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Commercial's
DIRECT TAX
& INTERNATIONAL TAXATION

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(No.2)
Act, 2024



ORIGINAL NOTES
by CA Shirish Vyas

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WITH THE BLESSING OF MATA VAISHNO DEVI

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PREFACE

In my many years of teaching Direct Tax subject, I have always been passionate about helping students achieve their full potential. I remember standing in front of a classroom filled with eager young minds, and encouraging them to write colourful notes that would help them better remember the vast concepts of Direct Tax subject. Now, I am delighted to present the same in a printed form to support all CA students across the country.

This book aims to provide a comprehensive and simplified coverage of Direct Tax subject for all CA Final students. This book represents the culmination of my extensive experience in teaching Direct Tax, and has helped countless students in the last 25 years. This book can also be used by students of CMA Final appearing in June & Dec 25.

I have taken great care to ensure that this book covers all the important aspects of the Direct Tax and International taxation syllabus prescribed by the Institute of Chartered Accountants of India.

It is a matter of immense satisfaction to me that through this book, I am able to contribute to your dream of becoming a CA. As an educator, I assure you that this book is the best solution to all your Direct Tax requirements.

As you embark on this exciting journey, I leave you with a personal message of inspiration and motivation at the end of the book. Remember that you have the passion and the potential to succeed, and I wish you all the very best in your future endeavours.

I am thankful to all my well-wishers, supporters and my past students.

Key features of this Book:

1. **One stop solution** for all CA Final students;
2. **Comprehensive** coverage of the syllabus of CA Course;
3. **Charts and graphical presentation** for quick recalling;
4. Use of **mnemonics** for memorizing complicated provisions;
5. Highlighted **catch words in red** for faster revision;
6. **Personal message** at the end to keep you motivated.

Happy learning and good luck!

Best regards,

CA SHIRISH VYAS

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INCOME FROM BUSINESS

In this chapter,

We have to learn how to calculate **Net Profit as per I.Tax.**

To compute this, we have to prepare following statement:

STATEMENT OF "INCOME FROM BUSINESS"

	Amt.	
<u>GROSS BUSINESS INCOME:</u>		
Sec. 28	XX	}
Sec. 41	XX	
	XXX	
<u>Less: DEDUCTIONS u/s 30 TO 37:</u>		
Sec. 30	-XX	}
Sec. 31	-XX	
Sec. 32	-XX	
Sec. 33 AB / ABA	-XX	
Sec. 35	-XX	
Sec. 35 AD / ABB / ABA	-XX	
Sec. 35 CCA / CCC / CCD	-XX	
Sec. 35 D / DD / DDA	-XX	
Sec. 36 (1)	-XX	
Sec. 37 (1)	-XX	
TAXABLE IFB	XXX	→ N.P. as per I.T.

→ OTHER REVELANT SECTIONS:

Expenses Expressly Disallowed	Special Provisions
Sec. 37 (2B)	Sec. 44 AA
Sec. 40 (a)	Sec. 44 AB
Sec. 40 (b)	Sec. 44 AD
Sec. 40 A (2)	Sec. 44 ADA
Sec. 40 A (3)	Sec. 44 AE
Sec. 40 A (7)	
Sec. 43 B	

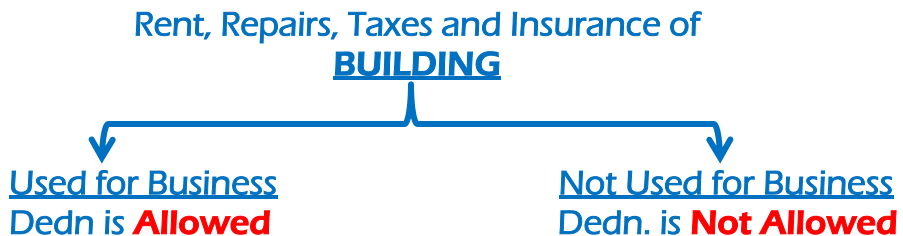
PART - I

DEDUCTIONS U/S 30 TO 37:

Deduction is for "**Expenses**" and for each expense, we have to learn whether deduction is **allowed** or **not allowed**.

Sec. 30

RENT, REPAIRS, TAXES & INSURANCE OF BLDG.



Sec. 31

REPAIRS & INSURANCE OF P & M / FURNITURE



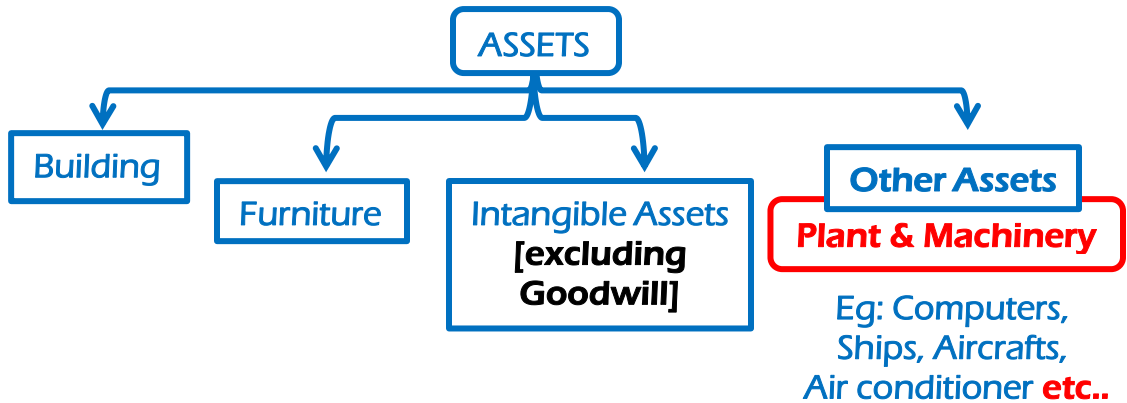
Sec. 32

DEPRECIATION

⇒ **Summary:**

- I. Class of Assets.
- II. Conditions
- III. Method of Depreciation
- IV. Rates of Depreciation
- V. System of Depreciation
- VI. Amount of Depreciation
- VII. Sale of Assets
- VIII. Actual Cost
- IX. Additional Depreciation
- X. Other Points

I) CLASS OF ASSETS:



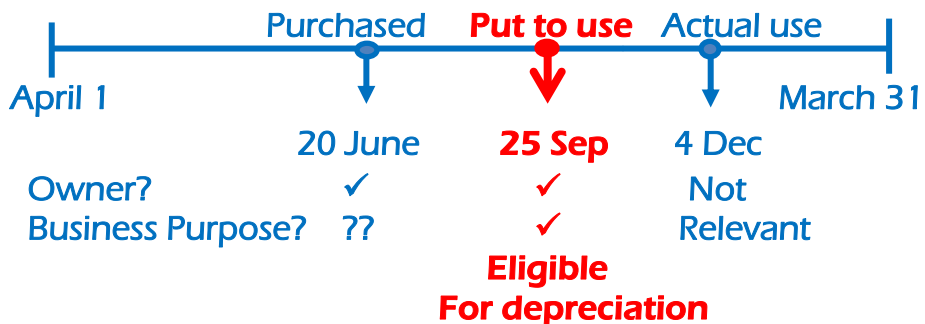
II) CONDITIONS:

Depreciation is allowed if following conditions are satisfied:

1. The Asset should be used for **Business** purpose.
2. The Assessee should be the **Owner** of such asset.
3. In the year of purchase, the asset should be put to use for **180 days or more** [if 180 days or more then **full** year depreciation and if less than 180 days then **half** year depreciation].

Note 1:

To count 180 days, consider the date when asset is put to use.



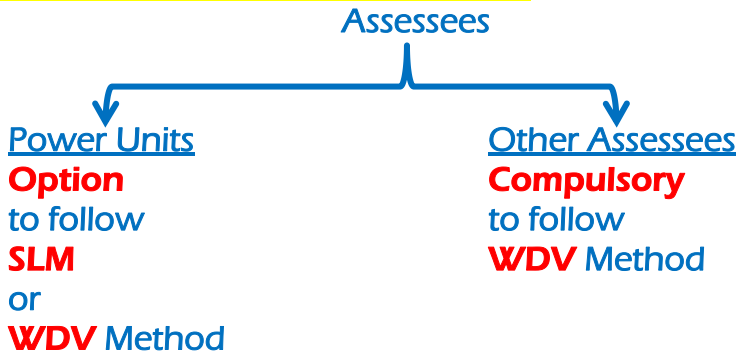
Note 2:

The rule of **180 days** is applicable **only in year of purchase**. This means, if an asset is purchased in a particular year and put to use in next year then, in the year of purchase no depreciation (because it's not put to use) and in the next year full year depreciation, whether put to use for 180 days or more or less (because it's the second year)

Note 3:



III) METHODS OF DEPRECIATION:



IV) RATES OF DEPRECIATION: For WDV Method

CLASS OF ASSETS	%
BUILDING	
⇒ Commercial Building	10%
⇒ Residential Building	5%
⇒ Temporary Exections/ wooden structures	40%
FURNITURE	10%
INTANGIBLE ASSETS [excluding Goodwill]	25%
PLANT AND MACHINERY (All other assets)	
1) Motor Cars	
⇒ Normally	15%
⇒ Hiring Business	30%
2) Ships	20%
3) Aircraft	40%
4) Computers [including computer software]	40%
5) Books	40%
6) Pollution Control Equipments (Life saving medical equipments, energy saving devices and windmill)	40%
7) General Rate (eg. A/c , Machinery etc.)	15%

V) SYSTEM OF DEPRECIATION:

There are two system of calculating depreciation as follows:

- ➔ Individual Asset system.
- ➔ Block of Assets system.

All the assesseees have to follow **Block of Assets** System. However, if **Power units** opt for **SLM** then they have to follow **Individual Assets System** [because under SLM, each asset has a different and unique rate; so its difficult to make blocks].

Individual Asset system	Block Of Assets System
Depreciation is computed asset wise (each asset is treated as separate asset)	Depreciation is computed block wise (all asset having same rate of depn within the same class of assets are grouped together and treated as one block)
Each asset has its own identity. Hence, profit or loss is computed on sale of each asset	Entire block is treated as a single asset. Individual asset loses its identity. Hence, profit or loss is not computed on sale of each asset. Its computed only when the entire block is sold.
Applicable only for Power units - SLM	Applicable to all the assesses [other than power units following SLM]

VI) AMOUNT OF DEPRECIATION:

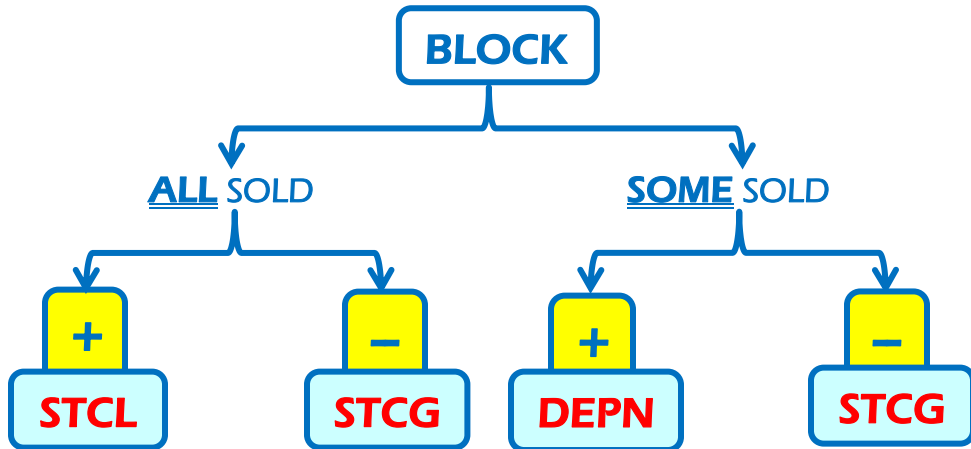
	<u>Amt.</u>	<u>No.</u>	
Opening WDV	XXX	XX	
<u>Add: Purchases:</u>			
→ 180 days or more	XXX	XX	
→ Less than 180 days	XXX	XX	
	XXX	XX	
<u>Less: Sales (S.P)</u>	XXX	XX	
	XXX	XX	
	↓		
↓	↓		
Cost of Asset used for <u>For less than 180 days</u> Half year depreciation		<u>Balance</u> Full year depreciation	

VII) SALE OF ASSETS: Under **Individual asset system**, profit or loss is calculated on sale of **each asset**. However, under **block of asset** system, profit or loss is calculated only if the **entire block** is sold. (if some assets are sold then it is not treated as sale; its mere recovery of cost).

→ **Sale under BLOCK OF ASSETS SYSTEM:** Under Block of Asset system, there are 4 cases as follows:

	ALL ASSETS SOLD				SOME ASSETS SOLD			
	(+)		(-)		(+)		(-)	
	Amt.	No.	Amt.	No.	Amt.	No.	Amt.	No.
Op. WDV	2,00,000	(3)	2,00,000	(3)	2,00,000	(3)	2,00,000	(3)
Add: Purchases	+7,00,000	(2)	+7,00,000	(2)	+7,00,000	(2)	+7,00,000	(2)
	9,00,000	(5)	9,00,000	(5)	9,00,000	(5)	9,00,000	(5)
Less: Sales(S.P.)	(6,00,000)	(5)	(10,00,000)	(5)	(6,00,000)	(4)	(10,00,000)	(4)
	3,00,000	(0)	(1,00,000)	(0)	3,00,000	(1)	(1,00,000)	(1)
	↓ STCL	↓ No Asset	↓ STCG	↓ No Asset	↓ Depn @ __%	↓ Yes Asset	↓ STCG	↓ Yes Asset
Opening WDV {Next Year}	No Block No WDV	No Block No WDV	No Block No WDV	No Block No WDV	3,00,000 Less: Depn	1 Asset	Nil	1 Asset

Capital Gains / Loss under block of asset system is **always SHORT TERM**.



→ **Sale under INDIVIDUAL ASSET SYSTEM:**

If **Power Units** follow **SLM** then they are subject to **individual asset system**. Under Individual asset system, Profit or Loss is calculated on sale of each asset, and there are **3 possibilities** as follows:

Example:

Cost	100	↙	S.P. 105 [Case 1]
Less: Dep ⁿ	-10	↘	S.P. 92 [Case 2]
	90		
Less: Dep ⁿ	-10	↘	S.P. 74 [Case 3]
WDV	80		

CASE 1: PROFIT WITH CG: [SP > COST]

S.P.	105
<u>Less: WDV</u>	<u>- 80</u>
Profit	<u>25</u>

5

Capital Gains
(SP - Cost)
[Real Income]

20

Income from Business
[Notional Income]

Balancing charge u/s 41(2)

CASE 2: PROFIT WITHOUT CG: [SP < COST > WDV]

S.P.	92
<u>Less: WDV</u>	<u>- 80</u>
Profit	<u>12</u>

Nil

No Capital Gains
(because SP < Cost)
[No Real Income]

12

Income from Business

Balancing charge u/s 41(2)

CASE 3: LOSS: [SP < WDV]

S.P.	74
<u>Less: WDV</u>	<u>(80)</u>
Loss	<u>(6)</u>

Terminal Depreciation [Deduction u/s 32]

VIII) ACTUAL COST: Sec. 43 (1)

	Amt.
Opening WDV	XXX
Add: Purchases [Actual Cost]	XXX
Less: Sales (SP)	- XX
	XXX

Depn @ ___%

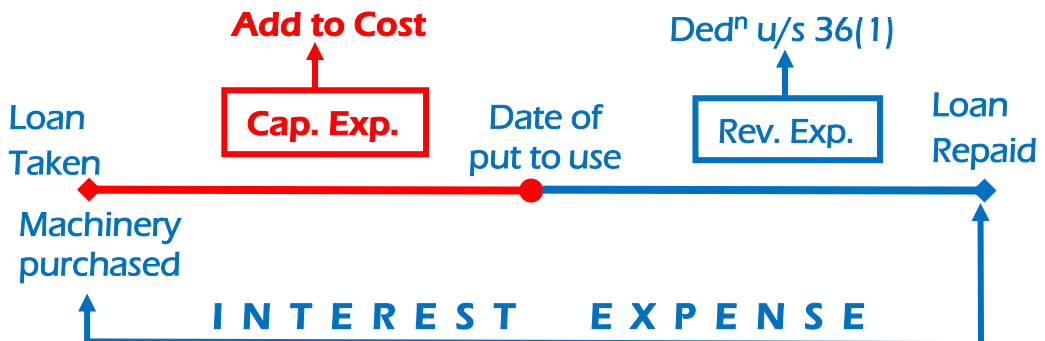
As per sec 43(1), Actual cost for the depn. is calculated as follows:

	Amt.
Cost of the Asset	XXX
Add: Incidental Exp.:	+XXX
Installation charges	
Transportation etc..	
Less: Subsidy recd. from Govt. or part of the cost of the asset met by any other person	- XXX
ACTUAL COST	XXX

Note1: TRIAL RUN:

Any amount **spent** on trial run of an asset should be **added** to the cost of asset and any amount **received** on sale of product generated during trial run should be **deducted** from the cost of asset.

Note2: INTEREST ON LOAN FOR ASSET:



→ **Cases when ACTUAL COST is taken at NOTIONAL figure:**

Cicumstances	Notional figure
1) Asset acquired by way of Gift/ Will/ Inheritance.	WDV of the previous owner.
2) Asset sold and Reacquired	1. WDV at the time of sale 2. Reacquisition cost whichever is less
3) Asset purchased and Leased back to same person (assessee is in leasing business)	WDV of the previous owner.
4) Asset acquired with an Intention to reduce tax liability by claiming higher depreciation.	Amount determined by A.O [with the prior approval of Joint Commissioner]
5) Personal Building converted into Business Building.	Original cost <u>Less:</u> Notional depn for the no. of years of personal use at current rates.
Etc.....	

IX) ADDITIONAL DEPRECIATION:

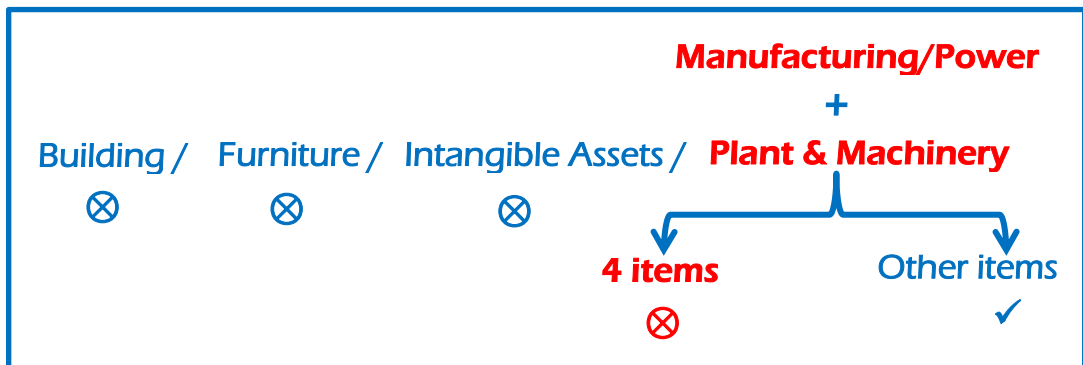
In case of Plant & Machinery, additional depreciation @ **20% on cost** is allowed if following conditions are satisfied:

→ **Conditions:**

- 1) The Assessee should be engaged in **Manufacturing** business or in the business of generation / distribution of **Power**.
- 2) The Asset should be **Plant and machinery *excluding*** following 4 items:
 - a) Ships, Aircrafts and Road Transport Vehicles.
 - b) Plant & Machinery installed in Office Building.
 - c) Second hand Plant & Machinery.
 - d) Plant & Machinery, the entire cost of which is allowed as deduction in one year.

Note 1:

Additional depreciation is allowed only in the year in which asset is **first put to use**. In the year of purchase, if the plant and machinery is put to use for **less than 180 days**, then **only half year's** additional depreciation is allowed but the **balance half** can be claimed in the immediate **next year**.



X) OTHER POINTS:

HIRE PURCHASE SYSTEM:

Normally, depn is allowed only if the assessee is the owner of the asset. Under hire purchase system, the assessee becomes the owner only after payment of last instalment but **depn is allowed** right from the beginning assuming assessee is the owner from the beginning.

ENHANCED DEPN. ON MOTOR CARS:

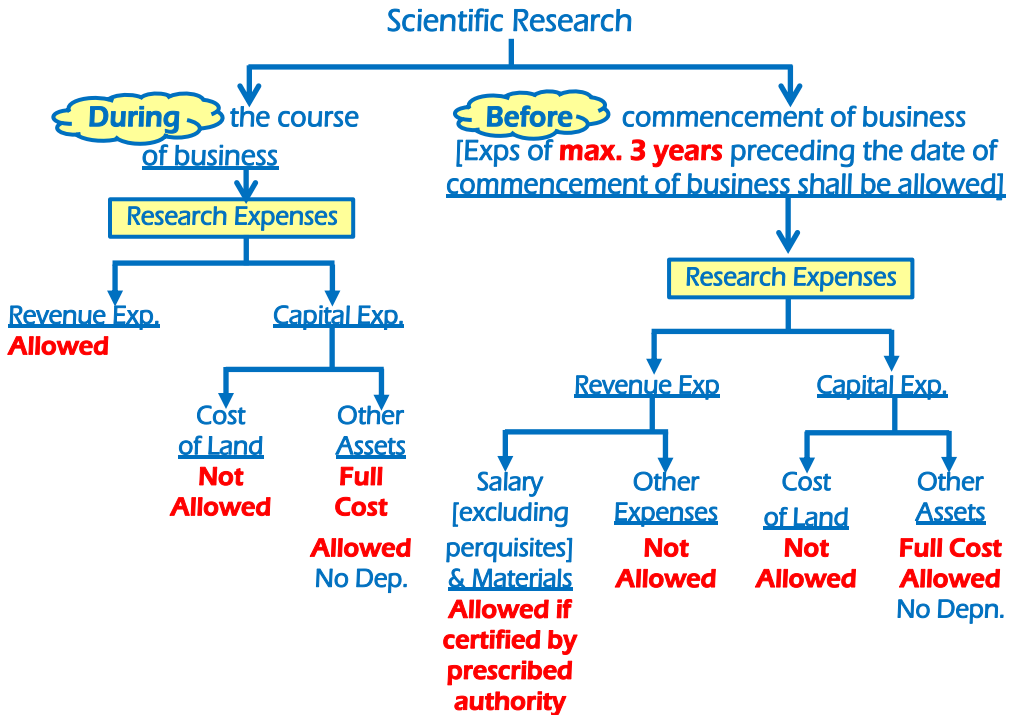
In case of motor cars purchased and put to use **between 23/8/2019 and 31/3/2020**, depreciation allowed every year will be **30%** [and if used for hiring business like buses, lorries, taxis etc then **45%**].

However, in case of motor cars purchased and put to use **on or after 1/4/2020**, depreciation will be allowed at **normal rates** [i.e 15% and for hiring business, 30%].

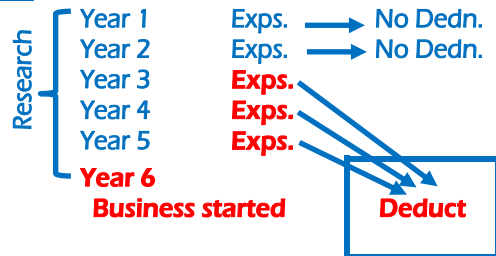
Sec. 35 EXPENDITURE ON SCIENTIFIC RESEARCH

PART - I: IN-HOUSE RESEARCH:

This means, research is done by Assessee himself within the business [for the business]



Example:



PART-II: CONTRIBUTION TO OUTSIDERS:

This means, research is carried on by outsiders and assessee has made donation for such research. Deduction is allowed in respect of donation made to:

- National Laboratory
- Indian Institute of Technology [I.I.T]
- Indian company engaged in R & D
- Approved **R U C I**

R – Research Association **U** – University **C** – College **I** – Institute

Sec. 35CCA CONTRIBUTION FOR RURAL DEVELOPMENT



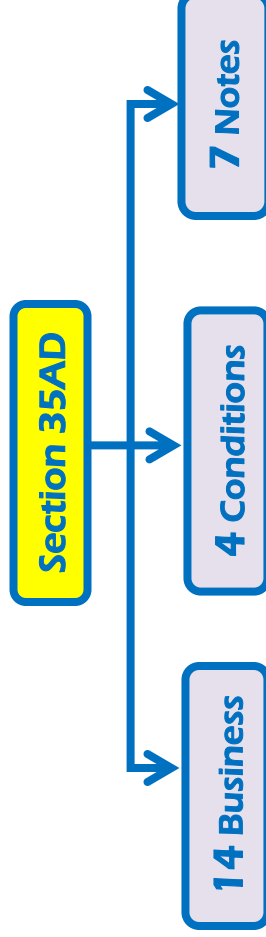
N F R D = National Fund for Rural Development
N U P E F = National Urban Poverty Eradication Fund

Sec. 35AD**DEDUCTION FOR SPECIFIED BUSINESS**

As per this section, **100%** deduction is allowed in respect of **Capital Expenditure** incurred in following business:

NATURE OF BUSINESS	Started on/after 1/4/...
Setting & Operating Cold Chain Facility	09
Setting & Operating Warehousing facility (For Agricultural Produce)	09
Laying & Operating Cross Country Pipeline Network (For distribution of Petroleum & Natural Gas) (For Natural Gas, 1/4/ 07)	09
Building and Operating Hospitals (min. 100 Beds)	10
Building and Operating Hotels (min. 2 star category)	10
Building and developing Housing Project (Slum Redevelopment Scheme)	10
Building and developing Housing Project (Affordable Housing scheme)	11
Production of Fertilizers .	11
Setting and Operating Inland Container Depot or container freight station (App.. by Customs Act, 1962)	12
Beekeeping and production of honey & Beeswax	12
Setting and Operating Warehousing facility (for sugar)	12
Laying and Operating Slurry Pipeline Network (for transportation of iron ore)	14
Setting up and operating Semi-Conductor Wafer Fabrication Manufacturing unit	14
Developing /Operating /Maintaining Infrastructure facility	17

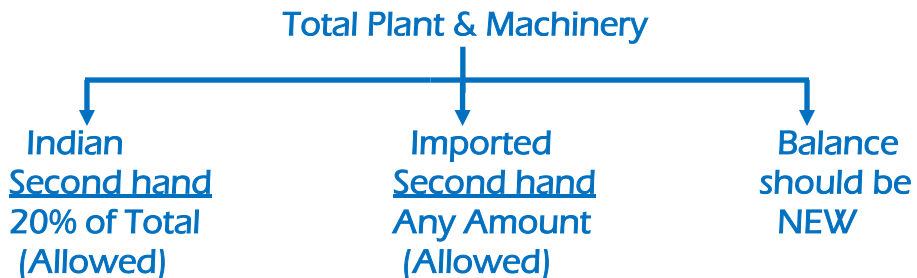
S/O	S/O	L/O	B/O	B/D	B/D	Prod.	S/O	S/O	S/O	L/O	D/O/M	
C	W	C	H	H	H	F	I	B	W	S	S	I
Any Prod.	Ag. Prod.	PNG	Min. 100 beds	Min. 2 Star	SRS	AHS	App by Custom Act, 62	Honey Wax	Sugar	Wafer	Iron ore	
09	09	09	10	10	10	11	12	12	12	14	14	17



→ **4 CONDITIONS:**

Deduction u/s 3AD is allowed only if the following conditions are satisfied:

1. **Business** should be **newly** established. It should not be formed by splitting up or reconstruction of an existing business.
2. **Plant & Machinery** required in the business should be **new** (first hand). However, use of second-hand P & M is allowed as follows:



3. In case of **Cross Country Pipeline Network** (petroleum and natural gas), following additional conditions should be satisfied – **IPCO**
 - a) Business should be owned by **Indian Company** or consortium of Indian companies
 - b) Business should be approved by **PNGRB** (Petroleum and Natural Gas Regulatory Board).
 - c) Atleast some portion of the total pipeline capacity (as may be prescribed by PNGRB) should be made available for use by “others” on **common carrier basis**.
 - d) Any **other conditions** as may be prescribed
4. In case of **Infrastructure facility**, following additional conditions should be satisfied:
 - a) Business should be owned by **Indian Company** or consortium of Indian companies
 - b) The assessee should enter in to an **Agreement** with **Central** or **State Govt.** or **Local Authority** for developing, operating or maintaining infrastructure facility.

