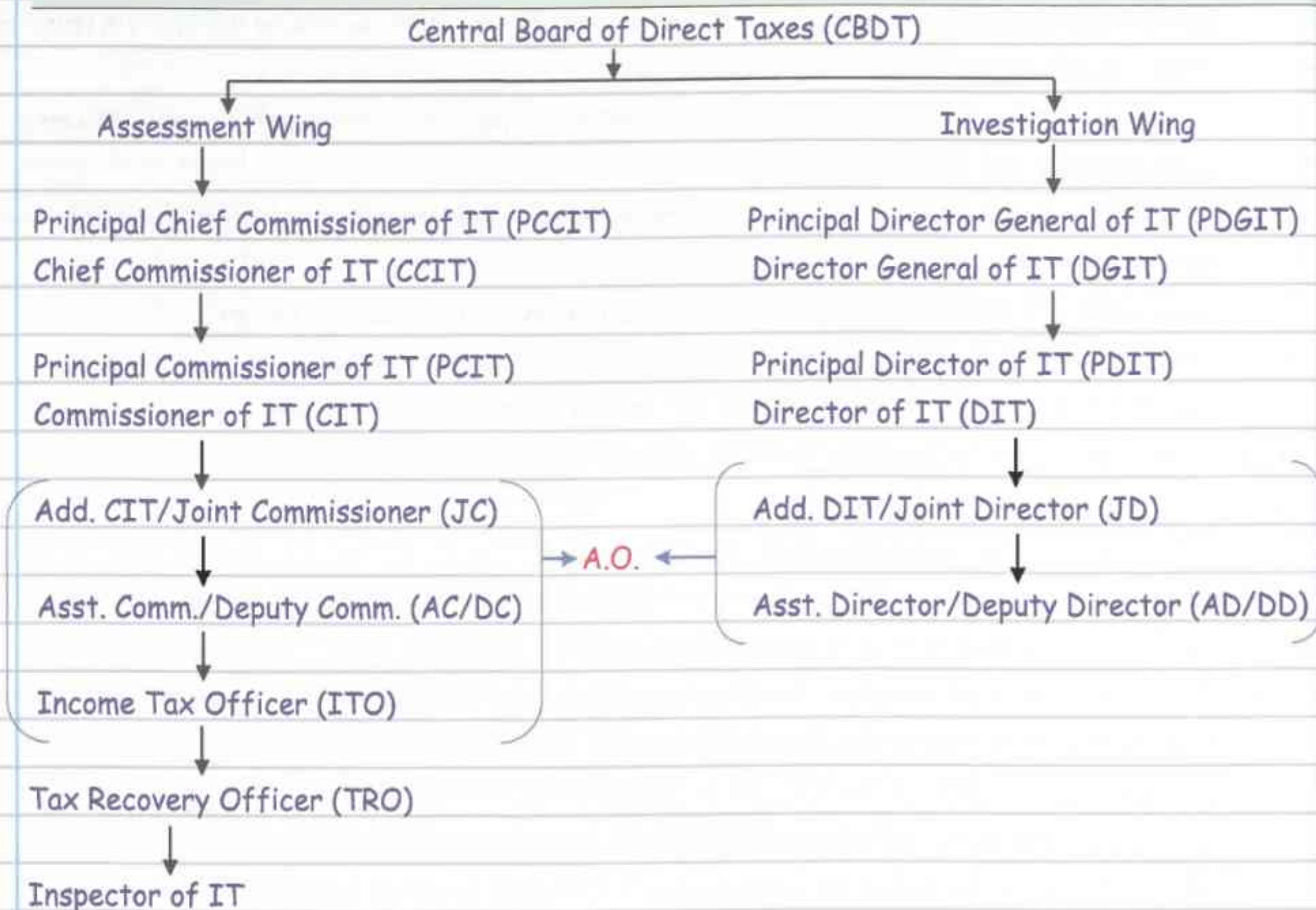
Accordingly, Mr. X is liable to pay additional income-tax in case he furnished his updated return as on

- (i) 31.3.25 - ₹ 71,250 [25% of 2,85,000, being tax of ₹ 2,50,000 plus interest of ₹ 35,000]
- (ii) 28.2.26 of ₹ 1,42,500 [50% of 2,85,000, being tax of ₹ 2,50,000 plus interest of ₹ 35,000]

He cannot furnish updated return where he has received notice u/s 147, since proceeding for income escaping assessment for the A.Y. 23-24 are pending.

Income Tax Authorities & their powers

Sec 116: Income Tax Authorities



Notes:

1. CIT (Appeals) & JC (Appeals) is also. I.T. Authority as per Sec. 116.
2. Sec 2(7A): Assessing Officer (A.O.) - Additional CIT/JC/AC/DC/ITO/Add. DIT/JD/AD/DD.

Sec 119: Power of CBDT to issue orders, instructions and circulars

1. CBDT can issue orders, instructions and circulars to its subordinates for the administration of the Act & its binding on subordinates.
2. CBDT, however, is **not empowered to issue orders**, instructions or directions in such a way as to
 - a. require any IT authority to make a particular assessment in a particular manner; or
 - b. interfere with the discretion of the CIT(A)/JC(A) in the exercise of his appellate functions.
3. Relax certain provisions of Income tax Act to remove any difficulties faced. Like extension of due date for filing the return of income etc.
4. Pass a general or special order authorising any IT authority [other than CIT(A)/JC(A)] to admit a certain claim, exemption, deduction, refund, carry forward of losses etc. made even after the expiry of specified periods to avoid any genuine hardships faced by the assessee.



5. Case Laws

- ☞ **SV Gopala Rao and Others [2017](SC):** CBDT does not have the power to amend legislative provisions in exercise of its powers u/s 119 of the Income-tax Act, 1961 by issuing a Circular.
- ☞ **Regen Powertech Private Ltd. [2019](Mad):** CA denied to sign audit report on last day. Assessee has appointed new CA but due to delay in obtaining NOC from old CA, audit got delayed and due to that assessee filed late return. Delay in carrying out audit is a circumstance beyond the control of the assessee. Any delay in filing the return of income due to such reasons should be accepted and the delay should be condoned by the CBDT. It is the duty of CBDT to exercise its discretion in proper manner.

Sec 119A: Taxpayer Charter

Income-tax department is committed to: Provide fair, courteous, and reasonable treatment, treat taxpayer as honest, provide mechanism for appeal and review, provide complete and accurate information, provide timely decisions, collect the correct amount of tax, respect privacy of taxpayer & Maintain confidentiality, hold its authorities accountable, enable representative of choice, provide mechanism to lodge complaint, provide a fair & just system, publish service standards and report periodically, reduce cost of compliance.

Income-tax department expects taxpayers to: Be honest and compliant, be informed, keep accurate records, know what the representative does on his behalf, respond in time, pay due amount in time.

Sec 120: Jurisdiction of Income-tax Authority

Jurisdiction is allotted on the basis of -

- | | |
|-------------------------------|---|
| (1) Territorial Area | for e.g., PIN code |
| (2) Person or Class of person | for e.g., Company |
| (3) Income or Class of Income | for e.g., Salary Income |
| (4) Cases or Class of Cases | for e.g., Professionals like CAs, Doctors, Lawyers etc. |

Sec 124: Jurisdiction of Assessing Officer

Once, jurisdiction of an area is allotted to an A.O., then within that area he can exercise his jurisdiction over any person -

- (1) who is **carrying on Business** or Profession in that area; or
- (2) who has **Principal Place of his Business** or Profession in that area; or
- (3) who **resides** in that area.

In case of disputes over jurisdiction A.O. shall refer to higher authority.



Assessee can also challenge the jurisdiction of A.O. within the following limits:

ROI filed 139(1)	ROI not filed
(a) 1 month from the date of receipt of notice u/s 142(1)/143(2); or	(a) within limit allowed in notice u/s 142(1)/ 148 to furnish ROI; or
(b) before completion of assessment whichever is earlier	(b) within limit allowed in a Show Cause Notice u/s 144 to show a cause whichever is earlier

Sec 127: Power to transfer cases

CCIT/PCCIT/DGIT/PDGIT/CIT/PCIT/DIT/PDIT can transfer the case from A.O. to another A.O. subordinate to him after giving a reasonable opportunity of being heard to concerned assessee. However, no opportunity of being heard shall be required if the case is to be transferred from one A.O. to another A.O. within the same city, town or locality. Disputes regarding jurisdiction shall be resolved by higher authorities on mutual understanding.

Sec 129: Change of Income-tax Authority

- (i) Where an IT authority succeeds another IT authority, who ceases to exercise jurisdiction, then, the succeeding IT authority may continue the proceedings from the stage at which the proceedings was left by his predecessor.
- (ii) The assessee concerned may demand that before continuance of proceedings as in (i) above, the previous proceedings or any part thereof be reopened or be reheard before passing of any assessment order against him.

Sec 130: Faceless Jurisdiction of IT Authority

As per scheme, the exercise of all or any or the powers and performance of all or any of the functions, assigned to IT authorities u/s 120 or vesting the jurisdiction with the AO as referred u/s 124 shall be in a faceless manner, through automated allocation, in accordance with section 144B with reference to making faceless assessment of total income or loss of assessee.

Sec 131: Power of I.T. Authority

I.T. Authority shall have all the powers vested in a civil court under the CPC, 1908;-

- ☞ Discovery & Inspection
- ☞ Enforcing the attendance of any person & examining such person on oath. Compelling the production of books of & documents
- ☞ Issuing commission (Summons)
- ☞ IT Authority can impound Books of A/c's for max 15 working days



Sec 133: Power to call for Information

I.T. Authority can **call information** from any person.

e.g:- Info. from bank relating to any account holder etc.

Note: U/s 133(6) AO, CIT(A), JC(A), CCIT, CIT, PCCIT, PCIT, PDIT, DIT, PDGIT, DGIT may require any person to furnish any information. This power cannot be exercise by any authority below the rank of CIT/DIT/PCIT/PDIT if proceeding is not pending without the prior approval of CIT/DIT/PCIT/ PDIT. This power can be exercise by **JD, DD, AD** without approval of **CIT/DIT/PCIT/ PDIT**.

- **Kathiroor Service Co-operative Bank Ltd. (2014)(SC):** Even where no proceeding is pending against a person, AO can definitely call for information u/s 133(6), which is useful or relevant to any enquiry, with the permission of DIT, CIT, PDIT, PCIT.

Sec 133B: Power to collect Information

I.T. Authority may enter at any **place at which Business/profession is carried** on and collect information from there.

IT Authority may enter any place of business or profession referred to above only **during the hours at which such place is open** for business or profession. In this section authority **cannot remove Books of Accounts or other valuable article**.

Sec 133C: Power to call for Information by Prescribed IT Authority (Investigating wing)

I.T. authority may for the purpose of **verification of information** in its possession relating to any person, issue a notice to such person requiring him to furnish information & documents and utilise such information and document in accordance with the scheme notified under this section or the provisions of sec. 135A.

This power can be exercised even if no proceedings are pending.

Sec 135: Faceless Collections of Information

As per scheme, powers u/s 133, 133B & 133C shall be exercised in faceless manner by prescribed IT Authority.

Sec 133A: Power to Survey

1. I.T. Authority may enter any building or place at which **Business or profession** is carried on or activity of **charitable purpose is carried on**.

Provided that **no action** under this section shall be taken by an IT Authority **without the approval of PDGIT or DGIT or PCCIT or CCIT**.



"IT Authority" means-

- (i) a PCIT or CIT, a PDIT or DIT, a JC or JD, an AD or a DD or an AO, or a TRO; and
- (ii) includes an Inspector, for the purposes of Inspect BOA & Documents, place marks of identification and make copies & extracts therefrom and for survey at any at Function, ceremony or event

-who is subordinate to the PDGIT/DGIT or the PCCIT/CCIT as may be specified by CBDT.

2. Upon entering they can do:

- ✓ Inspect any Books of A/c's or docs.
- ✓ Check or verify the cash, stock or other valuable articles.
- ✓ Place marks of identification on Books of A/c's & docs.
- ✓ Make an inventory of any cash, stock or other valuable articles.
- ✓ Impound Books of A/c's [Max 15 working days & it can retain more than 15 days also with the approval of PCCIT/CCIT/ PDGIT/DGIT/CIT/PCIT/DIT/PDIT].
- ✓ Record the statement of any person.

3. If Books of A/c's or assets relating to Business or profession or charitable purpose are kept at some other place, then such other place can also be covered under survey (extension of survey).

4. Entry Restriction

- a. Entry to the place of Business or profession can be only during those hours, during which such place kept open for conducting business or profession.
- b. Entry to any other place can be only after sunrise but before sunset.

Note: Restriction is only for entry, Not for Exit.

5. The I.T. Authority is of the opinion that it is necessary to do survey at any function, ceremony or event then they can survey such place but only after conclusion of such function, ceremony or event & require any person to furnish information as he may require statement given by such person can be record.

6. If person does not co-operate in survey then I.T. Authority shall issue summons u/s 131.

7. Sec 133A(2A) TDS/TCS Survey: IT Authority can conduct survey for the purpose of verifying TDS/TCS has been deducted/collected and paid as per the provision of income Tax Act. IT Authority can enter the premises where Business or profession is carried on to conduct survey after the sunrise but before sunset. They can enter the premises for which they have jurisdiction. IT Authority can inspect books and documents during survey and ask for various documents and information.

However in TDS/TCS survey, the IT Authority cannot impound the books of account and document. They cannot make inventory of cash, valuables, stock etc.

Search & Seizure [RAID]

Sec 132: Procedure to Search & Seizure

1. Who can authorize search [issue search warrants]

PCCIT/CCIT/PDGIT/DGIT

PCIT/CIT/ PDIT/DIT

(Additional CIT/DIT) → If empowered by CBDT
JC/JD

2. When search can be authorised

If I.T. Authority has **reason to believe** that:

☞ Any person to whom Notice u/s 142(1) or summon u/s 131 issued or might be issued to produce Books of A/c's or documents & Assessee **failed to produce / will not produce such Books of A/c's or docs.**

☞ Any person is in **possession of any money, jewellery or any other valuable articles** and such asset, which has not been disclosed / would not be disclosed for the purposes of I.T. Act.

Note: However, the reason to believe, as recorded by the IT Authority, **shall not be disclosed** to any person or any authority or the Appellate Tribunal (ITAT).

3. Power of Authorised officer in course of search

- (i) Enter & Search any Building, place, vessel, vehicle or aircraft where he has **suspect that Books of A/c's, money etc are kept.**
- (ii) Power to **break lock of any door, box, locker etc.** if keys are not available.
- (iii) **Search any person** who has got out of, or is about to get into, or is in, the Building, vessel, place, vehicle etc.
- (iv) Require any person who is in control of any Books of A/c's maintained in the electronic form, to **provide password.**
- (v) **Seized** any Books of A/c's, docs., money, bullion, jewellery etc. found under search. However, **stock cannot be seized.**
- (vi) Authorised officer may take **help of any police officer** or any officer of CG or any person or entity as may be approved by PCCIT or CCIT or PDGIT or DGIT in accordance with prescribed procedure.

Notes:

1. Deemed/Constructive Seizure: where it is **not possible/practical** to take **physical possession** of any asset due to **volume, weight, nature** etc. then authorised officer may serve an order on the owner of the person who is in immediate possession thereof, that he shall not remove/deal with/part with such asset without the approval of Authorised officer.
2. Prohibitory order/order of restraint: where it is **not practical to take physical possession** of any Books of A/c's or other asset for reason **other than mentioned in Note-1** above, then authorised



officer may serve an order on the owner of the person who is in immediate possession that he shall not remove/deal with/part with such asset without approval of Authorised officer. The order is **valid for maximum 60 days**.

3. **Presumption (Assumption) under Search:** Where any Books of A/c's other documents, money, bullion, jewellery etc. found in possession of any person, it may be presumed -
- (a) That such Books of A/c's, docs, money, bullion, other valuable article **belongs to such person**
 - (b) That the **content** of such Books of A/c's & docs are **true**.
 - (c) That the **signature** & every other part of such Books of A/c's & other docs which purport (seems) to be in the handwriting of any particular person are in that **person's handwriting**.
 - (d) That the **document** which purports to be **attested or stamped** by particular person are presumed to be attested or stamped by **such person**.

4. **Sec. 132(9A):** Where the authorised officer has no jurisdiction over the person searched by him the books of accounts or any money, bullion, jewellery etc shall be handed over by authorised officer to the A.O. having jurisdiction over such other person **within period of 60 days** from the date on which search was completed.

5. **Sec. 132(9B): Provisional Attachment:** During the course of search/within 60 days from the date of conclusion of search, the search party, may, **provisionally attach any property** belonging to assessee. However, before doing so: -

- Reasons shall be recorded in writing
- Interest of revenue shall be involved.

Provisional attachment so made shall be operational **for 6 months**, after which it shall be automatically vacated. [Sec. 132(9C)]

6. **Sec. 132(9D): Valuation Officer:** During course of search/within 60 days conclusion of search the authorised officer, may make a reference to Valuation Officer or any other person / entity registered valuer approved by PCCIT/CCIT/PDGIT/DGIT, VO or any other person / entity registered valuer shall estimate the FMV of the property. Report shall be submitted in **60 days of receipt of such reference**.

7. **Conclusion of Search or Requisition**

- ☞ Search - Date of Last Panchnama drawn
- ☞ Requisition - Date of actual receipts of BOA or assets

Sec 132A: Requisition

Where a search has already been conducted by any Authority under any other law e.g. GST, CBI, Election Commission etc. or search conducted by IT Authority but BOA or assets with any other authority then the authorised officer shall require such other authority [FEMA/CBI] to deliver Books of A/c's, assets seized, as early as possible.



Sec 132B: Application of Books of A/c's & Assets Seized

- A. Books of a/c's & docs: It shall be released within 30 days from the date of completion of assessment u/s 143(3) or 144 or 147. For retaining BOA & docs beyond this period permission of PCCIT/CCIT/PDGIT/DGIT/PCIT/CIT/PDIT/DIT is required.
- B. Money, Bullion, Jewellery, other valuable Assets
- Explain Assets: Assessee makes an application within 30 days from the end of the month in which the asset was seized and explains the nature and source of acquiring such asset to the satisfaction of the A.O., then, such asset can be released with the prior approval of PCCIT/CCIT/PCIT/CIT, after adjusting any existing tax liability of the assessee. Such release shall be made within 120 days from the date of conclusion (completed) of search.
 - Other Assets: Asset seized & requisitioned can be utilised to recover -
 - Existing liability under Income Tax Act & Black Money Act, 2015 [Added w.e.f. 1/10/24]
 - New liability determined on completion of assessment

Notes:

- (a) Money seized shall first be used for discharging the above liability.
- (b) If money falls short, then assets may be sold for discharging liability.
- (c) If assets remain then they shall be handed over to assessee.
- (d) CG shall pay simple interest at the rate of 0.5% per month or part of the month on the followings

amounts:	₹
Money seized u/s 132 or requisitioned u/s 132A	xx
Add: Proceeds of any Assets sold	xx
Less: Explain Money released	xx
Less: Aggregate amt. required to meet the liabilities	xx
	xx

Such interest shall run from the date immediately following the expiry of the period of 120 days from the date on which the search was completed to the date of completion of assessment or reassessment.

Case Law

Hemant Kumar Sindhi & Another (2014)(ALL): Assets seized during search can be sold and adjusted in pursuance to Sec 132B only when liability is determined. liability is determined only on completion of assessment and hence demand can be raised and recovery be initiated only after such date. Any application made assessee to AO for early sale of assets seized (to avoid interest u/s 234B) and adjustment of the same is not tenable.

Sec 142(1): Enquiry before Assessment (Return, Info. & Accounts Notice)

Return: Sec 142(1)(i): if assessee has not filed return within time limit u/s 139(1), then A.O. or any authority not below the rank of I.T.O. may issue a notice requiring him to furnish the return.