→ **7 NOTES:**

- 1) **Expenses** incurred **before commencement** of business shall be **allowed** as deduction in the **first year** of business.
- 2) Deduction is allowed for all the capital expenditures **excluding**:
 - Cost of **Land**;
 - Cost of **Goodwill**;
 - Cost of **Financial instruments**;
- 3) Amount received (selling price) on **sale or disposal** of asset (in respect of which deduction is allowed u/s 35AD) shall be **taxable u/s 28**.
- 4) Loss from **Specified Business** can be set off **only against** Income from **Specified Business**. If it cannot be set off in the same year, then it can be carried forward for **unlimited** no. of years [Sec. 73A]
- 5) Asset acquired for specified business should be used **only in specified** business for a minimum **8 years** (from the year of purchase). During such 8 years, if such asset is used in non-specified business then the following amount shall be taxable:
 Taxable amt. = Dedn allowed earlier u/s 35AD (-) Depn that would have been allowable till last year.

Eg: Asset cost ₹ 100

Yr.1	Specified Business	Dedn ₹100
Yr.2	Specified Business	NIL
Yr.3	Specified Business	NIL
Yr.4	Non-Specified Bus.	₹72.9 (100 - 27.1*) Added to income

* 27.1 = 10 + 9 + 8.1 [Depn for 3 years @ 10% assumed]

- 6) If Assessee claims deduction u/s 35AD then the Assessee is **not eligible** for Deduction u/s **80 IA to 80 RRB** and deduction u/s **10AA**.
- 7) In case of all the specified business, deduction is allowed only if the Assessee **sets up as well as operates**. However, in case of **Hotel business**, deduction is **allowed** even if the Assessee only builds the hotel (and operations are handed over to some other person).

Sec. 35CCC

EXP. ON AGRICULTURE EXTENSION PROJECT

It means training in agriculture.

As per this section, **100% Deduction** is allowed in respect of expenditure incurred by **any assessee** on agriculture extension project (project should be **notified by CBDT**).

- Cost of Land – No Deduction
- Cost of Building – Depreciation
- Other expenses (revenue / capital) – 100% Deduction

Sec. 35CCD

EXP. ON SKILL DEVELOPMENT PROJECT

It means training in manufacturing.

As per this section, **100% Deduction** is allowed in respect of expenditure incurred by a **company** on skill development project (project should be **notified by CBDT**).

- Cost of Land – No Deduction
- Cost of Building – Depreciation
- Other expenses (revenue / capital) – 100% Deduction

Agriculture Extension Project u/s 35CCC	Skill Development Project u/s 35CCD
Training (Agriculture) Notified by CBDT 100% Deduction All Assesseees	Training (Manufacture) Notified by CBDT 100% Deduction Companies

Sec. 35ABB

COST OF TELECOMMUNICATION LICENCE

Deduction is allowed in **equal instalments** depending upon the life of the license.

Deduction is allowed on **payment basis**.

Deduction will start in the year of payment & it will be spread over the **remaining life** of the license.

Eg: Cost of license Rs.1,00,000
 Life of license 10 years
 Amt paid in instalments:
 Rs. 50,000 in 1st year
 Rs. 30,000 in 6th year
 Rs. 20,000 in 9th year

Amt of Deduction = Amount Paid ÷ Remaining life

Year	50,000 paid immediately ÷ 10 years	30,000 paid in 6 th year ÷ 5 years	20,000 paid in 9 th year ÷ 2 years	Total Dedn u/s 35 ABB
1	5,000	-	-	5,000
2	5,000	-	-	5,000
3	5,000	-	-	5,000
4	5,000	-	-	5,000
5	5,000	-	-	5,000
6	5,000	6,000	-	11,000
7	5,000	6,000	-	11,000
8	5,000	6,000	-	11,000
9	5,000	6,000	10,000	21,000
10	5,000	6,000	10,000	21,000

Sec.35ABA

COST OF RIGHT TO USE SPECTRUM

[FOR TELCOMMUNICATION BUSINESS]

The provisions of this section are same as section 35ABB.

Sec.35 D

PRELIMINARY EXPENSES

Preliminary exp. means expenses incurred **before** commencement of a **new project**.

The following expenses are eligible for deduction:

→ **List of Eligible Expenses: PFME DRSO**

- **P**roject Report
- **F**easibility Report
- **M**arket Survey
- **E**ngineering Services
- **D**rafting of Memorandum/Articles of association & other legal Documents
- **R**egistration Fees
- **S**hares & Debentures Issue Expenses
- **O**thers expenses as may be prescribed

→ **Amount of Deduction:**

For Companies	For Other assessees
Deduction = 1/5th of: 1) Actual Eligible Expenses 2) 5% of COP or CE [whichever is high] Whichever is less	Deduction = 1/5th of: 1) Actual Eligible Exps. 2) 5% of COP Whichever is less

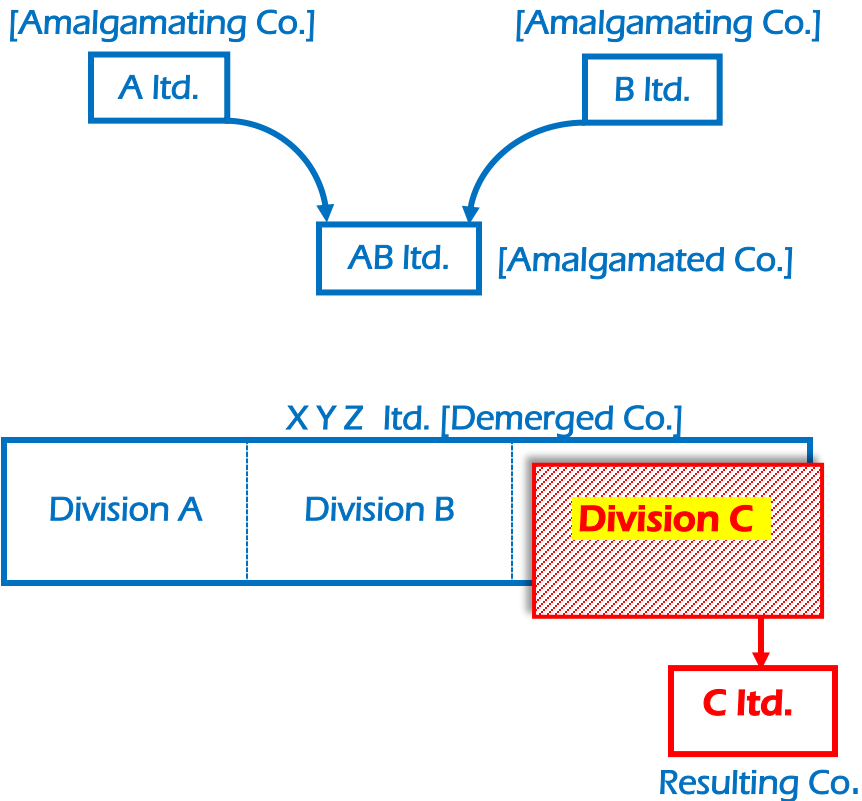
→ **Notes:**

- 1) The above deduction is for **5 years** starting from the year in which project commences.
- 2) COP (Cost of Project) = Cost of Fixed Assets
(required for the new project)
CE (Capital Employed) = Share Cap. + Deb. + L.T. Loans
(for the new project)
- 3) This deduction is only for **Indian companies** and **Others Resident** in India.

Sec.35 DD

AMALGAMATION & DEMERGER EXPENSES

Deduction is allowed in **5 equal Instalments** (only for Indian companies)



Sec.35 DDA

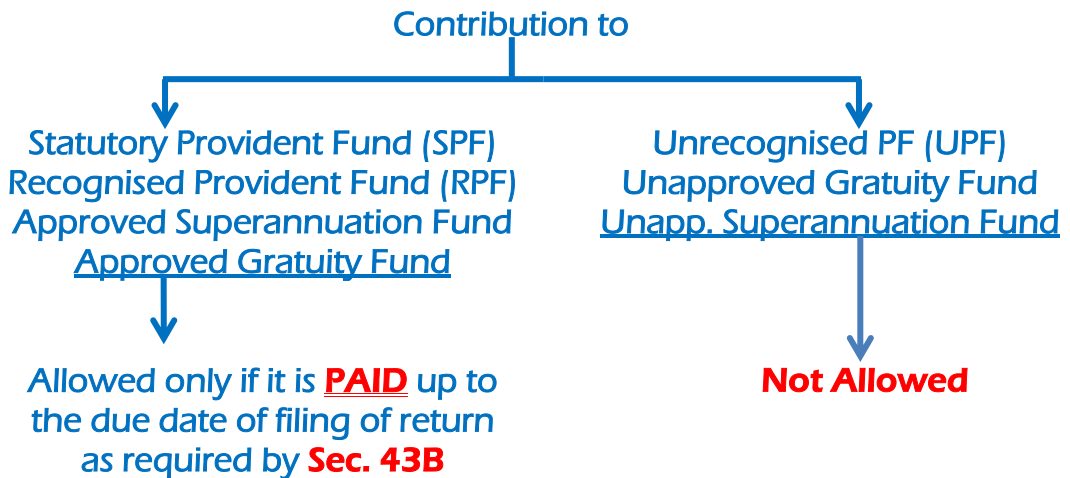
VOLUNTARY RETIREMENT COMPENSATION

Deduction is allowed in **5 equal Instalments**.

Sec.36(1)

OTHER SPECIFIC DEDUCTIONS – C I₂B₂A F.R.

C CONTRIBUTION TO PF etc.



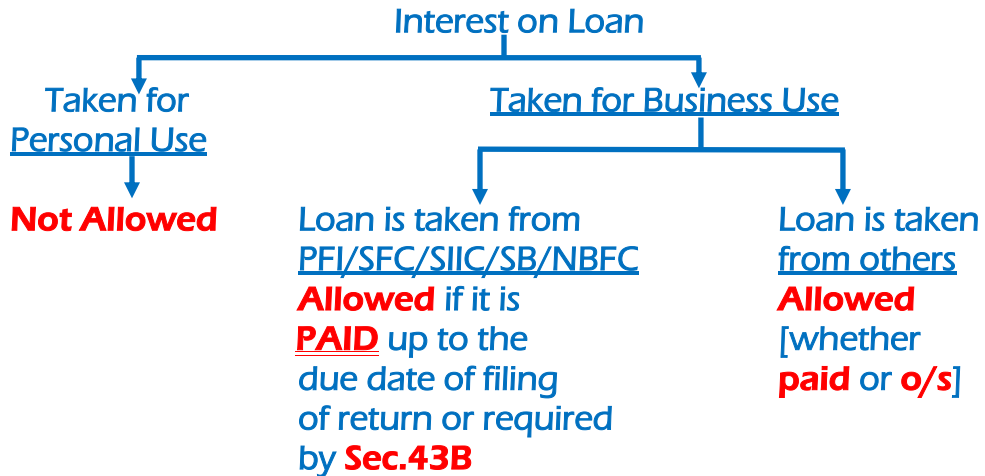
I₁ INSURANCE PREMIUM

→ Stock – **Allowed**

→ Medical Insurance Premium on Employee's health.



I₂ INTEREST ON LOAN



- PFI - Public Financial Institution
SFC - State Financial Corporation
SIIC - State Industrial Investment Corporation
SB - Schedule Banks [including Co-operative Banks]
NBFC - Non-Banking Financial Companies

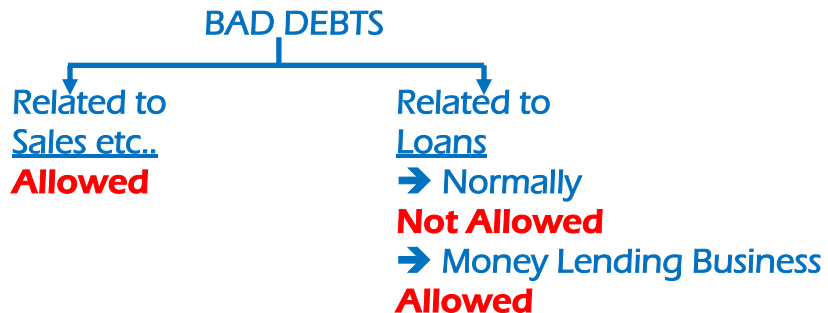
B₁ BONUS & COMMISSION TO EMPLOYEES

Bonus and commission to employees is **allowed** as dedn if it is **PAID** up to the due date of filing of return as required by **Sec. 43B**.

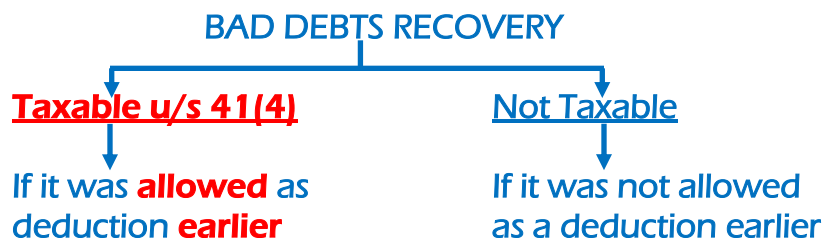
B₂

BAD DEBTS

a)



b)



c) Actual Bad debts is allowed as a deduction. But **RDD** is **not allowed**. However, in case of Banks & financial Institutions, deduction for RDD is allowed as follows:

→ In case of **Foreign Banks/PFI/ SFC/ SIIC/NBFC:**

- i. Actual RDD
- ii. **5% of G T I (before RDD)**
Whichever is less

→ In case of **others**

- i. Actual RDD
- ii. **8.5% of G T I (before RDD) + 10% of AARA**
Whichever is less

AARA = Aggregate Average Rural Advances

A ANIMALS WRITTEN OFF

In case of animals used in the business as fixed asset, deduction for the cost of animals will be allowed in the year in which animals becomes useless. [E.g. Death]

→ Amt. of dedn. = Cost – Sale proceeds of the carcass of animal

F FAMILY PLANNING EXPENDITURE

Any Expenditure incurred for promoting family planning amongst the **employees** is allowed as a deduction as follows:



Note: This deduction is only for **Companies**.

R TRANSFER TO SPECIAL RESERVE

In case of specified **FINANCIAL CORPORATION** [engaged in providing long term finance for **agriculture, industry, infrastructure** and purchase/construction of residential **houses** in India], deduction is allowed if some amount of profits is transferred to special Reserve.

→ **Amount of deduction:**

- 1) Actual Amt. trf. To Special Reserve.
- 2) **20%** of Taxable IFB (before this dedn.)
- 3) **200%** of (SC + GR) - Opening balance in special reserve
Whichever is less
{SC – Share Capital and GR – General Reserve}

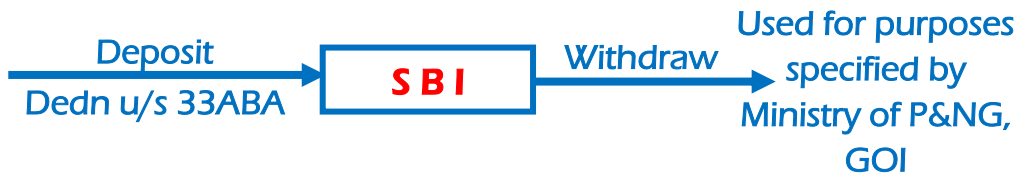
Sec.33 AB

TEA / COFFEE / RUBBER BUSINESS



Sec.33 ABA

PETROLEUM & NATURAL GAS BUSINESS



Sec. 33 AB	Sec. 33 ABA
This deduction is for assessee engaged in growing and mfg. of Tea/ Coffee/ Rubber .	This deduction is for assessee engaged in extraction/prod. of Petroleum and Natural gas .
Deduction is allowed if some amount is deposited in NABARD [within 6 m from the end of PY or upto the due date of return, whichever is earlier].	Deduction is allowed if some amount is deposited in SBI [up to the end of P.Y] [Site Restoration A/c]
<u>Amt. of deduction:</u> ↓ 1) Actual Amt. deposited 2) 40% of Taxable IFB [before this deduction]	<u>Amt. of deduction:</u> ↓ 1) Actual Amt. deposited 2) 20% of Taxable IFB [before this deduction]
Deposited amt. should be utilized for purposes specified by Tea / Coffee/ Rubber Board .	Deposited amt. should be utilized for purposes specified by Ministry of P& NG Govt. of India.
If the deposited amount is misutilised then deduction allowed earlier shall be withdrawn i.e. misused amount shall be taxable	

Sec.37(1)

GENERAL DEDUCTION

Any expense which is **not covered u/s 30 to 36(1)** shall be allowed as a deduction u/s 37(1) if following 2 conditions are satisfied:

1. Expense should be related to **Business**.
2. Expense should be **Revenue** in nature.

Note 1: Any Expense which is **illegal** in nature is **disallowed** even if such expense is necessary for the business. Eg: Bribes, protection money, secret commission etc.

Settlement amount paid to settle contraventions is illegal (disallowed). Expenditure for any purpose which is an offence or prohibited by law shall include any expenditure incurred to settle proceedings initiated in relation to a contravention under any law.

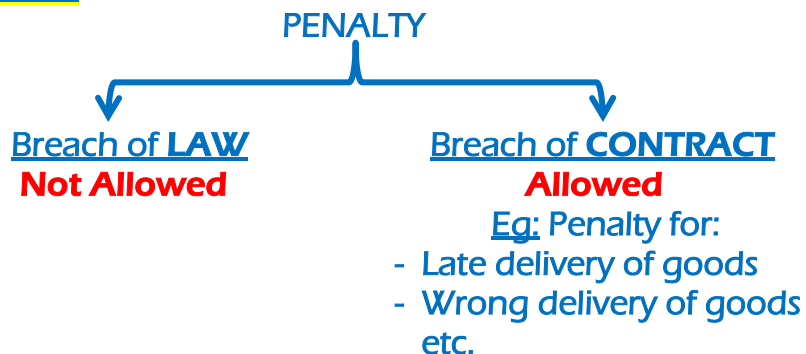
Note 2: Any Expense on **CSR** is **not allowed** because these expenses are not related to business [CSR = Corporate Social Responsibility]

Examples:

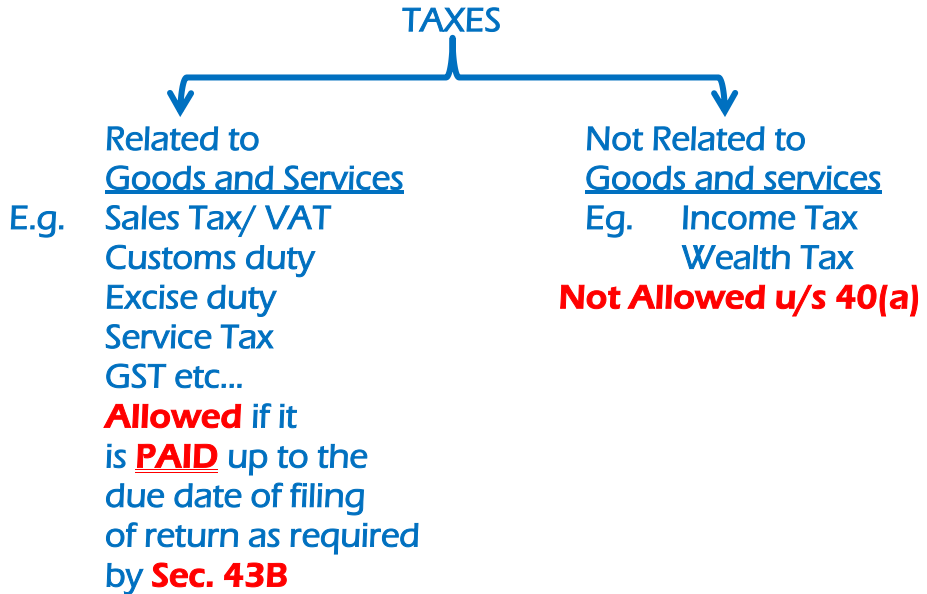
1) ADVERTISEMENT:

- Normally – Allowed u/s 37 (1)
- Advt. in the souvenir, brochure, pamphlets etc of a **Political Party – Not allowed u/s 37 (2B)** – Treated as donation to political party [Dedn u/s 80GGB – For companies or u/s 80GGC – For others]

2) PENALTY:

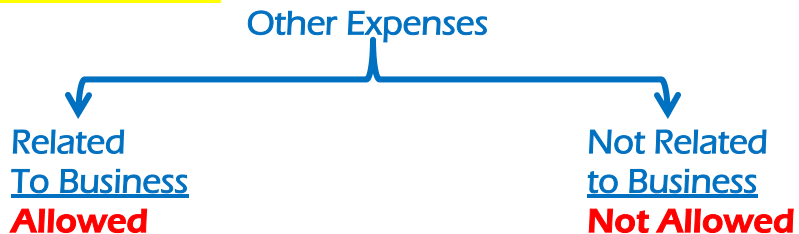


3) TAXES:



	Taxes	Int. on late payment or Late filing fees	Penalty
Sales Tax/VAT	✓	✓	✗
Custom Duty	✓	✓	✗
Excise Duty	✓	✓	✗
Service Tax	✓	✓	✗
GST	✓	✓	✗
Income Tax	✗	✗	✗
Wealth Tax	✗	✗	✗

4) OTHER EXPENSES:



PART - II

EXPENSES EXPRESSLY DISALLOWED

Sec.37 (2B)

ADVERTISEMENT – POLITICAL PARTY

Advt. in souvenir, brochure, pamphlets etc. of a political party is expressly disallowed under this section

Sec.40 (a)

Under this section, following expenses are expressly disallowed:

- a) **Income Tax** and **Wealth Tax**
- b) Expenses incurred **without** deducting **TDS**

Payment
to **Resident**
↓
**30%
Disallowed**

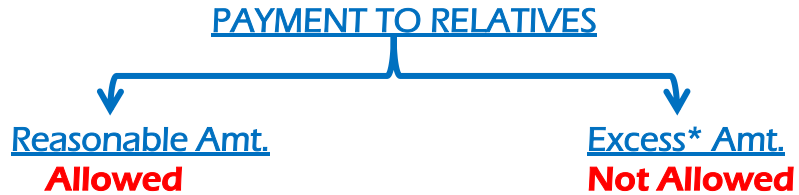
Payment
to **Non Resident**
↓
**100%
Disallowed**

Sec.40 (b)

To be discussed in Assessment of Partnership Firms.

Sec.40 A (2)

PAYMENT TO RELATIVES



*A payment is treated as excessive if it exceeds the **fair market value** of the goods, services or facilities or the **legitimate needs** of the business.

Meaning of Relative:

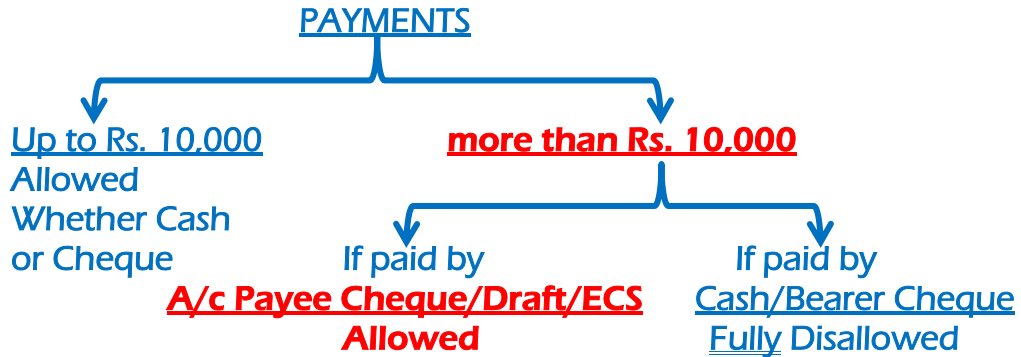
Assessee	Relatives
Individual	Husband, Wife, Brothers, Sisters, Lineal Ascendant and Lineal Descendant (H/W/B/S/L _A /L _D)
Partnership Firm	Partner and their relatives (H/W/B/S/L _A /L _D)
HUF	Members and their relatives (H/W/B/S/L _A /L _D)
Company	Directors and their relatives (H/W/B/S/L _A /L _D)
Any Assessee	→ Substantial interest → Any Person
Any Assessee	← Substantial interest ← Any Person

Note:

Substantial Interest means having atleast:
20% shares [in case of companies] or
20% rights in profits [in other cases]

Sec.40 A (3)

PAYMENT EXCEEDING Rs. 10,000



Note 1:

The above rule is applicable to all the expenses **except** medical **insurance premium of employee's health**. Insurance premium of employee's health is allowed as a deduction only if it is paid by cheque [whether less than or more than Rs. 10,000].

Note 2:

The restriction of cash payment is applicable to **revenue exp. as well as capital exp.** This means, if an asset is purchased in cash then such asset will not be eligible for depreciation or any other deduction like section 35 AD etc..

Note 3:

The restriction of cash payment is applicable to **aggregate** of payments made to a **single person** in a **single day** in respect of a **particular expenditure**.

Case	Date	Payment	Allowed or not
I	14.10.24	7,500 cash to "A"	Both allowed because different Persons
		7,500 cash to "B"	
II	14.10.24	7,500 cash to "A"	Both allowed because different dates
	15.10.24	7,500 cash to "A"	
III	14.10.24	7,500 cash to "A"	Same Person, Same date, Same Expense ∴ Not Allowed (because in aggregate it exceeds Rs.10,000)
	14.10.24	7,500 cash to "A"	

Note 4:

If an expenditure exceeding Rs. 10,000 (**outstanding**) is claimed as a deduction on accrual basis in a particular year and **subsequently**, it is **paid by cash** then **deduction** allowed earlier shall be **withdrawn**.

→ **EXCEPTIONS TO SEC. 40 A (3) [RULE 6 DD]:**

In following cases, deduction is allowed even if payment exceeding Rs.10,000 is made in cash:

- 1) Payments made to **Government** or **Banks/Financial Institutions** Eg: GST, custom duty, Interest to bank etc.
- 2) Payments made to **producers** of:
 - Agricultural products
 - Forest products
 - Fish products
 - Poultry products
 - Dairy products
 - Animals products
 - Products manufactured without the aid of power
- 3) Payments made in a place where there are **no banking facilities**.
- 4) Payment of **Terminal Benefits** to an employee (i.e. Gratuity, PF etc.) **up to Rs. 50,000**
- 5) Payment of **Salary** to an employee who is **posted** to a place other than his normal place of duty for minimum **15 days** (where he has no bank A/c)
- 6) Payment made to **Transport operator up to Rs. 35,000**

Sec.40 A (7)

PROVISION FOR GRATUITY

This means, assessee has provided for gratuity payable to employees who will retire in future. Since employees will **retire in future**, the gratuity expense will accrue in future & since it will **accrue in future**, it will be **allowed in future (not now)**. Hence, provision for gratuity is **not allowed**.

Note: Similarly, **any provisions/reserves** in respect of expenses or losses which will accrue in future are **not allowed**.

Eg: Provision for contingencies, RDD, Reserve for discount etc.

Sec.43 B

DEDUCTION ON PAYMENT BASIS

As per this section, following expenses are allowed only if such expenses are **PAID** up to the due date of filing of return:

T. B. L I C R M

- T: Any **T**ax, cess, duty payable to Govt.
- B: **B**onus & Commission to employees.
- L: **L**eave salary to employees.
- I: **I**nterest on loans taken from PFI, SFC, SIIC, SB & NBFC
- C: **C**ontribution to SPF, RPF, Approved Gratuity fund & Approved Superannuation fund.
- R: Payment to Indian **Railways**
- M: Payment to **Micro and small enterprises**

If the **payment is not made** up to the due date of filing of return, deduction is **not allowed in the current PY**. However, deduction will be allowed in future i.e. **in the year of actual payment**.