Info./A/c's : Sec 142(1)(ii): for the purpose of making an assessment, A.O. can issue notice-

- To produce Books of A/c's & documents (Max 3 years prior to relevant P.Y.)
- To furnish information including details of asset & liabilities (prior approval of J.O. required if information demanded is related to Assets & liabilities not included in BOA)

Sec 142(2A): Special Audit and Inventory Valuation

1. A.O. may, at any stage of proceeding, having regards to complexities in A/c's, volume of A/c's, doubt about correctness of A/c's, multiplicity of transactions in the A/c's, nature of the business activity & if it is in the interest of revenue (Dept.), direct the assessee to get either or both of the following; -
 - a. Accounts audited by CA and furnish a report of such audit (special audit).
 - b. Inventory valued by cost accountant(CMA) and furnish a report of such inventory valuation.
2. Direction can be issued with prior approval of CIT/CCIT/PCIT/PCCIT.
3. An opportunity of being heard must be given before directing.
4. CA & CMA shall be nominated by CIT/CCIT/ PCIT/PCCIT & remuneration shall be paid by CG.
5. Direction can be given even if A/c's already audited u/s 44AB or any other law.
6. Audit report or inventory valuation report has to be submitted within time allowed by A.O which can be extended but maximum time must not exceed 180 days.
7. Special audit can be directed for particular segment of A/c's i.e. sales, purchase etc.
8. An opportunity of being heard must be given before utilising material and evidences gathered from special audit or inventory valuation.
9. Failure to get the Books of Accounts audited or get inventory valued or failure to furnish Report within the time allowed will lead to Best Judgement Assessment u/s 144 and it also attract a penalty of ₹ 10,000 u/s 272A.
10. The expenses of audit or inventory valuation (including the remuneration of the Accountant [CA] Cost Accountant, qualified assistants, semi-qualified and other assistants who may be engaged by such Accountant or Cost Accountant) should not be less than ₹ 3,750 and not more than ₹ 7,500 for every hour of the period as specified by the AO.

Sec 142A: Reference to Valuation Officer (V.O.)

1. A.O. may for the purpose of Assessment, make a reference to V.O. to estimate the value (including FMV) of any - a) Asset or b) Property or c) Investments
2. V.O. shall estimate the value of asset after considering evidences the assessee may produce or gathered by V.O.



3. V.O. shall send copy of the report to the A.O & Assessee within 6 months from the end of the month in which a reference was made by A.O to V.O.
4. A.O. may consider such report after giving a reasonable opportunity of being heard.

Sec 142B: Faceless Inquiry or Valuation

As per scheme,

- (a) issuing notice u/s 142(1),
 - (b) making inquiry before assessment u/s 142(2),
 - (c) directing the assessee u/s 142(2A),
 - (d) estimating the value of any asset, property or investment by a VO u/s 142A,
- shall be in a faceless manner, through automated allocation, in accordance with section 144B with reference to making faceless assessment of total income or loss of assessee.

Sec 143(1): Processing of Return (Intimation)

Where return has been filed u/s 139 or 142(1), the same shall be processed by CPC after making the following adjustments:

- (i) Arithmetical error in the return.
 - (ii) Incorrect claim is apparent in the return.
 - (iii) Disallowance of loss claimed, if return filed late of the year in which losses incurred.
 - (iv) Disallowance of expenditure or increase in income indicated in the audit report but not considered in the return;
 - (v) Disallowance of deduction claimed u/s 10AA or u/c VI-A under the heading "C - Deductions in respect of certain incomes", if the return filed late.
- Before making any such adjustment, an intimation has to be given to assessee requiring him to respond to such adjustment. The response received, if any, has to be duly considered before effecting any adjustment. However, if No Response is received, within 30 days of issue of such intimation, the processing shall be carried out incorporating the adjustments.
 - After processing, intimation shall be sent if there is refund/demand/adjustment in losses [in practical life, intimation shall be sent in all cases].
 - Intimation shall be issued within 9 months from the end of financial year in which return was filed.
 - Sec 143(1D): From AY 17-18 department will issue intimation even AO already issued Scrutiny Notice u/s 143(2)

Sec 143(2): Notice of Scrutiny Assessment

For making assessment u/s 143(3) A.O or any I.T. authority not below the rank of I.T.O. is required to serve notice u/s 143(2). The notice has to 'served' within 3 months from the end of the FY in which return was filed. Notice u/s 143(2) can be issued after issuing Intimation u/s 143(1).

Sec 143(3): Order of Scrutiny Assessment

Based on material & evidences furnished by assessee in response to notice u/s 143(2) or gathered by A.O, A.O. shall **determine the income or loss of assessee**, by way of passing an order along with determination of **tax payable or refundable** to assessee u/s 143(3).

- Any institution to whom exemption u/s 10(21)/10(22B)/10(23A)/10(23B) available, A.O. cannot disallow such exemption if any contravention made by such Institutions. A.O. will inform to Govt / prescribed authority about the same & wait for Govt notifications. He can disallow the exemption u/s 143(3) if the Govt/Prescribed Authority has rescinded the notification withdrawing the exemption.
- Where the AO is satisfied that any institution or trust referred u/s 10(23C) or 11, has committed any specified violation as defined in section 12AB(4), he shall send a reference to the PCIT / CIT to withdraw the approval or registration and no order making an assessment of the total income or loss shall be made by him without giving effect to the order passed by the PCIT/CIT u/s 12AB(4).

Sec 144: Best Judgment Assessment

In case of any one of the following 4 defaults, A.O. shall make an assessment to the best of his judgment & knowledge.

- (i) Failure to furnish **ROI u/s 139(1)** and not files **u/s 139(4)** or **u/s 139(5)** or **139(8A)**
- (ii) Failure to comply with notice **u/s 142(1)** [RIA Notice]
- (iii) Failure to comply with **directions issued u/s 142(2A)** [Special audit]
- (iv) Failure to comply with **notice u/s 143(2)** [scrutiny notice]

Notes:

1. BJA can be taken up **only after issuing a SCN**, giving an opportunity of being heard to the assessee u/s 144 [**No opportunity** of being heard given, if assessee fails to comply with notice u/s 142(1)].
2. No refund can be issued by A.O u/s 144.
3. Assessment u/s 143(3) & 144 should be **completed (order passed) within 12 months** from the end of R.A.Y.
4. Where BJA is done, A.O. determines the income to the best of his judgment, Judgment of the A.O. cannot be arbitrary and has to be based on some evidence, A.O. cannot do adhoc addition.



Sec 144A: Power of J.C. to issue Direction

1. Joint commissioner (J.C.) may on **his own motion**, or on the **application of Assessee** or on **reference made by A.O.** call to examine the record of any proceeding in which an assessment is pending.
2. It is necessary then J.C, may issue directions for the guidance of A.O. [AC/DC/ITO] to enable him to complete the assessment.
3. Directions shall be **Binding** on the A.O.
4. Direction prejudicial to assessee can be issued only after giving opportunity of being heard.
5. **No appeal** can be filed against direction. Appeal can be filed against assessment order.

Sec 144B: Faceless Assessment

A. Procedure of Faceless Assessment/Reassessment u/s 143(3) or 144 or 147

National Faceless Assessment Centre (NFAC) shall assign the case selected for the purposes of faceless assessment to a specific assessment unit (AU) through an automated allocation system (AAS)

NFAC shall intimate the assessee that assessment shall be made as per this section

NFAC shall serve notice u/s 143(2) or u/s 142(1) to assessee and the assessee may file his response to such notice within the date specified therein, to the NFAC which shall forward the same to the "AU"

AU may make request to NFAC for

Obtaining Information, documents or evidences from assessee or any other person

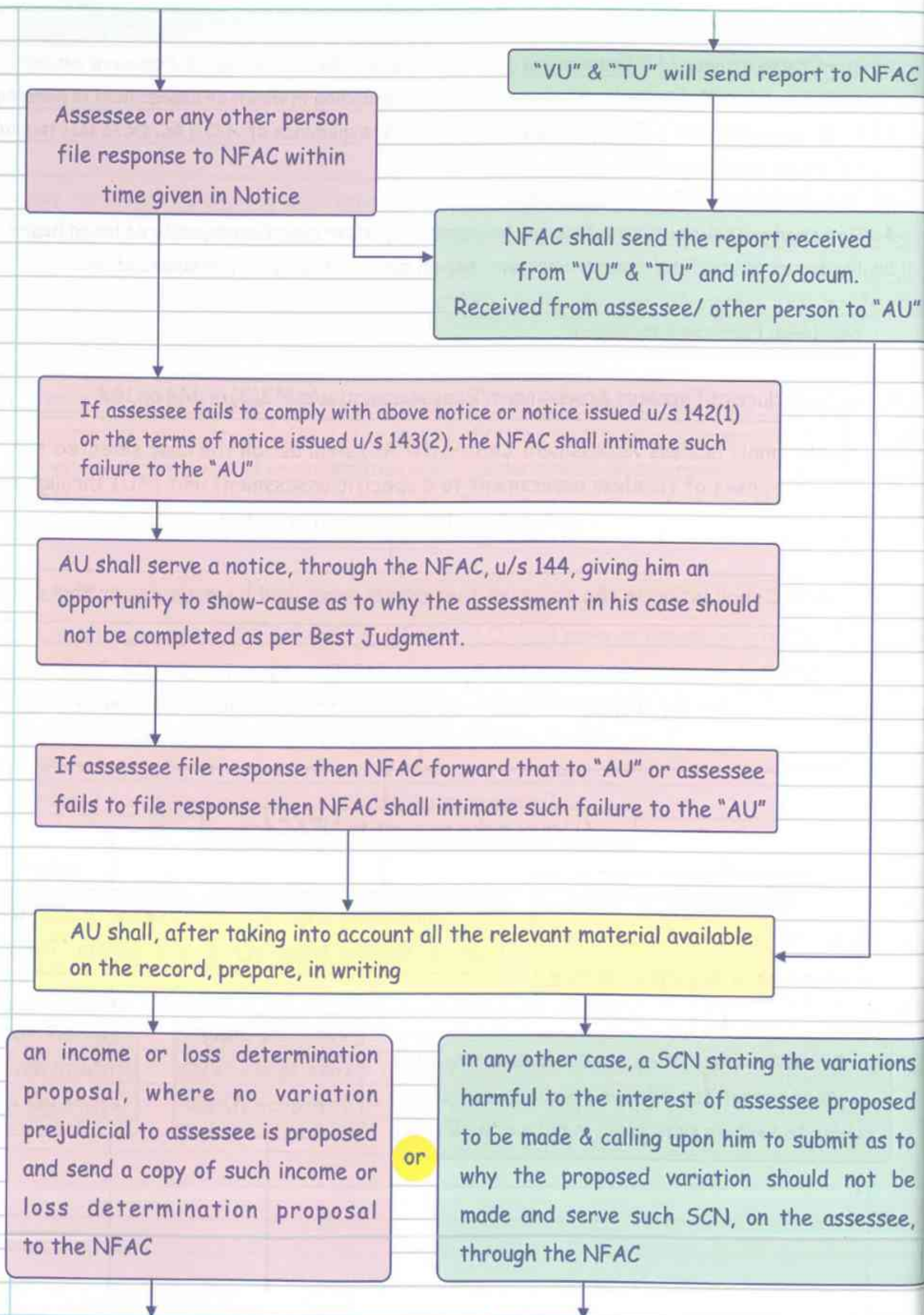
Conducting enquiry or verification from "VU"

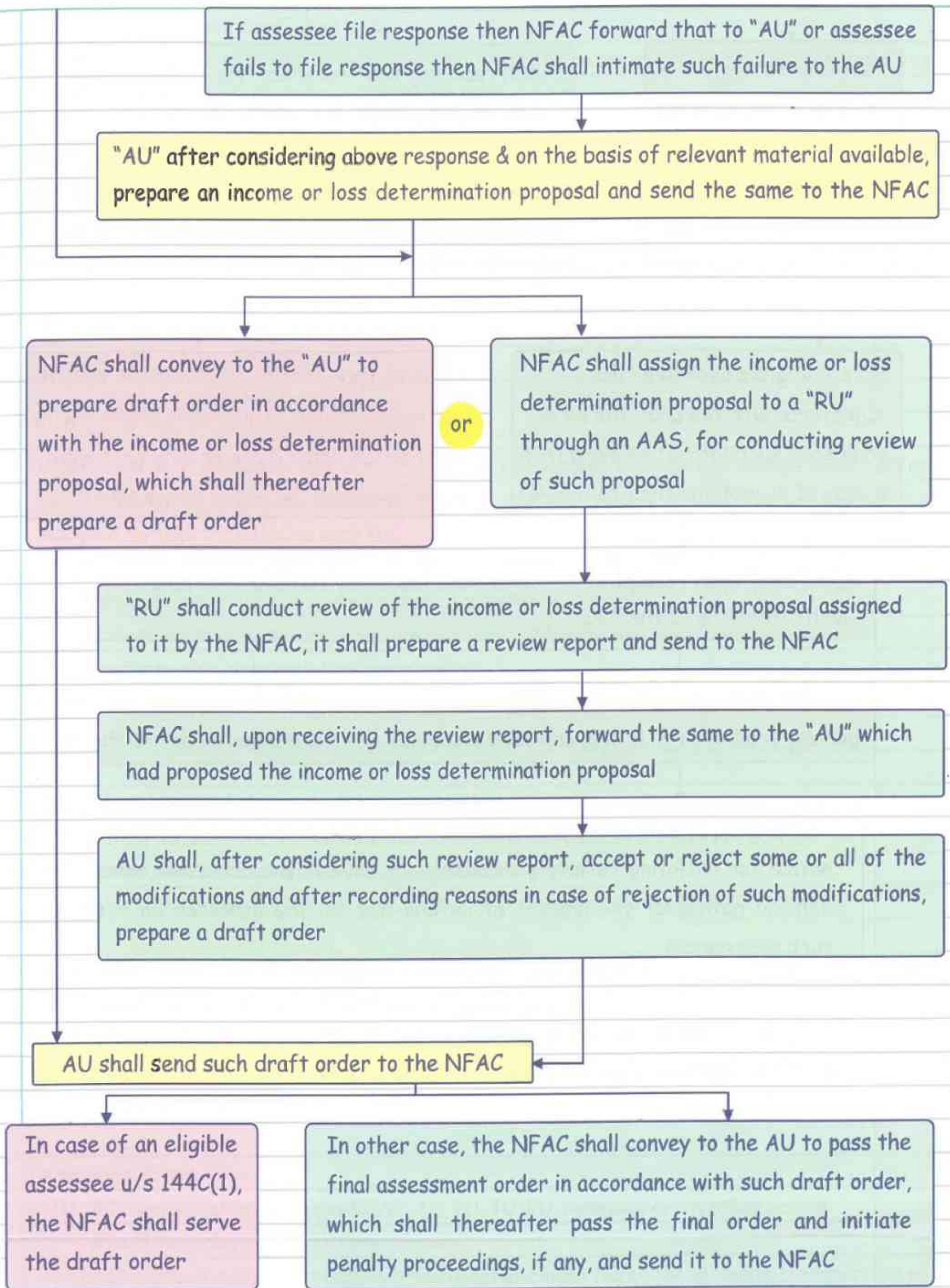
Technical assistance from "TU"

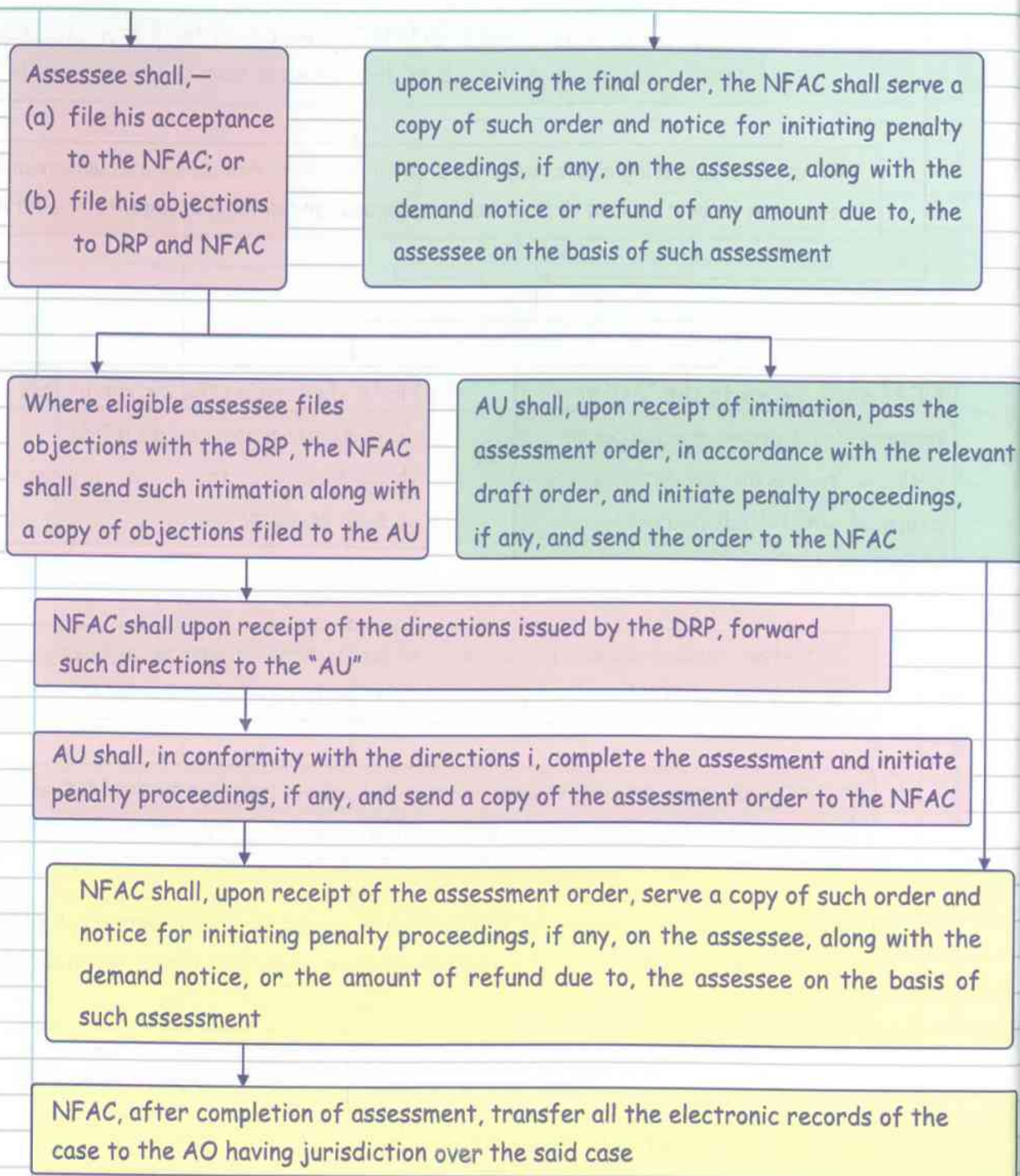
NFAC to issue notice to assessee or any other person for info. or document to be submitted within time given in notice to NFAC

NFAC to assign case to any "VU" through AAS

NFAC to assign case to any "TU" through AAS









B. Faceless Assessment Centre and Units

1. National Faceless Assessment Centre (NFAC): facilitate the conduct of faceless assessment proceedings in a centralised manner.

2. Assessment Units (AU): function of making assessment; -

- identification of points or issues
- seeking information or clarification on points or issues
- analysis of the material furnished by the assessee or any other person.

3. Verification units (VU): function of verification; -

- enquiry, cross verification
- examination of books of account
- examination of witnesses and recording of statements

Note: Function of VU may also be performed by a VU located in any other faceless centre set up under the Act or under any scheme of this Act; and the request for verification may also be assigned through the NFAC to such VU.