However, in case of amount payable to micro and small enterprises, sec.43B requires that the payment should be made within the **time limit prescribed in sec.15** of MSMEDA, 2006 [Micro, Small and Medium Enterprises Development Act, 2006]. If payment is made **within the time limit** u/s 15 of MSMEDA 2006 then dedn is allowed on **accrual basis** and if it is paid **after such time limit** then dedn is allowed on **payment basis**.

As per sec. 15 of MSMEDA, 2006, any sum due to micro and small enterprises should be paid on or before the **date agreed** upon in writing between the parties [**which shall not exceed 45 days**]. If there is **no such agreement** then it should be paid within **15 days**.

Eg: Our Previous year is **2024-25**

On **26th March 2025**, Assessee purchased stationery from Mr.X [who is a micro and small enterprise]. The assessee did not agree as to when the amount will be paid by him to Mr.X. Accordingly, the stationery bill should be paid within 15 days i.e. latest upto **10th April 2025**.

In this case:

- ⇒ If the assessee pays the bill **on or before 10th April 2025** then dedn will be **allowed in the PY 2024-25** itself on accrual basis.
- ⇒ If the assessee pays the bill **after 10th April, 2025** then dedn will not be allowed in PY 2024-25. It will be allowed in the **year of actual payment**.

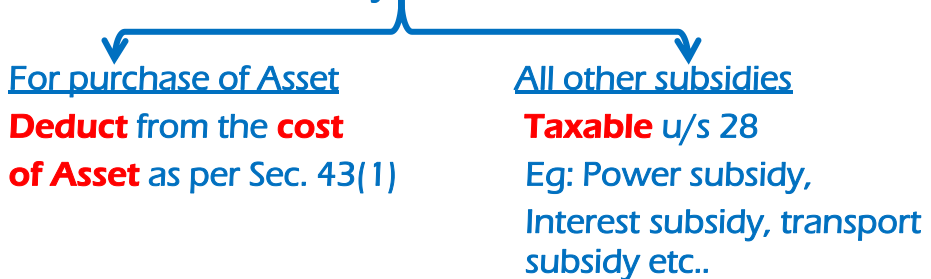
PART - III → LIST OF BUSINESS INCOMES

Following incomes are taxable as business income:

→ **As per Sec. 28:**

1. Gross Profit ;
2. Fees for providing services ;
3. Gifts from customers / clients ;
4. Cash Compensatory support (subsidy), Duty Drawback and Sale of Import license ;

Subsidy from Govt.



5. Remuneration and Interest received by partner from partnership firm is taxable u/s 28 [but share in Net Profit is exempt u/s 10 (2A)];
6. Non-compete fees i.e. amt. received for not carrying on competitive business/activity ;
7. Amount recd. from Keyman Insurance Policy ;
Note: Amount received is taxable u/s 28 but Premium paid for Keyman Insurance is allowed as deduction u/s 37(1).
8. Amount recd. on sale or disposal of asset (in respect of which deduction is allowed u/s 35AD) ; and
9. Any Other income which is related to the business.

→ **As per Sec. 41: DEEMED BUSINESS INCOMES:**

Section 41(1): GENERAL RECOVERY:

Subsequent recovery of **Any Expense** or Loss shall be taxable as business income if such expense or loss was **allowed in past**.

Eg: GST Refund, custom duty refund, etc.

Section 41(4): BAD DEBTS RECOVERY:

Subsequent recovery of **Bad debts** shall be taxable as business income if such bad debts was **allowed in past**.

Section 41(2): SALE BY POWER UNITS:

Already discussed (Refer Sec. 32)

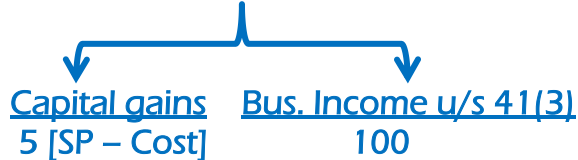
Section 41(3): SALE OF SCIENTIFIC RESEARCH ASSETS:

Treatment of such sale is same as in case of sale by power units.

Eg:

Cost	100
<u>Less: Dedn u/s 35</u>	<u>- 100</u>
WDV	<u>Zero</u>

SP.	105
<u>Less: WDV</u>	<u>0</u>
Profit	<u>105</u>



PART - IV **PROBLEMS**

QUESTION:

Profit and Loss A/c

		Rs.			Rs.
To Allowed Exps	✓	xxx	By Business Incomes	✓	xxx
To Disallowed Exps	⊗	xxx	By Non - Bus. Incomes	⊗	xxx
To Net Profit		xxx			
		xxx			xxx

ANSWER:

STATEMENT OF INCOME FROM BUSINESS [Indirect Method]

	Amt.	Amt.
N.P as per P/ L A/c		xxx
Add: <u>DISALLOWED EXPENSES:</u>		
----- } Dr. ⊗	xxx	
----- } Dr. ⊗	xxx	
----- } Dr. ⊗	xxx	+ xxx
		xxx
Less: <u>NON-BUSINESS INCOMES:</u>		
----- } Cr. ⊗	xxx	
----- } Cr. ⊗	xxx	
----- } Cr. ⊗	xxx	- xxx
		xxx
Less: <u>UNRECORDED BUSINESS EXPS: [U B E]</u>		
-----	xxx	
-----	xxx	- xxx
		xxx
Add: <u>UNRECORDED BUSINESS INCOME: [U B I]</u>		
-----	xxx	
-----	xxx	+ xxx
TAXABLE INCOME FROM BUSINESS		xxx

Treatment of Depreciation while Solving Sums:

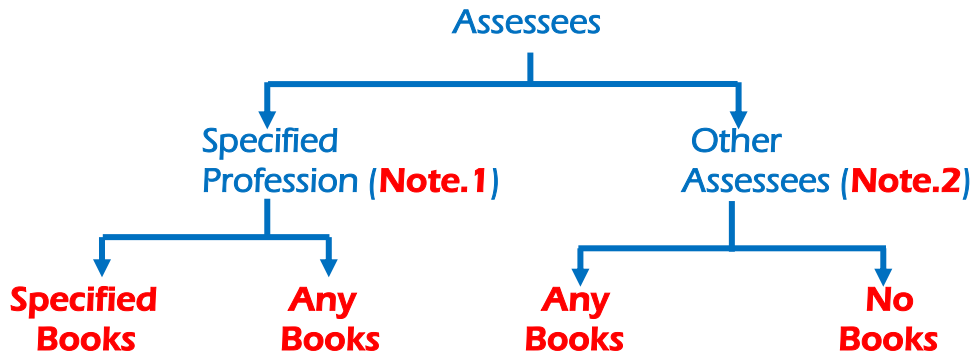
- Depreciation as per books (P/ L Dr.) – ⊗ **Disallowed**
- Depreciation as per Income Tax (Addl. Info.) – **UBE**

PART - V

SPECIAL PROVISIONS

Sec. 44 AA

COMPULSORY MAINTENANCE OF BOOKS



Note 1: ASSESSEE CARRYING ON SPECIFIED PROFESSION:

An assessee carrying on specified profession is required to maintain specified books if the **Gross Receipts** of **all** the preceding **3 years** is more than **₹ 1,50,000**. Otherwise, the assessee can maintain any books as are necessary for completing the assessment.

→ Specified Books (Rule 6F)

- Cash Book
 - Journal
 - Ledger
 - Carbon Copies of Income bills
 - Original Copies Expense bills
 - Stock of Medicines Register
 - Daily Case Register
- } only in case of Medical Profession.

→ Specified Profession [MA₂LE FIT CO.]

Medical, Accountancy, Architecture, Legal, Engineering, Film Artist, Interior Decoration, Technical Consultancy, Company Secretary and Others as may be notified by CBDT.

Note 2: OTHER ASSESSEES:

Other assessees are required to maintain any such books as are necessary to complete the assessment if:

→ In case of Individual / HUF:

Total Sales > ₹ 25,00,000
or
Taxable IFB > ₹ 2,50,000 } in **any one** of the preceding **3 years**.

→ In case of Others:

Total Sales > ₹ 10,00,000
or
Taxable IFB > ₹ 1,20,000 } in **any one** of the preceding **3 years**.

Otherwise, these assessees are not required to maintain books of accounts.

Failure to comply with above provision –
PENALTY of ₹ 25,000 u/s 271A

Sec. 44 AB

COMPULSORY AUDIT OF ACCOUNTS

- 1) In case of a **Business**, audit is compulsory if the total sales/turnover is **more than ₹ 1 crore/10 crores**.
Limit is ₹10 crores, if **max. 5%** of the Total Payments* during the financial year and **max. 5%** of the Total Receipts* during the financial year is by cash or bearer chq. or crossed chq.
*Total payments & receipts shall include all payments & receipts whether revenue or capital in nature.
- 2) In case of a **Profession**, audit is compulsory if the Gross Receipts is **more than ₹ 50 lakhs**.
- 3) Audit should be done by a **CA** and the **Audit Report** should be furnished atleast **one month prior the due date of filing return** i.e. upto **30th September** of AY.

- 4) The assessee should submit following **forms**:
- i. Form 3 CA (for companies) / Form 3 CB (for others)
 - ii. Form 3 CD (for all assessees)
- 5) Failure to comply with above provision shall attract **penalty u/s 271B** which will be lower of following:
- i. 0.5 % of Total sales/ Gross Receipts
 - ii. ₹ 1,50,000

Sec.44 AE

PRESUMPTIVE SCHEME - TRANSPORT BUSINESS

Transport business = Business of plying / hiring goods carriages. In case of Transport business, following special provisions are applicable if the assessee **owns up to 10 goods vehicle** throughout the previous year:

1. Income from such business is computed on presumptive basis as follows:
Taxable IFB = **Rs. 7,500 × No. of months × No. of trucks**
However, in case of Heavy Goods Vehicle (Weight >12,000 kgs/12 tons):
Taxable IFB = **Rs. 1,000 per ton × [Weight] No. of tons × No. of mnths × No. of trucks**
2. **Deductions** u/s 30 to 37(1) shall **not** be **allowed**. However, in case of a P. Firm carrying on transport business, dedn for **remuneration** and **interest** paid to **partners** shall be **allowed** subject to limits & conditions u/s 40(b).
3. Deduction for depn. is not allowed but WDV of the Block of Assets shall be computed assuming depreciation is allowed.
4. If assessee follows presumptive basis then such assessee is **not required** to maintain **books** of accounts and get it **audited**.
5. If the Assessee **claims** that his actual business income is less than the presumptive amt. then he can declare such **lower Income** provided he **maintains books** and **gets it audited**.

Sec.44ADA

PRESUMPTIVE TAXATION FOR PROFESSIONALS

In case of assessee carrying on specified profession [MA₂LE FIT CO.], following special provisions are applicable if the **Gross Receipts is up to ₹ 50 lakhs***.

1. Income from such profession is computed on presumptive basis as follows:

Taxable IFB = 50% of Gross Receipts

2. Deduction u/s **30 to 37(1)** shall **not** be **allowed**. Even partner's remuneration and interest is not allowed.
3. Dedn for depreciation is not allowed but **WDV** of the Block of assets shall be **computed assuming depn is allowed**.
4. If assessee follows presumptive basis then such assessee is **not required** to maintain **books** of a/c's and get it **audited**.
5. If the Assessee claims that his actual professional income is less than the presumptive amt. then he can **declare lower Income** provided he **maintains books** of accounts and **gets it audited**. However, if the **net taxable Income** of such assessee is **upto the Basic Exemption** then the Assessee can **declare lower Income without** the requirement of maintaining **books** of accounts and getting it **audited**.

Note 1:

This section is applicable only to **Residents Individuals** and **Resident Partnership firms [not being LLP]**.

Note 2:

If assessee follows presumptive taxation then **advance tax** is payable only in **one installment** i.e up to **15th March** of the previous year.

***Note 3:**

The threshold limit for claiming presumptive taxation u/s **44ADA** is **Rs.75 lakhs** for those assesseees in whose case **max. 5% of the gross receipts** is by way of cash or bearer chq. or crossed chq.

Sec.44 AD

PRESUMPTIVE TAXATION FOR ALL BUSINESS

In case of all the business (other than transport business, professionals and agency business) following special provisions are applicable if the **Total Sales** [or Turnover or Gross Receipts] **is upto ₹ 2 crores***.

1. Income from such business is computed on presumptive basis as follows:
Taxable IFB = 6% / 8 % of Total Sales [or Turnover]
Note: **6%**, in respect of the amount of Sales/turnover received by account payee **Cheque/Draft/ECS** during the PY or up to the due date of filing return.
2. Deduction u/s **30 to 37(1)** shall **not** be **allowed**. Even partner's remuneration and interest is not allowed. Such assessee is also **not eligible** for dedn u/s **80 IA to 80 RRB** and u/s **10AA**.
3. Dedn for depn. is not allowed but **WDV** of the Block of assets shall be **computed assuming depn is allowed**.
4. If assessee follows presumptive scheme then such assessee is **not required** to maintain **books** and get it **audited**.
5. If the Assessee claims that his actual business income is less than the presumptive amt. then he can **declare lower Income** provided he **maintains books** of accounts and **gets it audited**. However, if the **net taxable Income** of such assessee is **upto the Basic Exemption** then the Assessee can **declare lower Income without** the requirement of maintaining **books** of accounts and getting it **audited**.

Note 1:

This section is applicable only to **Residents Individuals, Resident HUF** and **Resident Partnership firms [not being LLP]**.

Note 2:

If assessee follows presumptive taxation then **advance tax** is payable only in **one installment** i.e up to **15th March** of the previous year.

Note 3:

If assessee follows presumptive scheme in a particular year then it is **compulsory** to follow this scheme for **coming 5 years**. During these 5 years, if assessee **opts out** of the scheme then for the **next 5 years**, the assessee **cannot enter** this scheme.