4. Technical Units (TU): function of technical assistance; -

- assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management
- any other technical matter under this Act or an agreement entered into u/s 90 or 90A, which may be required in a particular case or a class of cases.

5. Review Units (RU): function of review of the income determination proposal

- checking whether the relevant and material evidence has been brought on record
- relevant points of fact and law have been duly incorporated
- the issues requiring addition or disallowance have been incorporated.

C. The AU, VU, TU and the RU shall have the following authorities, namely:—

- (1) Add. CIT or Add. DIT or JC or JD, as the case may be;
- (2) DC or DD or AC or AD, or ITO, as the case may be;
- (3) such other IT authority, ministerial staff, executive or consultant, as may be considered necessary by the Board.

D. Additional Points

- (1) All communications between NFAC, AU, VU, TU, RU, Assessee or any other person should be exclusively by electronic mode.

Note: It shall not apply to the enquiry or verification conducted by the VU in the circumstances as may be specified by the Board.



- (2) In a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a SCN, the assessee or his authorised representative, as the case may be, may request for personal hearing so as to make his oral submissions or present his case before the IT authority of the relevant unit. The income-tax authority of relevant unit shall allow such hearing, through NFAC, which shall be conducted exclusively through video conferencing or video telephony.
- (3) Examination of records or statement of assessee or any other person shall be conducted by IT authority only through video conferencing.
- (4) CBDT shall establish facility for video conferencing at various location so assessee or any other person can use them if they are not having facility at their end.
- (5) If at any stage of the proceedings before it, the AU having regard to the nature and complexity of the accounts, volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee, and the interests of the revenue, is of the opinion that it is necessary to do so, it may, upon recording its reasons in writing, refer the case to the NFAC stating that the provisions u/s 142(2A) may be invoked.
- (6) The PCCIT or the PDGIT, in-charge of the NFAC, if he considers appropriate that the provisions u/s 142(2A) [Special Audit] may be invoked in the case, forward the reference received from an AU to the PCCIT or CCIT or PCIT or CIT having jurisdiction over such case, and inform the AU accordingly.
- (7) The PCCIT or the PDGIT, in-charge of the NFAC, if he considers appropriate may transfer the case to the AO having jurisdiction over such case.

Notes

**Sec 144C: Reference to Dispute Resolution Panel (DRP)**

1. The A.O. while making assessment is bound to follow procedure of forwarding draft order in the following cases :
 - a) **Foreign Co. or Non - Resident** in whose case A.O. wants to make variation which is prejudicial to assessee.
 - b) **Other Assessee** in whose case **variation** in total income arises on account of **order of TPO** passed u/s 92CA.
2. A.O. shall forward a copy of draft order to the Assessee.
3. Within 30 days from the date of receipt of draft order, the assessee shall -
 - a) File his acceptance to A.O., or
 - b) File his objections to A.O. & DRP.
4. If assessee files his **acceptance** then A.O shall pass the final order within one month from the end of the month in which acceptance is received by A.O.
5. If the assessee files **objection** then DRP shall issue direction with **9 months from the end of the month** in which draft order is forwarded to Assessee.
6. DRP shall issue Direction on the basis of Draft order, objection of assessee, material gathered by DRP, evidence produced by Assessee.
7. After receiving direction, the A.O shall pass the final order within **one month from end of the month in which directions are received by A.O.**
8. DRP directions are received by A.O are **binding on A.O.**
9. DRP may confirm, reduce or enhance the variation purposed in the draft order.
10. If Assessee is not satisfied with Final order passed by A.O. in pursuance of direction of DRP, he can file an appeal to ITAT (Appellate Tribunal). (Dept can't challenge direction of DRP)
11. Provisions of this section not applicable in case of proceedings u/s 158B to 158BI. (**Search cases on or after 1st September, 2024**)
12. CG may make and notify scheme for the purpose of Faceless issuance of directions by the DRP till 31st March 2025.

Sec 145(1): Method of Accounting

For **PGBP** and **IFOS** - Cash or Mercantile.

For **Salary, H.P, CG** - No method. These income taxable as per specific rules applicable to them.

Sec 145(2): Income computation & disclosure Standards (ICDS)

CG has been empowered to notify ICDS. CG has notified 10 ICDS effective from A.Y. 2017-18, for computing income under the head PGBP & IFOS, who are following Mercantile system of Accounting.

Sec 145(3): Discretionary Best Judgement Assessment

In the following three circumstances AO may take up the case and complete the assessment in the manner provided in Sec. 144:

- (1) AO is **not satisfied** about the **completeness or correctness** of the Books of Accounts and documents of the assessee;
- (2) **Correct Method of Accounting** was **not** regularly followed by assessee;
- (3) **ICDS** notified by CG may have **not been followed by the assessee** for Computation of Income.

➤ Sec 145A : Method of Accounting in Certain Cases (Already Covered with ICDS Topic)

➤ Sec 145B: Taxability of Certain Income

- (i) Interest received on **late compensation** shall be taxable in **the year in which it is received**.
- (ii) Any claim for **escalation** of price in a contract or **export incentives** shall be deemed to be the income of the PY in which **reasonable certainty of its realisation is achieved**.
- (iii) Govt. Grant taxable in the year in which it is accrued or received, whichever is earlier.

Sec 147: Income Escaping Assessment or Reassessment (Reopening of Cases)

1. If any income chargeable to tax has **escaped assessment** for any AY then **AO may assess or reassess** income of such AY subject to provisions of section 148 to 153.
2. For making assessment u/s 147, **AO bound to service of notice u/s 148**. Notice u/s 148 can be serve only after following procedure given u/s 148A. Notice u/s 148 will be served with order u/s 148A (exception in some cases).
3. During the assessment, if AO finds some **other income** escaped for same AY then **AO can assess or reassess such income** also without issuing fresh notice u/s 148 & without passing order u/s 148A.

Example: AO having information related to escaped income under the head PGBP of Mr. Bala for AY 22-23. AO followed procedure u/s 148A and validly served notice u/s 148. During the assessment AO finds that Bala is also having Capital Gain for same year which was not assessed earlier. In this case AO may assess income from capital gain also without following procedure of sec.148 & 148A. Suppose in above example if AO finds that Capital Gain is related to AY 21-22 then he has to follow procedure of sec.148 & 148A.

Sec 148: Issue of Notice [Amended w.e.f. 01/09/2024]

1. Before making the assessment, reassessment or recomputation u/s 147, the AO shall **issue** a notice to assessee, along with a **copy of the order passed u/s 148A(3)**, requiring him to furnish, within such period as may be specified in the notice, not exceeding 3 months from the end of the month in which such notice is issued, a **return of his income** or the income of any other person in respect of which he is assessable.



2. Notice u/s 148 can be issued only when AO having information related to income escaping from assessment. If AO received information as per **scheme u/s 135A** then AO has obtained **prior approval of higher authority u/s 151** before issuing notice u/s 148.
3. In response to notice u/s 148 assessee is required to file his return of income for that year. It shall be deemed that assessee was required to file his ROI u/s 139. However, where return of income is furnished beyond the period allowed above, such return would not be deemed to be a return u/s 139.
4. The assessee is required to file return u/s 148 even if he has already filed his return earlier as per normal provisions. Return filed u/s 148 cannot be revised as return can be revised only if return made u/s 139(1) or 139(4).
5. Notice u/s 148 can be issued only if following conditions are satisfied:
 - (i) AO having **information** which suggest that income has been escaped assessment, Information means:
 - (a) Info. in accordance with the **risk management strategy** formulated by the CBDT (like info. from SFT u/s 285BA, info. from investigation wing u/s 133C);
 - (b) Any **audit objection** to the effect that the assessment in the case of the assessee for the RAY has not been made in accordance with the provisions of this Act; or
 - (c) Any info. received **under DTAA u/s 90 or 90A**; or
 - (d) Any info. made available to the **AO under the scheme notified u/s 135A**; or
 - (e) Any info. which requires **action in consequence of the order** of a Tribunal or a Court.
 - (f) Any info. in the case of the assessee emanating from survey conducted u/s 133A, [other than TDS/TCS survey], on or after 1st September, 2024.
 - (ii) AO has complied with the **procedure given u/s 148A** [In cases other 135A info.]

Sec 148A: Providing opportunity before issue of notice u/s 148 [Amended w.e.f. 01/09/2024]

- (1) Where the AO has information, before issuing notice u/s 148, AO shall provide **opportunity of being heard** to the assessee, by serving SCN to show cause as to why notice u/s 148 should not be issued to him on the basis of information. SCN shall be accompanied by the information which suggest that income has escaped assessment.
- (2) On receipt of the notice, the assessee may furnish his reply within such period, as may be specified in the notice.
- (3) AO shall decide on the basis of material available on record including reply of assessee & passed an order u/s 148A(3) that whether **case is fit to issue notice u/s 148 or not**, with the prior approval of higher authority u/s 151.



Notes:

1. Appeal to CIT(A)/ITAT not possible against order u/s 148A(3). Assessee can file WRIT to HC if principle of natural justice not complied by AO.
2. Sec. 148A is not applicable where the AO has received any information under the scheme notified u/s 135A pertaining to income chargeable to tax escaping assessment for any AY in the case of the assessee. (AO can issue notice u/s 148 without following section 148A)

Sec 148B: Prior approval for assessment, reassessment or recomputation in certain cases

Where search initiated u/s 132 in case of assessee or any other person or survey conducted u/s 133A (other than TDS/TCS survey) then assessment or reassessment shall not be made by AO below the rank of JC, except with the approval of JC/JD/ Add. CIT/ Add. DIT.

Sec 149: Time Limit for issue of notice u/s 148 & 148A. [Amended w.e.f. 01/09/2024]

Case	Notice u/s 148	Notice u/s 148A
Normal Case	Notice can be issued within 3 years and 3 months from end of RAY	Notice can be issued within 3 years from end of RAY
Specific Case	Notice can be issued within 5 years and 3 months from end of RAY	Notice can be issued within 5 years from end of RAY

Specific Case: AO has in his possession BOA or other documents or evidence related to any asset or expenditure or transaction or entries which show that the income chargeable to tax, which has escaped assessment, amounts to or is likely to amount to ₹ 50 lakhs or more.

Sec 151: Sanction for Issue of Notice u/s 148 & 148A [Amended w.e.f. 01/09/2024]

Higher Authority : Add. CIT or Add. DIT or JC or JD

Sec 150: Unlimited time limit to issue notice u/s 148

If re-assessment is to be carried out to give effect of any findings or directions in order passed by CIT(A), ITAT, HC, SC, revision u/s 263/264 or any court under any other law for this year or another year, No limit to issue notice u/s 148.

This provision is applicable when the order contains a direction: -

- to exclude income from an AY, and include in another AY; or
- to exclude income from one assessee and include in another assessee.

Exception: However, no reassessment can be made where the time limit for re-opening assessment was already time barred when the order of AO which was appealed was passed by AO.

**Sec 152(1): Tax rate for Escaped Income**

Respective year tax rate shall apply.

Sec 152(2): Dropping of Assessment Proceeding

Proceedings once initiated under sec. 147, **may be dropped** by AO, if assessee satisfies him that

- (a) There will be no impact or **no effect on his tax liability**, even after taking into account the income escaping assessment; and
- (b) He has **not gone in an Appeal**, Revision or Reference, against any part of original assessment order.

Sec 153(2): Time limit to complete assessment

12 months from the end of FY in which notice u/s 148 was served.

Sec 151A: Faceless income escaping assessment

As per scheme,

- (a) assessment, reassessment or recomputation u/s 147,
 - (b) issuance of notice u/s 148 of the Act,
- shall be in a faceless manner, through automated allocation, in accordance with section 144B with reference to making faceless assessment of total income or loss of assessee.

Sec 154: Rectification of mistake

1. Income tax authority [A.O./CIT/CIT(A)/JC(A)] can rectify a mistake which is apparent on record **[not debatable mistake]** in
 - a. Any order passed by authority
 - b. Intimation u/s 143(1)
 - c. TDS/TCS intimation u/s 200A/206CB(1)
2. Rectification can be done by IT. Authority either "own motion" or "on application made by assessee".
3. No fees & No form prescribed.
4. If rectification is done on his own motion, then it should be done **within 4 years from the end of the F. Y. in which order containing mistake was passed.**
5. If rectification is done on application by assessee, then it should be done **within 6 months from the end of the month in which application is received by IT authority.**
6. Rectified order can be passed after 4 years if assessee made application within 4 years & it is in the advantage of assessee.
7. Rectified order can be further rectified. The time limit of 4 years will be calculated from the end of the year in which rectified order was passed (means fresh time limit of 4 years will arise)



8. Every rectified order passed under sec 154 is an appealable order.

Sec 156: Demand Notice

When any tax, interest, penalty or any other sum payable due to any order passed under IT. Act, then A.O. shall serve demand notice specifying the payment.

Assesses should pay the amount **within 30 days from the date of receipt of notice** of demand. If he fails to pay then recovery proceedings shall be initiated & assesses shall be treated as assesses in default, in such case, he will be liable to pay interest u/s 220 & penalty u/s 221.

In case of intimation u/s 143(1), 200A(1) & 206CB(1) intimation shall be **deemed to be notice of demand**.

Sec 156A: Modification and Revision of notice in Certain Cases

- (1) Where demand notice has been issued u/s 156 and demand is reduced as a result of an order of the Adjudicating Authority(AA) as defined in IBC, 2016, the AO shall modify the demand payable as per order of AA and shall thereafter serve on the assessee a revised notice of demand.
- (2) Where the order of AA is modified by the NCLT or the Supreme Court, as the case may be, the modified notice of demand as referred to in sub-section (1), issued by the AO shall be revised accordingly.

Protective Assessment (No Section)

When ownership of the income is in dispute or is a matter of doubt then A.O. can assess income in the hands of all persons (who are claiming ownership). This is called protective Assessment. The objective of the **protective assessment is to protect the interest of revenue**, in this case, income tax authority cannot recover tax from both the persons.

Example: - Litigation between two parties in civil courts, Benami transaction.



Time Limit for Completing Assessment

Sec	Assessment	Time Limit for Completion of Assessment
153(1)	143(3) Scrutiny Assessment 144 Best Judgement Assessment	For AY 22-23 onwards - 12 months from end of AY. For AY 21-22 - 9 months, For AY 20-21 - 18 months, For AY 19-20 - 12 months, For AY 18-19 - 18 months, For AY 17-18 & earlier year - 21 months from end of AY.
Note: (i) Where updated return u/s 139(8A) is furnished then time limit is 12 months from the end of the FY in which such return was furnished. (ii) Where return filed due to order u/s 119 [CBDT allowed to file late return] then time limit is 12 months from the end of the FY in which such return was furnished.		
153(2)	147 Income Escaping Assessment	12 months from the end of F.Y in which notice u/s 148 was served.
153(3)	Fresh assessment u/s 143/144/ 147 or an fresh order u/s 92CA (TPO), where the original assessment or order u/s 92CA, has been set aside, cancelled and referred back to the AO by an order u/s 250/254/263/264	12 months from the end of the F.Y. in which order u/s 250 or 254 is received by PCCIT/CCIT /PCIT /CIT or the order u/s 263/264 passed by CIT/PCIT/CCIT/PCCIT
153(3A)	Where an assessment or reassessment is pending on the date of initiation of search u/s 132 or making of requisition u/s 132A.	All above time limits shall increase by 12 months
153(4)	Where reference made to TPO u/s 92CA.	All above time limits shall increase by 12 months
153(5)	Effect to be given by A.O./TPO to an order u/s 250/254/260/262/263/264 (otherwise than fresh assessment/ orders)	3 months from end of the months in which order u/s 250/254/260/262 is recd. by CCIT/PCCIT/CIT/PCIT or order u/s 263/264 passed by CIT/PCIT/CCIT/PCCIT
✓ Additional period of 6 months may be allowed by CIT/PCIT to A.O./TPO if A.O./TPO apply that order could not be given effect within 3 months. ✓ If AO/TPO requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee the time limit to give effect in 12 months as provided in 153(3) ✓ Where the TPO gives effect to an order or direction u/s 263 by an order u/s 92CA and forwards such order to the AO, the AO shall proceed to modify the order of assessment, in conformity with such order of the TPO, within 6 months from the end of the month in which such order of the TPO is received by him. Sec 153(5A)		
153(6)(i)	Where assessment/reassessment made in consequence of or to give effect to any finding or direction in any order u/s 250/254/260/262/263/264 or order of any court. (Refer section 150)	12 months from end of the month in which the order is received or passed by the PCCIT/CCIT/PCIT/CIT
153(6)(ii)	Where assessment made on partner due to assessment made on firm u/s 147.	12 months from end of the month in which the assessment order in case of firm was passed.



For the purpose of Sec 153, following time period shall be excluded (extended)

S.No.	Particular	From	Till
1.	Contravention of the provisions of 10(21)/(22B)/(23A)/(23B)	Date on which A.O. Informs to Govt. or prescribed authority	Date on which Govt. Notification received by A.O. withdrawing the approval.
2.	Direction to get accounts audited or inventory valued u/s 142(2A)	Date on which A.O. directs	Last date on which assessee required to file report, or Date on which order set aside such direction was recd by CIT/ PCIT [if direction challenged by assessee in court]
3.	Reference made to valuation officer u/s 142A	Date on which A.O. makes reference	Date on which report recd. by A.O.
4.	Declaration filed by assessee u/s 158A [Avoiding repetitive appeal]	Date on which A.O. has recd. declaration	Date on which A.O. or ITAT passed order of accept or reject declaration, However such period cannot exceed 60 days
5.	Application made to BAR	Date on which application was made	Date on which order of rejection recd. by CIT /PCIT, or date on which advance ruling pronounce is recd by CIT /PCIT
6.	Where reference for exchange of info. u/s 90/90A.	Date on which reference made	Date on which info recd. by CIT/PCIT, or 1 year whichever is less
7.	AO made reference to CIT/PCIT in case of specified violation by Trust or institution u/s 12AB(4)	Date on which AO makes reference to CIT/PCIT	Date on which copy of order of CIT/PCIT u/s 12AB(4) received by AO.
8.	Period for which assessment proceeding is stayed by any court.		
9.	Time lost in giving opportunity to be re-heard u/s 129.		
Note:	After exclusion of above time limit, the period referred to in Sec 153(1)/(2)/(3) available to A.O. is less than 60 days, such remaining period shall be extended to 60 days.		

Special Procedure for Assessment in Search Cases

[Chapter XIV - B] [Added w.e.f. 01/09/24 by FA 2024]

Sec 158BA: Assessment of Total Income as a Results of Search (Raid)

1. Whenever, a **Search** is initiated u/s 132 or a **requisition** is made u/s 132A **on or after 1 September 2024**, in respect of any person, the assessment of such person will be governed by provision of chapter XIV-B.
2. AO shall issue a **notice to such person**, requiring him to **furnish** within such period, maximum 60 days, as may be specified in the notice, return in the prescribed form, setting forth his total income, including the undisclosed income, for the **block period**. [Sec 158BA]
 - ☞ Provided that such return shall be considered as **return furnished u/s 139** and notice u/s 143(2) shall thereafter be issued.
 - ☞ Notice under this section shall be issued by AO with the prior approval of Add. CIT/ Add. DI / JC / JD.
 - ☞ Provided further that any ROI furnished beyond the period allowed in the notice shall not be deemed to be a return u/s 139.
 - ☞ Provided also that **no notice u/s 148 is required** to be issued for the purpose of proceeding under this Chapter.
 - ☞ Provided also that person shall **not be entitled** to furnish a **revised return**.
 - ☞ Provision of section **143(1)** shall **not apply** to return furnished under this section.
3. "Block Period" means the period comprising PY's relevant to 6 AY's preceding the PY in which search was initiated u/s 132 or requisition was made u/s 132A and also includes the period starting from 1st April of the PY in which search was initiated or requisition was made and ending on the date of the execution of the last of the authorisations for such search or such requisition.
 - Last of the authorisations shall be deemed to have been executed:-
 - (a) Search - on the conclusion of search as recorded in the **last panchnama drawn**.
 - (b) Requisition - on the actual **receipt** of the **BOA or other documents** or assets by the Authorised Officer. [Sec 158BA]

Example: If a search is initiated on 30/09/2024 and concluded on 05/10/2024, block period consists from AY 19-20 (PY 18-19) to AY 24-25 (PY 23-24) and the period from 01/04/24 to 05/10/24.
4. Any assessment/ reassessment, which is **pending as on the date of initiation of search or requisition**, in relation to such last 6 PY's shall **abate**. (Only assessment/ reassessment shall abate)



any other proceedings such as Appeals or Revision, which is pending, shall not abate.) If in any case if reference is made to TPO u/s 94CA(1) by AO or order passed by TPO u/s 94CA(3) such reference or order shall also abate.