***Note 4:**

The threshold limit for claiming presumptive taxation u/s **44AD** is **Rs.3 crores** for those assesseees in whose case **max. 5% of the turnover** is by way of cash or bearer chq. or crossed chq.

~~~~~

## IMPORTANT POINTS IN COMPUTATION OF BUSINESS INCOME

1. Traffic signal installed by the assessee to facilitate employees to come to office – **Allowed u/s 37(1)**
2. EPABX and mobile phones - **15% depreciation**  
EPABX – Electronic Private Automatic Branch Exchange.
3. Depreciation on plant and machinery will be **40%** if such P&M is used for manufacturing a product (**invented in govt laboratory/recognized lab**) or for manufacturing a product by using technology (**developed in Govt Lab/ Recognized Lab**).
4. If amalgamation takes place during the previous year, then depreciation for the whole year shall be apportioned between **Amalgamating Co** and **Amalgamated Co** in the **ratio of number of days** (Assets were used by them)  
Note:  
The above system of apportionment is applicable in case of:
  - ✓ Amalgamation
  - ✓ Demerger
  - ✓ Conversion of Sole trader/Part. firm into Company
  - ✓ Conversion of Pvt./Unlisted Public Co into LLP.
5. Under Section **33AB**, if an asset is purchased by withdrawing money from NABARD then such asset **should not be sold within 8 years** from end of year of purchase. If sold within 8 years then **cost of such asset** shall be **taxable as business income** (Because cost was incurred from balance in NABARD for which we had claimed deduction).

6. **Section 35E: Expenses on prospecting minerals:**  
These expenses are incurred **before** commencement of mining business. Expenses of maximum **4 preceding years** and expenses in the **year of commercial production** shall be allowed as deduction in **10 equal installments** starting from the year of commercial production.
  
7. **Sale of Telecom/Spectrum license:**  
Treatment of such sale is **same as sale by Power Units** (following SLM) – same 3 cases which are discussed in our notes.  
However, one point should be noted i.e. If part of license is sold and if selling price is less than WDV (Case 3) then the difference between WDV and SP is allowed as deduction in equal installments over the remaining life of license.  
In short,  
If full license is sold - Full terminal deduction is allowed in the year of sale and  
If part license is sold – Terminal dedn. spread in remaining life.
  
8. Employer's contribution to NPS (**National Pension Scheme**) is allowed as **deduction u/s 36(1)**  
⇒ Max. **14%** of [**Basic Salary + D.A (in terms)**]
  
9. Employer's Contribution to RPF is allowed if it is paid upto due date of filing return as required by Section 43B.  
However, **Employee's** Contribution to RPF is allowed if **paid upto due date of the fund** as required by section 36(1)(va).  
If not paid upto due date of the fund, then it is **disallowed forever**.
  
10. **STT** (Securities Transaction Tax) and **CTT** (Commodities Transaction Tax) are allowed **u/s 36(1)**, if assessee is engaged in the **business of securities/commodities**.  
Note: Only if the question clearly specifies that assessee is doing business of securities/commodities, dedn. will be allowed. Otherwise – Disallowed.

11. **Discount on Zero Coupon Bonds:**

Deduction is **allowed** u/s **36(1)** on **pro-rata basis** having regard to the **life of bonds (in months)**. While calculating life, a period of 15 days or more is treated as full month.

**Example:**

Issue Price = ₹12 lakhs

Redemption value = ₹33 lakhs

Amount of discount = 33 – 12 = ₹21 lakhs

Date of issue – 24/Nov/2024

Date of Redemption–23/May/2028

Life of bonds = 42 months

Deduction per month = 21,00,000 ÷ 42 mnths = ₹50,000

Dedn in **PY 24-25 = 50,000 x 4m = 2 lakhs** [Dec/Jan/Feb/ Mar]

Dedn in PY 25-26 = 50,000 x 12m = 6 lakhs

Dedn in PY 26-27 = 50,000 x 12m = 6 lakhs

Dedn in PY 27-28 = 50,000 x 12m = 6 lakhs

Dedn in PY 28-29 = 50,000 x 2m = 1 lakh [Apr/May]

12. In case of **Banks/FI**, where deduction is allowed for RDD, **actual Bad debts** will be allowed **only to the extent it exceeds** balance in **RDD A/c**.

Example:

RDD balance = ₹7 lakhs, Actual Bad Debts = ₹10 Lakhs,

Excess ₹3 lakhs will be allowed as deduction for bad debts.

13. **Tax on Non-Monetary Perquisites** [provided to employee] paid by employer is **disallowed**. (because this benefit is exempt to employee u/s 10(10CC)).

14. Expense on making **GARDENS AND LAWNS** in factory compound – It does not increase the business; it maintains the business - Revenue expenditure [**ALLOWED** u/s 37(1)].

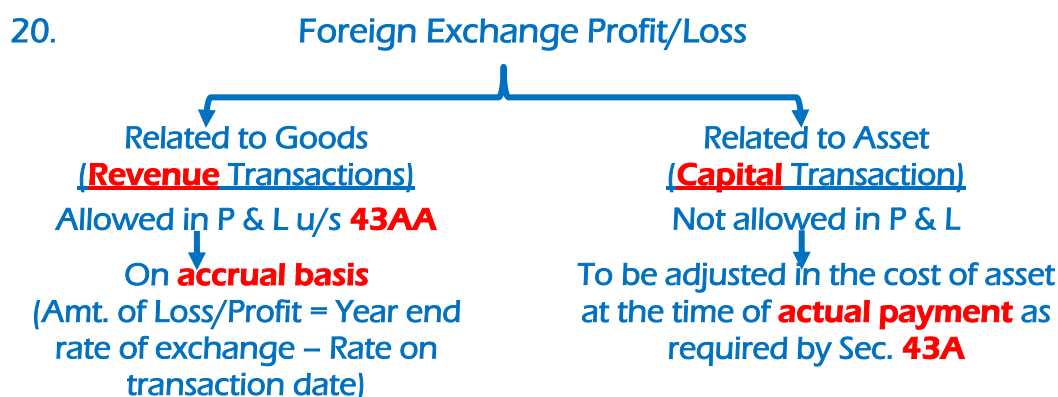
15. **DEVELOPMENT CHARGES** paid on a **land purchased** – its related to purchase of asset – capital expenditure - **DISALLOWED** – add to cost of land.

16. Amount paid for obtaining **EXPERT OPINION** for purchase or construction of new asset - **DISALLOWED** (Add to cost of asset).

17. Interest on loan from PFI/SFC/SIIC/SB/NBFC is allowed if **paid** upto the due date of filing the return as required by **Sec. 43B**. When outstanding interest is **converted into a new loan**, such conversion is **not treated as payment** of interest. However, when such loan is repaid, it is treated as payment of interest.

18. Travelling expenses for **new line of business**:  
New line of business means new project and expenses before commencement of new project are preliminary. However, travelling expenses is not covered u/s 35D (Not there in the list of PFME DRSO). Hence, **not allowed** u/s 35D. Even u/s 37(1), it is not allowed because it is **not revenue** in nature [only if travelling expense is during the course of business then it is revenue in nature].

19. Any **contribution** for employee to **non-statutory fund** [not required by any law] like employee welfare fund is **disallowed u/s 40A(9)**.



21. Loss on **non-realisation of advances** is bad-debts related to loans. Hence, **not allowed**.

22. Expenses on **bonus issue** shall be **allowed** u/s **37(1)**. Bonus issue does not increase the capital structure of the company. It **maintains** the capital structure of company, and any expense which simply maintains the business is **revenue** in nature.

If the expenses are on **fresh/rights issue** and if the issue is for the **new project** then deduction can be claimed u/s **35D** (PFME DRSO) Otherwise, fresh/rights issue expenses are **disallowed**.

## ASSESSMENT OF PARTNERSHIP FIRMS

While computing business Income of Partnership firm, deduction for **remuneration** and **interest** shall be allowed subject to following **conditions** and **limits**:

### CONDITIONS:

→ **As per Sec. 184:**

1. The Firm should be evidenced by an **INSTRUMENT** (Partnership Deed).
2. **PROFIT SHARING RATIO** should be specified in such instrument.
3. A certified copy of such instrument should be **FILED** along with the first return of Income and whenever there is change in constitution of the firm, a revised copy of such instrument should be filed.
4. The firm should **not** make any **DEFAULT u/s 144**.

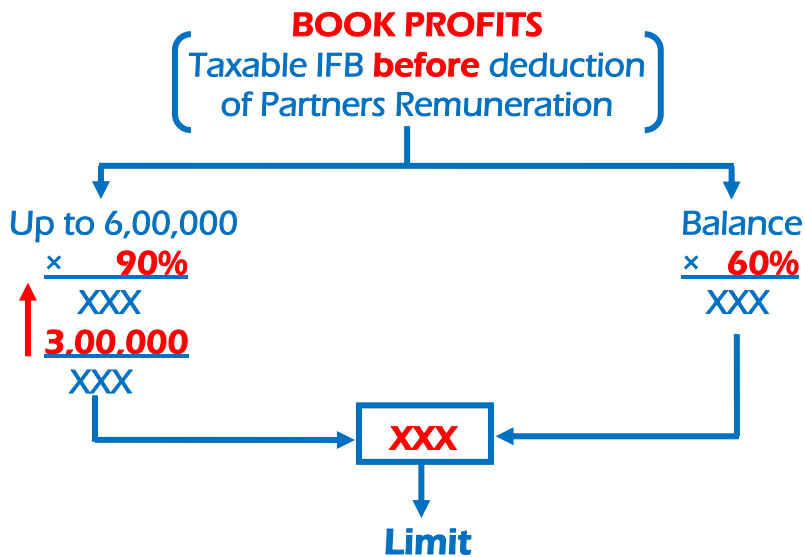
→ **As per Sec. 40(b):**

5. Remuneration and interest should be **AUTHORISED** and **QUANTIFIED** by the Partnership Deed. (either the exact amt. of interest/remuneration should be mentioned in the deed or method of calculating such amount should be mentioned in the deed)
6. Remuneration should be paid to **WORKING PARTNER**.

**LIMIT u/s 40(b):**

→ **For INTEREST TO PARTNERS:**  
(on Partners' Capital or Partners' Loan):  
**Max. 12% p.a.**

→ **For REMUNERATION TO PARTNERS:**  
(Salary, Commission, Bonus etc. to working partners)



**Amount of deduction:**

1. Actual Remuneration to working Partners
2. Limit u/s 40(b) as calculated above

**Question on P.Firm:**

**Profit & Loss A/c (of P. Firm)**

|                        |           |                     |           |
|------------------------|-----------|---------------------|-----------|
| To Salary to Staff     | 4,00,000  | By GP.              | 9,50,000  |
| To Advt.               | 2,00,000  | By B.Debts Recovery | 50,000    |
| To RDD                 | 52,000    | By Interest Income  | 5,00,000  |
| To Int on P.Cap @ 18%  | 18,000    |                     |           |
| To Salary to Partners: |           |                     |           |
| X (Working)            | 3,00,000  |                     |           |
| Y (Working)            | 2,00,000  |                     |           |
| Z (Sleeping)           | 1,00,000  |                     |           |
| To N.P.                | 2,30,000  |                     |           |
|                        | 15,00,000 |                     | 15,00,000 |

Compute taxable income from business of:

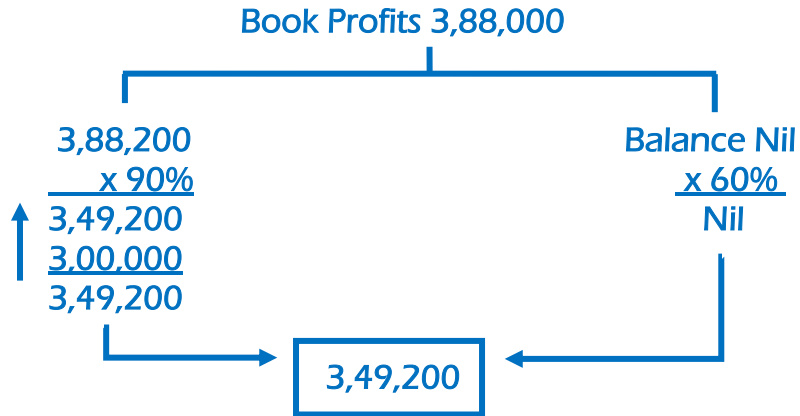
- ⇒ Partnership Firm and
- ⇒ Partners

**Solution:**

**STATEMENT OF INCOME FROM BUSINESS (of P..Firm)**

|                                              | Amt.     | Amt.              |
|----------------------------------------------|----------|-------------------|
| N.P. as per P/L                              |          | 2,30,000          |
| <b>Add: DISALLOWED EXPENSES:</b>             |          |                   |
| RDD                                          | 52,000   |                   |
| Interest on P. Cap (6%)                      | 6,000    |                   |
| Salary (3L+2L+1L)                            | 6,00,000 | 6,58,000          |
|                                              |          | 8,88,000          |
| <b>Less: NON-BUSINESS INCOMES:</b>           |          |                   |
| Int Income                                   | 5,00,000 | (5,00,000)        |
|                                              |          | 3,88,000          |
| <b>Less: U B E:</b>                          |          | NIL               |
| <b>Add: U B I:</b>                           |          | NIL               |
| <b>BOOK PROFITS</b>                          |          | <b>3,88,000</b>   |
| <b>Less: Dedn for partners' remuneration</b> |          | <b>(3,49,200)</b> |
| ↓ 1) Actual Remuneration to WP               | 5,00,000 |                   |
| ↓ 2) Limit u/s 40(b) (Note.1)                | 3,49,200 |                   |
| <b>TAXABLE INCOME FROM BUSINESS</b>          |          | <b>38,800</b>     |

**Note 1: Limit u/s 40 (b):**



**STATEMENT OF INCOME FROM BUSINESS (of Partners)**

|                                                                                                                      | X               | Y               | Z            |
|----------------------------------------------------------------------------------------------------------------------|-----------------|-----------------|--------------|
| <b><u>GROSS BUSINESS INCOME:</u></b>                                                                                 |                 |                 |              |
| → Remuneration from P. Firm<br>( <b>to the extent allowed</b> to the Firm)<br>[3,49,200 in remuneration ratio 3 : 2] | 2,09,520        | 1,39,680        | -            |
| → Interest from P. Firm<br>( <b>to the extent allowed</b> to the Firm)<br>[12,000 in cap. ratio assuming equal]      | 4,000           | 4,000           | 4,000        |
| → Share in Profit<br>[ <b>Exempt u/s 10 (2A)</b> ]                                                                   | -               | -               | -            |
| <b><u>Less: DEDUCTION u/s 30 to 37</u></b>                                                                           | -               | -               | -            |
| <b>Taxable Income from business</b>                                                                                  | <b>2,13,520</b> | <b>1,43,680</b> | <b>4,000</b> |

## REPRESENTATIVE PARTNER

A partnership firm can have an artificial entity as partner [like HUF, Company etc.]. Since an artificial entity cannot participate physically or mentally, it will usually appoint a natural person [some individual like karta in case of HUF or director in case of a company] to represent itself. Interest and remuneration paid to such representative is allowed as follows:

→ **Remuneration to Representative Partner:**

Remuneration to Representative Partner is allowed subject to **limit u/s 40(b)** because the representative partner is putting efforts **on behalf** of the actual partner [his efforts are not in his independent capacity]

→ **Interest to Representative Partner:**

Interest to Representative partner is **fully allowed** and is not subject to limit u/s 40(b) because interest is on loan and loan is given by the representative in his **independent capacity**.

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COMPUTATION OF TAX LIABILITY

STATEMENT OF TOTAL INCOME

Income from Salaries	XXX
Income from House Property	XXX
Income from Business	XXX
Capital Gains	XXX
Income from Other Sources	XXX
GROSS TOTAL INCOME	XXX
<u>Less: Deductions under chapter VI A</u>	- XX
NET TAXABLE INCOME (N.T.I.)	XXX

STATEMENT OF TAX

	STCG u/s 111A	LTCG u/s 112A	LTCG	Winning	Balance NTI
N.T.I.	XXX	XXX	XXX	XXX	XXX
Tax on above	XXX	XXX	XXX	XXX	XXX
	15%	10%	20%	30%	Note 1
	20%*	12.5%*	12.5%*		
	*If on/after 23/7/2024				
Tax on Above			XXX		
<u>Less: Rebate u/s 87A</u>			- XX		
<u>Add: Surcharge</u>			XXX		
			+XX		
<u>Add: HEC @4%</u>			XXX		
			+XX		
Tax Liability			XXX		

NOTE 1: TAX ON BALANCE N.T.I.

→ For Individuals / HUF – Slab Rates

As per old regime:

Balance NTI	Rates
Up to ₹ 2,50,000	0%
> 2,50,000 up to ₹ 5,00,000	5%
> 5,00,000 up to ₹ 10,00,000	20%
> ₹ 10,00,000	30%

Senior Citizen

Resident **60 yrs.** & above

Balance NTI	Rate
Up to ₹ 3 Lakhs	0%
> 3 L up to ₹ 5 L	5%
> 5 L up to ₹ 10 L	20%
> ₹ 10 Lakhs	30%

Very Senior Citizen

Resident **80 yrs.** & above

Balance NTI	Rate
Up to ₹ 5 Lakhs	0%
> 5 L up to ₹ 10 L	20%
> ₹ 10 Lakhs	30%

As per new tax regime:

Discussed separately in the topic of Concessional Tax Regime

→ For P Firms / LLP – **30%**

→ For Indian Companies – **30%***

→ For Foreign Companies – **35%**

→ For Co-op Sty

- First 10,000 - 10%
- Next 10,000 - 20%
- Balance - 30%

* Indian companies having **total turnover** or gross receipts **up to Rs. 400 crores** in **PY 2022-23** shall be taxable @**25%**

NOTE 2: REBATE U/S 87A:

In case of **Resident individuals** whose **N T I** is up to ₹ **5,00,000**, rebate of maximum ₹ **12,500** shall be allowed.

NOTE 3: SURCHARGE:

→ **For Individuals / HUF [Assessee subject to slab rates]**

- 10% of tax if NTI exceeds ₹ 50 lakhs
- 15% of tax if NTI exceeds ₹ 1 cr.
- 25% of tax if NTI exceeds ₹ 2 cr.
- 37% of tax if NTI exceeds ₹ 5 cr.



→ **For Indian Company/Co-operative societies:**

7% of tax if NTI > ₹ 1 crore and 12% of tax if NTI > ₹ 10 crores.

→ **For Foreign Company**

2% of tax if NTI > ₹ 1 crore and 5% of tax if NTI > ₹ 10 crores.



→ **For Partnership Firms/LLP:**

12% of tax if NTI exceeds ₹ 1 crore.



NOTE 4: MARGINAL RELIEF

An assessee who is liable to pay surcharge is entitled to marginal relief as follows:

	Amt.
Extra Tax	xxx
<u>Less:</u> Extra Income	- xx
Marginal Relief	xxx

If the above answer is negative then there will be no marginal relief.

Example:

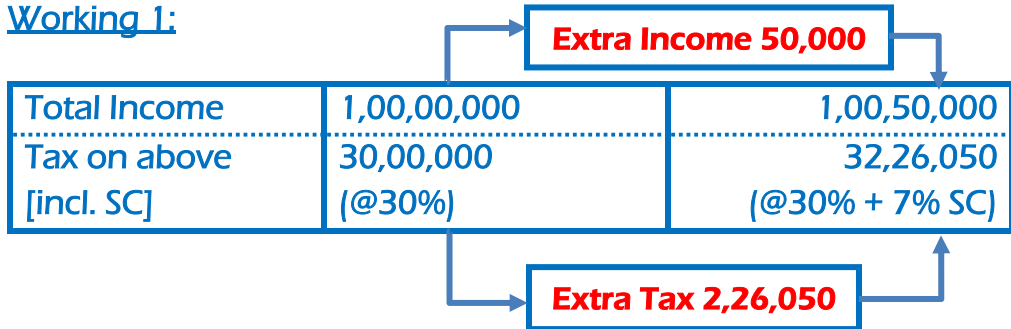
Compute the **tax liability** of X Ltd. on N.T.I. of ₹1,00,50,000 [assuming turnover in PY 22-23 is upto ₹ 400 crores].

Answer:

STATEMENT OF TAX

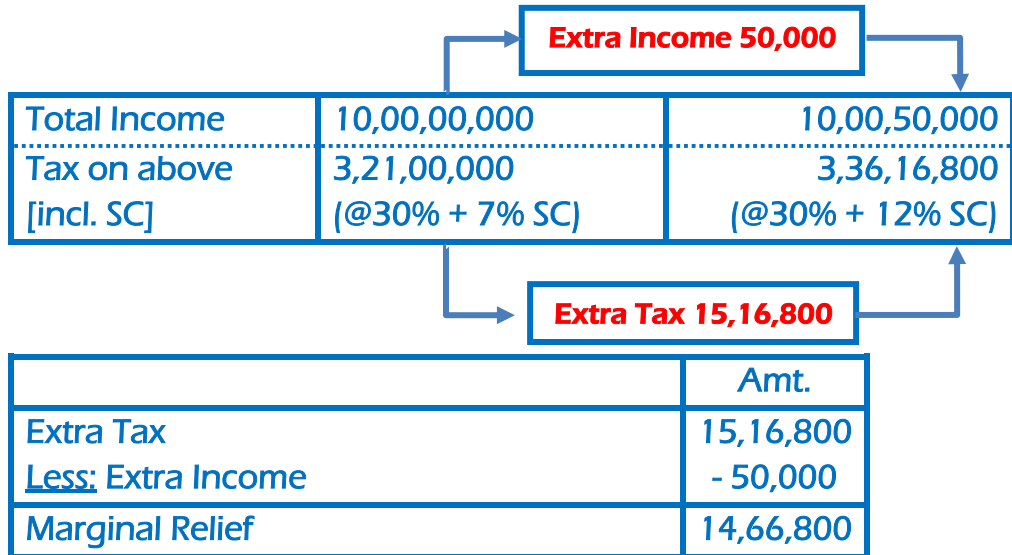
	STCG u/s111A	LTCG	Win...	Balance
Net Taxable Income	NIL	NIL	NIL	1,00,50,000
Tax on above	NIL	NIL	NIL	30,15,000
Add: Surcharge @ 7%				+ 2,11,050
				32,26,050
Less: Marginal Relief [Working 1]				- 1,76,050
Add: HEC @ 4%				30,50,000 + 1,22,000
Tax Liability				31,72,000

Working 1:



	Amt.
Extra Tax	2,26,050
<u>Less:</u> Extra Income	- 50,000
Marginal Relief	1,76,050

Example on income exceeding 10 crores:



Explanation:

In this example, the income of company has increased by ₹50,000 but the tax has increased by ₹ 15,16,800. This situation is not acceptable because for additional income of 50,000, no one would like to pay additional tax of 15,16,800 [at the most, one can pay additional tax of ₹50,000; hence, the difference i.e. 15,16,800 - 50,000 i.e. 14,66,800 shall be exempted in the form of marginal relief].

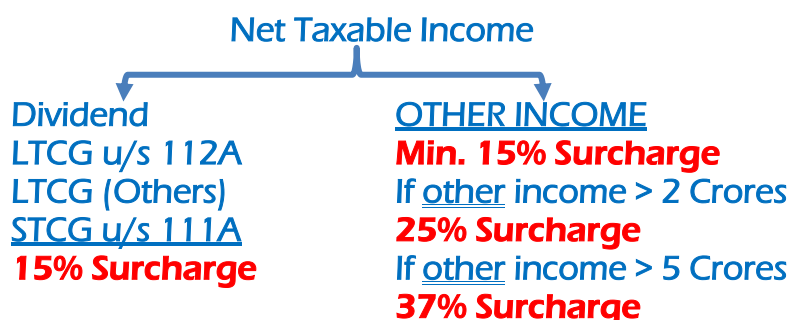
NOTE 5:

25% / 37% Surcharge NOT APPLICABLE in certain cases:

25% / 37% surcharge is not applicable in case of **DL₂S**:

- Dividend
- LTCG u/s 112A
- LTCG (Others)
- STCG u/s 111A

In case of Individual / HUF, if NTI (Net Taxable Income) **exceeds 2 crores** then surcharge is calculated as follows:



Example:

	NTI up to 2 crores				NTI more than 2 crores					
D L ₂ S	90L		90L		90L	15%	90L	15%	90L	15%
Other Income	5L		90L		120L	15%	300L	25%	600L	37%
NTI	95L	10%	180L	15%	210L		390L		690L	

NOTE 6: UNEXHAUSTED BASIC EXEMPTION

In case of Individuals / HUF, if the **Balance NTI is less than Basic Exemption Limit** (2,50,000 / 3,00,000 / 5,00,000) then, the **unexhausted Basic Exemption** can be utilized against:

- LTCG (Others)
- STCG u/s 111A
- LTCG u/s 112A

Not Against Winnings

This benefit of Unexhausted Basic Ex. is **ONLY FOR RESIDENTS**.

Example: Compute the tax liability of Mr. X

1) Income from HP	1,00,000
2) STCG (Sale of Land in June 24)	20,000
3) LTCG (Sale of Gold in June 24)	1,00,000
4) STCG (Sale of Eq. Sh. in June 24)	3,80,000
5) Winnings	1,00,000

Answer: STATEMENT OF TOTAL INCOME

IFHP	1,00,000
CG	
⇒ STCG u/s 111A	3,80,000
⇒ STCG [Sale of Land]	20,000
⇒ LTCG [Sale of Gold]	1,00,000
IFOS [Winnings]	<u>1,00,000</u>
Gross Total Income	7,00,000
<u>Less: Dedn u/c VIA</u>	<u>—</u>
Net Taxable Income	<u>7,00,000</u>

STATEMENT OF TAX

	STCG u/s 111A	LTCG u/s 112A	LTCG (Others)	Winnin gs	Balance
Net Taxable Income	3.80 L	Nil	1 L	1 L	1,20,000
Tax on above (Unexhausted Ex. = 2.5 L – 1.2 L = 1.3 L)	52,500 (3.80 L – 30,000) x 15%	Nil	Nil (1 L – 1 L) x 20%	30,000 (1 L x 30%)	Nil (Slab Rates)
<u>Less: Rebate u/s 87A</u> <u>Add: Surcharge</u> <u>Add: HEC @4%</u>			82,500 Nil Nil + 3,300		
Tax Payable			85,800		

NOTE 7: PARTIAL INTEGRATION OF AGRICULTURAL INCOME:

If an assessee has Agricultural Income in India and if all the following conditions are satisfied, then Tax is calculated in special way:

→ Conditions:

- 1) The assessee should be **Individual / HUF**.
- 2) The Balance NTI should be **more than basic exemption**.
- 3) Net Agricultural Income should be **more than ₹ 5,000**.

If all the above conditions are satisfied then tax is calculated as follows:

Tax on (Balance NTI + Net Agricultural Income)	xxx
<u>Less:</u> Tax on (Basic Exemption + Net Agricultural Income)	xxx
Tax payable	xxx

Example:

From following details, compute tax liability of Mr. X

- 1) STCG 9,00,000
- 2) Agricultural Income 2,20,000 (Expenses = 20,000)

Income from Salaries	Nil
Income from HP	Nil
Income from Business	Nil
Capital Gains	
→ STCG	9,00,000
IFOS	
→ Agricultural Income	Nil
[Exempt u/s 10(1)]	
GTI/NTI	9,00,000

Solution:

STATEMENT OF TAX

	STCG u/s 111A	LTCG u/s 112A	LTCG	Winning	Balance NTI
NET TAXABLE INCOME	NIL	NIL	NIL	NIL	9,00,000
Tax on above	NIL	NIL	NIL	NIL	1,32,500 [Note 1]
Tax on Above <u>Less:</u> Rebate u/s 87A			1,32,500 NIL		
<u>Add:</u> Surcharge			1,32,500 NIL		
<u>Add:</u> HEC @ 4%			1,32,500 +41,300		
Tax Liability			1,73,800		

Note 1: Tax on Balance NTI (Scheme of Partial Integration)

Tax on (Balance NTI + Net Agricultural Income) Tax on (9,00,000 + 2,00,000)	1,42,500
<u>Less:</u> Tax on (Basic Exemption + Net Agricultural Income) Tax on (2,50,000 + 2,00,000)	10,000
Tax payable	1,32,500

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## ASSESSMENT OF COMPANIES

Companies are entitled to **various tax benefits** like deduction u/s 80IA to 80IE, section 10AA, section 35AD etc. Due to this, the **tax liability** of a company **reduces** to a nominal amount. On the other hand, the companies show **huge profits** in the **books** of accounts and inspite of companies making huge profits, their tax liability is very less. As a result, the shareholders are impressed but Government is depressed. Hence, every company is required to pay a **minimum amount** of tax as per **section 115JB**. This is known as Minimum Alternate Tax (MAT). Accordingly, tax liability of a company is calculated as follows:

- ↑ 1. Normal Tax (as per general provisions of Income Tax)
  - ↑ 2. Minimum Alternate Tax (MAT)\*
- Whichever is higher

### **\*MINIMUM ALTERNATE TAX (MAT):**

|                                                                                                                                          |            |
|------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <b>15% of Book Profits</b>                                                                                                               | XXX        |
| <u>Add: Surcharge:</u><br>7% / 2% on above amount (if book profits > 1 crores)<br>12% / 5% on above amount (if book profits > 10 crores) | +XX        |
| <u>Add: Health &amp; Education Cess @ 4%</u>                                                                                             | +XX        |
| <b>Minimum Alternate Tax</b>                                                                                                             | <b>XXX</b> |

| NORMAL TAX                  | MAT                                |
|-----------------------------|------------------------------------|
| Head wise Computation       | No head wise                       |
| Chapter VIA dedn – Allowed  | Chapter VIA dedn – Not allowed     |
| As per Taxation principles  | As per Accountancy principles      |
| Multiple tax rates          | Single Tax rate (15%)              |
| Surcharge linked with N.T.I | Surcharge linked with Book Profits |

**BOOK PROFITS**

Profit & Loss A/c

|                                             | Amt.       |                                 | Amt.       |
|---------------------------------------------|------------|---------------------------------|------------|
| <b>To P<sub>3</sub> R I D<sub>3</sub> E</b> | <b>XXX</b> | <b>By D P R<sub>2</sub> E S</b> | <b>XXX</b> |
| To Net Profit                               | XXX        |                                 |            |
|                                             | XXX        |                                 | XXX        |

|                                                  | Amt. | Amt.        |
|--------------------------------------------------|------|-------------|
| NP as per P&L A/c ( <b>Note 1</b> )              |      | XXX         |
| <b>Add: P<sub>3</sub> R I D<sub>3</sub> E</b>    |      | <b>+ XX</b> |
|                                                  |      | XXX         |
| <b>Less: D P R<sub>2</sub> E S</b>               |      | <b>- XX</b> |
|                                                  |      | XXX         |
| <b>Less: B/f Business Loss</b> (as per accounts) | XXX  |             |
| <b>Unabsorbed Depn</b> (as per accounts)         | XXX  |             |
| <b>Whichever is less</b>                         |      | <b>- XX</b> |
| <b>BOOK PROFITS</b>                              |      | <b>XXX</b>  |

**Add: P<sub>3</sub> R I D<sub>3</sub> E**

- P<sub>1</sub>** **Provision for unascertained liabilities** – ad hoc provisions  
E.g. Provision for Gratuity/Leave salary/Contingencies etc.  
**Note:** **Ad-hoc** provisions are **disallowed** but if provision for gratuity or leave salary is calculated scientifically as per **actuarial valuation** then it is **allowed**
- P<sub>2</sub>** **Provision for diminution in assets** – ad hoc provisions  
E.g. RDD, RFDD, Provision for Impairment of assets etc.
- P<sub>3</sub>** **Provision for loss of subsidiary company**  
[Even Actual loss is disallowed]
- R** **Transfer to reserves**
- I** **Income tax and Interest on Income tax**
- D<sub>1</sub>** **Deferred Tax**
- D<sub>2</sub>** **Dividend & Dividend Distribution Tax**
- D<sub>3</sub>** **Depreciation on Revaluation**
- E** **Exps related to incomes Exempt u/s 10/11/12**  
[Except Sec.10AA]

**Less: D P R<sub>2</sub> E S**

- D** **Deferred Tax**
- P** **Amt. withdrawn from Provisions**
- R<sub>1</sub>** **Amt. withdrawn from Revaluation Reserve**  
(to the extent of depn on revaluation) – (**Note 3**)
- R<sub>2</sub>** **Amt. withdrawn from Other Reserves**  
(if created from P & L a/c) – (**Note 2**)
- E** **Income Exempt u/s 10/11/12** [Except Sec 10AA]
- S** **Profit of Sick Industrial Unit** [during the period of sickness]

**Note 1:** NET PROFIT AS PER P & L A/C:

Net Profit should be computed as per P&L A/c prepared in accordance with **Schedule III** of Companies Act, 2013. Once Net Profit is computed as per schedule III, **no adjustments** should be done **other than P<sub>3</sub>R I D<sub>3</sub>E** and **D P R<sub>2</sub>E S**.

**Note 2:** AMOUNT WITHDRAWN FROM "OTHER RESERVES":

Amt. withdrawn from **Other Reserves** should be **deducted only if** it was **created from P&L A/c**. This means, if the such reserve was not created from P&L A/c then it should not be deducted.

**Note 3: AMT WITHDRAWN FROM "REVALUATION RESERVE":**

**Normally** amount withdrawn from revaluation reserve **should not be deducted** in DPR<sub>2</sub>ES.

| P & L A/c |     |                |                              |
|-----------|-----|----------------|------------------------------|
| To NP     | 100 | By W/d from RR | 100<br><b>[Don't deduct]</b> |

|                                 | Rs. |
|---------------------------------|-----|
| NP as per P&L A/c               | 100 |
| <u>Less: DPR<sub>2</sub>ES:</u> | —   |
| Book Profits                    | 100 |

**However** if there is depn on revaluation on debit side of P & L A/c then amt withdrawn from revaluation reserve should be **deducted to the extent of depn on revaluation.**

| P & L A/c      |    |                |                    |
|----------------|----|----------------|--------------------|
| To Depn on Rev | 10 | By W/d from RR | 100                |
| To NP          | 90 |                | <b>[Deduct 10]</b> |

|                                                                    | Rs.         |
|--------------------------------------------------------------------|-------------|
| NP as per P&L A/c                                                  | 90          |
| <b>Add: P<sub>3</sub>RID<sub>3</sub>E:</b><br><b>Depn on Rev..</b> | <b>+ 10</b> |
| <u>Less: DPR<sub>2</sub>ES:</u><br><b>W/d from RR</b>              | <b>- 10</b> |
| Book Profits                                                       | 90          |

The above treatment is in MAT. However, in **normal tax**, anything related to revaluation should be marked as ⊗ because revaluation is just a book entry [neither an income nor expense]

**Sec. 115JAA**

**MAT CREDIT:**

1. Tax liability of company is either Normal Tax or MAT (whichever is higher)
2. The year in which **MAT** is **higher**, the **excess tax** paid over and above the normal tax is treated as **MAT credit**.
3. MAT credit can be **utilized** in the year in which **normal tax** is **high** (to the extent Normal Tax exceeds MAT)
4. MAT credit can be carried forward for **15** consecutive **years** immediately following the year in which the credit arises.
5. MAT credit is adjustable but **not refundable**.
6. MAT credit **does not carry interest**.

**MAT (High) → Credit Arises**  
**N. Tax (High) → Credit is Utilized**

Eg:

|                   | Year 1 | Year 2 | Year 3 | Year 4 |
|-------------------|--------|--------|--------|--------|
| ↑ Normal Tax      | 100    | 400    | 740    | 900    |
| MAT               | 130    | 450    | 700    | 600    |
| whichever is high | 130    | 450    | 740    | 900    |
| MAT Credit        | 30     | 50     | (40)   | (40)   |
|                   |        |        | 700    | 860    |

~~~~~

ADDITIONAL POINTS IN MAT:

In addition to DPR₂ ES, following items are also deducted in **BOOK PROFITS**:

Net Profit

Add: P₃ RI D₃ E

Less: DPR₂ ES

Less: Royalty income of **Indian Company** taxable @ 10% u/s **115BBF** [Related Expenses – Add Back]

Less: Chapter XII income of **Foreign Company** taxable at a rate **below 15%** like Interest from IDF (5%); R/FTS (10%); LTCG u/s 112A (10%) etc. [Related Expenses – Add Back]

Less: Share in AOP [Related Expenses – Add Back]

Normally, while computing book profits for the purpose of MAT, we deduct B/f Business loss or UAD [whichever is less].

However, in case of following companies, we can deduct **B/f Business loss as well as UAD** [both the amounts can be deducted]:

- 1) Company which is under **corporate insolvency resolution process**
- 2) Company [and its subsidiary and the subsidiary of such subsidiary] whose board of **directors** are **suspended** by NCLT and **new directors** are **appointed** by NCLT [because member of such company has complained **u/s 241** of Companies Act, 2013 about its affairs being conducted in a manner prejudicial to public interest.

MAT FOR Ind AS COMPLIANT COMPANIES:

In case of Ind AS complaint companies, following **additional adjustments** should be done in the book profits:

	Amt.	Amt.
NP as per P&L A/c		XXX
<u>Add:</u> P ₃ R I D ₃ E		+ XX
		XXX
<u>Less:</u> D P R ₂ E S		- XX
		XXX
<u>Less:</u> B/f Business Loss (as per accounts)	XXX	
Unabsorbed Depn (as per accounts)	XXX	
Whichever is less		- XX
BOOK PROFITS [Before IndAS Adjustments]		XXX
<u>Add:</u> Items credited to OCI* [which will not be reclassified to P & L A/c] except Revaluation surplus on Fixed Assets/Equity Instruments		- XX
<u>Less:</u> Items debited to OCI* [which will not be reclassified to P & L A/c] except Revaluation loss on Fixed Assets/Equity Instruments		- XX
<u>Add:</u> 1/5 th of Transition amount calculated on adoption of IndAS for the first time [If the transition amount has debit balance then deduct 1/5 th]		+ XX
BOOK PROFITS [After IndAS Adjustments]		XXX

Note: The addition/deduction of **1/5th of Transition amount** should be done for the **first 5 years** starting from the year in which company adopts IndAS for the first time. However, following amounts should be **excluded** from the transition amount:

- Capital Reserve,
- Securities Premium reserve, and
- Revaluation surplus on FA/Equity Instruments]
- OCI items which will be reclassified to P & L A/c
- Cumulative Translation difference of a foreign operation.