5. If any proceeding initiated under this Chapter or any order of assessment or reassessment u/s 158BC has been **annulled in appeal** or any other legal proceeding, then, abated assessment or reassessment shall **revive** with effect from the date of receipt of the order of such annulment by CIT/PCIT.

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

6. Where any assessment of search case (first search) is pending in case of an assessee in whose case a subsequent search (second search) is initiated, or a requisition is made, such assessment (first search) shall be duly completed, and thereafter, the assessment in respect of such subsequent search or requisition shall be made.

Note: Provided that time period of completing the assessment in respect of subsequent search is less than 3 months such period shall be extended to 3 months from the end of the month in which the assessment in respect of the earlier search was completed.

7. AO shall proceed to determine the total income including the undisclosed income of the block period in the manner laid down u/s 158BB and the provisions u/s 142, 143(2), 143(3), 144, 145, 145A and 145B shall, so far as may be, apply.

8. AO, on determination of the total income of the block period, shall pass an order of assessment or reassessment and determine the tax payable by him on the basis of such assessment or reassessment. Provided that **nothing in the provisions of section 144C shall apply** in respect of such order.

9. Total income (other than undisclosed income) of AY relevant to the PY in which the last of the authorisations for a search is executed or a requisition is made, shall be assessed separately in accordance with the other provisions of this Act.

10. Order of assessment for the block period shall be passed by an **AO not below the rank of a DC or AC or DD or AD**, as the case may be:

Provided that no such order shall be passed without the **previous approval of the Add. CIT or Add. DIT or the JC or JD.**

[Sec 158BG]

Sec 158BB: Computation of Total Income of Block Period

	Particular	Income
A.	Total Income disclosed in the return furnished u/s 158BC	xx
B.	Total Income assessed u/s 143(3) or 144 or 147 or 153A or 153C (prior to the date of initiation of the search or the date of requisition)	xx
C.	Total Income declared in the return u/s 139 or in response to a notice u/s 142(1) or 148 and not covered under A or B above	xx
D.	Total Income determined where the PY has not ended (i.e. 1 st April of PY till last date of search), on the basis of book entries or transactions as recorded in BOA and other documents maintained in the normal course	xx
E.	Undisclosed income determined by AO (Note:1)	xx
	Total	xx
	Less: Total Income assessed referred in B + C + D	xx
	Total Income of Block Period	xx

Note-1: Undisclosed income falling within the block period, shall be computed in accordance with the provisions of the Act, on the basis of evidence found as a result of search or survey in consequence of such search (or requisition of books of account or other documents) and such other materials or information as are either available with the AO or come to his notice by any means during the course of proceedings u/s 158B to 158BI.

"Undisclosed income" includes any money, bullion, jewellery or other valuable article or thing or any expenditure or any income based on any entry in the BOA or other documents or transactions, where such money, bullion, jewellery, valuable article, thing, entry in the BOA or other document or transaction represents wholly or partly income or property which has not been or would not have been disclosed for the purposes of this Act, or any expense, exemption, deduction or allowance claimed under this Act which is found to be incorrect, in respect of the block period.

Note-2: While determining Undisclosed Income Interest and remuneration **not allowed** to Partner in case of FIRM (other than working partner).

Note-3: Undisclosed income in the case of international transactions - Where any evidence found as a result of search or requisition relates to any international transaction or specified domestic transaction referred u/s 92CA, pertaining to the period beginning from 1st April of PY in which last of the authorisations was executed and ending with the date on which last of the authorisations was executed, such evidence shall not be considered for the purposes of determining the total income of the block period and such income shall be considered in the assessment made under the other provisions.



Note- 4: Any B/f losses or unabsorbed depreciation (for PY before block period) not allowed to be set-off against undisclosed income.

Note- 5: Tax rate, interest, penalty - The tax shall be charged at 60% for the block period as per section 113 (no surcharge or health and education cess).

No interest or section 270A penalty - No interest under the provisions of section 234A, 234B or 234C or penalty under the provisions of section 270A, shall be levied or imposed upon the assessee in respect of the undisclosed income assessed or reassessed for the block period. [Sec 158BF]

Sec 158BD: Undisclosed income of any other person

Where AO is satisfied that any undisclosed income belongs to (or pertains to or relates to) any other person, then, any money, bullion, jewellery or other valuable article or thing, or assets, or expenditure, or BOA, other documents, or any information contained therein, seized or requisitioned shall be handed over to the AO having jurisdiction over such other person and that AO shall proceed as per provisions of this chapter. [like in other person case now sec. 158BA, 158BB, 158BC shall apply]

Sec 158BE: Time-limit for completion of block assessment

1. The time-limit for completion of block assessment of the searched assessee shall be 12 months from the end of the month in which the last of the authorisations for search u/s 132 (or requisition u/s 132A) was executed or made.
However, an exclusion of time period [max 6 months] shall be available in respect of period from date of initiation of search to the date of handing over of seized material to the AO having jurisdiction over assessee.
2. The time-limit for completion of block assessment of any other person shall be 12 months from the end of the month in which the notice u/s 158BC in pursuance of section 158BD, was issued to such other person.
3. If case is transfer to TPO u/s 92CA then above time limit shall be extended by 12 months.
4. While computing time limit, time lost due to certain procedure shall be excluded. (Same as given u/s 153 like reference to VO or Info. u/s 90/90A etc.)

Sec 158BFA: Levy of Interest and Penalties in Certain Cases

1. Interest: Where ROI is not furnished within time specified in such notice u/s 158BC, or is not furnished, the assessee shall be liable to pay simple interest @1.5% pm or part of the month of the



tax on undisclosed income, commencing on the day immediately after the expiry of the time given in the notice, and ending on the date of completion of assessment.

2. **Penalty** - Penalty on the undisclosed income shall be levied at 50% of the tax payable on undisclosed income.

However, penalty u/s 158BFA(2) and u/s 271AAD/271D/271DA/271E can be avoided if the following conditions are satisfied -

- Assessee has furnished a return u/s 158BC,
- tax payable on the basis of such return has been paid or, if the assets seized consist of money, the assessee offers the money so seized to be adjusted against the tax payable,
- evidence of tax paid is furnished along with the return; and
- an appeal is not filed against the assessment of that part of income which is shown in ROI.

However, the above concession shall not apply where the undisclosed income in the return and in such cases the determined by the AO is in excess of the income shown penalty shall be imposed on that portion of undisclosed income determined which is in excess of the amount of income shown in the return.



Appeal to Joint Commissioner (Appeals) or Commissioner (Appeals)

JC(A) or CIT(A) [Sections 246 to 251]

1. Sec 246(1) - Appealable orders before JC(A): On or after 1/4/23 assessee aggrieved by following order of AO (below the rank of JC) may appeal to JC(A)
 - ☞ Order passed by A.O. u/s 143(3), 144, 147 (Assessment Order by AC/DC/ITO)
 - ☞ Intimation u/s 143(1) or 200A or 206CB
 - ☞ Rectification order u/s 154 or 155
 - ☞ Order u/s 201 or 206C(6A) (assessee in default if TDS/TCS not deducted or collected)
 - ☞ Order of Penalty

Note: If above order passed with the prior approval of IT Authority above the rank of DC then appeal cannot be filed to JC(A). In this case appeal will be file to CIT(A).

2. Sec 246A - Appealable orders before CIT(A):
 - ☞ Order passed by A.O. u/s 143(3), 144, 147, 158BC (Assessment Order)
 - ☞ Intimation u/s 143(1) or 200A or 206CB
 - ☞ Rectification order u/s 154 or 155
 - ☞ Order where the assessee denies his liability to be assessed under this Act
 - ☞ Any order of AO u/s 92CD, 115VP, 163, 170, 171, 201, 206C(6A), 237, 239A, 221, Penalty.

Notes:

1. Where any appeal filed against an order u/s 246(1) is pending before CIT(A), CBDT or authorised IT authority, may transfer such appeal to JC(A). JC(A) may then proceed with such appeal or matter from the stage at which it was before it was so transferred.
2. CBDT or authorised IT authority may transfer any appeal which is pending before JC(A) to CIT(A).
3. Where an appeal is transferred, the appellant shall be given an opportunity of being reheard.
3. JC(A) or CIT(A) can be filed only by assessee (First appeal) within 30 days from the date of receipt of demand notice (in case of assessment/penalty) or date of receipt order/intimation (in any other case). However, delay can be condoned by JC(A) or CIT(A).
4. It can be filed in prescribed form i.e. Form No. 35 along with the Statement of facts, Grounds of appeal, copy of order/intimation of A.O., filing fees. This entire set called as Memorandum of appeal.
5. JC(A) or CIT(A) shall give the judgment (pass order) within 1 year from the end of the year in which appeal is filed or transferred, if possible [Advisory time limit].
6. An appeal with JC(A) or CIT(A) will be entertained only if -
 - ✓ Assessee has paid the tax on the amount of income returned by him.



- ✓ If no ROI is filed, then assessee should have paid the tax, which is equal to the amount of advance tax payable by him. (However, on an application made by assessee, JC(A) or CIT(A), may exempt the assessee from the payment of this amount and admit his appeal without payment of tax.)

Appeal To ITAT [Sections 252 to 255]

1. A case at ITAT level appeal shall be heard by "Bench" (Panel of Judges). Normally heard by members bench (Division bench), one judicial member & other Accountant member. However, total income of assessee is up to ₹ 50 lakhs then appeal can be heard by single member. Decision at ITAT level shall be taken according to the opinion of the majority. However, if the members differ on any point, and the members are equally divided on that point, then such point shall be referred to the president of ITAT who shall then refer the case to be heard by another member and then decision shall be taken according to the opinion of the majority.
2. Appeal to ITAT has to be filed within 60 days from the date of receipt of a copy of order sought to be appealed against. [w.e.f. 1/10/24 time period is 2 months from end of the month in which copy of order received]
3. It shall be filed in prescribed form i.e. Form No. 36 along with the statement of facts, grounds of appeal, copy of order, filing fees.
4. ITAT shall give Judgment within 4 years from the end of the year in which appeal was received by it, if possible.
5. Following order can be appealed against ITAT:
 - ☞ Order of JC(A) or CIT(A)
 - ☞ Order of A.O. passed on the basis of direction of DRP u/s 144C
 - ☞ Revision order u/s 263
 - ☞ Order of A.O. Passed with approval of CIT/PCIT u/s 144BA
 - ☞ Any other order of CIT/CCIT/DIT/DGIT/PCIT/ PCCIT/PDIT/PDGIT
6. Stay of demand: While filing appeal to ITAT, the assessee can apply for stay of demand. ITAT may after considering the merits of application can grant stay of demand for 180 days if assessee deposited at least 20% of the amount of tax, interest, fee, penalty or any other sum payable under the provisions of the Act or furnishes security of equal amount. If ITAT fails to give judgment within 180 days & delay is not attributed to the assessee then ITAT can extend stay period by maximum period (original+ extended) should not be more than 365 days.



Case Law: Pepsi Foods Ltd. (2021)(SC): SC observed that the ITAT, wherever possible, has to hear and decide appeals within a period of 4 years from the end of the FY in which such appeal is filed. It is only when a stay is granted by the ITAT, the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the ITAT is concerned, this is a directory provision. However, the condition of automatic vacation of stay on expiry of the period becomes mandatory so far as the assessee is concerned.

The SC also pointed out that the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days, even if the ITAT could not take up the appeal in time for no fault of the assessee. Further, vacation of stay in favour of the depart. would ensue even if the depart. is itself responsible for the delay in hearing the appeal. In this sense, the proviso is manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned. Accordingly, the SC held that the third proviso to sec 254(2A) has to be read without the word "even" and the word "not" after the words "delay in disposing of the appeal". Thus, any order of stay shall stand vacated after the expiry of the period mentioned in the section, only if the delay in disposing of the appeal is attributable to the assessee.

7. Where any party filed an appeal before the ITAT, the other party is allowed to file cross objections. This cross objections shall be filed in Form 36A within 30 days of receipt of notice from ITAT that the first mentioned party has filed an appeal. No fees applicable for filing cross objections.

Difference between Power of JC(A) or CIT(A) & ITAT

S.No.	Particulars	JC(A) or CIT(A)	ITAT
1.	Power to enhance the Assessment	Yes	No
2.	Power to reduce/confirm the Assessment	Yes	Yes
3.	Power to cancel the Assessment	Yes	Yes
4.	Power to set aside and refer back to A.O. for fresh assessment	No (Note 1)	Yes
5.	Power to condone delay	Yes	Yes
6.	Power to make inquiries	Yes	Yes
7.	Power to rectification of mistake	Yes - Sec. 154	Yes-Sec.254
8.	Power to review	No	No
9.	Power to admit additional grounds of appeal	Yes	Yes
10.	Power to admit additional evidence	Yes (Note 2)	Yes (Note 3)
11.	Power to grant stay	Yes	Yes
12.	Power to Award cost (in case of frivolous Appeal)	No	Yes
13.	Power to Reject appeal	Yes	Yes

Sec 154: JC(A) & CIT(A) is covered under IT Authority, it can rectify its order u/s 154.

Sec 254: Rectification of Mistake by ITAT: ITAT can rectify its order if there is mistake apparent on record within **6 months from the end of the month which original order was passed**. It can be rectified on own motion or on an application made by assessee or A.O.



Notes:

1. If appeal is against AO's order u/s 144 then CIT(A) may set aside and refer back to AO for fresh assessment. [Added by FA 24 w.e.f. 1/10/2024]
2. JC(A) or CIT(A) can admit additional evidence in following cases:
 - a. Assessee produced evidence but A.O rejected.
 - b. A.O. completed the assessment without giving opportunity to produce such evidence.
 - c. Where A.O. demanded such evidence but assessee cannot/could not produce such evidence for sufficient cause.
 - d. Where A.O. didn't demand such evidence & evidence was relevant but assessee could not produce for sufficient cause.
3. ITAT can admit additional evidence furnished by the appellant assessee, which were not furnished by him earlier:
 - a. In a case, where ITAT is satisfied that the Income Tax Authorities have decided the case without giving sufficient opportunity to the assessee to produce relevant evidence; or
 - b. In a case, where ITAT requires production of additional evidences / documents on its own to enable it to pass its order.

4. Appeal filling fees

S.No.	Particulars	JC(A) or CIT(A)	ITAT
1.	Assessed Income is upto ₹ 1,00,000	250	500
2.	Assessed income more than ₹ 1,00,000 upto ₹ 2,00,000	500	1500
3.	Assessed income more than ₹ 2,00,000	1000	1 % of assessed income (Max 10,000)
4.	In any other case	250	500
5.	Appeal filed by department to ITAT	-	No Fees
6.	Filing of Memorandum of Cross objections to ITAT	-	No Fees
7.	Application of stay of demand to ITAT	-	500

Appeal to H.C. [section 260A & 260B]

1. Appeals to H.C. can be filed within 120 days only if there is Question of Law.
2. Appeal form, fees & procedure governed by Code of Civil Procedure, 1908.
3. HC have power to review its order (S.C. case law)

Appeal to S.C. [section 261 & 262]

1. Appeal against HC order.
2. Within 90 days.
3. SC have power to review its order.
4. Appeal form, fees & procedure governed by Code of Civil Procedure, 1908



Sec 263: Revision of orders prejudicial to the Interest of Revenue

1. CIT/PCIT/CCIT/PCCIT can call for and examine the "Records" of any proceeding in which order has been passed by an A.O. /TPO which is;-
 - Erroneous, and
 - Prejudicial to the interest of Revenue
 then CIT/PCIT/CCIT/PCCIT can pass any revisional order under this section, as he deems fit.
2. CIT/PCIT/CCIT/PCCIT can enhance, modify or cancel the assessment & direct for fresh assessment or order modifying the order u/s 92CA or an order cancelling the order u/s 92CA and directing a fresh order u/s 92CA.
3. An opportunity of being heard must be given to assessee before any such revisional order.
4. The time limit to pass any such order by CIT/PCIT/CCIT/PCCIT is 2 years from the end of the financial year in which original order of A.O./TPO was passed.
5. Order passed u/ s 263 can be appealed against at ITAT level.
6. CIT/PCIT/CCIT/PCCIT cannot revise matter involving appeal, means matters which are decided or considered in any appeal cannot be revised (Partial merger). However, they can revise other matters of same order.
7. "Record" means everything which available on record at the time of examination of the file by CIT/PCIT/CCIT/PCCIT & not only those things which were available on record at the time of passing of the order by A.O./TPO.
 E.g.: Report of a valuation officer, which was not available earlier at the time of passing of the order of A.O. but is now available at time of examination of the file by CIT/PCIT/CCIT/PCCIT.
8. Order passed by A.O./TPO shall be deemed to erroneous in so far as it prejudicial to the interest of the revenue, if in the opinion of the CIT/ PCIT/CCIT/PCCIT;-
 - (i) Order passed without making inquiries or verification which should have been made.
 - (ii) Order is passed allowing any relief without inquiring into the claim.
 - (iii) Order has not been made in accordance with any order direction or instruction of CBDT.
 - (iv) Order has not been passed in accordance with any decision which is Prejudicial to the assessee, rendered by the jurisdictional HC or SC in the case of the assessee or any other person.

**Sec 264: Revision of other Order**

1. CIT/PCIT/CCIT/PCCIT may either on his own motion or on an application made by assessee, call for and examine the records of any proceeding, in which an order other than referred u/s 263 has been passed by A.O. & CIT/PCIT/CCIT/PCCIT may pass such revisional order u/s 264 as he deems fit.
 2. CIT/PCIT/CCIT/PCCIT can revise the order on his own motion within 1 year from date of passing of the order by A.O.
 3. If assessee applies for revision, then he can make an application within 1 year from the date of receiving a copy of order by assessee.
 4. If assessee has asked for revision the CIT/PCIT/CCIT/PCCIT has to pass an order within 1 year from the end of F.Y. in which application was made by assessee.
 5. Order which is prejudicial to the interest of assessee cannot be passed under this section.
 6. Appeal cannot be filed against order u/s 264.
 7. Assessee can apply for revision u/s 264 only if:-
 - (i) Time limit to file JC(A) or CIT(A) has been expired (30 days), or
 - (ii) Assessee waived his right of appeal in writing

☞ Assessee can either prefer an appeal or can apply to CIT/PCIT/CCIT/PCCIT for revision u/s 264. Both the remedies cannot be available simultaneously, even if they pertain to different matters. [Total merger].
- ❖ Point to be remember
- ✓ If the order of A.O. has subject matter of appeal then such order can be revised u/s 263 but cannot be revised u/s 264.
 - ✓ Revisional order u/s 263 can be appealed to ITAT but order u/s 264 cannot be appeal.
- ❖ Sec 264A: Faceless Revision of Orders
- CG may make and notify scheme for the purpose of Faceless Revision of orders u/s 263 & 264.



Other Concepts

Sec 158A: Special provisions for avoiding repetitive appeals

In case of an assessee, for an **earlier assessment year**, if appeal is pending before **High Court(HC)** or **Supreme Court(SC)** on a particular matter and for an identical point.

In the case of **same assessee**, but for subsequent year, if the same matter is pending before:-

- (i) Any IT Authority (AO), or
- (ii) JC(A), CIT(A), or
- (iii) ITAT

then assessee, rather than filing the appeal once again he can furnish a declaration in form No. 8 to A.O./JC(A)/CIT(A)/ITAT, requesting them that if they agree to apply decision of HC/SC in current case than the Assessee shall not appeal. The A.O./JC(A)/CIT(A)/ITAT may admit or reject the application of Assessee.

Sec 158AB: Procedure where an identical question of law is pending before HC or SC

1. In case of **assessee or any other person**, if question of law for any AY is **pending before jurisdictional HC or SC (first case)** against the order of ITAT or HC which was in the **favour of assessee/other person** (order was against dept.) and in case of **assessee on same question of law** is decided by JC(A)/CIT(A) or ITAT (second case) in the favour of assessee, then instead of filing appeal to ITAT/HC (by dept.), the **collegium** may decide and **inform the CIT/PCIT not to file any appeal**, at this stage, to the ITAT or HC.

"Collegium" means a collegium comprising of 2 or more CCIT or PCIT or CIT specified by the CBDT.

2. CIT/PCIT shall, on receipt of a communication from the collegium, **direct the AO** to make an application to ITAT or HC in **Form 8A within 120 days** from the date of receipt of JC(A)/CIT(A) or ITAT order, stating that an appeal on the question of law arising in second case may be filed when the decision of first case becomes final.
3. CIT/PCIT shall direct the AO to make an application **only if an acceptance is received from the assessee** to the effect that question of law in the first case is identical and in case no such acceptance is received, the PCIT or CIT shall file appeal to ITAT/HC.
4. When the question of law **decided by HC/SC (in first case)**, in the **favour of dept.** then, CIT/PCIT may **direct the AO to appeal to the ITAT/HC**. Appeal to ITAT should be file within **60 days** and HC within **120 days** from the date on which order of HC/SC is received by CIT/ PCIT.

Sec 268A: Special provision for appeal by Dept

1. This section empowers CBDT to fix monetary limit to regulate appeal by Dept. in order to avoid litigation in small cases.

2. As per notification, the dept can file appeal only in the **Tax effect** is more than following amount

S.No.	Appeals in IT matters	Monetary Limit
1.	Before ITAT	₹ 50,00,000
2.	Before HC	₹ 1,00,00,000
3.	Before SC	₹ 2,00,00,000

3. If Dept. has not filed appeal on a particular issue in case of a particular assessee in a particular year, then it shall not stop the dept from filing appeal on the same issue.

(a) in case of same Assessee in another year.

(b) in case of another assessee in any year.

4. The assessee cannot contend that the dept has agreed on a particular issue by not filing appeal on such issue.

Case Laws

- **Genpact India Pvt. Ltd. [2019](SC):** Assessee company bought back shares but not paid taxes u/s 115QA. AO passed order u/s 143(3) and charged tax @20% u/s 115QA. Assessee directly filed writ to HC. SC held that any dispute on the determination of Buy back tax u/s 115QA would fall within the ambit of "an order against which, the assessee denies his liability to be assessed under this Act". Hence, an appeal u/s 246A to CIT(A) against such order passed would also be maintainable. The company cannot directly file writ.
- **Pruthvi Brokers & Shareholders (2012) (Bom.):** Assessee can make an additional/new claim before an appellate authority, which was not claimed by the assessee in the return of income, otherwise than by way of filing a revised return of income.
- **Ritha Sabapathy [2019] (Mad):** The ITAT cannot dismiss an appeal, without deciding the case on its merits, solely on the ground that the assessee had not appeared on the appointed date of hearing. ITAT should not shirk its responsibility to decide a case on its merits. Cryptic order not touching the merits of the case, would not give rise to any substantial question of law for consideration by the High Court u/s 260A.
- **Earnest Exports Ltd. (2010) (Bom.)/Lachman Dass Bhatia Hingwala (P) Ltd. (2011) (Delhi):** ITAT does not have the power to review or re-appreciate the correctness of its earlier decision u/s 254(2). It only has the power to rectify an apparent mistake. While exercising the power of



rectification u/s 254(2), ITAT can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the ITAT's mistake, error or omission and the error committed is apparent.

- **Meghalaya Steels Ltd. (2015) (SC)** : High Court being a court of record has inherent power to review its own order. There is nothing in Income Tax Act or Constitution of India precluding it from doing the same. So, HC has an inherent power under the Income tax Act, 1961 to review an earlier order passed on merits.
- **Sunil Vasudeva & Others v. Sundar Gupta & Others (2019)(SC)**: High Court can review its own order, where the grounds for review were:
 - (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;
 - (ii) mistake or error apparent on the face of the record;
 - (iii) any other sufficient reason.
 A review will, however, not be maintainable in the following cases:
 - (i) repetition of old and overruled argument;
 - (ii) minor mistakes of inconsequential import.
- **A.A. Estate Pvt. Ltd. (2019)(SC)**: While deciding an appeal. High Court cannot hear and decide on the case based on the questions urged by the appellant. The Court is obligated to formulate the substantial question of law and decide on the case only based on these questions formulated by itself.
- **Spinacom India (P.) Ltd. [2018] (SC)**: Delay in filing an appeal to High Court on the grounds that appellant was seeking an alternate remedy u/s 254 for rectification of mistakes apparent from record in ITAT order is not acceptable and shall not be condoned. Appellant should have filed the appeal to HC mentioning in the memorandum of appeal stating that an application for rectification has been filed before ITAT which is pending as on date.
- **Fortaleza Developers (2015)(Bom)**: When the order of the CIT(A) is complete and the appeal is pending before the ITAT, the CIT/ PCIT is precluded from invoking sec. 263 for revision of the very same matter decided by the CIT(A). Accordingly, the High Court held that the order passed by the AO got merged with the order of the CIT(A). The very same issue cannot be revised by invoking revisionary jurisdiction u/s 263.
- **Reliance Telecom Ltd./Reliance Communications Ltd. (2022)(SC)** Can the powers under section 254(2) be exercised by the Tribunal to recall an order and rehear the entire order on merits?

No, ITAT cannot recall its order, ITAT have only power for rectification of mistake as per section 254. If assessee not satisfied with the judgment of ITAT then he may file appeal to HC. ITAT is not allowed to recall or rehear matter on which judgment already given by ITAT except in case of rectification of mistake.

➤ **SAP Labs India Pvt. Ltd. [2023](SC)**

As per SC, HC has power to consider the substantial question of law involving determination of ALP :-

- While determining ALP, ITAT has to follow the guidelines of transfer pricing (sec. 92 to 92F). If ITAT has not determined ALP as per rules of TP then it is treated as QOL and HC can determine ALP.
- HC can also examine the question of comparability of two companies or selection of filters and examine whether the same is done judiciously and on the basis of the relevant material/ evidence on record.
- HC can also examine whether the comparable transactions have been taken into consideration properly or not, i.e., to the extent as to whether non-comparable transactions are considered as comparable transactions or not.

➤ **Industrial Development Bank of India Ltd. [2023](SC)**

Does the limitation period for exercising the powers u/s 263 reckoned from date of passing of the original assessment order rather than the date of reassessment order for the issues covered under the original assessment but not covered in the reassessment proceedings? As observed and held by the Court in the earlier decisions, once an order of assessment is reopened, the previous order of assessment will be held to be set aside. The whole proceedings would start afresh, but the same would not mean that even when the subject matter of reassessment is distinct and different, the entire proceedings would be deemed re-opened. It means that only in a case where the issues before the CIT at the time of exercising powers u/s 263 relate to the subject matter of reassessment would the limitation start from the date of the reassessment order. However, if the subject matter of the reassessment is distinct and different, in that case, the relevant date for the purpose of determining the period of limitation for exercising powers under section 263 would be the date of the original Assessment Order. Accordingly, Apex Court held that the issues before the CIT while exercising the powers u/s 263 related back to the original assessment order which were not covered in the reassessment proceedings and, therefore, the limitation would start from the original assessment order and not from the reassessment order.



Sec 245MA(1): Constitution of Dispute Resolution Committee (DRC)

CG shall constitute one or more DRC. DRC shall resolve disputes of class of persons which shall be specified by the Board. Assessee would have an option to opt for or not opt for the dispute resolution through the DRC. Dispute should arise from any variation in the **specified order** for an assessment.

- **Constitution** - CG would constitute a DRC for every region of PCCIT for dispute resolution.
- **Composition** - Each DRC would consist of 3 members, as under:-
 - ☞ 2 members would be retired officers from the IRS(Income-tax), who have held the post of CIT or any equivalent or higher post for 5 years or more; and
 - ☞ 1 serving officer not below the rank of CIT/PCIT.
- **Time period** - Members would be appointed by the CG for a period of 3 years.
- **Decision of DRC** - Decision of the DRC shall be by majority.
- **Removal of member** - CG may remove any member after giving an opportunity of being heard.

Application to DRC for dispute resolutions

Specified person has to make an application for resolution of dispute before the DRC in form 34BC **within 1 month** from date of receipt of specified order with **fee of ₹ 1,000**.

"Specified Order" means orders satisfied followings conditions:

- ☞ Order **specified by the CBDT**,
- ☞ Aggregate amount of **variations** in the said order is **upto ₹ 10 lakhs**,
- ☞ Order is **not based on**
 - search initiated u/s 132 or requisition u/s 132A in the case of assessee or any other person; or
 - survey u/s 133A; or
 - information received under an DTAA u/s 90/90A;
- ☞ Where return has been filed then total income as per return **upto ₹ 50 lakhs** for that year.

➤ Orders specified by CBDT

- (a) Draft order with variation as referred u/s 144C(1);
- (b) Intimation u/s 143(1)/200A/206CB;
- (c) Order of assessment/reassessment, except an order passed as per directions of the DRP;
- (d) Rectification order u/s 154 having the effect of enhancing the assessment or reducing the loss;
- (e) Order u/s 201/206C(6A) deeming a person as an assessee-in-default [the variation in the specified order relating to default in TDS/TCS would refer to the amount on which tax has not been deducted or collected]

➤ Following persons NOT eligible for resolution

- (i) In respect of whom an order of **detention has been made** under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

- (ii) In respect of whom **prosecution has been instituted** and has been convicted of any offence punishable under any of the following Acts:
- ⊗ Indian Penal Code, 1860
 - ⊗ Unlawful Activities (Prevention) Act, 1967
 - ⊗ Narcotic Drugs and Psychotropic Substances Act, 1985
 - ⊗ Prohibition of Benami Transactions Act, 1988
 - ⊗ Prevention of Money Laundering Act, 2002
 - ⊗ Prevention of Corruption Act, 1988
- (iii) In respect of whom **prosecution has been initiated by an IT authority** for any offence punishable under the provisions of the Act or the Indian Penal Code or for the purpose of enforcement of any civil liability under any law for the time being in force or such person has been convicted of any such offence consequent to the prosecution initiated by an IT authority; or
- (iv) Who is notified u/s 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992; or
- (v) Proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 have been initiated for the AY for which resolution of dispute is sought.

➤ Screening of application by DRC

- (i) Examination of application - DRC has to examine the application. Upon such examination, when DRC considers that application should be rejected, it has to serve a SCN as to why his application should not be rejected.
- (ii) Provision of opportunity of being heard - Assessee can request for an opportunity of being heard. DRC has to provide opportunity of being heard through video conferencing facility.
- (iii) Furnishing response to SCN within the specified date - Assessee has to furnish a response to the SCN within the specified date and time or such extended time as may be allowed, to the DRC;
- (iv) Rejection of application by DRC - DRC may, after considering the response furnished by the assessee, reject the application or allow the application. Where no response is furnished by the assessee, DRC may reject the application [In such a case, the assessee may file an appeal to the JC(A)/CIT(A). Period taken by the DRC in deciding on the admission has to be excluded from the period available to file such appeal].
- (v) Communication of decision of DRC to assessee - Decision of the DRC, allowed or rejected, has to be communicated to the assessee on his registered e-mail;
- (vi) Submission of proof of withdrawal of appeal/application before DRP - Within 30 days of receipt of the communication that the application is admitted, the assessee is required to submit a proof of withdrawal of CIT(A) or withdrawal of application before the Dispute Resolution panel, if any, to the DRC or convey that there is no aforesaid proceeding pending in his case. If the assessee fails to do so, the DRC may reject the application.

- Procedure to be followed by the DRC
- (i) Calling for records for further examination - DRC may call for records from IT authority & report from AO, as it may deem fit, with respect to the issues covered in the application;
 - (ii) Calling for further information - DRC may before disposing off the application, call for further information from assessee or any other person by sending an email to his registered email;
 - (iii) Submission of response within specified time - Assessee has to electronically submit its response to DRC, within the time specified or such time as may be extended by DRC;
 - (iv) Decision of DRC - After considering the material available on record, DRC may decide —
 - (a) to make modifications to the variations in specified order, which are beneficial to assessee, and decide for waiver of penalty & immunity from prosecution, and pass an order of resolution; or
 - (b) to not make modifications to the variations in the specified order. However, the DRC may decide to waive penalty and grant immunity from prosecution, and pass an order of resolution. Such an order will be treated as an order not prejudicial to the interest of the assessee; or
 - (c) to not make any modification in specified order, and pass an order disposing off the application. Such an order will be treated as order 'not prejudicial to the interest of the assessee', - within 6 months from end of the month in which application is admitted by the DRC.
 - (v) Serving copy of order to AO and assessee - DRC has to serve a copy of the order of resolution or order disposing off the application, to assessee and also the AO for giving effect to the same;
 - (vi) No appeal or reference will lie against the modified order - Where the specified order is an order of the eligible assessee u/s 144C(1), the assessee will not be eligible to file any reference to the DRP or an appeal to CIT(A) against the modified order.
 - (vii) Serving copy of modified order to assessee - AO has to serve a copy of the modified order along with notice of demand upon the assessee specifying a date for making payment of demand. No appeal or revision would lie against the modified order.
 - (viii) Assessee to furnish proof of payment of demand - Assessee has to furnish proof of payment of the said demand to the DRC and also to the AO.
 - (ix) Grant of immunity from prosecution and waiver of penalty - DRC shall, on receipt of confirmation of payment of demand, by an order in writing, grant immunity from prosecution and waiver of penalty if applicable.
- Termination of dispute resolution proceedings: DRC may, at any stage, after giving an opportunity of being heard to the assessee, decide to terminate dispute resolution proceedings if, -
- ⊗ assessee fails to cooperate during the course of dispute resolution proceedings; or
 - ⊗ assessee fails to respond to, or submit any info. in response to, a notice issued to him; or
 - ⊗ DRC satisfied that the assessee has concealed any particular material or given false evidence.
 - ⊗ the assessee fails to pay the demand as required in notice of demand.
- Where the dispute resolution proceedings are terminated, the DRC has to intimate IT authority for taking necessary action as per the provisions of the Act.



- Power to reduce or waive penalty or immunity from prosecution or both under the IT Act, 1961
- Conditions for grant of waiver of penalty or immunity from prosecution - DRC, upon receipt of confirmation from assessee of payment of demand, should grant waiver of penalty imposable or immunity from prosecution or both, if it is satisfied that such person has,
- ☞ Paid the tax due on the returned income in full if available; and
 - ☞ Co-operated with the DRC in the proceedings before it.

Note: No immunity if prosecution proceedings were initiated before the date of receipt of application

Withdrawal of immunity - If such person fails to comply with any of the conditions subject to which the immunity was granted. On such withdrawal, the provisions of IT Act, 1961 would apply as if such immunity or waiver had never been granted.

Sec 245MA(2A): Effect of DRC order by AO

Upon receipt of the order of the DRC, the AO shall,-

- (a) in a case where the specified order is a draft of the proposed order of assessment 144C(1) pass an order of assessment, reassessment or recomputation; or
- (b) in any other case, modify the order of assessment, reassessment or recomputation, - in conformity with the directions contained in the order of the DRC within one month from the end of the month in which such order is received.



Cash Loan/Advances/Deposits [Sec 269SS, 269T, 269ST]

Sec 269SS: Mode of taking/accepting Loans or Deposit or Advance

Any person should **take/accept**

a. loan/deposit, or

b. Advance in relation to immovable property.

only by account payee cheque or D.D., any other prescribed electronic modes, if the amount is ₹ 20,000 or more.

Note : On the date of taking or accepting such loan or deposit or advance in relation to immovable property, any loan or deposit or advance in relation to immovable property taken or accepted earlier by such person and unpaid on such date shall also be consider for ₹ 20,000 limits.

Exception: Above section is **not applicable** if loan/advance/deposit is taken from or by (i) Govt (ii) Banks, Co-op Bank, Post Office (iii) Govt. Company (iv) Person having only Agriculture Income (v) Corp. established by Central, State, Provincial Act (vi) Any other as notified by CBDT.

Amendment: Limit of ₹ 2,00,000 is **applicable** in case of any deposit or loan where,

- deposit is accepted by Primary Agricultural Credit Society (PACS) or Primary Co-operative Agricultural and Rural Development Bank (PCARD) from its member, or
- a loan is taken from PACS or PCARD Bank by its member.

- **Penalty u/s 271D:** If assessee fails to follow sec 269SS, then penalty Shall be **levied @ 100% of such loan/Deposit/advance**. It shall be **imposed by J.C.**

Example: 1. Raj accepted ₹12,000 as a loan and ₹13,000 as a deposit from Hori on 16/12/24 by way of bearer cheque -

Yes violation of Sec 269SS penalty u/s 271D shall be attract on ₹ 25,000.

Example: 2 Raj accepted loan from Hori as follow -

On 26/07/24 ₹ 15,000 by way of account payee cheque

On 10/12/24 ₹ 15,000 by way of Cash

Yes, violation of Sec 269SS penalty u/s 271D shall be attract on ₹ 15,000.

Example: 3 Raj accepted loan from Hori as follow -

On 26/07/24 ₹ 15,000 by Cash

On 10/12/24 ₹ 15,000 by account payee cheque

No violation of Sec 269SS penalty u/s 271D not applicable.

Sec 269ST: Mode of Undertaking Transactions

Any person should **not receive an amount of ₹ 2,00,000 or more** except by account payee cheque or D.D., any other prescribed electronic modes,

(a) in aggregate from a person in a day; or

(b) in respect of a single transaction; or



(c) in respect of transactions relating to **one event or occasion** from a person.

Notes: CBDT Clarification

1. In respect of receipt in the nature of **repayment of loan** by NBFC or Housing Finance Companies, the receipt of **one instalment** of loan shall constitute a "**single transaction**" & instalments paid for a loan shall not be aggregated.
2. Receipt related to **dealership/distributorship contract** by the **Co-operative Society** on any day in a PY, which is within limit of (a) & (b), **may not be aggregated across multiple days** for purposes of (c) for that previous year.

♦ Sec. 269ST not applicable in following cases

- ⊗ Any receipt by Govt., Bank, Post Office or Co. op. Bank.
- ⊗ Transactions referred in Sec. 269SS.
- ⊗ Such other person notified by CG.

Notification No. 28 & 57/2017

- ⊗ Cash withdrawal from Bank, Co. op Bank, Post office.
- ⊗ Receipts by bank correspondent by Bank or Co. op. Bank.
- ⊗ Receipts by ATM Operator.
- ⊗ Receipt from an agent by an issuer of pre-paid payment instruments.
- ⊗ Receipt by a credit cards company against bills raised in respect of one or more credit cards.
- ⊗ Receipt of Awards from Govt. exempt u/s 10(17A).

- **Penalty u/s 271DA:** If assessee fails to follow Sec 269ST, then penalty shall be **levied @ 100% of such receipt**. It shall be imposed by **J.C.**

However, no penalty shall be levied if that person proves that there were good & sufficient reasons for the contravention.