***OCI = Other Comprehensive Income**

~~~~~

# ALTERNATE MINIMUM TAX

AMT is similar to MAT. MAT is applicable to companies whereas AMT is applicable to **all the assessees (other than companies)**.

Alternate Minimum Tax is for those assessees claiming deduction under:  
 Sec. 80IA to 80RRB [except 80P],  
 Sec. 10AA and  
 Sec. 35AD

Due to benefits under these sections, tax liability of such assessees reduces to a nominal amount. Hence, **section 115JC** requires such assessees to pay a minimum amount of tax. This is known as Alternate Minimum Tax (AMT). Accordingly, tax liability of such assessees is computed as follows:

- (i) Normal Tax as per general provisions of Income Tax
  - (ii) Alternate Minimum Tax\* (AMT)
- Whichever is higher

## **\*Alternate Minimum Tax:**

|                                                         | Rs. |
|---------------------------------------------------------|-----|
| 18.5% / 15%# of <b>Adjusted Total Income [ATI]</b>      | xxx |
| <u>Add:</u> Surcharge [if ATI exceeds 50 lakhs/1 crore] | xxx |
| <u>Add:</u> HEC @ 4%                                    | xxx |
| Alternate Minimum Tax (AMT)                             | xxx |

# 15%, in case of Co-op. Societies

## **Adjusted Total Income:**

|                                                                  | Rs. |
|------------------------------------------------------------------|-----|
| Net Taxable Income                                               | xxx |
| <u>Add:</u> Deduction u/s 80IA to 80RRB [except 80P]             | xxx |
| <u>Add:</u> Deduction u/s 10AA                                   | xxx |
| <u>Add:</u> Deduction u/s 35AD                                   | xxx |
| <u>Less:</u> Depn. on Assets (on which dedn u/s 35AD is claimed) | xxx |
| Adjusted Total Income                                            | xxx |

### **Note 1:**

In case of Individual and HUF, AMT is **not payable** if Adjusted Total Income **does not exceed 20 lakhs**.

### **Note 2:**

Provisions of **AMT credit** u/s 115JD are **same as** provisions of **MAT credit** u/s 115JAA.

~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~ ~

## INCOME COMPUTATION & DISCLOSURE STANDARDS

Following ICDS are applicable for:

- All the assesseees [**other than Non-Tax Audit Ind / HUF**]
- Having **Income from business** or **IFOS**
- Following **mercantile** system of accounting:

|           |                                                                  |
|-----------|------------------------------------------------------------------|
| ICDS I    | <b>A</b> ccounting policies                                      |
| ICDS II   | Valuation of <b>I</b> nventories                                 |
| ICDS III  | <b>C</b> onstruction contracts                                   |
| ICDS IV   | <b>R</b> evueue recognition                                      |
| ICDS V    | <b>T</b> angible fixed assets                                    |
| ICDS VI   | Effect of changes in <b>F</b> oreign exchange rates              |
| ICDS VII  | <b>G</b> overnment grants                                        |
| ICDS VIII | <b>S</b> ecurities                                               |
| ICDS IX   | <b>B</b> orrowing costs                                          |
| ICDS X    | Provisions, <b>C</b> ontingent liabilities and contingent assets |

### ICDS II: INVENTORIES

This ICDS requires inventory to be valued at **Cost or NRV [whichever is less]**

Note: As per section 36(1)(xviii), MTM loss or other expected loss shall be **allowed as deduction as per ICDS**. Section 40A(13) expressly disallows MTM loss or expected losses other than that allowed u/s 36(1).

### ICDS III: CONSTRUCTION CONTRACTS

Contract revenue and contract costs associated with a construction contract should be recognized by **Percentage of Completion Method [POCM]**. Percentage of completion can be determined with reference to:

- Survey of work performed; or
- Completion of physical proportion of contract work; or
- Contract costs incurred for work performed up to the end of the year divided by total estimated contract costs

Eg:

Contract price [including retention money] Rs.50 lakhs

Contract costs incurred till date Rs. 16 lakhs

Estimated cost yet to be incurred Rs. 24 lakhs

% of completion – 16 lakhs/40 lakhs = 40%

Contract Revenue to be recognized [50 L x 40%] Rs. 20 lakhs

Less: Contract costs till date Rs. 16 lakhs

Income to be recognized in the current year Rs. 4 lakhs

Note: If the percentage of completion is **up to 25%** then contract revenue is **recognized only** to the **extent of contract costs** incurred i.e. no profit to be recognized in early stage of a contract.

Note: As per **section 43CB**, Profit arising from construction contract shall be **computed in accordance with ICDS III**.

### ICDS IV: REVENUE RECOGNITION

- 1) Revenue from **sale of goods** should be recognized when there is **reasonable certainty** of its ultimate collection.
- 2) Revenue from **service transactions** should be recognized by **Percentage of Completion Method** [POCM]. However, when services are provided by **indeterminate** number of acts over a **specific period** of time, revenue is recognized on a **straight-line basis** over the specific period.  
Revenue from service contracts with a **duration of max. 90 days** should be recognized when the **service is completed** or substantially completed.  
Note: As per **section 43CB**, Profit arising from service contract shall be **computed in accordance with ICDS IV**.
- 3) **Interest income** should be recognized on **accrual** or time basis. However, **interest on refund of any tax or duty** should be recognized on **receipt basis**.
- 4) **Royalties** should be recognized as per the **terms of the agreement** [it can be a fixed amount per year or depending upon the number of units sold etc.]
- 5) **Dividend** should be recognized as per **Income Tax Act, 1961** [i.e. final dividend is recognized in the year of declaration and interim dividend is recognized in the year of receipt].

### ICDS VI: EFFECT OF FOREIGN EXCHANGE FLUCTUATION

As per **section 43A**, exchange difference on **liability** in relation to a **capital asset** should be **added or deducted from the cost** of such asset at the time of **actual payment** of such liability.

Exchange difference in **all other cases** is dealt by ICDS VI and backed by **section 43AA** (Recognized as income or expense on **accrual basis** – based on year end exchange rate].

### ICDS VII: GOVERNMENT GRANTS

As per **ICDS VII**, Subsidy/grant from govt. [other than for purchase of asset] is **taxable** in the:

- i) Year of **Receipt** or
- ii) Year of **reasonable assurance** of the **fulfillment** of prescribed **conditions** whichever is **earlier**

However, as per section 145B, subsidy/grant from Govt. [other than for purchase of asset] is **taxable** in the year of receipt.

As per section 145B,

- **Interest** on initial/enhanced **compensation** is taxable in the **year of receipt**.
- Any **claim for escalation** of price in contract or **export incentives** shall be taxable in the year in which **reasonable certainty** of its realization is achieved.
- Any **subsidy**, grant, assistance etc received from Government [other than that for purchase of asset] shall taxable in the **year of receipt** [if not taxed earlier].

**Note:** If the provisions of Income-tax law contradict with the provisions of I.C.D.S then the provisions of Income-tax law shall prevail.

**ICDS VIII: SECURITIES**

If a debt security is acquired at **cum-interest price** [i.e. interest accrued up to the date of acquisition is included in price] then the subsequent receipt of interest should be allocated between pre-acquisition and post-acquisition period. The **pre-acquisition** interest should be **deducted from the cost** of such security and post-acquisition interest is treated as income.

At the end of the PY, securities held as stock-in-trade is **categorized** in to:

- Shares;
- Debt securities;
- Convertible securities; and
- Other securities

**Each category** shall be valued at **Cost or NRV [whichever is less]**.

Note: As per section **36(1)(xviii)**, MTM loss or other expected loss shall be **allowed as deduction as per ICDS**. Section 40A(13) expressly disallows MTM loss or expected losses other than that allowed u/s 36(1).

### ICDS IX: BORROWING COST

This ICDS deals with treatment of interest on borrowing for qualifying asset [i.e. **Fixed assets** and **inventories that require a period of 12 months or more** to bring them to a saleable condition].

If loan is taken specifically for purchase or construction of fixed asset then interest **up to the date** when fixed asset is **put to use** should be **capitalized**

If loan is taken specifically for production of **inventories** then interest **up to the date when inventories become saleable** should be **added to the cost of production of inventories**.

### ICDS X: PROVISIONS, CONT.. LIABILITIES & CONT.. ASSETS

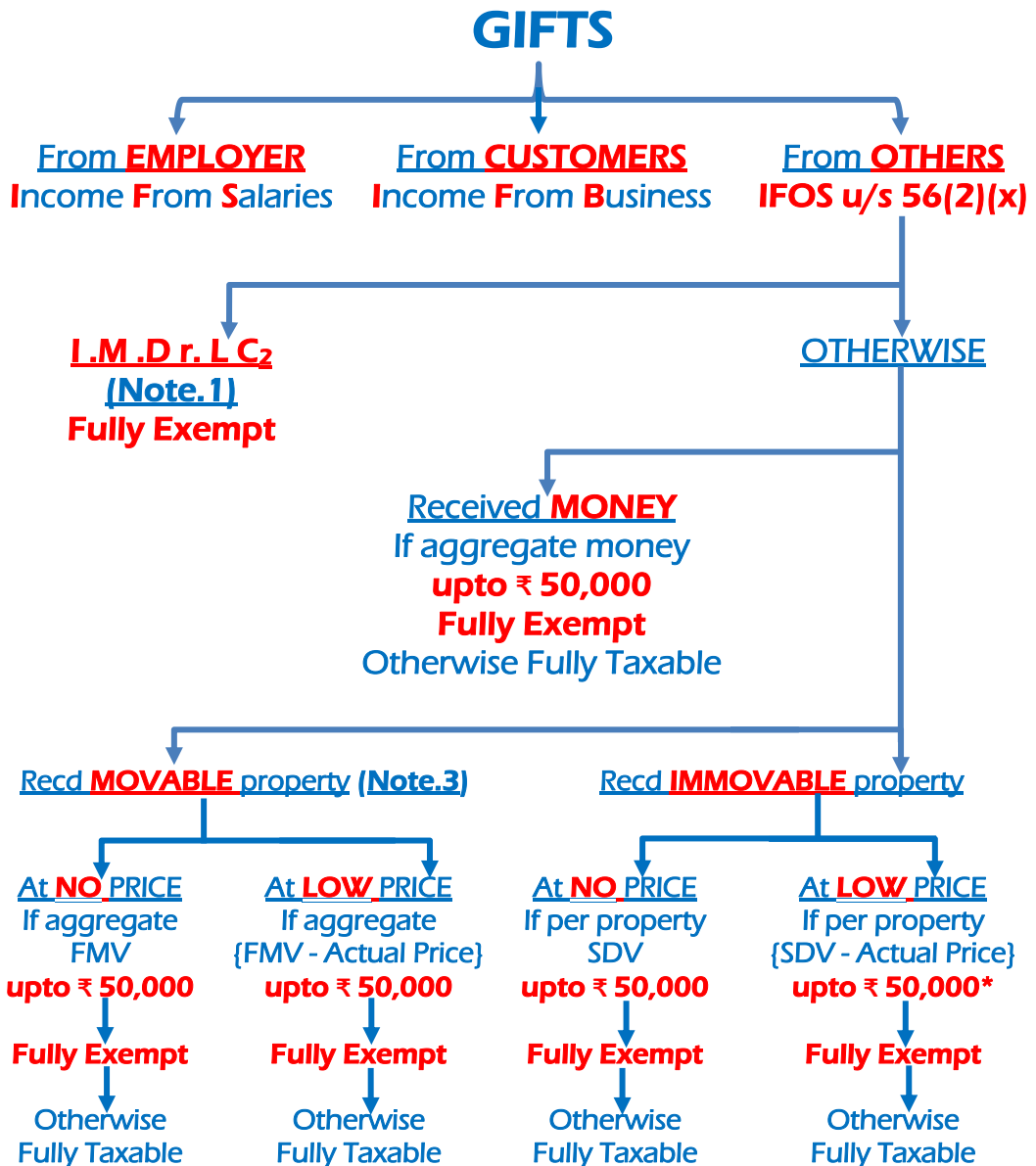
**Provisions** should be recognized only if the obligation to pay arises out of **past events** and only if there is **reasonable certainty** of outflow

**Contingent assets** should be recognized only if there is **reasonable certainty** of inflow.

**Contingent liabilities** should **not be recognized**.

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TAXATION OF GIFTS



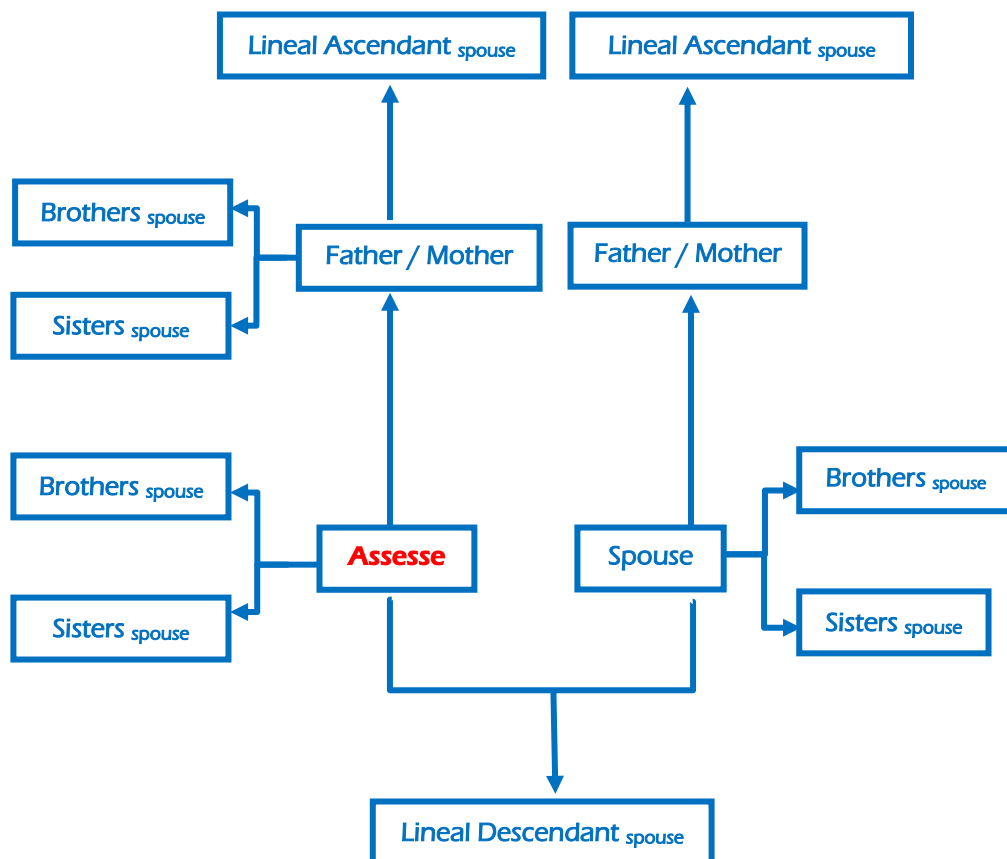
***or up to 10% of Actual Price [Whichever is high]**

NOTE 1: GIFTS FULLY EXEMPT = I.M.D r. L C₂

- I** – Gift by way of **Inheritance** or Will
- M** – Gift on **Marriage**
- D** – Gift in Contemplation of **Death**
- r** – Gift from **Relatives** or Gift from Individual received by a trust created solely for the benefit of his **Relative**
Gift from **Local Authority**
- L** – Gift from or to **Charitable/Religious trust**
- C₁** – Any sum received by an individual for his or family*
- C₂** – member's **COVID treatment** or
Any sum **up to ₹10 lakhs** received by family* member of individual who **died due to COVID** [provided to the amount is recd **within 12 mnths** from the date of death]

*Family = Spouse, Children, Dependent [Parents/Brothers/Sisters]

NOTE 2: MEANING OF RELATIVE:



NOTE 3: MOVABLE PROPERTY:

Gift of only following movable properties is taxable: [JAS-V]

- **J**ewellery [including bullions]
- **A**rtistic work [Drawings, Paintings, Sculptures or any work of Art] and Archaeological collections
- **S**hares and Securities
- **V**irtual Digital Assets

Any property [whether movable or immovable] held as **stock in trade** received as gift [either for no price or low price] **shall not be taxable.**

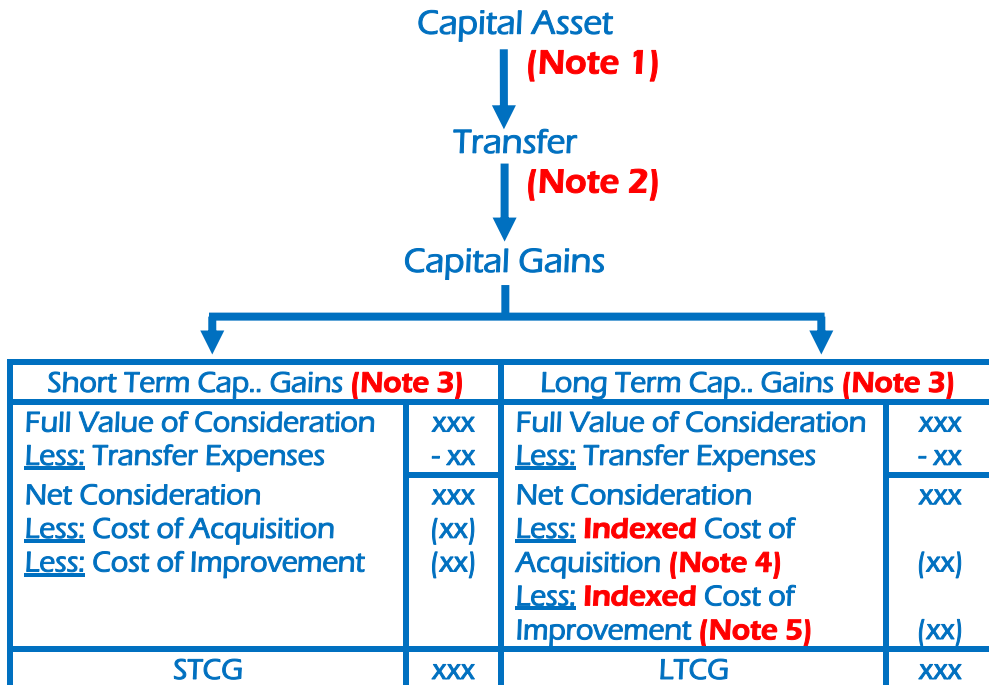
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# CAPITAL GAINS

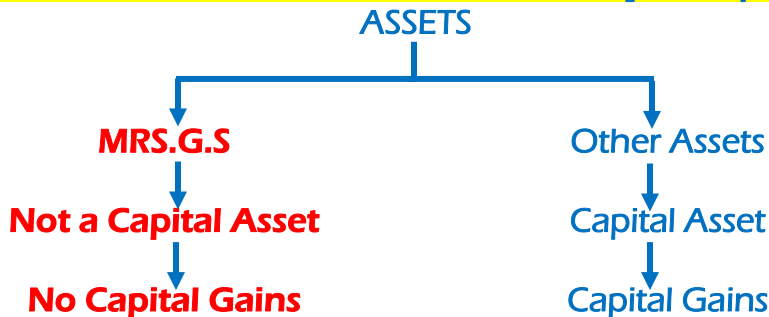
→ **SUMMARY:**

- I. BASIC CONDITIONS and COMPUTATION
- II. SECTION WISE [Sec. 45(1) TO Sec. 55]

**PART - I** → **BASIC CONDITIONS & COMPUTATION**



**Note 1: DEFINITION OF CAPITAL ASSET [Sec. 2(14)]:**



**M**ovable Personal\* Assets (T.V., Fridge, Washing machine etc)

**R**ural Agricultural Land in India [RALI]

**S**tock-in-Trade

**G**old Bonds issued under Gold Deposit Scheme, 1999 and deposit certificates issued under Gold Monetisation Scheme, 2015

**S**pecial Bearer Bonds

\*Following are Movable Personal Assets but capital assets:

→ Jewellery

→ Drawings, Paintings, Sculptures or any work of art [DPSA]

→ Archaeological collections

**Note 2: DEFINITION OF TRANSFER [Sec. 2(47)]:**

Transfer includes **SEREC<sub>2</sub>**:

**S**ale of capital asset

**E**xchange of capital asset

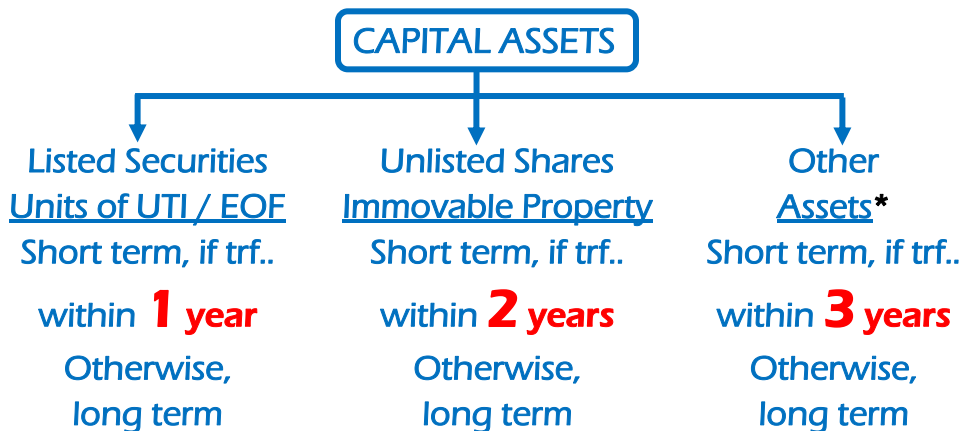
**R**elinquishment of capital asset

**E**xtinguishment of "Rights" in capital assets

**C**ompulsory acquisition of capital asset by Government.

**C**onversion of capital asset into stock in trade

**Note 3: TYPES OF CAPITAL GAINS:**



EOF – Equity oriented fund is a mutual fund/ULIP which invests: Minimum **65%** in listed **equity** shares of domestic companies **or** Minimum **90%** in **another fund** which also invests minimum **90%** in listed **equity** shares of domestic companies.

**ULIP – Unit Linked Insurance Policy of insurance companies**

**\* With effect from 23/7/2024, period of holding for all these capital assets is reduced to 2 years**

**Note 4: INDEXED COST OF ACQUISITION:**

$$= \text{Cost of Acquisition} \times \frac{\text{Index (Year of **Transfer**)}}{\text{Index (Year of **Purchase**)}}$$

**Note 5: INDEXED COST OF IMPROVEMENT:**

$$= \text{Cost of Improvement} \times \frac{\text{Index (Year of **Transfer**)}}{\text{Index (Year of **Improvement**)}}$$

**Indexation - Not Allowed, if transfer is on or after 23/7/24.**

**Note 6: PURCHASE BEFORE 1/4/2001:**

In such case, cost of acquisition will be:

- ↑ 1. Actual Cost
- 2. Fair Market Value [FMV] as on 1.4.2001 \*

\* in case of immovable prop., lower of FMV or SDV as on 1/4/01

**Note 7: IMPROVEMENT BEFORE 1/4/2001**

IGNORE

**Note 8: COST INFLATION INDEX:**

| Year    | Index | Year    | Index | Year           | Index      |
|---------|-------|---------|-------|----------------|------------|
| 2001-02 | 100   | 2009-10 | 148   | 2017-18        | 272        |
| 2002-03 | 105   | 2010-11 | 167   | 2018-19        | 280        |
| 2003-04 | 109   | 2011-12 | 184   | 2019-20        | 289        |
| 2004-05 | 113   | 2012-13 | 200   | 2020-21        | 301        |
| 2005-06 | 117   | 2013-14 | 220   | 2021-22        | 317        |
| 2006-07 | 122   | 2014-15 | 240   | 2022-23        | 331        |
| 2007-08 | 129   | 2015-16 | 254   | 2023-24        | 348        |
| 2008-09 | 137   | 2016-17 | 264   | <b>2024-25</b> | <b>363</b> |

**PART -II**

**SECTION WISE**

**Sec. 45 (1):**

**BASIS OF CHARGE:**

The basis [conditions] for charging capital gains to tax is as follows:

- a) There must be a **Capital Asset**
- b) There must be **Transfer** of such capital asset

**Capital Asset + Transfer = Capital Gains**

As per this section, the year of charging capital gains is the **year of transfer** i.e. on accrual basis (not on receipt basis).

**Year of Tax = Year of Transfer**

However, there are **some exceptions** to this rule [discussed later]

**Sec. 45 (1A):**

**DESTRUCTION OF CAPITAL ASSET:**

**Normally,**

Capital gains is computed only if there is a “transfer”. In case of destruction, there is **no transfer** because in the process of transfer, the asset must exist. The definition of transfer includes extinguishment of “Rights” in a capital asset but in case of destruction, the capital asset itself is extinguished. Hence, destruction is not a transfer [therefore, **no capital gains**].

**However,**

After the introduction of section 45(1A), capital gains will be **computed** even in case of destruction **provided** the destruction is due to the following reasons: **(NRFE)**

- **Natural** calamities
- **Riots** or civil disturbance
- Accidental **Fire** or explosion
- **Enemy** attack

Notes:

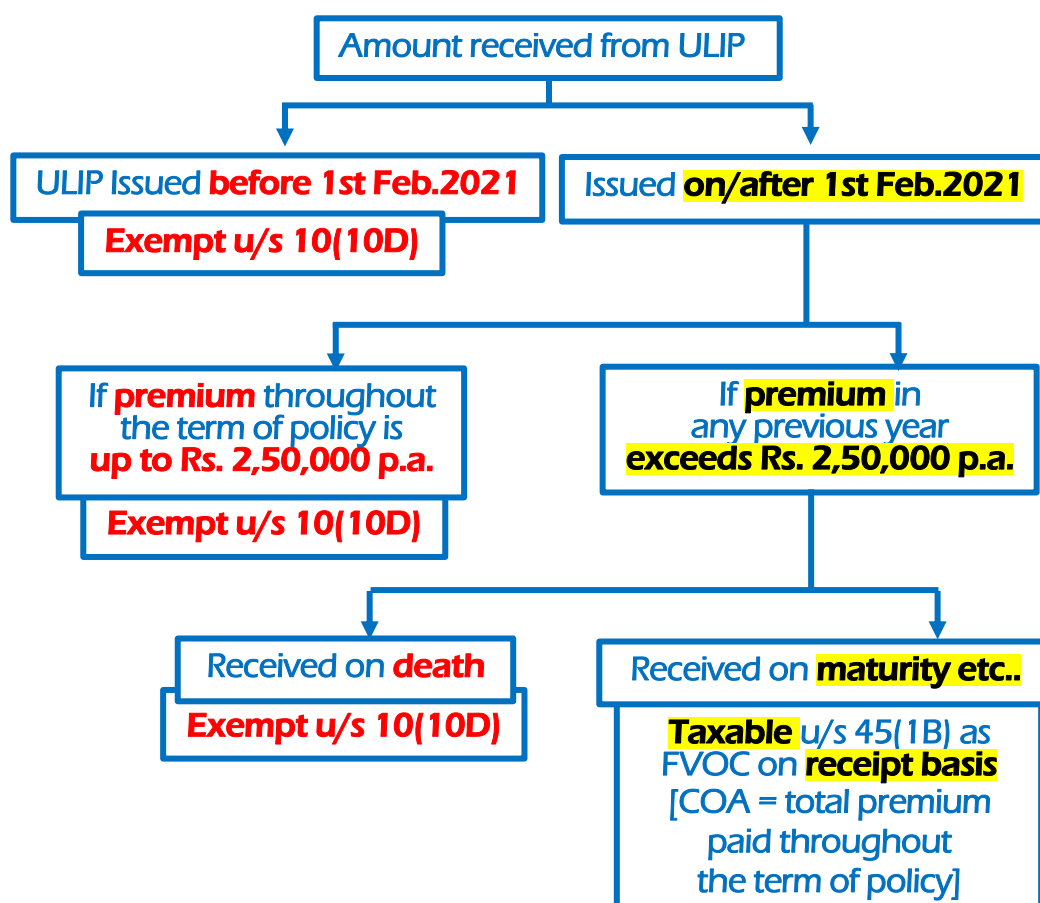
- 1) If the destruction is due to **other reasons**, then capital gains is **not computed**.
- 2) Normally,  
Year of Tax = Year of Transfer  
However, in case of destruction,  
Year of Tax = Year of **Receipt** of Insurance Claim
- 3) FVOC = Amt. of Insurance claim

**Sec. 45 (1B):**

**AMOUNT RECEIVED UNDER ULIP**

**ULIP – Unit Linked Insurance Plan/Policy**


ULIP is a combination of insurance + investment. A small portion of the money invested goes to securing your life whereas the rest of the money is invested in the market. Policyholders can pay premiums monthly/annually. In short, ULIP is like a mutual fund with an additional feature of insurance.



**Important Note:**

In case of multiple ULIPs, amount received from only those ULIPs will be exempt u/s 10(10D), the aggregate premium on which does not exceed Rs. 2,50,000.

|                | ULIP "A" | ULIP "B" | ULIP "C" | ULIP "D" |
|----------------|----------|----------|----------|----------|
| Annual Premium | 1,00,000 | 1,00,000 | 1,00,000 | 1,00,000 |

  
Aggregate premium upto 2,50,000  
Hence, ULIP "A" and "B" shall be exempt u/s  
Taxable      Taxable

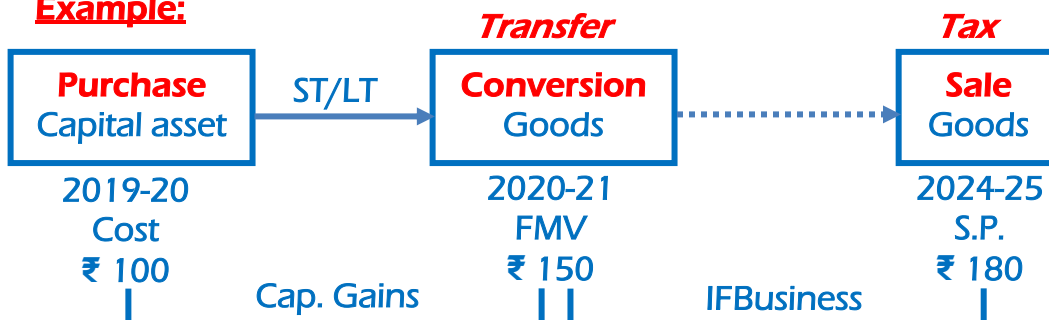
**Sec. 45 (2): CONVERSION OF CA INTO STOCK IN TRADE:**

If Capital Asset is sold – Income is Capital Gains

If Stock-in-trade is sold – Income is Business Income

If CA is converted in to SIT and then sold – Partly CG...Partly IFB

**Example:**



In the above eg., the assessee purchased jewellery during 2018-19 as investment. During 2020-21, the assessee started the business of jewellery & the jewellery which was held as investment was transferred to his jewellery shop. This amounts to conversion of capital asset into stock in trade. In such case, 2 calculations are done in the year when the jewellery is sold [i.e. 2024-25].

**→ First Calculation [Income From Business]:**

|                                     |            |
|-------------------------------------|------------|
| S.P. of stock in trade              | xxx        |
| Less: FMV on the date of conversion | -xxx       |
| <b>Income From Business</b>         | <b>xxx</b> |

**→ Second Calculation [Capital Gains]:**

|                                               |            |