Examples:

1. Mr Hari buys a gold chain worth ₹ 2 Lakh and pays the amount by cash to Mr Rahul on a single day in 4 equal instalments of ₹ 50,000 each. As Mr Rahul accepted cash worth ₹ 2 Lakh from a single person and in a single day, Sec. 269ST is applicable in this case. Mr Rahul has to pay a penalty of ₹ 2 Lakh.
2. Mr Kejriwal goes through a medical surgery and the hospital charges him a bill of ₹ 4 Lakh. Kejriwal clears the bill in 4 instalments of ₹ 1 Lakh each on four different dates. Here, the cash receipts got by hospital are less than ₹ 2 Lakh and have been received on different dates. Whether this transaction violates 269ST? - **Yes. Hospital has to pay the penalty.** Because, they received the payments with respect to single bill/transaction. So, splitting of payments over several days is prohibited.



3. If a person has done work of different nature in a marriage of his customer, say, given garden on rent for marriage reception, given tent house services, done decoration and has issued three different bills of ₹ 1.50 lakhs each for each separate service (total ₹ 4.50 lakhs), then he can receive only less than ₹ 2 lakhs from his customer in cash etc. mode in respect of all the 3 bills/transactions. If entire ₹ 4.50 lakhs are taken in cash etc. then even though the limit of per transaction and also limit per day per entity is not crossed, but since all the transactions are related with the single occasion of a marriage, then the total limit of less than ₹ 2 Lacks will be a consolidated limit for all the related transactions.

Sec 269SU: Acceptance of payment through prescribed electronic modes

Person carrying on **business**, shall provide facility for **accepting payment through prescribed electronic modes**, if his Turnover of last year more than ₹ 50 crore

Penalty u/s 271DB : If assessee fails to follow Sec. 269SU then he shall be liable to pay penalty sum of ₹ 5000, for every day during which such failure continues. It shall be imposed by **J.C.**

Prescribed Electronic Modes-Notification No.105/2019

- (i) Debit Card powered by RuPay;
- (ii) Unified Payments Interface (UPI)(BHIM-UPI);and
- (iii) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code)

Sec 269T: Repayment of Loan/Deposit/Advance

Any person **should repay:**

- a. loan or deposit (together with interest)
- b. Advance in relation to immovable property, only by account payee cheque or D.D, any other prescribed electronic modes, if the amount is ₹ 20,000 or more.

Note: On the date of repayment of such loan or deposit or advance in relation to immovable property, any loan or deposit or advance in relation to immovable property outstanding on such date shall also be consider for ₹ 20,000 limits.

Exception: above section not applicable if loan or deposit or advance in relation to immovable property taken or accepted from: -

- (i) Govt. (ii) Bank, Co-op. bank, post office (iii) Govt. company (iv) Corp. established by Central, State, Provincial Act

Penalty u/s 271E : If assessee fails to follow Sec. 269T then penalty shall **be levied@ 100%** of such loan/deposit/advance repayment. It shall be imposed by **J.C.**

Deemed Income [Sec 68 to 69D]**Sec 68: Cash Credit**

Where any sum is found credited in the books of the assessee and assessee offers no explanation about the nature and source or the explanation offered is not satisfactory in the opinion of the AO, the sum so credited may be treated as income of the assessee of that PY.

However, where the sum so credited consists of loan or borrowing or any such amount, whatever name called, any explanation offered by the assessee shall not be deemed to be satisfactory, if, the person in whose name such credit is recorded also offers no explanation about the nature and source or explanation not satisfactory.

Further, any explanation offered by a closely held company in respect of any sum credited as share application money, share capital, share premium or any such amount, in the a/c's of such company shall be deemed to be not satisfactory, if, the resident person, in whose name such credit is recorded in the books of such company also not explains about the nature and the source of such sum or explanation not satisfactory.

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

Sec 69: Unexplained Investments

Where in the PY, the assessee has made investments which are not recorded in the BOA and the assessee offers no explanation about the nature and the source of investments or explanation not satisfactory in the opinion of the AO, the value of the investments are taxed as deemed income of the assessee of that PY.

Sec 69A: Unexplained Money, Assets etc.

Where in any PY, the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and the same is not recorded in the BOA and the assessee offers no explanation about the nature and source of acquisition of such money, bullion etc. or the explanation not satisfactory in the opinion of the AO, the money and the value of bullion etc. may be deemed income of the assessee of that PY.

Sec 69B: Amount of investments etc., not fully disclosed in the books of account

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



Sec 69C: Unexplained Expenditure

Where in any PY, an assessee has incurred any **expenditure** and he offers **no explanation** about the source of such expenditure or the explanation is unsatisfactory in the opinion of the AO, AO can treat such unexplained expenditure as the income for such PY. Such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as deduction under any head of income.

Sec 69D: Amount borrowed or repaid on hundi

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

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

Note: Income mentioned u/s 68 to 69D taxable @60% (+25% Surcharge +4% HEC i.e.78%)

Miscellaneous Provisions for Assessments

Sec 281: Certain Transfer to be Void

Where any tax, penalty, interest or fine more than ₹ 5,000 is payable by an assessee and the assets which are charged or transferred by the assessee exceeds ₹ 10,000 in value during the period [pendency of any proceedings under the Act till the service of notice by TRO] shall be deemed to be void.

Exception: Charge or transfer shall **not be treated as void** if

1. If it is made on stock in trade of the business, or
2. It is made for adequate consideration & without notice of the proceedings being pending or sum being due, or
3. With the prior approval of A.O.

Manoj Kabra (2014) (All): In order to declare a transfer as fraudulent u/s 281, an appropriate proceeding in accordance with law was required to be taken u/s 53 of the Transfer of Property Act, 1882. The AO is required to file a suit for declaration to the effect that the transaction of transfer was void u/s 281 of the IT Act, but he himself cannot assume jurisdiction to declare the sale deed as void.



Sec 281B: Provisional attachment of Property

- Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment or for imposition of penalty u/s 271AAD (false entry penalty) where the amount or aggregate of amounts of penalty likely to be exceeds 2 crore rupees, AO, in order to protect the interest of the revenue may provisionally attach any property of the assessee after obtaining the prior approval of PCCIT/CCIT/PCIT/CIT or PDGIT/DGIT/PDIT/DIT.
- Such provisional attachment shall remain valid for 6 months from the date of order or such extended period as may be approved by the above higher authorities which shall not exceed years or 60 days after date of completion of assessment proceedings, whichever is later.
- Assessee can alternatively furnish a bank guarantee to the AO & AO shall in such cases, revoke the order for provisional attachment within 15 days of receiving guarantee.

Sec 285B: Statements by producers of films or persons engaged in specified activity

Person carrying on the production of a film or engaged in any specified activity, or both, shall furnish within 60 days from end PY, a statement in Form 52A to the DGIT/PDGIT (System) in the electronic mode, containing particulars of all payments of over ₹50,000 in the aggregate made by him or due from him to each such person as is engaged by him in such production or specified activity.

Explanation- "Specified activity" means event management, documentary production, production of programmes for telecasting on television or OTT platforms, sports event management, other performing arts or any other activity as may be notified.

Sec 285BA: Statement of Financial Transaction (SFT) or Reportable Account

Following persons are required to file SFT or reportable accounts upto 31st May after the end of FY in which transaction took place:-

S.No.	Class of Person (Reporting Person)	Nature & Value of Transaction
1.	Bank or Co.op Bank	(a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of agg. ₹10 lakhs or more in FY. (b) Payments made in cash agg. ₹10 lakhs or more in FY for purchase of pre-paid instruments. (c) Cash deposits or Cash withdrawals (including through bearer's cheque) agg.to ₹ 50 lakhs or more in FY, in or from one or more current a/c of a person.
2.	Bank or Co.op Bank	Cash deposits agg. to ₹ 10 lakhs or more in FY, in one or more accounts (other than current a/c and time deposit)
3.	Bank or Co.op Bank or Post office or Nidhi or NBFC	One or more time deposits (other than made through renewal of another TD) agg. to ₹ 10 lakhs or more in FY



4.	Bank or Co.op Bank or any Credit Card company	Payments made by any person of agg. to- (i) ₹ 1 lakh or more in cash; or (ii) ₹ 10 lakhs or more by any other mode, against bills raised in respect of one or more CC issued to that person, in FY.
5.	Company or Institution issuing Bonds or Debentures	Receipt from any person agg. ₹ 10 lakhs or more in FY for acquiring bonds or debentures issued by the company or institution (other than renewal)
6.	Company issuing shares	Receipt from any person agg. ₹ 10 lakhs or more in FY for acquiring shares
7.	Listed Company purchasing its own Shares (BuyBack)	Buy back of shares from any person (other than the shares bought in the open market) for agg. ₹ 10 lakhs or more in FY.
8.	Mutual Fund Trustee	Receipt from any person agg. ₹ 10 lakhs or more in FY for acquiring units of one or more schemes of MF (other than transfer from one scheme to another scheme of that MF).
9.	Authorized person as per FEMA, 1999	Receipt from any person for sale of foreign currency including any foreign exchange card or expense in such currency through a debit or credit card or through issue of traveller's cheque or draft or any other instrument of agg. ₹ 10 lakhs or more in FY
10.	Inspector General or Registrar or Sub-Registrar	Purchase or sale of immovable property for ₹ 30 lakhs or more or SDV ₹ 30 lakhs or more
11.	Person Subject to Audit u/s 44AB	Receipt of cash payment more than ₹ 2 lakhs for sale of goods or services of any nature (other than covered in 1 to 10 above)

Reporting person (except 10 & 11 above), while agg. the amounts,

- ☞ Take into account all accounts of same nature maintained in respect of that person during FY;
- ☞ Agg. all transactions of same nature recorded in respect of that person during FY;
- ☞ Attribute entire value of transaction or agg. value of all transactions to all the persons, in a case where a/c is maintained or transaction is recorded in the name of more than one person;
- ☞ Apply limit separately to deposits and withdrawals in point 1 of table.

◆ Notification -16/2021

For the purposes of pre-filling the ROI, information relating to capital gains on transfer of listed securities or units of MF, dividend income, and interest income shall be furnished:-

S.No.	Class of Person (Reporting Person)	Nature & Value of Transaction
1.	RSE, Recog. Clearing Corp. Depository, Registrar	CG on transfer of listed securities or units of Mutual Funds
2.	Company	Dividend Income
3.	Bank, Co-op. Bank, Post master or NBFC	Interest Income

Note: Info. to be reported for all account/deposit holders where interest exceeds "0" per account in the FY excluding Jan Dhan Accounts

♦ Sec 271FA: Penalty for late filing of SFT

Period	Amount
From 1 st June after end of FY in which the transaction is recorded till the date of furnishing SFT or the date of expiry of the time specified in the notice, as the case may be	500 Per Day
After the expiry of notice period till the date of furnishing of statement.	1000 Per Day

♦ Sec 271FAA: Penalty for Incorrect information in SFT

- ☞ Penalty is ₹ 50,000 will be levied only if IT Authority is satisfied that: -
- (a) provides inaccurate information in the statement or fails to furnish correct information within 10 days of discovering inaccuracy; or
 - (b) Inaccuracy is due to failure to comply with the due diligence requirement or is deliberate on the part of that person
- ☞ Penalty of ₹ 5,000 for every reportable account, in addition to penalty of ₹ 50,000, if it provides inaccurate info. in the SFT and inaccuracy is due to false or inaccurate info. furnished by the holder a/c's.
- Where such penalty is paid by reporting person, such person entitled to recover such sum so paid on behalf a/c holder, or to retain out of any moneys that may be in its possession.

Sec 285BB: Annual Information Statement (AIS)

PDGIT (Systems) or DGIT (Systems) or any person authorised by him, to upload in the registered account of the assessee an AIS in Form No. 26AS within 3 months from end of the month in which information received:-

Nature of information

- Information relating to TDS/TCS
- Information relating to SFT
- Information relating to payment of taxes
- Information relating to demand and refund
- Information relating to pending proceedings
- Information relating to completed proceedings

Sec 288: Authorised Representative

1. Any Assessee required to attend before any IT authority or ITAT can do so through an authorised representative (AR)
2. Following persons are eligible to be AR of the Assessee:



- ☞ Employee of Assessee
- ☞ Officer of scheduled Bank in which assessee maintains a current a/c or has regular dealings
- ☞ Legal Practitioner eligible to practice in Civil Courts
- ☞ Chartered Accountant (incl. CA Firm)
- ☞ Person who has passed accountancy exams recognised by CBDT (CS, CMA etc)
- ☞ Person who has acquired degree in Commerce or law from University approved by CBDT
- ☞ Any other person as maybe prescribed.

Sec 292B: Return, orders, notices etc. deemed to be valid

Any return, assessment, notice, summons or other proceeding cannot be rendered invalid merely because there exists some mistakes, defect or omission in such returns, assessment notice, summons or other proceeding if such return, assessment, notice summons or other proceeding is in substance and effect in conformity with or according to the intent of this Act.

Maruti Suzuki India Ltd. [2019] (SC)

Issuance of assessment notice in the name of a non-existent amalgamating co. even after being intimated of the amalgamation is not a curable defect u/s 292B. Hence the assessment proceedings on a non-existent entity is void-ab-initio and mere participation in the proceedings by the amalgamated co. would not cure this illegality.

Sec 292BB: Proceedings deemed to be valid

Where Assessee appeared in any proceedings/co-operated in any enquiry relating to an assessment/reassessment, it shall be deemed that any notice served upon him, has been duly served in time and he shall be precluded from raising any objection in any proceeding/enquiry that notice was

- (a) not served upon him; or
- (b) not served upon him in time; or
- (c) served in an improper manner.

However, the above provision shall not be applicable if assessee has raised such objection before the completion of assessment or reassessment.

Laxman Das Khandelwal (2019)(SC): SC held that non-issuance of notice u/s 143(2) is not a curable defect u/s 292BB inspite of participation by the assessee in assessment proceedings.

Case Laws related to 269SS & 269T

- **V. Sivakumar (2013)(Mad.):** Can cash advanced by a partnership firm to the sole-proprietorship concern of its partner be viewed as a violation of Sec. 269SS to attract levy of penalty?
HC held that there is no separate identity for Firm and that partner is entitled to use the funds of the firm. In the present case, the assessee has acted bona fide and that there was reasonable cause. Transaction cannot be said to be in violation and no penalty is attracted in this case.
- **Triumph International Finance (I.) Ltd. (2012)(Bom.):** Where an assessee repays a loan merely by passing adjustment entries in its BOA, then such repayment of loan by the assessee cannot be taken as a contravention of 269T to attract penalty u/s 271E if the transaction is bona fide in nature being a normal business transaction and has not been made with a view to avoid tax.
- **Muthoot Financiers (2015)(Del):** Is penalty u/s 271D imposable for cash loans/deposits received from partners?
The HC observed that, in this case, there was no dispute as regards the money brought in by the partners of the firm. The source of money was also not doubted. The transaction was bona fide and not aimed to avoid any tax liability. The credit worthiness of the partners and genuineness of the transactions coupled with relationship between the 'two persons' and two different legal interpretations put forward, could constitute a reasonable cause in a given case for not invoking 271D/271E.
The HC held that the issue being a debatable one, there was reasonable cause for not levying penalty.



Section	Nature of defaults	Quantum of Penalty	Who can impose
221(1)	Failure to pay the whole or part of the self-assessment tax, demand of tax, TDS, TCS	Maximum: Amount of tax in arrears	AO
271A	Failure to keep, maintain or retain books of accounts as required by section 44AA.	₹ 25,000	AO, JC(A), CIT(A)
271AA & 271G	Transfer pricing documents related (covered with TP topic)	2% of the value of such transaction	AO, CIT(A)
271AAB	Undisclosed income found in search - assessee during search admits the undisclosed income, and - specifies the manner in which such income was earned, and pays tax + interest on undisclosed income and furnishes the return of income declaring undisclosed income, before the due date u/s 139(1)/ period specified u/s 148 notice.	30% of undisclosed income	AO, CIT(A)
	- In any other case	60% of undisclosed income	
271AAC	Deemed Income u/s 68 to 69C	10% on tax on deemed income u/s 115BBE	AO, JC(A), CIT(A)
Note: Penalty u/s 270A not applicable when penalty has been levied u/s 271AAB or 271AAC.			
271AAD	Penalty for false entry or omission of any entry which is relevant for computation of total income of such person, to evade tax liability.	100% of amount of such False entry or omitted entry	AO, JC(A), CIT(A)
"False entry" includes use or intention to use- - forged or falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or - invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or - invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist. This penalty applicable on:- - person who makes such false entry or omits an entry to evade tax liability; and - any other person, who caused the person in any manner to make a false entry or omit any entry to evade tax liability.			
271AAE	Any Trust referred u/s 11 or Institution u/s 10(23C) gives any benefit to related person u/s 13(1) (Benefit to trustee, founder etc.)	100% of amount applied in case of 1st Time violation 200% of amount applied in subsequent violation	AO
271B	Failure to get accounts audited upto due date u/s 44AB	0.5% of turnover (Max ₹ 1,50,000)	AO
271BA	Transfer pricing audit report not furnish u/s 92E	₹ 1,00,000	AO
271J	Furnishing of incorrect information in any report or certificate by CA / Merchant Banker/ Registered Valuer	₹ 10,000/-per failure	AO, JC(A), CIT(A)
271K	Institution notified u/s 35 or 80G fails to submit statement to prescribed authority or certificate to Donor	₹ 10,000 to ₹ 1,00,000	AO



271C	Failure to deduct TDS or to pay or ensure payment of TDS u/s 194B or 194R or 194S or 194BA. Note- In all the four sections mentioned above, the winnings/benefit/perquisite/consideration for VDA, as the case may be, is wholly in kind or partly in cash and partly in kind and the part in cash is not sufficient to meet the TDS liability.	100% amount of tax which he failed to deduct or pay or ensure payment of said tax at source	JC
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Sec 270A: Penalty for Under reporting/Mis-reporting of income

- Who can initiate penalty: -
 - ☞ AO - For addition made in assessment
 - ☞ JC(A), CIT(A) - For enhancement in appeal
 - ☞ CIT/PCIT - For Addition made in revision u/s 263
- Quantum of penalty
 - ☞ Under reporting of income (URI): 50% of tax payable on URI
 - ☞ Misreporting of income: 200% of tax payable on URI

Part-A: First time Assessment

Return Not Filed or return filed first time u/s 148	Return Filed
Assessed Income > Basic Exemption	Assessed income > Income Determined u/s 143(1)
URI = a) Company (Firm) = Assessed Local Authority Income b) Other Cases = Assessed Income - Basic exemption	URI = Income Assessed - Income Determined u/s 143(1)
Tax on URI Tax on [URI + Basic exemption] (if applicable)	Tax on URI Tax on [URI + Income determined u/s 143(1)] xxx - Tax on income determine u/s 143(1) (xxx) xxx