|-----------------------------------------------|------------|
| FVOC ( <b>FMV on the date of conversion</b> ) | xxx        |
| <u>Less:</u> Transfer Expenses                | -xxx       |
| Net Consideration                             | xxx        |
| <u>Less:</u> COA / Indexed COA                | -xxx       |
| <u>Less:</u> COI / Indexed COI                | -xxx       |
| <b>STCG / LTCG</b>                            | <b>xxx</b> |

**Note:**

Normally, Year of Tax = Year of Transfer

However, in case of conversion,

Year of Tax = Year of **sale of stock in trade**

**Sec. 45 (3):**

**TRANSFER BY PARTNER TO P. FIRM :**

**Example:**



In the above example, partner Mr. A has transferred his land to P. firm as his capital contribution. Hence, his **right** in the land is **extinguished**.

This is extinguishment of rights in a capital asset which amounts to “transfer” [SEREC<sub>2</sub>]. Hence, capital gains will be computed by the partner (transferor) as follows:

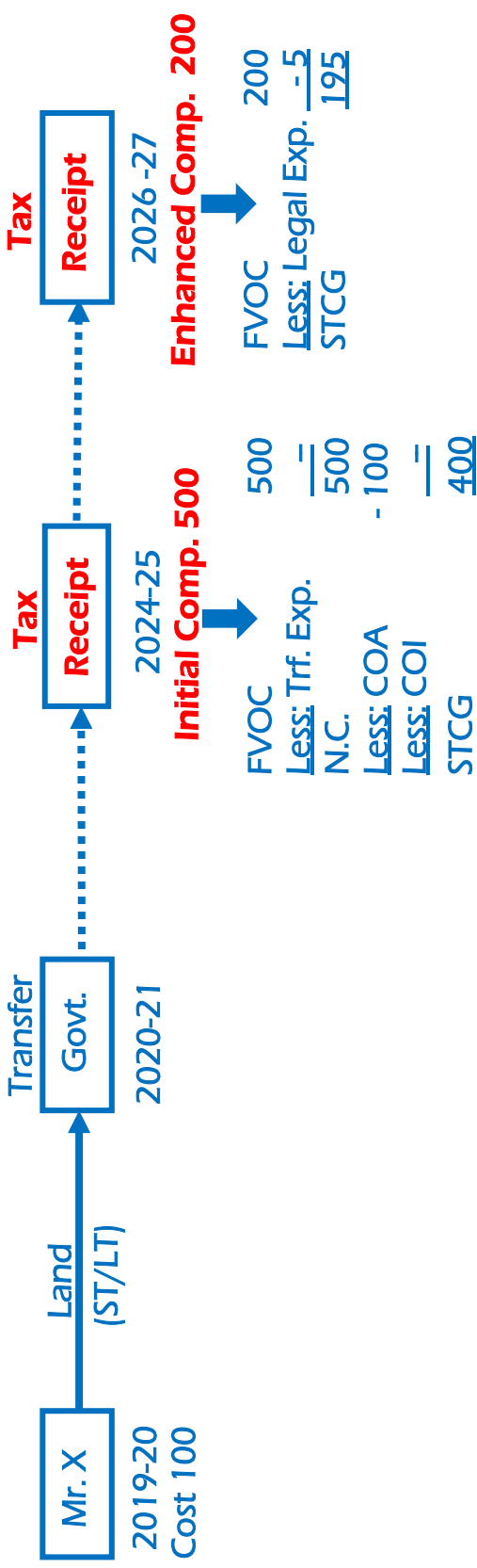
|                                                      |      |
|------------------------------------------------------|------|
| FVOC ( <i>Amt. recorded in the books of P.Firm</i> ) | xxx  |
| <u>Less:</u> Transfer Expenses                       | -xxx |
| Net Consideration                                    | xxx  |
| <u>Less:</u> COA / Indexed COA                       | -xxx |
| <u>Less:</u> COI / Indexed COI                       | -xxx |
| STCG / LTCG                                          | xxx  |

Explanation: “Partner ka asset gaya but return mein uska capital account khul gaya aur jitne se account khula [i.e.amt. recorded in books] – woh usko firm se milega as consideration [FVOC]”

**Sec. 45 (5):**

**COMPULSORY ACQUISITION BY GOVT.:**

**Example:**



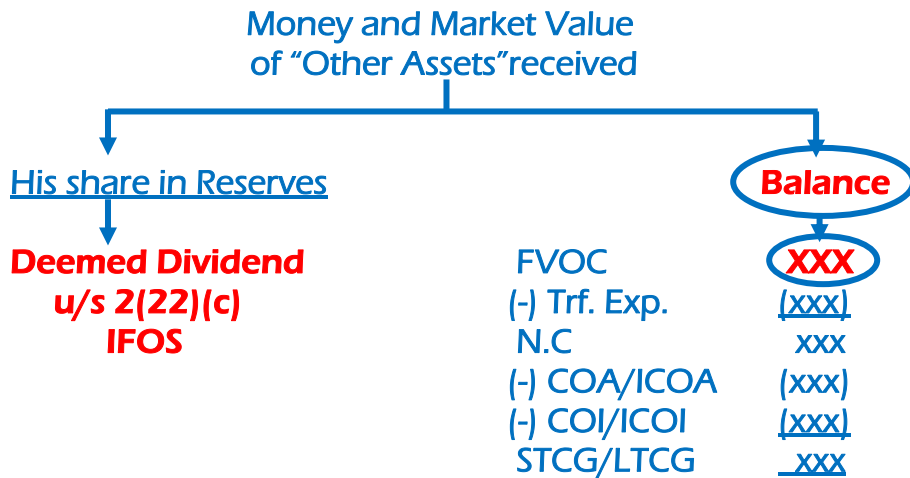
**Notes:**

- 1) Normally, Year of Tax = Year of Transfer  
However, in case of compulsory acquisition, Year of Tax = Year of **Receipt** of Compensation
- 2) If **initial** compensation is received in **instalments**, then the **entire** compensation will be taxable in the year of receipt of **first installment**.  
If **enhanced** compensation is received in **instalments**, then it is taxable **as & when received**.
- 3) If enhanced compensation is **received** as per the **interim order** of the court, then it will be **taxable when** the **final order** is made.
- 4) If assessee receives **interest** for the delay in initial/ enhanced compensation then such interest is taxable as **IFOS**.  
→ Taxable Amt. = Total Interest – **50 % standard deduction**

**Sec. 46:**

**LIQUIDATION:**

At the time of liquidation, the **shareholder** has to **surrender** his shareholding rights. This amounts to **relinquishment** of capital asset [SE~~REC~~<sub>2</sub>]. Hence, it is a **transfer**. In such case, capital gains will be computed by the shareholder as follows:



**Example:**

B/s of A Ltd.

|                         |          |              |          |
|-------------------------|----------|--------------|----------|
| ESCapital (60,000 × 10) | 6,00,000 | Land         | 50,000   |
| Reserves                | 2,00,000 | Other Assets | 7,50,000 |
|                         | 8,00,000 |              | 8,00,000 |

Mr. X (10% shareholder) has purchased 6,000 shares in 2011-12 for ₹ 12,000. The company went in to liquidation in October 2024. On liquidation, he received a land having market value of Rs. 80,000.

**Solution:**

|                                                                                                                          |                                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Money<br>Market value (FMV) of land                                                                                      | Nil<br><u>80,000</u><br><u>80,000</u>                                                                                                                      |
|                                                                                                                          |                                                                                                                                                            |
| <u>His share in Reserves</u><br>20,000 (10% of 2,00,000)<br><b>Deemed Dividend</b><br><b>u/s 2(22)(c)</b><br><b>IFOS</b> | <b>Balance</b><br><b>FVOC</b> <b>60,000</b><br>(-) Trf. Exp. <u>Nil</u><br>N.C.                    60,000<br>(-) ICOA <u>-12,000</u><br>LTCC <u>48,000</u> |

**Note 1:**

The above computation is done from shareholder's point of view and it is for the capital asset – "shares". However, from **company's point of view**, there is transfer of "land" but this transfer is **exempt u/s 46(1)** for the company because the market value of land is taxed in the hands of shareholder u/s 46 (2).

**Note 2:**

In the above e.g., if Mr. X sells the land **next year** for Rs. 92,000 then capital gains will be computed as follows:

|                                                    |                 |
|----------------------------------------------------|-----------------|
| FVOC (S.P.)                                        | 92,000          |
| <u>Less: Cost [FMV at the time of liquidation]</u> | <u>(80,000)</u> |
| STCG                                               | <u>12,000</u>   |

**Sec. 47:**

**EXEMPT TRANSFERS:**

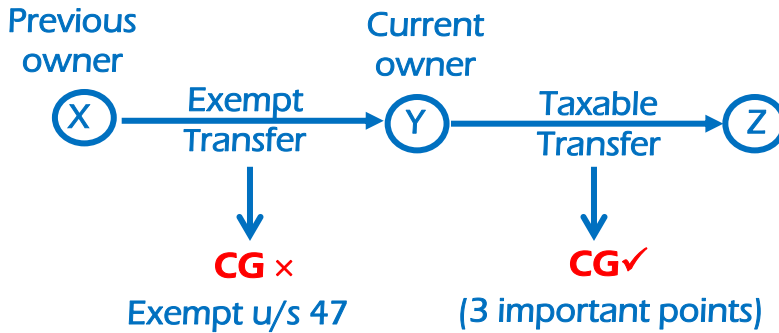
In following cases, there is a capital asset and there is transfer of such capital asset but the transfer is exempt u/s 47:

Capital asset + Transfer = Capital Gains  
✓                      ✓                      ✓

**But, Exempt u/s 47**

1. Transfer by way of **Gift/Will/Inheritance**.
2. Transfer by HUF to its individual members at the time of **partition**.
3. **Conversion** of self acquired property of an individual member into the common property of HUF.
4. Transfer by amalgamating company to amalgamated company in the scheme of **amalgamation**.
5. Transfer by a demerged company to the resulting company in the scheme of **demerger**.
6. Transfer between a **holding** company and its **100% subsidiary** company.
7. **Exchange** [by a shareholder] of shares in amalgamating company for shares of amalgamated company in the scheme of amalgamation.
8. **Exchange** of convertible debentures for shares on Conversion of convertible debentures into shares.  
**etc.....**

**Sec. 49(1): CAPITAL GAINS AFTER EXEMPT TRANSFERS:**



In the above example, transfer by “X” to “Y” is exempt u/s 47. Hence, capital gains is not computed. But later, when “Y” transfers the asset to “Z”, capital gains will be computed and in such computation, following 3 points should be noted:

- 1) **Cost** of Acq... for “Y” = Cost to the **previous owner** “X”.
- 2) To decide Short term/Long term, **period** should be calculated from date of purchase by **previous owner** “X” up to the date of transfer to “Z”.
- 3) Indexed COA = 
$$\text{Cost of Acquisition} \times \frac{\text{Index (Year of Transfer)}}{\text{Index (Yr. of Previous owner)}}$$

In short,

| <b>COST</b>    | <b>PERIOD</b>  | <b>INDEX</b>   |
|----------------|----------------|----------------|
| Previous Owner | Previous Owner | Previous Owner |

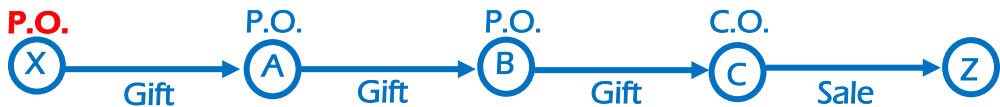
**Note 1:**

The logic behind taking the cost of previous owner is that the Govt. wants to **withdraw the exemption u/s 47 in the previous transfer.**

**Note 2:**

Previous owner means the **last previous owner.**

**Last  
P.O.**



**Note 3:**

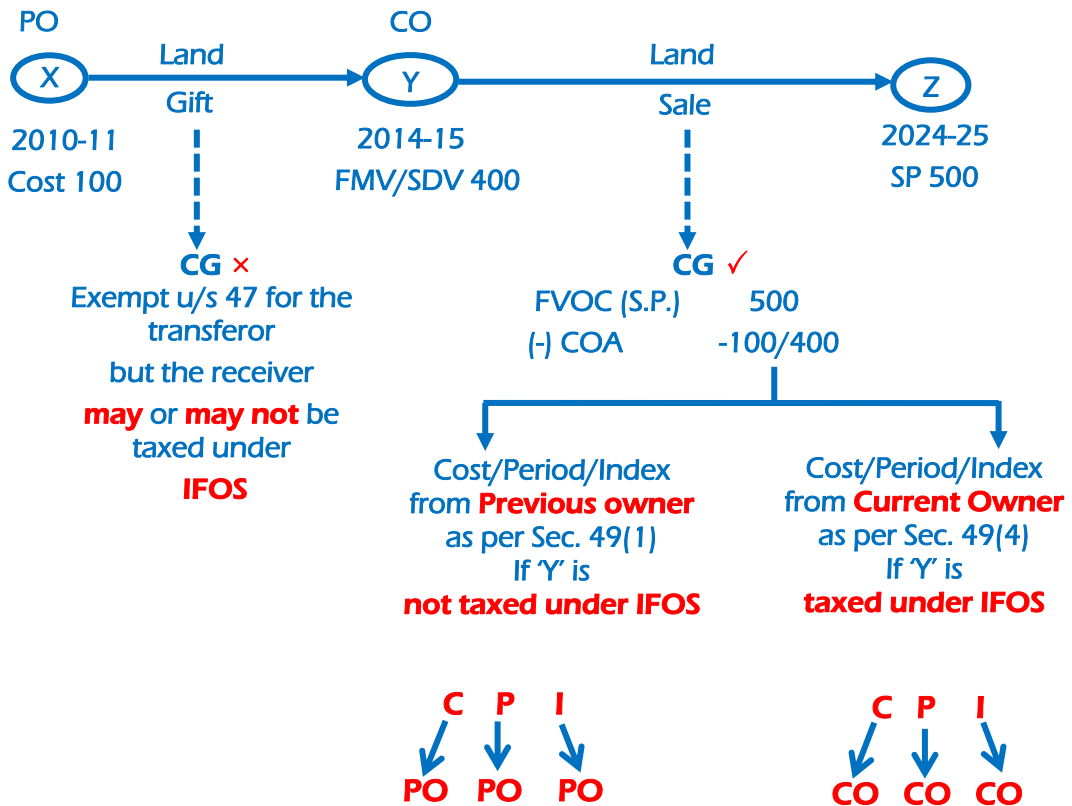
While deducting cost of **improvement**, consider improvement done by **previous owner as well as current owner.**

**Sec. 49(4): COST OF ASSET ACQUIRED BY WAY OF GIFT:**

If the receiver of the gift has already been taxed u/s 56 on the FMV or SDV of gifted asset [under the head IFOS] then cost of such asset will be such FMV or SDV.

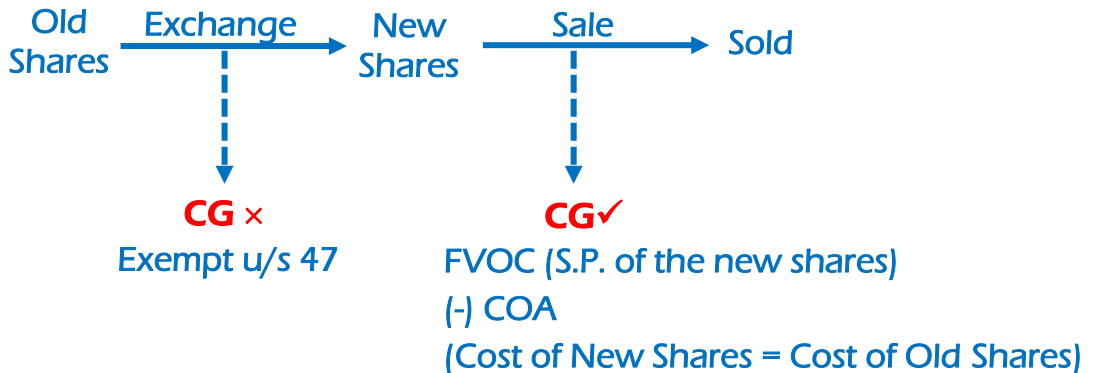
FMV [Fair Market Value] – in case of Movable property and SDV [Stamp Duty Value] – in case of Immovable property.

**Example:**



**Sec. 49(2):**

**COST OF NEW SHARES IN AMALGAMATION**



In amalgamation, a shareholder of amalgamating company receives new shares in exchange of his old shares. This amounts to an “exchange” which falls in the definition of transfer but as per Sec. 47, this transfer is exempt.

Later on, when these new shares are transferred:

**Cost** of new shares = Cost of **Old Shares**.

**Period** of new shares = Date of purchase of **Old Shares** up to the date of transfer of new shares

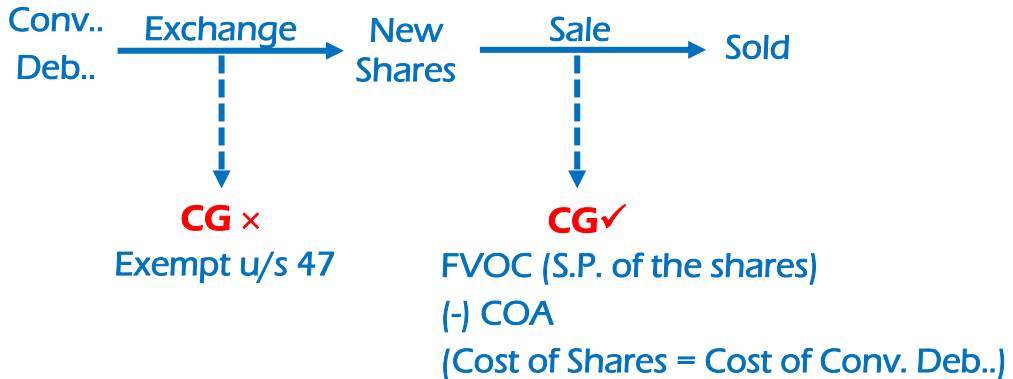
**Indexation** will be done from the year when **Old Shares** were purchased up to the year of transfer of new shares

In short,

| <b>COST</b>                    | <b>PERIOD</b>                  | <b>INDEX</b>                   |
|--------------------------------|--------------------------------|--------------------------------|
| Previous Asset<br>(Old Shares) | Previous Asset<br>(Old Shares) | Previous Asset<br>(Old Shares) |

**Sec. 49(2A):**

**COST OF SHARES RECD. ON CONVERSION OF CONV. DEB.:**



When convertible debentures are converted in to shares, it amounts to “exchange” which falls in the definition of transfer but as per Sec. 47, this transfer is exempt.

Later on, when these shares are transferred:

**Cost** of shares = Cost of **Convertible Deb.**

**Period** of shares = Date of purchase of **Convertible Deb.** up to the date of transfer of shares

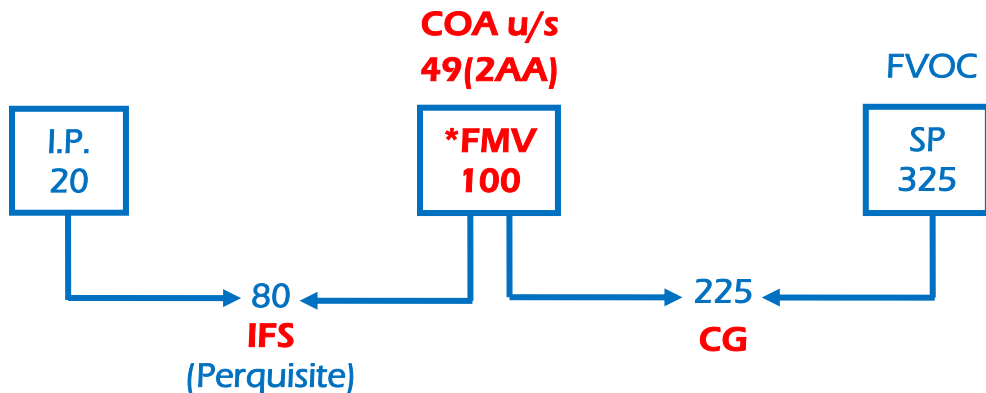
**Indexation** will be done from the year when **Convertible Deb** are purchased up to the year of transfer of shares

In short,

| <b>COST</b>                    | <b>PERIOD</b>                  | <b>INDEX</b>                   |
|--------------------------------|--------------------------------|--------------------------------|
| Previous Asset<br>(Conv.. Deb) | Previous Asset<br>(Conv.. Deb) | Previous Asset<br>(Conv.. Deb) |

**Sec.49(2AA): COST OF SHARES ALLOTTED UNDER ESOPS:**

Under Employees Stock **OPTION** Scheme, an employee is allotted shares/securities at **concessional price**. This **benefit** is taxable under the head "**Income from Salaries**". When such shares are sold, capital gains is computed as follows:



\*FMV should be as on the **date of exercising the option**.

**Sec. 49(2C): COST OF SHARES OF RESULTING CO.:**

$$= \text{Cost of Shares in D.Co (before demerger)} \times \frac{\text{Net Book Value of Assets trf}^{\text{ed}} \text{ to R Co.}}{\text{*Net Worth of D.Co. (before demerger)}}$$

\*Net Worth = Paid up Share Capital + General Reserve

D Co. = Demerged Company

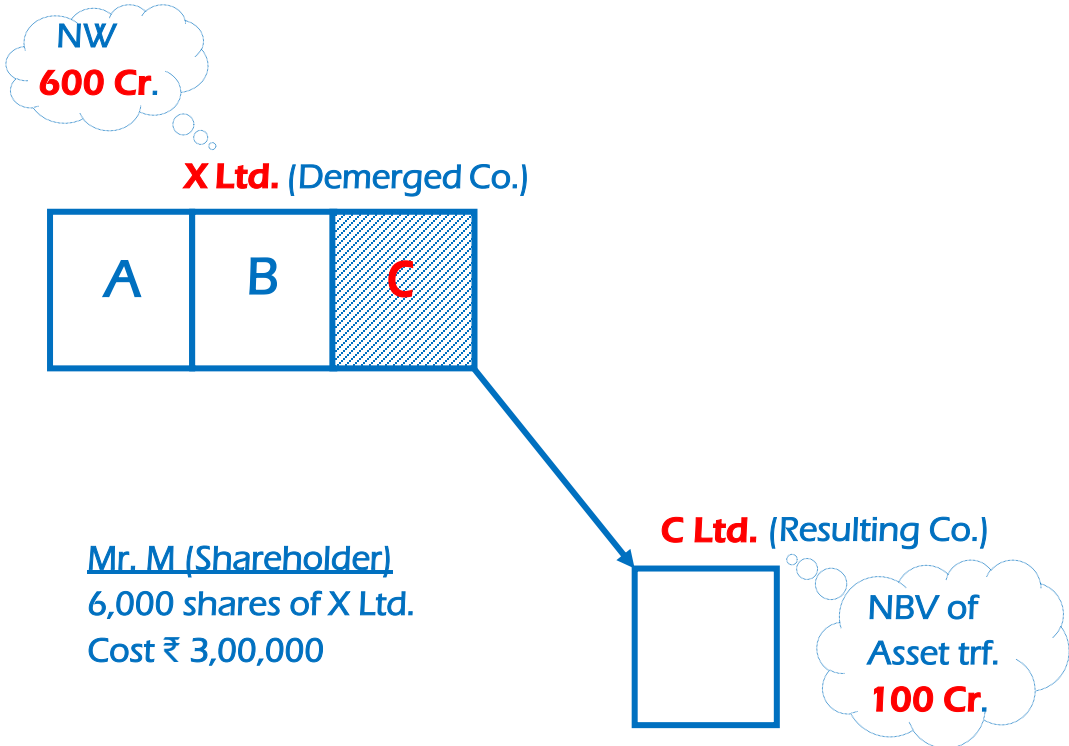
R Co. = Resulting Company

**Note: Period** [to decide ST/LT] of shares of R.Co. shall be calculated from the date of purchase of **shares of D.Co**. Even **indexation** is done from the year of purchase of **shares of D.Co**.

**Sec.49(2D): COST OF SHARES OF D.CO (after demerger):**

$$= \text{Cost of Shares in D Co. (before demerger)} - \text{Cost of Shares in R Co. as per Sec. 49(2C)}$$

**Example:**



In the scheme of demerger, Mr. M is allotted additional 1,200 shares in C Ltd. (Resulting Co.). Now, he has following 2 lots:

- i) 6,000 shares of X Ltd.
- ii) 1,200 shares of C Ltd.

**→ As per Sec. 49(2C):**

$$\text{Cost of 1,200 shares} = 3,00,000 \times \frac{100}{600} = 50,000$$

**→ As per Sec. 49(2D):**

$$\text{Cost of 6,000 shares} = 3,00,000 - 50,000 = 2,50,000$$

**Sec. 48/50:**

**MODE OF COMPUTATION:**

**CAPITAL ASSETS**

**Depreciable Assets**

(Eg: Machinery, Office/Factory Bldg. and Other business assets)

**Section 50**

|                                              |      |
|----------------------------------------------|------|
| Opening WDV                                  | XXX  |
| Add: Purchases                               | XXX  |
| Less: Sales (SP)                             | -XX  |
|                                              | XXX  |
| ↓<br>All Sold                      Some Sold |      |
| (+)                                          | (-)  |
| STCL                                         | STCG |
| (+)                                          | (-)  |
| STCG                                         | STCG |

**Always Short term**

**Non – Depreciable Assets**

(Eg: Land, Jewellery, Shares, Res..House etc..)

**Section 48**

|                     |     |
|---------------------|-----|
| FVOC                | XXX |
| Less: Transfer Exps | -XX |
| Net Consideration   | XXX |
| Less: COA / ICOA    | -XX |
| Less: COI / ICOI    | -XX |
| STCG / LTCG         | XXX |

**Short /Long term**

**Sec. 50B:****SLUMP SALE:**

As per Section 2(42C), slump sale means transfer of an “undertaking” for **lumpsum price**. Price is fixed for the whole undertaking **without assigning values to individual assets and liabilities**.

Since price of each asset is not known individually, it is not possible to compute capital gains for each asset separately. Hence, **single computation** is done as follows (assuming the entire undertaking as a single capital asset):

**COMPUTATION OF CG**(Sale of “**Undertaking**”)

|                                                                              |      |
|------------------------------------------------------------------------------|------|
| Full value of consideration [Higher of following]                            | xxx  |
| ↑ <b>Actual consideration or</b><br>↑ <b>FMV as per Rule 11UAE [Note. 6]</b> |      |
| <u>Less:</u> Transfer Exps.                                                  | (xx) |
| Net Consideration                                                            | xxx  |
| <u>Less:</u> Cost of Undertaking [ <b>Net Worth – Note.3</b> ]               | (xx) |
| STCG/LTCG                                                                    | xxx  |

**Note 1:**

To decide short term/long term, period should be calculated from the **date of commencement of undertaking** upto the date of slump sale.

**Note 2:**

Indexation is **not allowed**.

**Note 3: Net Worth:**

|                                                |            |
|------------------------------------------------|------------|
| WDV of depreciable assets (as per I.Tax)       | XXX        |
| <u>Add:</u> Book Value of other assets         | + XX       |
| <u>Less:</u> Book Value of outside liabilities | -XX        |
| Net Worth                                      | <u>XXX</u> |

In short, **all** the assets and liabilities of the undertaking shall be considered **except share capital, reserves and misc. exp.**

**Note 4:**

If Balance sheet values are revalued figures then **remove the effect of revaluation**. In case of sec. 35AD assets and self generated Goodwill, consider the value as Nil.

**Note 5:**

In IncomeTax, **WDV of depreciable assets** is of the block and block is of the whole company but under slump sale, a particular unit may be sold. Hence, WDV is computed **individually** in respect of assets sold in slump sale as follows:

|                                                                    |      |
|--------------------------------------------------------------------|------|
| Original Cost of Depreciable Asset tr <sup>fed</sup> in slump sale | xxx  |
| <u>Less:</u> Depreciation as per I.Tax till last year              | (xx) |
| WDV as per Income Tax                                              | xxx  |

However, if the entire company is sold by way of slump sale then the WDV of the whole block can be considered in net worth computation.

**Note 6: FVOC**

FVOC is the lumpsum price but this price should not be less than the FMV of the undertaking sold in slump sale. Hence,

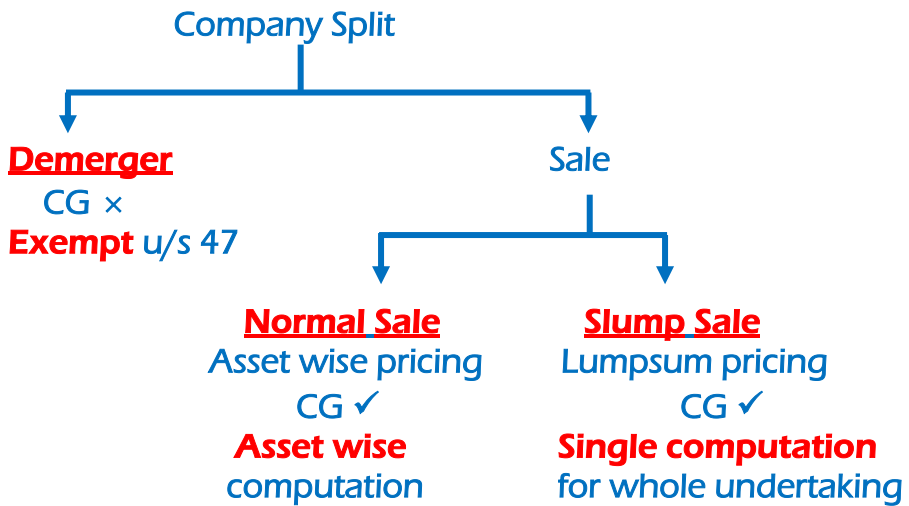
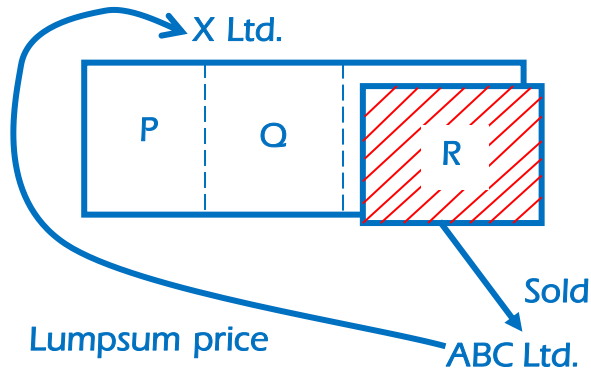
|                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------|
| $FVOC = \begin{matrix} \uparrow \\ \text{Actual Consideration} \\ \text{FMV of "undertaking" as per Rule 11UAE} \end{matrix}$ |
|-------------------------------------------------------------------------------------------------------------------------------|

→ **FMV of undertaking as per Rule 11UAE:**

|                                                                      |       |
|----------------------------------------------------------------------|-------|
| FMV of <b>JAS</b><br>(Jewellery, Artistic Work, Shares & Securities) | XXX   |
| <u>Add:</u> SDVof <b>Immovable Property</b>                          | XXX   |
| <u>Add:</u> Book Value of <b>Other Assets</b>                        | XXX   |
| <u>Less:</u> Book Value of <b>Outside Liab.</b>                      | (XXX) |
| FMV of the undertaking                                               | XXX   |

→ **Actual Consideration:**

Money or Money Value of Other Assets Received



**Sec. 50C:**

**FVOC FOR IMMOVABLE PROPERTY:**

In case of Immovable Property (Land/Building):

FVOC =  $\uparrow$  1) Declared consideration (Actual Sale Price)  
2) Stamp Duty Value (SDV)

Stamp Duty Value is like market value. It is the value adopted by Stamp Valuation Authority [State Govt] for stamp duty purpose.

If the Assessee disputes the Stamp Duty Value and if the matter goes to the Valuation Officer [V.O.] then:

FVOC =  $\uparrow$  1) Declared consideration (Actual Sale Price)  
2) SDV or Value as per VO (whichever is less)

**Note 1:**

If SDV [on agreement date] is different from SDV [on registration date] then consider **SDV [on agreement date]** provided part or whole of the consideration is **received** by way of account payee **cheque**/bank draft/ECS [**on or before the agreement date**]

**Example:**

|                            |     |
|----------------------------|-----|
| SDV [on agreement date]    | 120 |
| SDV [on registration date] | 130 |
| Actual sale price          | 100 |

Assuming part or whole of the consideration is received in cheque on or before the agreement date, FVOC = 120 or 100 [whichever is high i.e. 120]

**Note 2:**

The above provisions are also applicable under the head '**Income From Business**' in case of immovable property held as **stock in trade** but these provisions are contained in **section 43CA**

Hence,

Sec.50C [for immovable property – Capital asset – CG] = Sec.43CA [for immovable property – Stock in trade – IFB]

**Note 3:**

Under sec. 50C and sec. 43CA, if the SDV exceeds the actual sale price and if the **difference is only upto 10% of actual sale price** then **SDV is ignored** (and income from business/capital gains shall be computed on the basis of actual sale price).

**Sec. 50CA:**

**FVOC FOR UNLISTED SHARES:**

In case of unlisted shares:

$$\text{FVOC} = \begin{matrix} \uparrow \\ 1) \text{ Declared consideration (Actual Sale Price)} \\ 2) \text{ FMV of the shares as determined under Rule 11UA} \end{matrix}$$

**Sec. 50AA:**

**TAXATION OF MLDs AND SMFs:**

Section 50AA is applicable to:

- Market Linked Debentures
- Units of Specified Mutual Funds acquired on or after 1/4/23 &
- **Unlisted debentures/bonds transferred on or after 23/7/24.**

As per this section, capital gains on transfer of above assets will be computed as follows and it will be **always taxed as STCG**:

|                                               |      |
|-----------------------------------------------|------|
| FVOC [Amt received on maturity or Sale Price] | xxx  |
| <u>Less:</u> Transfer Expenses                | - xx |
| Net Consideration                             | xxx  |
| <u>Less:</u> Cost of Acquisition              | - xx |
| Always Deemed as Short term                   | xxx  |

- ⇒ **Market linked Debentures** are debentures whose returns are linked to **underlying market index**. The underlying market index can be Equity index, Gold index etc. Unlike regular debentures, here the **returns are not fixed**.
- ⇒ **Specified Mutual Fund** means a Mutual Fund where **not more than 35%** of its total proceeds is invested in the **equity shares** of domestic companies.

**Sec. 51: FORFEITURE OF ADVANCE MONEY RECEIVED:**

This means, assessee had negotiated for sale of a capital asset and **took advance** from the buyer but the sale **did not materialise** and assessee forfeited the advance money received i.e. the assessee **did not return** the money.

In such cases,

- ⇒ If advance money is forfeited **before 01.04.2014** then it should be **deducted from the cost** of Asset.
- ⇒ If advance money is forfeited **on or after 01.04.2014** then it is taxable as **IFOS** (in the year in which such advance is forfeited).

**Example:**

Mr. X was supposed to sell his property to Mr. Y for which he took an advance of Rs.50,000. However, the sale did not materialise because Mr.Y backed out. Hence, Mr. X **forfeited** advance of **Rs. 50,000** on **4<sup>th</sup> June, 2010**.

During 2015-16, Mr. X negotiated with Mr. A for the sale of same property and took advance of Rs.25,000. Even this sale did not materialise and the advance of **Rs.25,000** was **forfeited** by Mr. X on **8<sup>th</sup> September 2015**.

The property was finally sold to Mr. Z on 10<sup>th</sup> April, 2024 for Rs. 90 lakhs.

Compute the amount of capital gains assuming the property was purchased by Mr. X for Rs. 26 lakhs during 2004-05.

**COMPUTATION OF CAPITAL GAINS**

|                                                     |                    |
|-----------------------------------------------------|--------------------|
| FVOC [Sale price]                                   | 90,00,000          |
| <u>Less:</u> Trf. Exp.                              | <u>          —</u> |
| N.C.                                                | 90,00,000          |
| <u>Less:</u> ICOA (26 L – <b>50,000</b> ) X 363/113 | <u>- 81,91,593</u> |
| LTCG                                                | <u>8,08,407</u>    |

**Note:** Advance money of **Rs.25,000** forfeited on 8<sup>th</sup> Sept., 2015 [i.e. on/after 1/4/2014] shall be taxable as **IFOS** in PY 2015-16.

**Sec. 55:**

**COST IN DIFFERENT SITUATIONS:**

| SITUATION                                                                                                         | COST                                                                     |
|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|
| <b>Purchase before 1.4.2001</b>                                                                                   | Cost = Actual cost<br>↑<br>FMV on 1.4.2001                               |
| <b>Improvement before 1.4.2001</b>                                                                                | Ignore                                                                   |
| <b>Bonus Shares:</b><br>→ Alloted on/after 1.4.2001<br>→ Alloted before 1.4.2001                                  | Cost = Nil<br>Cost = Actual cost<br>↑<br>FMV [1.4.2001] Nil<br>xxx       |
| <b>Right "Shares":</b><br>→ For existing shareholder<br>→ For outsider                                            | Cost = Issue price<br>Cost = Issue price +<br>Amt. paid to the renouncer |
| <b>Rights "offer"</b>                                                                                             | Cost = Nil                                                               |
| <b>Self generated asset</b><br>E.g. Goodwill, trademark, brand name etc.<br>→ If self generated<br>→ If purchased | Cost = Nil<br>Cost = Purchase price                                      |

**Sec. 45(5A): JOINT DEVELOPMENT AGREEMENT (JDA):**

JDA = Agreement between the **owner of a Land/Building** and a **builder/developer** where the owner **transfers his land/bldg..** to the builder/developer for construction of building in consideration of **share in the new building** [in the form of one or more flats in the new building]. Since the agreement involves transfer of a capital asset [land/bldg.], capital gains will be computed by the owner of land/bldg. as follows:

|                                                                               |              |
|-------------------------------------------------------------------------------|--------------|
| <b>Monetary consideration</b>                                                 | <b>xxx</b>   |
| <b>SDV of his share as on the date of issue of CC</b>                         | <b>+ xxx</b> |
| FVOC                                                                          | xxx          |
| <u>Less:</u> Transfer Expenses                                                | -xxx         |
| Net Consideration                                                             | xxx          |
| <u>Less:</u> COA / Indexed COA [ <b>Cost of Land/Bldg trf<sup>ed</sup>.</b> ] | -xxx         |
| <u>Less:</u> COI / Indexed COI                                                | -xxx         |
| STCG / LTCG                                                                   | xxx          |

Normally,

Year of Tax = Year of Transfer [i.e. the yr. when land/Bldg is trf<sup>ed</sup>.]

However, in case of joint development agreement,

Year of Tax = Year in which **CC** for the new bldg.. is **issued**  
 CC = Certificate of Completion

**Note 1:**

Monetary consideration is subject to TDS u/s 194 IC @ 10%

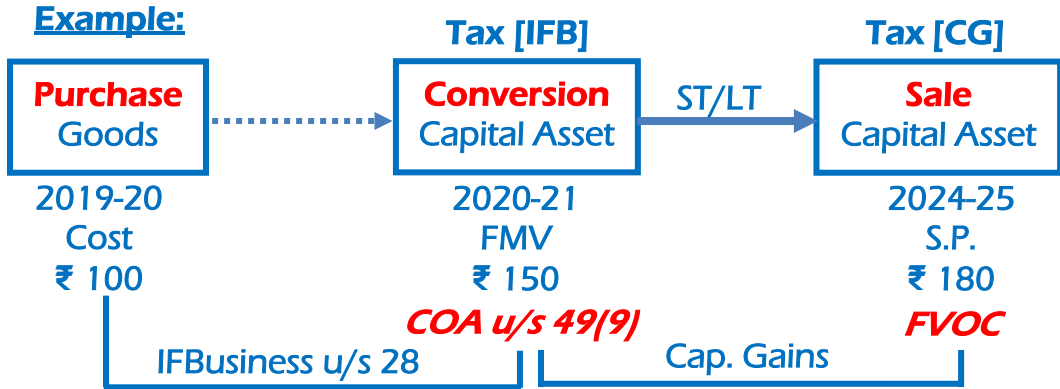
**Note 2:**

If the Land/Bldg. owner transfers his share in the new bldg. before the date of issue of CC then the capital gains will be taxable in the year of transfer of such share.

[FVOC = Amt. received/receivable for transfer of his share;

COA = Cost of land/bldg. trf<sup>ed</sup>.]

**Sec. 49 (9): CONVERSION OF STOCK IN TRADE INTO CA:**



## EXEMPTIONS

| Section                           | Asset transferred                                                                            | Asset to be purchased                                 | Time limit | Scheme of deposit | Amt. Of Exemption | Lock in period | Eligible assessee |
|-----------------------------------|----------------------------------------------------------------------------------------------|-------------------------------------------------------|------------|-------------------|-------------------|----------------|-------------------|
| LT<br>54                          | <b>Residential house</b><br>[except SOP(B)]                                                  | Residential house<br>[except SOP(B)]                  | 1B 2A 3A   | Same              | Same              | 3 years        | Ind./HUF          |
| LT/ST<br>54B                      | <b>Urban Ag. land</b><br>(used for ag. purpose for atleast 2 yrs by assessee or his parents) | <b>Any agricultural land</b><br>(Rural/Urban)         | 2A         | Same              | Same              | 3 years        | Ind./HUF          |
| LT/ST<br>54D<br><b>Comp. Acq*</b> | <b>Industrial Land &amp; Bldg.</b><br>(used for ind. purpose for atleast 2 yrs by assessee)  | Industrial Land & Bldg.                               | 3A         | Same              | Same              | 3 years        | All               |
| LT<br>54EC                        | <b>Any LTCA</b> being immovable property                                                     | <b>Notified Bonds</b><br>(NHA/RECL/PFCL etc)          | 6 months   | <b>N.A.</b>       | Same              | 5 years        | All               |
| LT<br>54EE                        | <b>Any LTCA</b>                                                                              | <b>Units of Specified Fund</b>                        | 6 months   | <b>N.A.</b>       | Same              | 3 years        | All               |
| LT<br>54F                         | <b>Any LTCA</b><br>(except Res. House)                                                       | <b>Residential house</b><br>(except SOP(B))           | 1B 2A 3A   | Same              | <b>Different</b>  | 3 years        | Ind./HUF          |
| LT/ST<br>54G<br><b>Shifting*</b>  | <b>L/B/P/M</b><br>except furniture<br>(in <b>urban</b> area)                                 | L/B/P/M<br>except furniture<br>(in <b>rural</b> area) | 1B 3A      | Same              | Same              | 3 years        | All               |
| LT/ST<br>54GA<br><b>Shifting*</b> | <b>L/B/P/M</b><br>except furniture<br>(in <b>urban</b> area)                                 | L/B/P/M<br>except furniture<br>(in <b>SEZ</b> )       | 1B 3A      | Same              | Same              | 3 years        | All               |

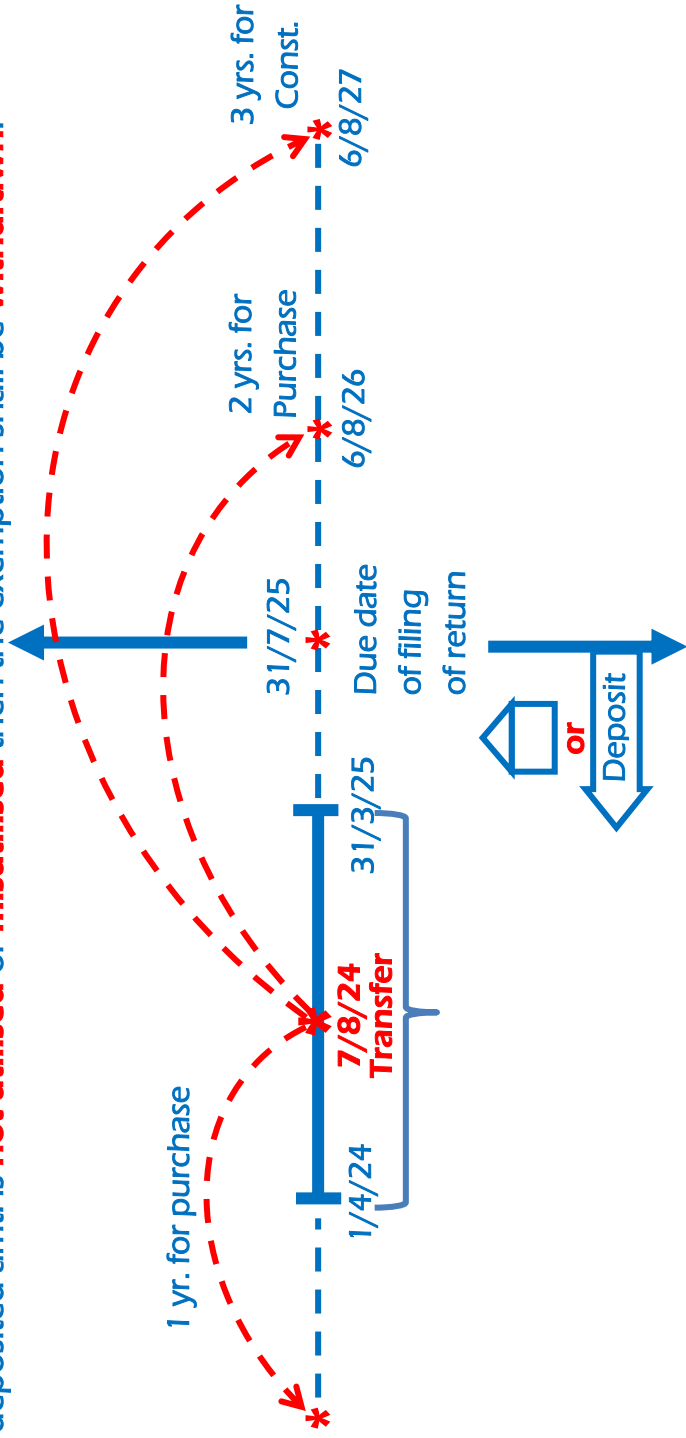
SOP(B) = Self occupied property for Business

\*Exemption u/s **54D** is only in case of **compulsory acquisition**

\*\*Exemption u/s **54G/GA** is only in case of **shifting** of industrial undertaking from urban area to rural area or SEZ

**Note 1: SCHEME OF DEPOSIT**

- a) If the new asset is **not acquired upto the due date** of filing return then the assessee should **deposit** the desired amount in **CGAS** (Capital Gains Account Scheme – special a/c opened in bank) (Deposit should be made on or before the due date of filing return).
- b) The deposited amt. should be **utilized** for the acquisition of **new asset** within the prescribed time.
- c) If the deposited amt. is **not utilised** or **misutilised** then the exemption shall be **withdrawn**.



**Note 2: AMOUNT OF EXEMPTION:**

→ **Under All sections (except 54F):**

- ↓ 1) Amt. of Capital Gains
- ↓ 2) Cost of New Asset (CNA) / Amt. of Deposit

→ **Under Sec. 54F:**

If the net consideration is **fully utilised** then the capital gains is **fully exempt**.

If the net consideration is **partly utilised** then the capital gains is **partly exempt** as follows:

$$\text{Amt. of Exemption} = \text{Gross LTCG} \times \frac{\text{CNA/Deposit}}{\text{Net Consideration}}$$

**Note 3: LOCK-IN-PERIOD**

The new asset should not be transferred within **3 years from the date of its acquisition**. If the new asset is transferred within 3 years then the **exemption** allowed earlier shall be **withdrawn** as follows:

→ **Under all sections (Except Sec. 54EC/EE/F):**

**COMPUTATION OF CG**

(on transfer of new asset within 3 years)

|                                                                                  |      |
|----------------------------------------------------------------------------------|------|
| FVOC (SP of new asset)                                                           | xxx  |
| <u>Less:</u> Transfer Exps.                                                      | (xx) |
| Net Consideration                                                                | xxx  |
| <u>Less:</u> <b>Reduced</b> COA/ICOA<br>(CNA – <b>Exemption claimed</b> earlier) | (xx) |
| <u>Less:</u> COI/ICOI                                                            | (xx) |
| STCG/LTCG                                                                        | xxx  |

→ **Under Sections 54EC/EE/F:**

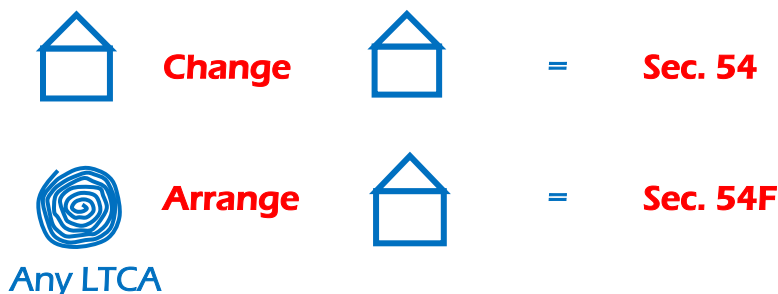
**COMPUTATION OF CG**

(on transfer of new asset within 3 years)

|                                                                   |      |
|-------------------------------------------------------------------|------|
| FVOC (SP of new asset)                                            | xxx  |
| <u>Less:</u> Transfer Exps.                                       | (xx) |
| Net Consideration                                                 | xxx  |
| <u>Less:</u> <b>Full</b> COA/ICOA                                 | (xx) |
| <u>Less:</u> COI/ICOI                                             | (xx) |
| STCG/LTCG of New asset                                            | xxx  |
| <b>Add:</b> <b>LTCG exemption</b> [of old asset] <b>withdrawn</b> | +xx  |
|                                                                   | xxx  |

**Note 4: Note for Section 54 and 54F:**

Under section **54**, the assessee is **changing** the house and under section **54F**, the assessee is **arranging** a house but under both the sections, the assessee should purchase/construct **Only One Residential House (in India)**.



Under **Sec. 54**,

→ If the assessee acquires **2 or more** houses then exemption is allowed only for cost of 1 house [the **one whose cost is higher**]. However, in case of an assessee having LTCG **upto Rs. 2 crores**, exemption can be claimed for **2 houses** [but **only once** in his life time].

BUT

Under **Sec 54F**,

**One house means only one** house i.e.

→ If assessee acquires **2 or more** houses **at the time of filing** the return then exemption is **not allowed** [i.e. exemption milega hi nahi b'coz ameeri dikh gayi – garibi dikhani padegi]

AND

→ If he acquires only **one** house **at the time of filing** the return then exemption is **allowed** but then such exemption will be **withdrawn in future** [if he purchases another house within 2 years or constructs another house within 3 years].

Purchase of **adjacent houses** (intended to be used as single residence) is treated as purchase of **one house**.

Under section 54 and 54F, the **cost of new house should not be more than Rs. 10 crores.**

**Note 5: Note for Section 54F:**

For claiming exemption u/s 54F, the assessee should **not own more than one** residential house (he should have only 1 house or no house)

| Existing House | New House        |
|----------------|------------------|
| 0<br>1         | Only 1<br>Only 1 |

↓                      ↓

Only for 54F              For 54 as well 54F

In all **other sections** [other than 54/54F], there is **no restriction on the number** of assets already owned and the number of assets to be purchased.

**Note 6: Exemption Limit for Section 54EC and 54EE:**

→ For exemption u/s 54EC, the assessee is required to invest in Bonds of **NHAI** [National Highways Authority of India] or **RECL** [Rural Electrification Corporation Limited] or **PFCL** [Power Finance Corporation Ltd.] or any **other notified bonds**.

→ For exemption u/s 54EE, the assessee is required to invest in the **units of specified fund** [specified fund means fund which will raise money to invest in **start up projects**]



Start-up project means:

Business of **developing/innovating/improving** products, processes or services or a **scalable business** model with a high potential of **employment generation** or **wealth creation**.

→ However, the amount of exemption under both these sections should not exceed **Rs. 50,00,000**

**Note 7: LTCA includes DEPRECIABLE ASSET:**

Exemption u/s 54EC/EE and 54F is for transfer of LTCA i.e. Long Term Capital **Asset**. Hence, if a **depreciable asset (more than 2/3 years old)** is transferred then it is a transfer of **LTCA**. Accordingly, exemption u/s 54EC/EE & 54F shall be **allowed** even though the resulting capital gains taxable as “Short Term”.