Part-B: Reassessment

Income re-assessment



Income assessed or reassessed just before such reassessment

URI = Reassessed income - Income assessed or reassessed earlier

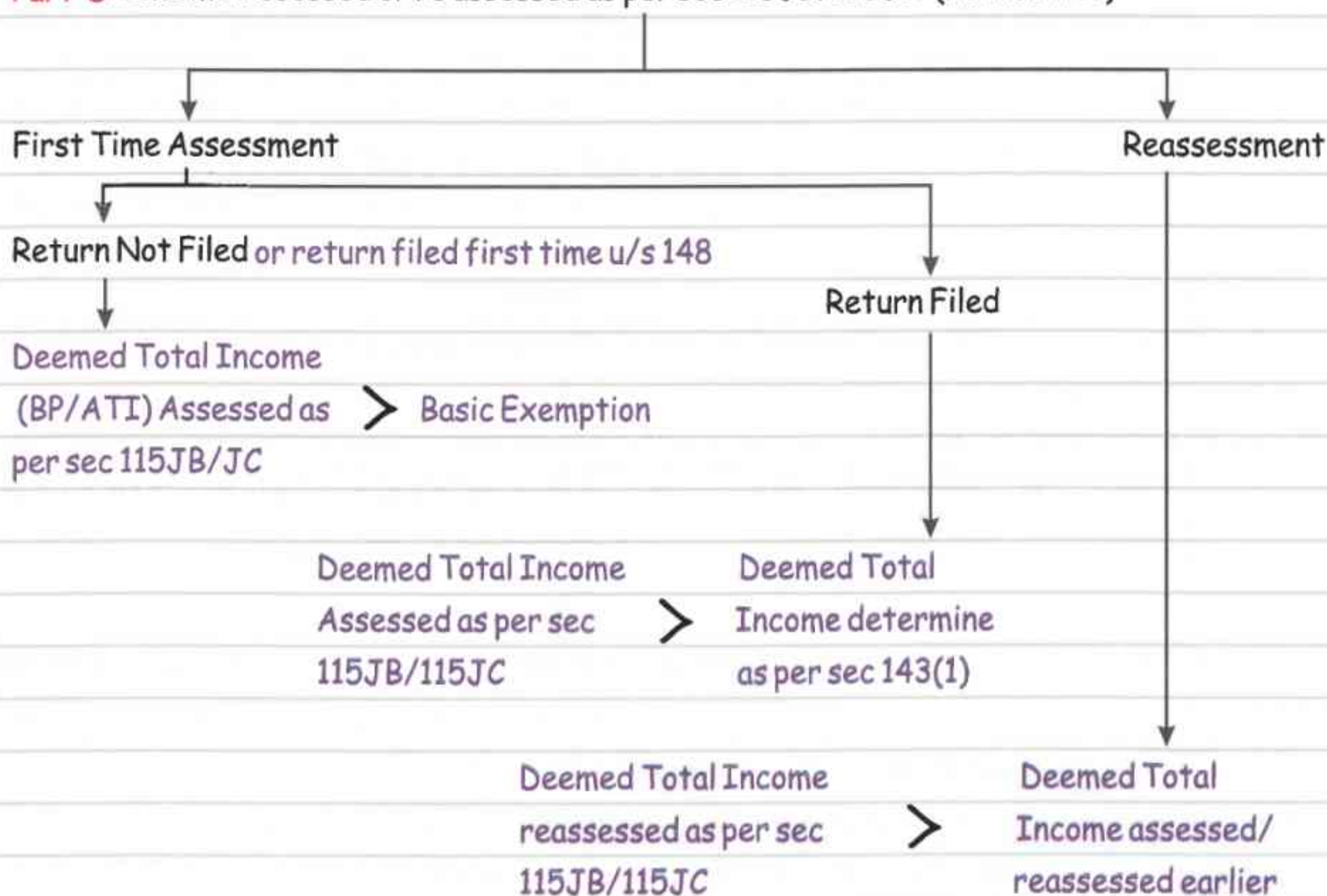
**Tax on URI**

Tax On [URI + Income Assessed in last order]	xxxx
- Tax on Income Assessed in last Order	(xxxx)
	<u>xxxx</u>

Part : C : Losses Claimed Reduced or Converted in to income

- URI =**
- Loss Claimed - Losses assessed or reassessed
 - Loss Claimed - Income assessed or reassessed

Tax on URI : Tax on URI as if it were the total income of the Assessee.

Part-D Income Assessed or re assessed as per sec 115JB/115JC (MAT/AMT)

$$URI = (A-B) + (C-D)$$

A) = Total income assessed / reassessed as per General Provision	xxx
B) = Total Income Assessed / reassessed reduced by URI	(xxx)
	<u>xxx</u>
C) = Total Income Assessed / reassessed as per sec 115JB / 115JC	xxx
D) = Total Income Assessed/reassessed as per 115JB/115JC reduced by URI	(xxx)
	<u>xxx</u>

Note : URI in B & D are the same, then URI Shall Not be Considered in "D"



- Following would be cases involving Mis-reporting:
- (i) Misrepresentation or suppression of facts (Normal LTCG shown as LTCG u/s 112A)
 - (ii) Failure to record investments in books of account (A.O. Discovered Investment)
 - (iii) Claim of expenditure not substantiated by any evidence (Bogus Bills)
 - (iv) Recording of any false entry in books of account (Bogus Expenditure)
 - (v) Failure to record any receipt in books of account having a bearing on total income; and
 - (vi) Failure to report any international transaction under Transfer pricing chapter.

➤ Cases not included within the scope of under reported income u/s 270A [Section 270A(6)]

S.No	Case	Condition
1.	Amount of income in respect of which the assessee offers an explanation	AO/CIT/PCIT/JC(A)/CIT(A) is satisfied that the explanation is bona fide and all the material facts have been disclosed to substantiate the explanation.
2.	Amount of URI determined on the basis of an estimate	Accounts are correct and complete to the satisfaction of IT authority but the method employed is such that the income cannot properly be deduced therefrom.
3.	Amount of URI determined on the basis of an estimate	Assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue and has included such amount in the computation of his income and has disclosed all the facts material to addition or disallowance.
4.	Amount of URI represented by any addition made in conformity with ALP determined by the TPO	Where the assessee had maintained info. and docum. u/s 92D, declared international transaction and disclosed the material facts relating to the transaction.
5.	Amount of undisclosed income on account of a search operation	Where penalty is leviable u/s 271AAB in respect of such undisclosed income.

- Sec 273A: PCIT/CIT has the power to reduce or waive penalty u/s 270A if he is satisfied that:
- (i) Assessee has voluntarily made a full and true disclosure of all facts related to his income in good faith even before detection of the same by the AO, and
 - (ii) Assessee has co-operated with dept. on any enquiry, and
 - (iii) He has paid the applicable taxes along with interest in full.

Notes:

1. Above relief is available to an assessee only once in his lifetime.
2. CIT/PCIT can reduce or waive penalty:-
 - Without approval of higher authority, where income is upto ₹ 5 lakhs
 - With approval of CCIT/PCCIT/DGIT/PDGIT, where income more than ₹ 5 lakhs.



- **Sec 270AA: Immunity from imposition of penalty & Prosecution on under-reported income**
Assessee may file application to AO for grant of immunity of penalty u/s 270A & prosecution if:
- He paid taxes along with applicable interest within time limit as per notice of demand, and
 - Does not file an appeal against the order of AO.

Notes:

- No immunity** shall be granted by the AO in case of **mis-reporting of income**.
- Application has to be made **within 1 month from end of the month** in which order of AO received.
- AO has to pass an order accepting or rejecting application **within 1 month from end of month which application is received** after providing assessee an opportunity of being heard.

Prosecution under Income Tax Act

Section	Nature of default	Rigorous imprisonment
275A	Contravention of order of deemed seizure or restrain order u/s 132(2)	Upto 2 Years (+) fine
275B	Failure to provide necessary facility to the Authorised officer to inspect books of a/c u/s 132(1)(iib)	Upto 2 Years (+) fine
276	Removal, concealment, transfer or delivery of property to thwart tax recovery	Upto 2 Years (+) fine
276B 276BB	Failure to pay TDS or TCS or ensure that TDS paid u/s 194B, 194R, 194S & 194BA [this section not applicable if tax paid before due date of TDS return]	3 months to 7 years (+) fine
276C(1)	Wilful attempt to evade tax, penalty, or interest chargeable or imposable or under reports his income	Evasion/tax on URI > ₹ 25 Lakhs: 6 months to 7 years (otherwise: 3 months to 2 years) + fine
276C(2)	Wilful attempt to evade payment of tax, penalty or interest	3 months to 2 years + fine, at the discretion of the court
276CC	Wilful failure to furnish ROI in DD u/s 139(1), 142(1)(i), 148 - ROI u/s 139(1) is furnished before expiry of AY or a return is furnished by him u/s 139(8A) within the time provided in that section or - Tax payable by a person (not being a Co.) on total income determined on regular assessment net of TDS, TCS, advance tax, SAT, paid before expiry of AY is upto ₹ 10,000	Evade tax > ₹ 25 Lakhs: 6 months to 7 years (otherwise: 3 months to 2 years) + fine
276D	Willful failure to produce accounts and documents u/s 142(1)/142(2A)	Upto 1 Year (+) fine
277	False statements in verification	Evade tax > ₹ 25 Lakhs: 6 months to 7 years (otherwise: 3 months to 2 years) + fine
277A	Falsification of books of a/c or doc etc. to induce or abet any person to evade any tax, penalty or interest chargeable or imposable under the Act. It is not necessary to prove that the other person has actually evaded any tax, penalty or interest under the Act for the purpose of establishing charge under this sec.	3 months to 2 years (+) fine
278	Abetment of false return etc (relating to any income chargeable to tax)	Evade tax > ₹ 25 Lakhs: 6 months to 7 years (otherwise: 3 months to 2 years) + fine
278A	Second and subsequent offences u/s 276B, 276BB, 276C(1), 276CC, 277, 278	6 months to 7 years for every subsequent offence (+) fine

Case Laws

- **Bhavecha Machinery and Others (2010)(MP):** Prosecution proceedings u/s 276CC would not be attracted where the failure to furnish return in time was not willful.
- **D.K. Shivakumar (2021)(Kar):** Can prosecution be launched in every case where unaccounted transactions (like unaccounted loan) are unearthed during search, irrespective of whether there is a liability to pay tax, penalty or interest under the Act in respect thereof?
Gist of the offence u/s 276C is the wilful attempt to evade any tax, penalty or interest charged or imposable on income. What is made punishable is "attempt to evade tax, penalty or interest". There is no presumption under law that every unaccounted transaction (unaccounted loan, in the present case) would lead to imposition of tax, penalty or interest. Therefore, until and unless it is determined that the unaccounted transactions unearthed during search were liable for payment of tax, penalty or interest, no prosecution could be launched on the ground of attempt to evade such tax, penalty or interest.
- **US Technologies International Pvt. Ltd. (2023)(SC):** Can penalty u/s 271C be levied for non-payment or belated remittance of TDS to the CG?
The words "fails to deduct" in section 271C(1)(a) cannot be read as "failure to deposit/pay the tax deducted". Therefore, on correct interpretation of section 271C, no penalty would be leviable under section 271C on delay in remittance of the tax deducted at source after deducting it on time.
- **AT-Dev Prabha (JV) and others (2023)(SC):** As per CBDT Circular in case of failure to pay TDS/TCS u/s 276B or 276BB, no prosecution will be processed if the TDS/TCS amount does not exceed ₹ 25 lakhs and delay in deposit is less than 60 days. However, for these offences, in exceptional cases like habitual defaulters prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers though the amount involved does not exceed the threshold limit of ₹ 25 lakhs.

Overview of the Black Money & Imposition of Tax Law

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, passed on 26.5.2015 & apply to whole of India w.e.f. AY 2016-17.

Sec 3: Charging Section

Every assessee would be liable to tax @ 30% in respect of his undisclosed foreign income and asset of the PY. Undisclosed asset located outside India shall be charged to tax on its value in the PY in which such asset comes to the notice of the AO.

➤ Definitions

- (i) **Sec 2(12): Undisclosed Foreign Income & Asset:** It means total amount of undisclosed Income of Assessee from a source located outside India & the Value of Undisclosed Asset located outside India.
- (ii) **Sec 2(11): Undisclosed asset located outside India :** An asset (including financial interest in an entity) located outside India,
 - held by the assessee in his name or
 - in respect of which he is a beneficial owner, and
 - he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the AO unsatisfactory.
- (iii) **Sec 2(2): Assessee**
 - ☞ A person resident in India (Sec 6 of IT Act) in PY, or
 - ☞ A person NR or R but NOR in PY but who was Resident in India either in the PY to which undisclosed income relates or PY in which undisclosed asset located outside India was acquired.
- (iv) **Sec 2(9): Previous Year**
 - a) Period beginning with the date of setting up of a business and ending with the date of the closure of the business or 31st March, whichever is earlier;
 - b) Period beginning with the date on which a new source of income comes into existence and ending with the date of closure of the business or the 31st March, whichever is earlier;
 - c) Period beginning with the 1st April and ending with the date of discontinuance of the business or dissolution of an unincorporated body or liquidation of a company, as the case may be; or
 - d) Period of 12 months commencing 1st April (1st April to 31st March).



Sec 3(2): Value of Undisclosed Assets [FMV as per Rule 3(1)]

1. Bullion, jewellery, precious stone or artistic work (Archaeological collections, drawings, paintings, sculptures or any work of art)

Value	(i) Cost of Acquisition	xx
	(ii) NRV on Valuation Date.	xx

Note: For this purpose, assessee may obtain valuation report from valuer recognised by foreign Govt.

2. Quoted Shares and securities

Value	(i) Cost of Acquisition	xx
	(ii) Avg. of Lowest & Highest price on valuation date in Established security market	xx

Note: If No trading of such shares and security on valuation date then average of lowest Highest price of immediately preceding the valuation date when such shares and security traded in established security market.

3. Unquoted Equity shares

Value:	(i) Cost of Acquisition	xx
	(ii) $\frac{A+B-L}{PE} \times PV$	xx

Notes:

A = Book Value of All Assets (other than Covered in B) exclude TDS, Advance Tax in excess of income tax refund claimed & deferred expenditure shown in the Asset side

B = FMV of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule

L = Book value of liabilities, but **not including following** amounts, namely:—

- (i) Paid-up capital in respect of equity shares;
- (ii) Amount set apart for payment of dividends on preference shares and equity shares;
- (iii) Reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation
- (iv) Provision for taxation
- (v) Provisions made for unascertained liabilities
- (vi) Contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance sheet

PV = the paid up value of such equity shares

4. Unquoted Shares or Security (other than equity shares)

Value ↑	(i) Cost of Acquisition	xx
	(ii) NRV on Valuation Date	xx

Note: For this purpose, assessee may obtain valuation report from valuer recognised by foreign Govt.

5. Immovable Property

Value ↑	(i) Cost of Acquisition	xx
	(ii) NRV on Valuation Date	xx

Note: For this purpose, assessee may obtain valuation report from valuer recognised by foreign Govt.

6. Bank Account

The sum of All the deposit made since the date of opening the account; or Where such account is already declared earlier & tax, penalty paid the sum of all deposit made since the date of such declaration.

Note: Any deposit made from withdrawal of account then such deposit shall not be considered.

7. Value of Interest in FIRM/LLP/AOP/BOI

Value of Asset: Net worth of Asset (A+B-L)

First distribute amongst partners/members in proportion in which they contributed capital & balance net worth in dissolution ratio or PSR in absence of dissolution ratio.

Example: Suppose networth of Firm is ₹ 26,00,000 & capital of partners as follow

MR A ₹ 10,00,000

MR B ₹ 5,00,000

MR C ₹ 2,00,000

Dissolution ratio or PSR is equal.

Now Value of interest in Firm is

MR A = 13,00,000 (10,00,000+3,00,000)

MR B = 8,00,000 (5,00,000+3,00,000)

MR C = 5,00,000 (2,00,000+3,00,000)

8. Value of any other asset

Value ↑	(i) Cost of Acquisition	xx
	(ii) NRV on Valuation Date	xx



➤ Rule 3(2): Asset transferred before Valuation date

Value ↑	(i) Cost of Acquisition	xx
	(ii) Sales Value	xx

Note: If asset transferred without consideration or inadequate consideration then :-

Value ↑	(i) Cost of Acquisition	xx
	(ii) FMV on date of Transfer	xx

Rule 3(3): Where a new asset is acquired out of consideration received on account of transfer of an old asset or withdrawal from a bank account then FMV(value) of such old asset or bank account shall not be considered.

Example:

House A located in a country outside India was bought in 1995 for ₹15 lakh. It was sold in 2000 for ₹ 22 lakh. This amount was deposited in a bank account in that country. In the year 2001 another House B was purchased for ₹35 lakh. The investment in House B was made through withdrawal from the bank account in the foreign country. House B has not been transferred before the valuation date and its value on the valuation date is ₹ 48 lakh. Assuming that the value of foreign bank account as computed under Rule 3(1)(e) is ₹ 60 lakh, the fair market value (FMV) of the assets would be computed in the following manner:

FMV of House A = ₹ 22 lakh (being higher of ₹15 lakh and ₹ 22 lakh) - ₹ 22 lakh (invested in foreign bank account) = Nil

FMV of Foreign Bank account = ₹ 60 lakh - ₹ 35 lakh (invested in House B) = ₹ 25 lakh

FMV of House B = Higher of ₹ 35 lakh and ₹ 48 lakh = ₹ 48 lakh

➤ Rule 3(4) & 3(5): Rate of conversion of currency used to determine FMV of an asset

- ☞ RBI Reference rate on Valuation date
- ☞ If RBI reference rate is not given then FMV of such asset shall convert in US \$ from foreign currency & there after US \$ to Indian Currency by RBI reference Rate.

➤ Valuation Date for Valuation of asset and conversion into Indian Currency

- ☞ If asset declared u/s 59: 1st July 2015
- ☞ In other Cases: 1st April of PY



➤ Meaning of certain Terms

- (a) **Established securities market:** An exchange that is officially recognised and supervised by a Governmental entity in which the market is located and that has a meaningful annual value of shares traded on the exchange.
- (b) **Meaningful annual value of shares traded on the exchange:** With respect to an exchange, it means it has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding one billion United States Dollar during each of the three calendar years immediately preceding the calendar year in which the determination is being made.
- (c) **Meaningful volume of trading on an on-going basis:** With respect to each class of shares, it means,-
 - (i) Trades in each such class are effected, other than in de minimis quantities, on one or more established securities markets on at least 60 business days during the prior calendar year; and
 - (ii) Aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least 10% of the average number of shares outstanding in that class during the prior calendar year
- (d) **Quoted share or security:** The share or security which has a meaningful volume of trading on an ongoing basis on an established securities market and is regularly quoted by dealers where they actively do offer to, and in fact do, purchase the share from, and sell the share to, customers who are not related to the dealer in the ordinary course of a business.
- (e) **Unquoted share and security:** other than quoted.

Sec 4: Scope of total undisclosed foreign income and asset

Total undisclosed foreign income and asset of any previous year would be -

- (1) Income from a source located outside India which **has not been disclosed** in the ROI filed under Income tax Act, 1961 on or before the due date u/s 139(1) or in the belated return of income u/s 139(4) or in the revised return of income u/s 139(5).
- (2) Income from a source located outside India in respect of which a return is required to be filed u/s 139 of the Income-tax Act, 1961, but **no return, belated return or revised return has been filed** under section 139(1)/(4)/(5) of that Act.
- (3) **Value of any undisclosed asset** located outside India.

Notes:

- Income from source outside India is already included in any assessment or reassessment in Income Tax (u/s 29,43C,57,59,92C) then such income shall not be included in total undisclosed foreign income.
- Any income or asset is included in undisclosed foreign Income/Asset under this Act then such Income or Asset shall not be included in IT Act.

Sec 5: Computation of total undisclosed foreign income and asset

- Expenditure or set-off of losses not be allowed against undisclosed Foreign Income.
- If any asset is acquired out of any income which was already assessed earlier under Income Tax Act (before black money Act) or Black money Act then such income shall be reduced.

Example:

Mr. Hari acquired share of Foreign Company for ₹ 10,00,000. He utilised ₹ 4,00,000 white money and ₹ 6,00,000 black money. Now value of such asset as per rule 3(1) is ₹ 42,00,000. The undisclosed asset will be ₹ 38,00,000.

- In continuation of point (b) in case of immovable property following amount shall be reduced.

$$\text{FMV of Asset} \times \frac{\text{White Money (Income already disclosed)}}{\text{Total Cost of Asset}}$$

Total Cost of Asset

Example:

A house property located in a country outside India was acquired by Mr. A, an assessee in the PY 12-13 for ₹ 60 lakh. Out of the investment of ₹ 60 lakh, ₹ 35 lakh was assessed to tax in the total income of the PY 12-13 and earlier years. Such undisclosed asset comes to the notice of the A in the year PY 24-25. If the value of the house property in the year PY 24-25 is ₹ 120 lakh, the amount chargeable to tax shall be $X - Y = Z$ where,

$$X = ₹ 120 \text{ lakh,}$$

$$Y = ₹ 120 \text{ lakh} \times \frac{35}{60} = ₹ 70 \text{ lakh,}$$

$$Z = ₹ 120 \text{ lakh} - ₹ 70 \text{ lakh} = ₹ 50 \text{ lakh.}$$

Penal Provisions

Section	Default	Penalty
41	Where tax has been computed in relation to undisclosed foreign income and asset	In addition to tax, a sum equal to three times the tax so computed.
42	Failure to furnish return in relation to foreign income and asset	₹ 10 lakhs
43	Failure to furnish information in the return of income or for furnishing inaccurate particulars about an asset located outside India	₹ 10 lakhs

Note: Provided that section 42 & 43 not applicable in respect of an asset or assets (other than immovable property) where the aggregate value of such asset or assets does not exceed ₹ 20 lakhs. [Added by FA 24 w.e.f. 1/10/2024]

44	Default in payment of tax arrear	100% of tax arrears
45	Failure, without reasonable cause, to answer any question put to him by a tax authority or to sign any statement made by him in the course of any proceedings under the Act or to attend or produce books of account or documents at the place or time in response to summons issued under section 8	₹ 50,000 to ₹ 2 lakh

Section 6 to 88- Procedural part in Black money Act is similar to DT Part



Sec. 163 of FA 2016: Extent, commencement and application

This Chapter extends to the whole of India **except the State of Jammu and Kashmir**.

Note: Provided that the consideration received or receivable for specified services and for e-commerce supply or services **shall not include** the consideration, which are **taxable as royalty or FTS** in India under the Income-tax Act, read with the agreement notified by the CG u/s 90/90A.

Sec. 165 of FA 2016: Charge of Equalisation levy on Specified service

Equalisation Levy @ **6%** applicable if payment for specified service (ads) received / receivable by **Non-resident** from; -

- (a) A person resident in India & **carrying Business or Profession**, or
- (b) **Non-resident having P.E. in India**.

Notes:

1. Equalisation levy **not applicable** in following cases:-

- NR having P.E. in India & service connected with such PE (service provider),
- Aggregate amount recd. by NR from payer is **up to ₹ 1,00,000 in P.Y.**,
- Where the payment for the specified service by the person resident in India, or the PE in India **is not for the purposes of carrying out business or profession**.

2. Specified service means: -

- (a) Online Advertisement, or
- (b) Any provision of digital advertisement space or any other facility or service for the purpose of online Advt.

Sec. 165A of FA 2016: Charge of equalisation levy on e-commerce supply or services

[Provision of this section and related provisions of E-commerce supply and service **NOT Applicable** from 1st August 2024]

Equalisation levy @ **2%** applicable of the consideration received or receivable by an **e-commerce operator from e-commerce supply or services** made or provided or facilitated by it—

- (i) **to a person resident in India; or**
- (ii) **to a NR in the specified circumstances *; or**
- (iii) **to a person who buys such goods or services or both using IP address located in India.**

➤ Equalisation levy not applicable:

- (i) Where the e-commerce operator making or providing or facilitating e-commerce supply or services **has a PE in India** and such e-commerce supply or services is effectively connected with such PE;
- (ii) Where the equalisation levy is leviable **u/s 165**; or
- (iii) **Turnover or gross receipts**, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is **less than 2 crores** during the PY.



*Specified Circumstances means:-

- (i) Sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through IP address located in India; and
- (ii) Sale of data, collected from a person who is resident in India or from a person who uses IP address located in India.

➤ Consideration received or receivable from e-commerce supply or services shall include—

- (i) Consideration for sale of goods whether it is owned by e-com. operator or not, however, it shall include sale of goods which are owned by a person resident in India or by a PE in India of NR, if sale of such goods is effectively connected with such PE.
- (ii) Consideration for provision of services whether it is provided by e-com. operator or not, however, it shall not include provision of services which are provided by a person resident in India or by a PE in India of NR, if provision of such services is effectively connected with such PE.

☞ "E-com. operator" means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both

☞ "E-commerce supply or services" means—

- (i) Online sale of goods owned by the e-com. operator; or
- (ii) Online provision of services provided by the e-com. operator; or
- (iii) Online sale of goods or provision of services or both, facilitated by the e-com. operator; or
- (iv) Any combination of activities listed in clause (i), (ii) or clause (iii)

Explanation —For the purposes of this clause, "online sale of goods" and "online provision of services" shall include one or more of the following online activities, namely: —

- (a) acceptance of offer for sale; or (b) placing of purchase order; or
- (c) acceptance of the purchase order; or (d) payment of consideration; or
- (e) supply of goods or provision of services, partly or wholly.

Sec. 166 of FA 2016: Collection and recovery of equalisation levy on specified services

Every resident person carrying on Business or profession or a NR having P.E. in India shall deduct the equalisation levy u/s 165 from the amount paid/ payable to NR @ 6%. If aggregate amount of consideration for specified service is more than ₹ 1,00,000 in P.Y.

Notes:

1. Equalisation levy deducted shall be deposited to C.G. up to 7th of next month.
2. If any person fails to deduct equalisation levy, then also, he's liable to pay levy to Govt.
3. Interest @ 1% per month or part of the month (for delay period) shall be applicable on late deposit of levy u/s 165 or 165A [Sec 170].



Sec. 166A of FA 2016: Collection and recovery of equalisation levy on E-comm. Supply and Service
Equalisation levy u/s 165A, shall be paid by every e-comm. operator to the CG for the quarter of the FY year ending within following time limit:

Date of ending of the quarter of FY	Due date
30 th June	7 th July
30 th September	7 th October
31 st December	7 th January
31 st March	31 st March

Sec. 171 of FA 2016: Penalty for Failure to deduct or pay equalisation levy

Nature of Default	Penalty
Failure to deduct whole or part of equalisation levy u/s 166	In addition to payment of equalisation levy u/s 166(3) and interest u/s 170, penalty equal to the amount of equalisation levy that he failed to deduct would be leviable.
Failure to pay whole or part of Equalisation levy as required u/s 166A	In addition to equalisation levy u/s 166A and interest u/s 170, penalty equal to the amount of equalisation levy that he failed to pay is leviable.
Failure to remit equalisation levy to the CG on or before 7 th of the following month, after deduction of the same u/s 165	In addition to paying the equalisation levy on specified services u/s 166 and interest u/s 170, a penalty of ₹ 1,000 for every day during which the failure continues is leviable. However, such penalty shall not exceed the amount of equalisation levy that he failed to pay.

Sec. 167 of FA 2016: Furnishing of Statement (Return Filing)

- Every assessee or e-comm. operator has to file return in Form No. 1 on or before 30th June of immediately following financial year.
- Belated/ Revised Return: If assessee or e-com. operator has not furnished the return within time limit or furnished return within time, noticed any mistake, may furnish revised return. Such belated return or revised return has to be furnished within 2 years from the end of FY in which specified service was provided, or e-com. supply or service was made or provided or facilitated.
- If assessee or e-commerce operator fails to furnish the statement within the prescribed time, the AO may serve a notice upon such assessee requiring him to furnish the statement. If AO issue notice, then assessee has to file return within 30 days from the date of serving of such notice.

Sec. 168 of FA 2016: Processing of Statement (Intimation)

Where statement has been made u/s 167 by the assessee or e-com. operator such statement shall be processed u/s 168. In processing if there is an arithmetical error then it has to be rectified. AO will issue Intimation specifying sum payable or refunded to assessee or e-com. operator.



Intimation has to be sent within 1 year from the end of the FY in which the return was filed. If there is any interest, Levy, Penalty is payable then notice of demand in Form No. 2 has to be served upon assessee or e-com. operator. If any demand arises due to processing of return, then intimation itself is treated as deemed to be demand notice.

Sec. 169 of FA 2016: Rectification of Mistake

If there is any mistake apparent on record then AO may amend such intimation on Suo moto. If mistake brought to notice by assessee or e-com. operator. Intimation can be amended within 1 year from the end of FY in which intimation sought to be amended was issued.

Sec. 172 of FA 2016: Penalty for late filing of Return

If assessee or e-com. operator fails to file return upto 30th June or within 30 days from the date of service of Notice by AO then penalty of ₹ 100 per day during which failure continues.

Note: No penalty u/s 171 & 172 if there is reasonable cause of such failure.

Sec. 174 of FA 2016: Appeal to Commissioner of Income-tax (Appeals)

An assessee or e-com. operator aggrieved by an order imposing penalty under this Chapter, may appeal to CIT (A) in Form No. 3 along with fees of ₹ 1,000 within a period of 30 days from the date of receipt of the order of the AO.

Where an appeal has been filed, the provisions of sec. 249 to 251 of the IT Act 1961 apply to such appeal.

Sec. 175 of FA 2016: Appeal to ITAT

An assessee or e-com. operator aggrieved by an order of CIT(A) may appeal to the ITAT in Form No. 4 along with fees of ₹ 1,000 against such order. CIT may, if he objects to any order passed by the CIT(A), direct the AO to appeal to the ITAT against such order.

Appeal shall be filed within 60 days from the date on which order received by the assessee or the CIT, as the case may be.

Sec. 176 of FA 2016: Punishment for false statement

If a person makes a false statement in any verification or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to 3 years and with fine.

Sec. 10(50) of IT Act: Income exempt from tax

Any income arising from specified service or arising from any e-com. supply or services made or provided or facilitated and chargeable to equalisation levy under that Chapter shall be exempt.



Sec. 40(a)(ib) of IT Act: Non-compliance of the provision of equalisation levy

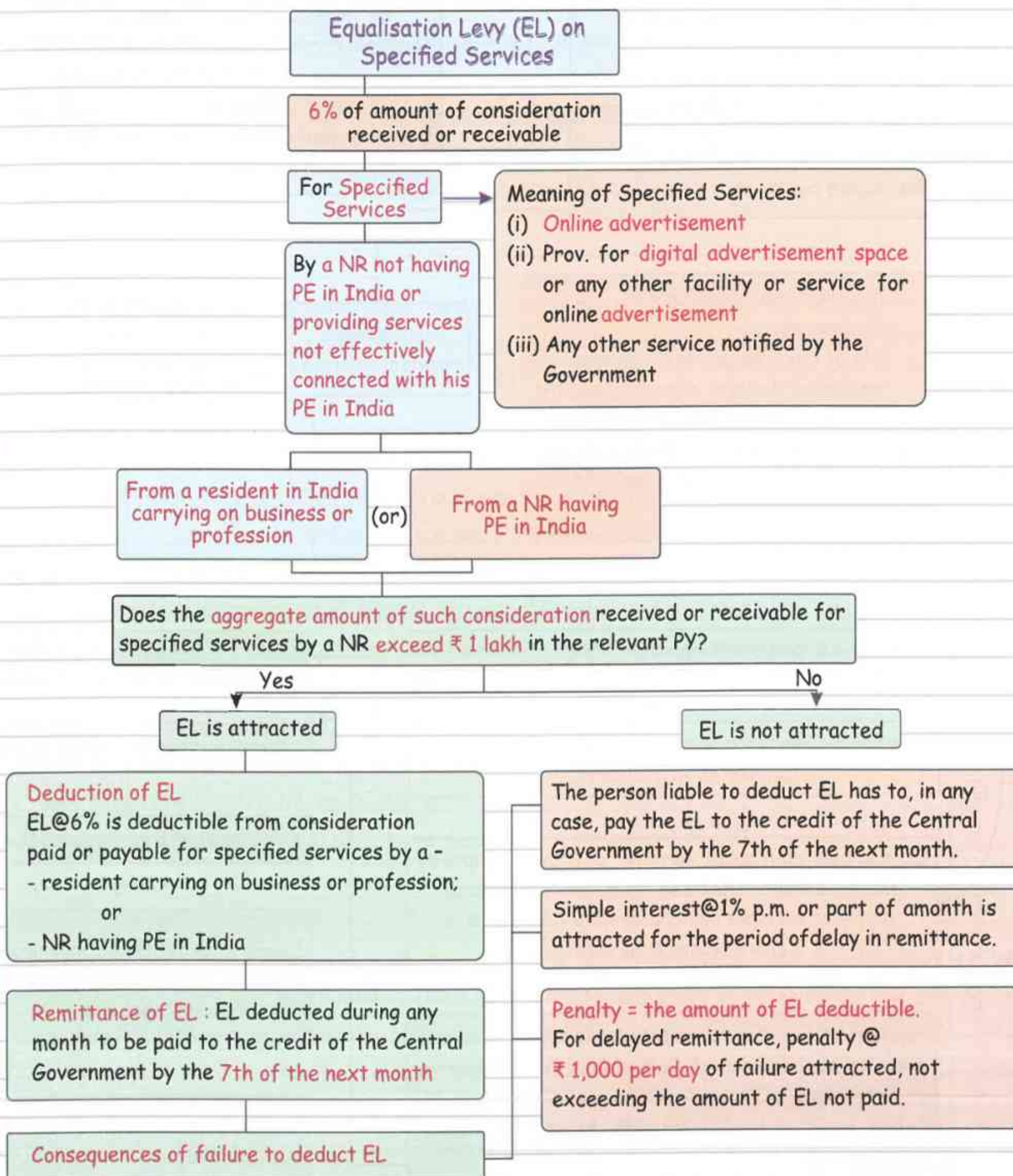
Any consideration paid /payable to NR for which equalisation levy is deductible and if;-

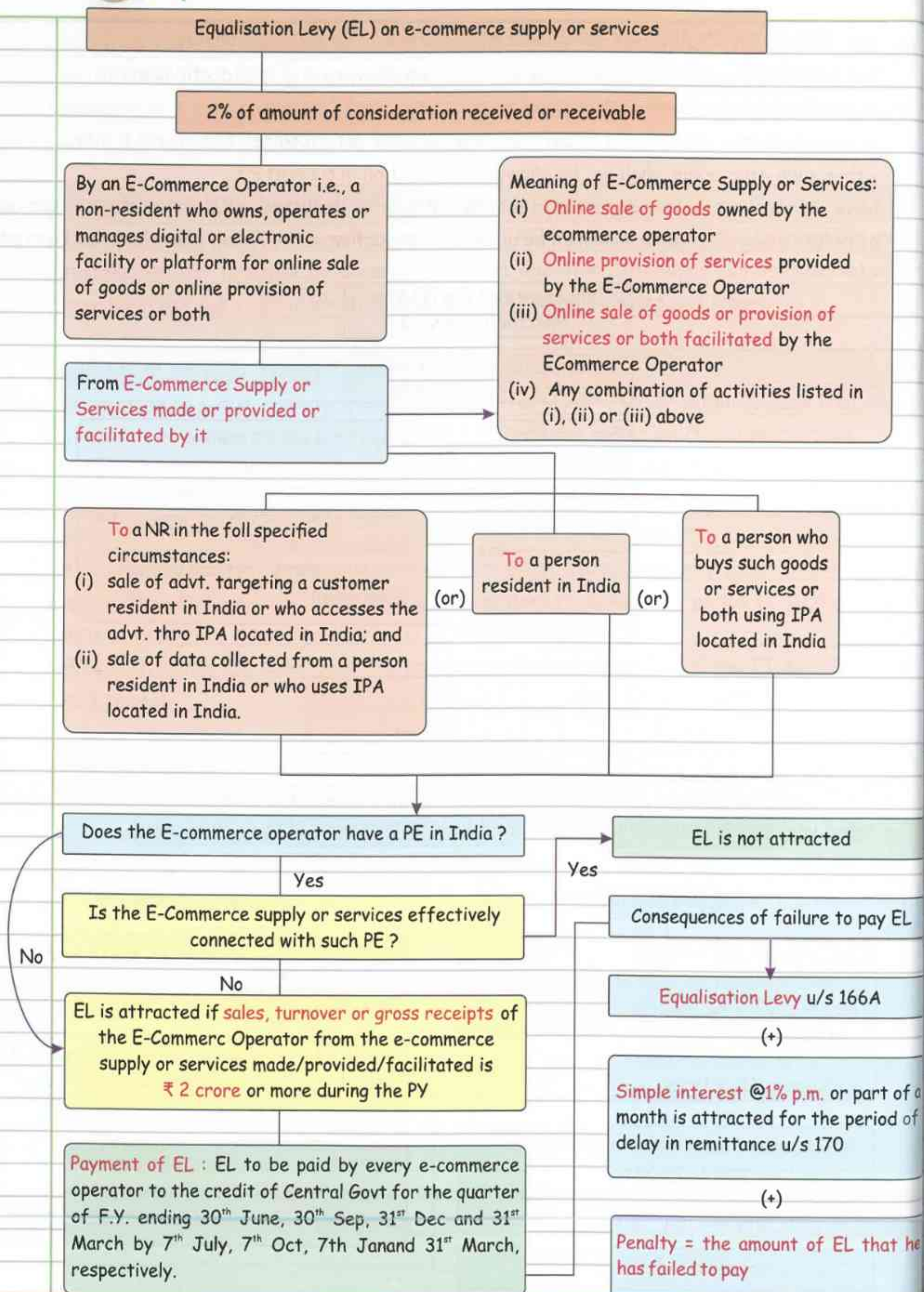
a) Such levy has **not been deducted**, or

b) Levy deducted but **not paid to govt up to due date of return filing**,

- then such Advt. exps. shall **not be allowed as deduction in current P.Y.**

Note: If equalisation levy deducted in subsequent year or deducted in P.Y. but paid after due date of return filing then, such sum shall be allowed as deduction in the P.Y. in which levy has been paid.







- **Tax Planning:** Tax planning means reducing tax liability by taking advantage of the legitimate concessions and exemptions provided in law. It involves the process of arranging business operations in such a way that reduces tax liability. E.g.: Investment in 80C or reinvestment u/s 54, 54EC etc.
- **Tax Avoidance:** Tax avoidance means taking undue advantage of the loopholes or drafting mistakes for reducing tax liability and thus avoiding payment of tax which is lawfully payable. Generally, it is done by twisting or interpreting the provisions of law and avoiding payment of tax. It means following the provisions of law but killing the spirit of the law. E.g.: Sale and leaseback of assets, so that the depreciation is diverted but the asset remains with assessee.
- **Tax Evasion:** Tax evasion means avoiding tax by illegal means. Generally, it involves suppression of facts, falsifying records, fraud. It is an attempt to evade tax liability with the help of unfair means. Tax evasion is illegal and would result in punishment by way of penalty, fines and sometimes prosecution. E.g.: Record bogus expenses.
- **Tax Management:** It means planning affairs in such a manner, so that the tax obligation is managed properly. E.g.: Advance tax is paid properly to avoid interest, Return filed on time so refund can be processed earlier.

General Anti-Avoidance Rules (GAAR)

- ☞ Provisions of this Chapter shall apply in addition to, or in lieu of, any other basis for determination of tax liability. Specific Anti-Avoidance Rules (SAAR) would be applicable in respective cases. Some examples of SAAR are 40A(2), 94A, 2(22)(e), Transfer Pricing etc.
- ☞ GAAR **override** the provisions of Double Taxation Avoidance Agreement (DTAA).
- ☞ GAAR would apply in respect of **tax benefit** in aggregate by all enterprises out of an arrangement in an AY **exceeds ₹ 3 crores**. GAAR provisions are applicable from AY 2018-19
- ☞ GAAR **not applicable** in case of:-
 - FII who has invested in securities in India with prior permission of competent authority and has not taken any benefit under DTAA, or
 - Investment made by NR in off-shore derivative instruments of FII.

Sec 95: Applicability of GAAR

GAAR provides that an **arrangement entered** into by an assessee **may be declared to be an impermissible avoidance arrangement (IAA)** and the consequence in relation to tax arising therefrom may be determined as per the provisions of this Chapter.

The section starts with a non-obstante clause which means, if there is a conflict with provisions in other sections, then this section shall prevail over other conflicting provisions.