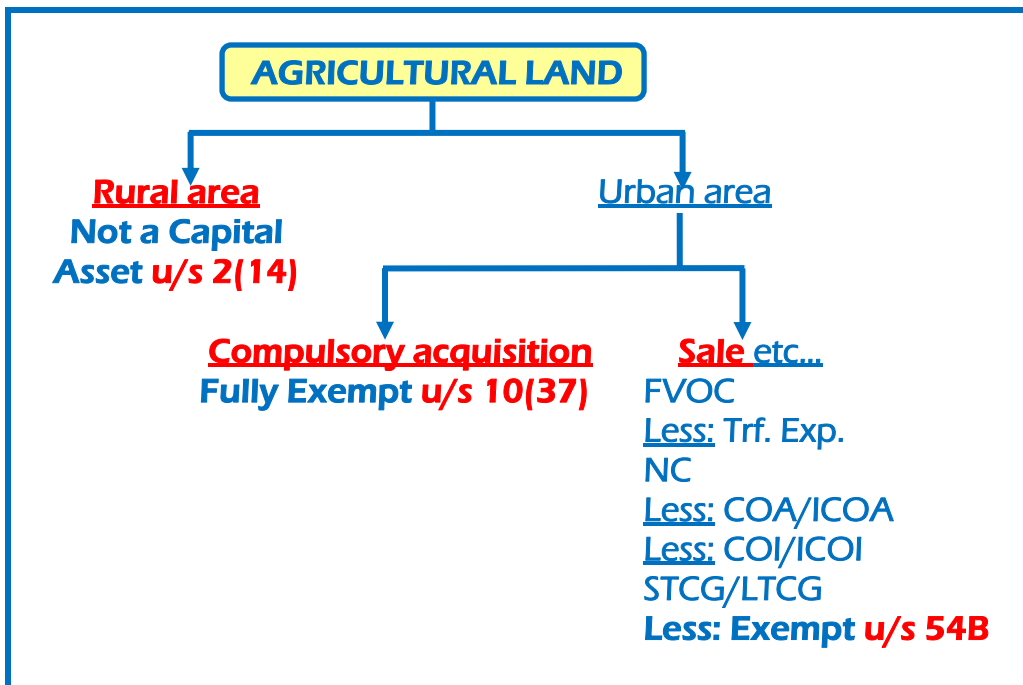
**Relevant case law:**

Case of Assam Petroleum – For Sec. 54EC

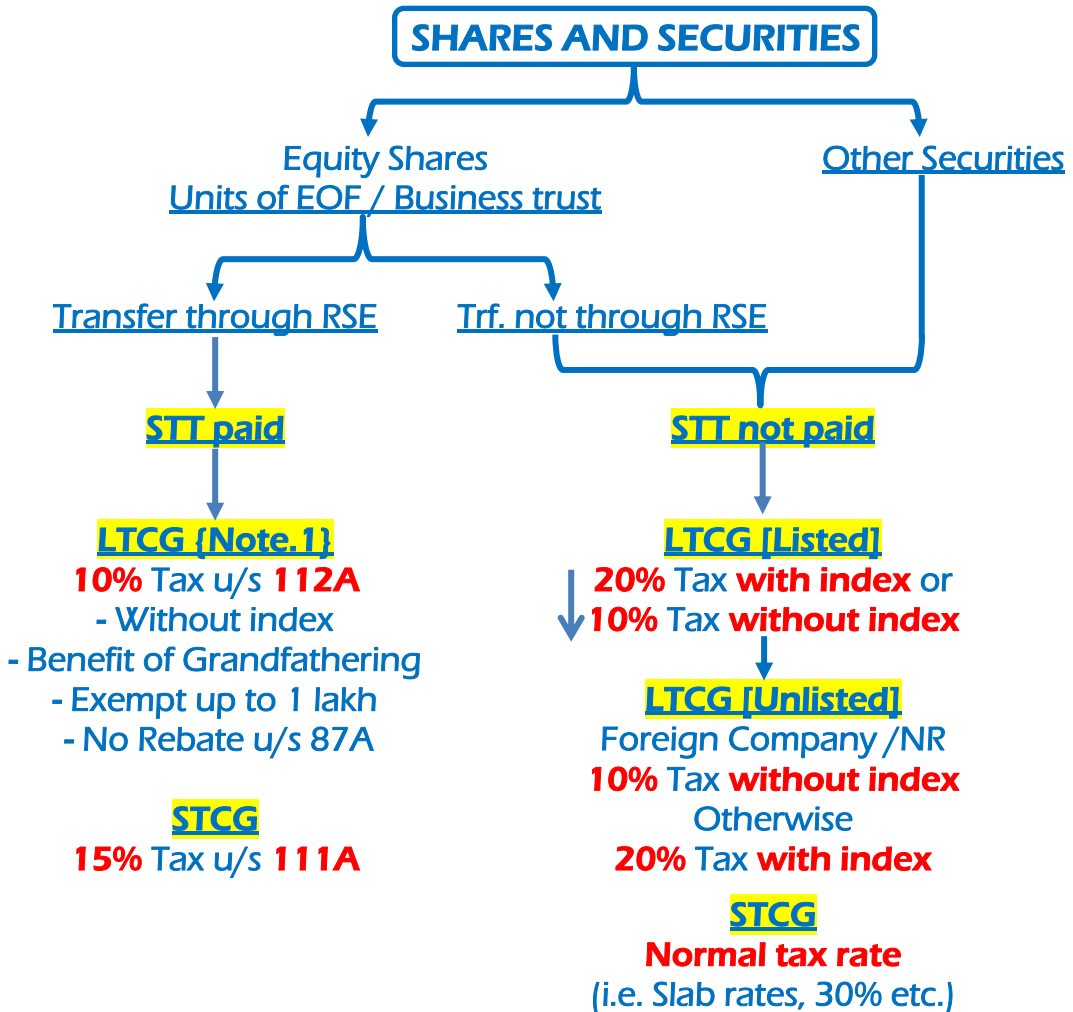
Case of Rajiv Shukla – For Sec. 54F

## DEBENTURES AND BONDS

In case of debentures and bonds, **indexation is not allowed** [whether transfer is before 23/7/24 or after 23/7/24]. However, in case of **CAPITAL INDEXED BONDS** issued by Govt. and **SOVEREIGN GOLD BONDS** issued by RBI, indexation is **allowed if transfer is before 23/7/24**



**CAPITAL GAINS ON SHARES AND SECURITIES**



Amount received from ULIP is also taxable as per section 112A

**If transfer is on or after 23/7/24 then:**

**STCG u/s 111A – 20% Tax**

**Exemption u/s 112A is up to ₹ 1,25,000**

**LTCGs [u/s 112A and others] – 12.5% Tax without Index**

**Note 1:**

Benefit of **Grand fathering** is applicable i.e. if the equity shares/units are purchased **on/before 31/1/2018** then gains upto 31/1/2018 are exempt. Hence, cost of acquisition will be computed as follows:

↑ Actual Cost  
 ↑ FMV as on 31/1/2018 or SP [whichever is less]

Example on Equity shares purchased on/before 31/1/2018:

|              | Eg.1 | Eg.2 | Eg.3 |
|--------------|------|------|------|
| FVOC (SP)    |      |      |      |
| Less: COA*   |      |      |      |
| LTCG         |      |      |      |
| *COA         |      |      |      |
| ↓ FMV        | 150  | 150  | 90   |
| ↓ SP         | 180  | 140  | 70   |
| ↑ Lower      |      |      |      |
| Actual Cost  | 100  | 100  | 100  |
| Higher (COA) |      |      |      |

**Note 2:**

Benefit of concessional tax u/s 112A/111A is applicable only if **STT is paid** by the assessee [in case of **units** – at the **time of sale** but in case of **equity shares** - at the time of **purchase as well as sale**.

→ Exception – If equity shares were unlisted at the time of purchase or were purchased in Public Issue, Rights Issue, Bonus Issue, ESOPs, etc. then STT should be paid only at the time of sale.

**Note 3: FMV as on 31.1.18**

→ If **equity shares/units** were **listed** as on 31.1.18:  
FMV as on 31.1.18 = **Highest Trading Price** as on 31.1.18.

If the equity shares were not traded on 31/1/18 then consider highest trading price of the immediately preceding date when the shares were traded.

→ If the **units** were **not listed** as on 31.1.18:  
FMV as on 31.1.18 = **Net Assets Value** as on 31.1.18 and

→ If **equity shares** were **not listed** as on 31.1.18:  
FMV as on 31.1.18 =

$$\text{Cost of Acquisition} \times \frac{\text{Index (2017-18)}}{\text{Index (Yr. of Purchase)}}$$

**Sec. 9B: TRANSFER BY PARTNERSHIP FIRM TO PARTNER**

**At the time of Dissolution or Reconstitution**

Whenever a partnership firm transfers a **capital asset** or **stock-in-trade** to a partner (whether at the time of **dissolution** or **reconstitution** of partnership firm), following computation is done by partnership firm:

**COMPUTATION OF CAPITAL GAINS (for Trf. of Capital Asset)**

|                                     |      |
|-------------------------------------|------|
| FVOC [FMV as per Registered Valuer] | XXX  |
| <u>Less:</u> Transfer Expenses      | - XX |
| Net Consideration                   | XXX  |
| <u>Less:</u> COA / ICOA             | - XX |
| <u>Less:</u> COI / ICOI             | - XX |
| STCG / LTCG u/s 9B                  | XXX  |

**COMPUTATION OF BUSINESS INCOME (for Trf. of Stock-in-Trade)**

|                                       |      |
|---------------------------------------|------|
| FMV of stock as per Registered Valuer | XXX  |
| <u>Less:</u> Cost of Acquisition      | - XX |
| Income from Business u/s 9B           | XXX  |

**Sec. 45(4):**

**TRF. OF MONEY OR CAPITAL ASSET TO PARTNER**

**At the time of Reconstitution**

If capital asset or stock-in-trade is transferred by partnership firm to partner, then first, we should make computation u/s 9B and then net book profit (after tax) should be **adjusted in the capital accounts** of all partners. After adjusting capital of each partner, following computation is done u/s 45(4):

**COMPUTATION OF CAPITAL GAINS u/s 45(4)**

|                                                               |      |
|---------------------------------------------------------------|------|
| Money & money value of other assets given to outgoing partner | XXX  |
| Less: Adjusted capital of outgoing partner                    | - XX |
| Capital Gains u/s 45(4)                                       | XXX  |

The above capital gains is taxable as **short term** if the remaining assets are either:

- **Short term** capital assets or
- **Depreciable** assets or
- **Self generated** assets

However, if the some of the remaining assets are short term / depreciable /self generated and some are long term then the above capital gains will be partly short term and partly long term (to be apportioned in the **ratio of appreciation**). The amount of capital gains taxed u/s 45(4) will be reduced from the sale consideration whenever the remaining assets are sold.



# TRANSFER PRICING

## → **SUMMARY:**

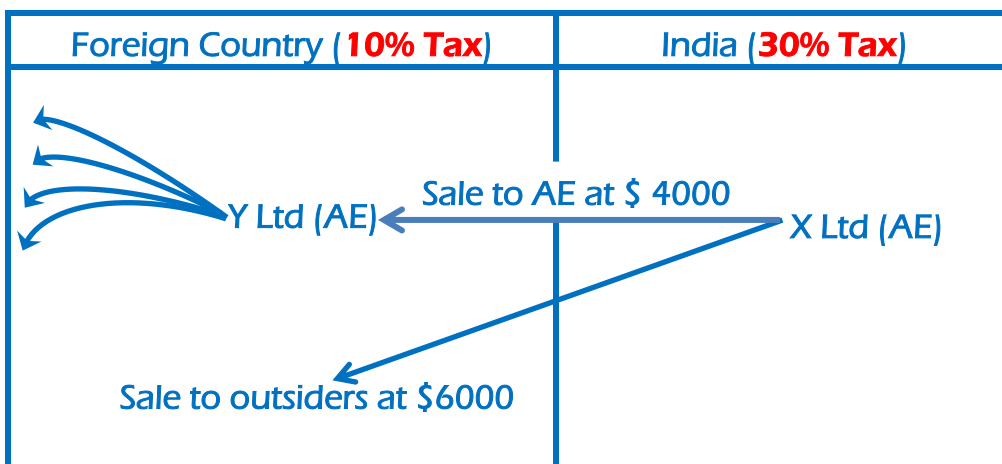
- I] Introduction
- II] Sec. 92A : Associated Enterprise (AE)
- III] Sec. 92B : International Transaction
- IV] Sec. 92C : Arm's length Price
- V] Sec. 92CA : Reference to TPO
- VI] Sec. 92CB : Safe Harbour Rules
- VII] Sec. 92CC : Advance Pricing Agreement (APA)
- VIII] Sec. 92CD : Effect of APA on Returns and Assessment.
- IX] Sec. 92CE : Secondary Adjustment
- X] Sec. 92D : Information and documents
- XI] Sec. 92E : Report of CA
- XII] Sec. 144C : Dispute Resolution Panel
- XIII] Sec. 94B : Thin Capitalization

## I. **INTRODUCTION:**

In this chapter,

→ First, we have to understand the **cheating** done by MNCs.

→ Then, we have to learn the **provisions** to control such cheating.

Example on cheating:

X Ltd. wants to sell goods to foreign customers but **instead of selling directly** to foreign customers, X Ltd is **selling through Y Ltd.** (its associated enterprise). This is because if the sale is directly made to foreign customers, sale price cannot be manipulated but if goods are first sold to Y Ltd. & then Y Ltd. sells to foreign customers, it is **possible to manipulate** the sale price i.e. X Ltd. will sell to Y Ltd. at lower price say \$4,000 [whereas the genuine sale price is \$6,000]. This will reduce the tax liability of X Ltd. by 30% and increase the tax liability of Y Ltd. but only by 10% (because in Y's country, tax rate is 10%). Hence there is a net saving of 20% [this is because of the difference in tax rates of two countries]. This is the cheating done by X Ltd. (out of 30% tax which belongs to India – 10% is shifted to Foreign country and 20% is eaten up by X Ltd). This is known as **Base Erosion and Profit Shifting** [because profit of \$2,000 having base in India is shifted to foreign country].

To control such practice, there is transfer pricing law. As per this law, whenever there is an **International transaction (I.T.)** between **Associated enterprise (A.E.)**, the price declared by the assessee (i.e. \$4000) shall not be accepted & the income will be computed having regard to the **Arm's Length Price** (i.e True, Fair and Genuine Price which can be taken as \$6000 in this case). Accordingly, the difference of \$2000 will be added to the income of X Ltd.

Hence, **A.E. + I.T. = ALP**

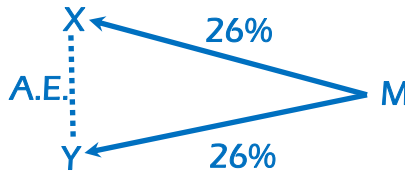
**II. Sec 92A** **ASSOCIATED ENTERPRISES:**

Two enterprises are treated as associated enterprises in **any one** of the following circumstances at **any time** during the P.Y:

**S<sub>2</sub> B<sub>2</sub> LG GM FO**

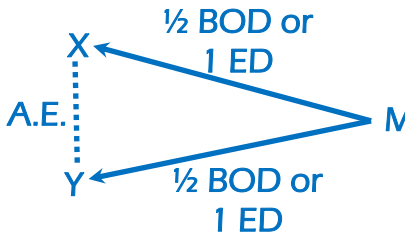
**S<sub>1</sub>** - One enterprise holds atleast **26% shares** of another enterprise

**S<sub>2</sub>** - Atleast **26% shares** of two enterprises are held by same person



**B<sub>1</sub>** - One enterprise appoints more than **half of the BOD** or atleast **1 ED** of another enterprise (BOD – Board of Directors , ED – Executive Director)

**B<sub>2</sub>** - More than **half of the BOD** or atleast **1 ED** of two enterprises are appointed by a same person.



**L** - One enterprise advances **loan** of atleast **51% of the total assets** of another enterprise.

**G** - One enterprise **guarantees** atleast **10% of the total borrowings** of another enterprise.

**G** - **Goods** manufactured by one enterprise are **sold** to other enterprise & the **price/other conditions are influenced** by such other enterprise.

Atleast **90%** of the total **raw material requirement** of one enterprise is supplied by another enterprise & the price/other conditions are influenced by such other enterprise.

- M** - **Manufacturing** by one enterprise is **wholly dependent** on the patents, copyrights, know how etc. owned by other enterprise.
- F** - One enterprise has atleast **10%** interest in another enterprise being a **Firm/AOP/BOI**.
- O** - Any **Other relationship** of mutual interest as may be prescribed.

### III. **Sec 92B** → **INTERNATIONAL TRANSACTION:**

International transaction (IT) means transaction of purchase, sale, lease, provision of services, lending, borrowing etc. between A.E. (**at least one** of which is a **non-resident**)

R ←————→ R – Not an IT

R ←————→ **NR** – Yes, an **IT**

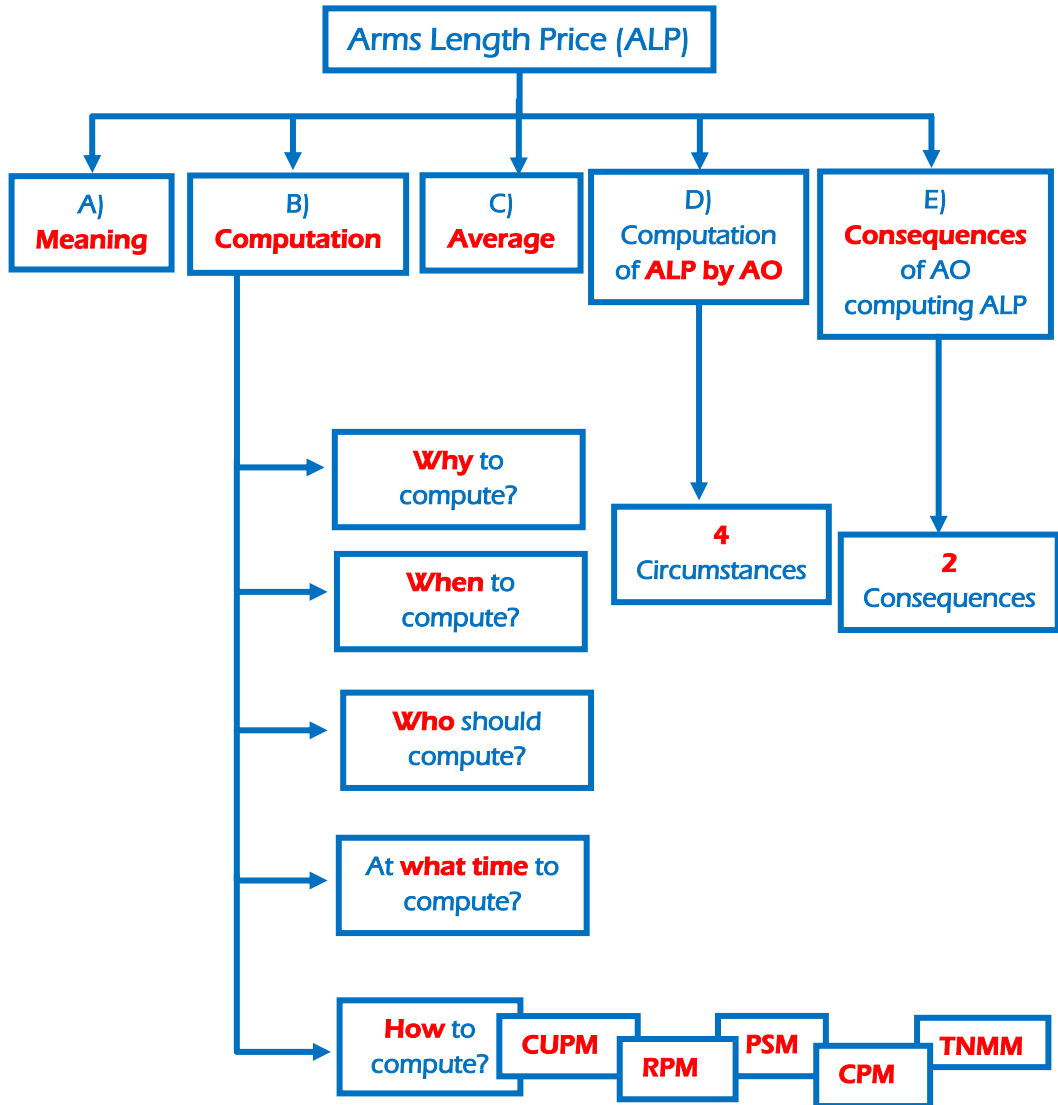
**NR** ←————→ **NR** – Yes, an **IT**

If **both are "R"** then both have to pay tax in India. In such case, **profit shifting is not possible**. Hence, it's not an IT.

If one is **"R"** (taxable in India) and the other is **"NR"** (incorporated abroad and business also abroad - taxable in foreign) then **profit shifting is possible**. Hence, it's an IT.

If one is **"NR"** (incorporated abroad but having place of **business in India** - taxable in India) and the other is **"NR"** (incorporated abroad and business also abroad - taxable in foreign) then **profit shifting is possible**. Hence, it's an IT.

IV. **Sec 92C** → **ARMS LENGTH PRICE:**



**A) MEANING:**

ALP is a price charged to **unrelated** parties.  
It is the price charged in **uncontrolled** transactions.  
It is the true/fair/**genuine** price.

**B) COMPUTATION OF ALP:**

⇒ **Why to compute ALP ?**

ALP is computed because the Government does not trust the price charged by assessee to its AE.

⇒ **When to compute ALP ?**

ALP should be computed whenever there is an IT between AE.

Therefore, **A.E. + I.T. = ALP**

⇒ **Who will compute ALP ?**

ALP should be computed by the **assessee** [Normally, his CA will compute].

⇒ **At what time ALP is computed ?**

ALP should be computed by the assessee at the time of **filing the return** [Due date of filing return in case of such assessee is 30<sup>th</sup> Nov].

⇒ **How to compute ALP ?**

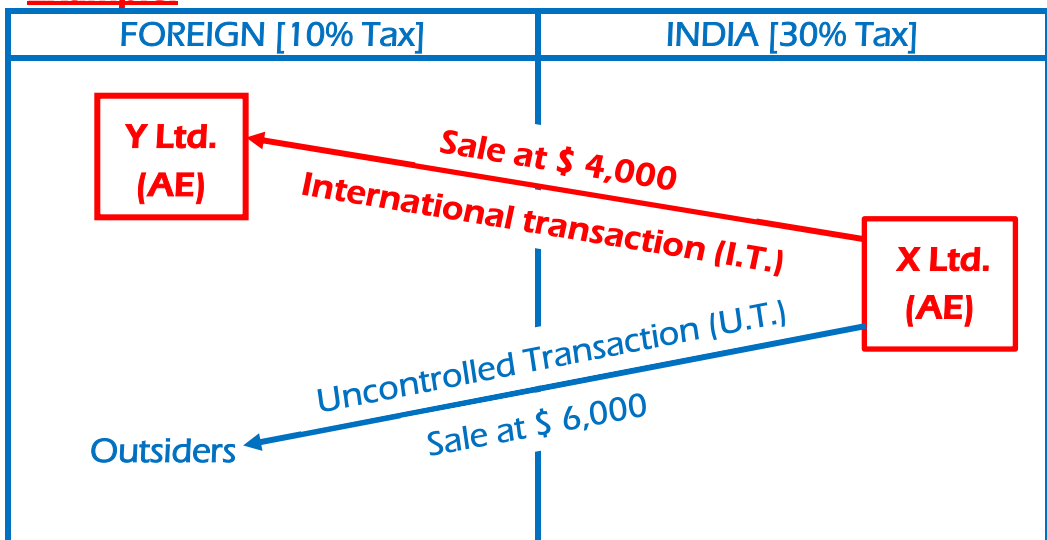
ALP should be computed as per the **most appropriate method** out of following methods:

- a. Comparable Uncontrolled Price Method (CUPM)
- b. Resale Price Method (RPM)
- c. Profit Split Method (PSM)
- d. Cost Plus Method (CPM)
- e. Transactional Net Margin Method (TNMM)
- f. Any other method as may be prescribed.

**i) Comparable Uncontrolled Price Method:**

|                                                           |      |
|-----------------------------------------------------------|------|
|                                                           | Amt. |
| Price charged in Comparable Uncontrolled Transaction (UT) | XXX  |
| <u>Add/Less:</u>                                          |      |
| Adjustments to account for differences between IT and UT  | ± XX |
| Arms Length Price                                         | XXX  |

**Example:**



Both the above transactions are comparable except following differences:

- i) Sale to Y Ltd. is at discount because the order is in bulk but such **discount** is **not given to outsiders** (Amt. of Discount is \$ 600).
- ii) Sale to Y Ltd. is without warranty but sale to **outsiders** is **with warranty** (Amt. of Warranty is \$ 200).
- iii) Sale to Y Ltd. is at FOB price but sale to **outsiders** is at **CIF price** (Amt. of Insurance and Freight is \$ 400).

Compute the Arms Length Price.

**Solution:**

**COMPUTATION OF ALP**

|                                                      | Amt(\$)      |
|------------------------------------------------------|--------------|
| Price charged in Comparable Uncontrolled Transaction | 6,000        |
| <u>Add/Less: Adjustments:</u>                        |              |
| Discount                                             | (600)        |
| Warranty                                             | (200)        |
| Insurance & Freight                                  | (400)        |
| <b>Arms Length Price</b>                             | <b>4,800</b> |

**Conclusion:**

Since the ALP is \$ 4,800, the genuine sale price is \$ 4,800 but X Ltd. has shown only \$ 4,000 (shown less – cheating). Hence, the difference of \$ 800 shall be added to the income of X Ltd.

**Note:**

If the sale price charged by assessee is more than ALP i.e. the assessee has shown higher income then ignore the ALP (& the price charged by assessee shall be accepted).

**ii) Resale Price Method (RPM):**

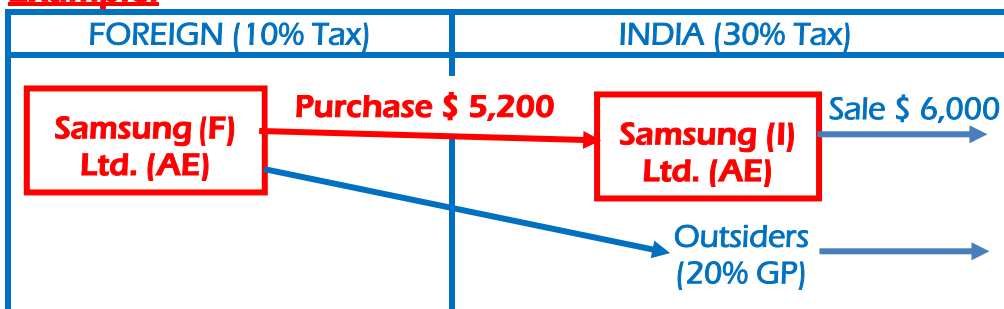
This method is suitable when the assessee is a **distributor/reseller** i.e. in cases where an Indian Associate purchases (imports) goods from its Foreign Associate and then sells it in Indian market without any further processing [that's why, its called resale price method – resale means product is bought and then sold as it is].

Eg: Samsung (India) Ltd., Sony (India) Ltd, LG (India), L'oreal (India) Ltd. etc. purchase goods from its foreign AE and sell it in Indian market **without further processing**.

Under such situation, manipulation is possible in purchase price like when Samsung (India) Ltd. purchases from Samsung (Foreign) Ltd., it will show the purchases at higher price. Hence, we need to find the genuine purchase price (ALP) which is computed as follows:

|                                                                  |      |
|------------------------------------------------------------------|------|
|                                                                  | Amt  |
| Resale price [Price at which imported goods are sold in India]   | XXX  |
| <u>Less:</u> Normal GP Margin (which other distributors earn)    | (XX) |
|                                                                  | XXX  |
| <u>Less:</u> Purchase related expenses                           | (XX) |
|                                                                  | XXX  |
| <u>Add/Less:</u> Adj. to account for differences between IT & UT | +XX  |
| ALP (Purchase price)                                             | XXX  |

**Example:**



Normal G.P. margin is 20% on Sales (This is the profit margin which other distributors earn on purchase and sale of same/similar product). Purchase related exps (custom duty, transportation etc) is \$ 300. Samsung (India) Ltd. gets discount of \$ 200 from Samsung (Foreign) Ltd. but outsiders [other distributors] don't get such discount. Compute Arms Length Price.

**Solution:**

**COMPUTATION OF ALP**

|                                                                   | Amt (\$)            |
|-------------------------------------------------------------------|---------------------|
| Resale price                                                      | 6,000               |
| <u>Less: Normal Gross Profit Margin (20%)</u>                     | (1,200)             |
|                                                                   | 4,800               |
| <u>Less: Purchase related expenses</u>                            | (300)               |
|                                                                   | <b>Note 1</b> 4,500 |
| <u>Add/Less: Adj. for differences between IT &amp; UT [Disc.]</u> | (200)               |
| ALP (Purchase price)                                              | 4,300               |

**Conclusion:**

Since the ALP is \$ 4,300, the genuine purchase price is \$ 4,300 but Samsung (India) Ltd. has shown purchase of \$5,200 (shown more expense - cheating). Hence, the difference of \$900 (excess purchase expenditure) shall be added back to the net profit of Samsung (India) Ltd.

**Note 1:**

Purchase price of \$4,500 can also be calculated as follows:

Trading A/c

|                       | Amt.  |       | Amt.  |
|-----------------------|-------|-------|-------|
| Purchases [Bal. fig.] | 4,500 | Sales | 6,000 |
| Purchase related exp. | 300   |       |       |
| G.P. [20 %]           | 1,200 |       |       |
|                       | 6,000 |       | 6,000 |

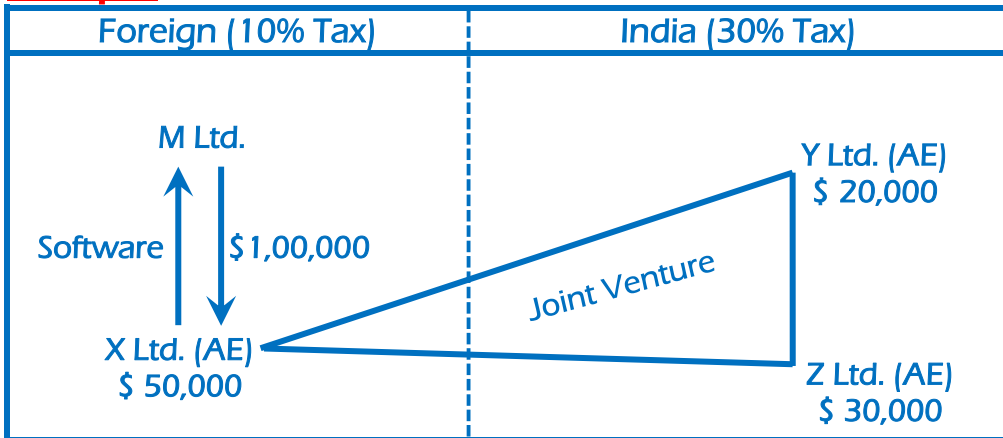
**iii) Profit Split Method (PSM):**

This method is suitable when an assessee executes an order in joint venture with its associated enterprises. In such case, ALP is calculated as follows:

Cost incurred by the assessee XXX  
 Add: Share of profit based on its **relative contribution**\* XXX  
 Arms Length Price XXX

\***Relative contribution** can be measured in terms of manpower employed, assets employed, functions performed, risks undertaken etc depending upon the type of the work (This ratio will be given in the question).

**Example:**



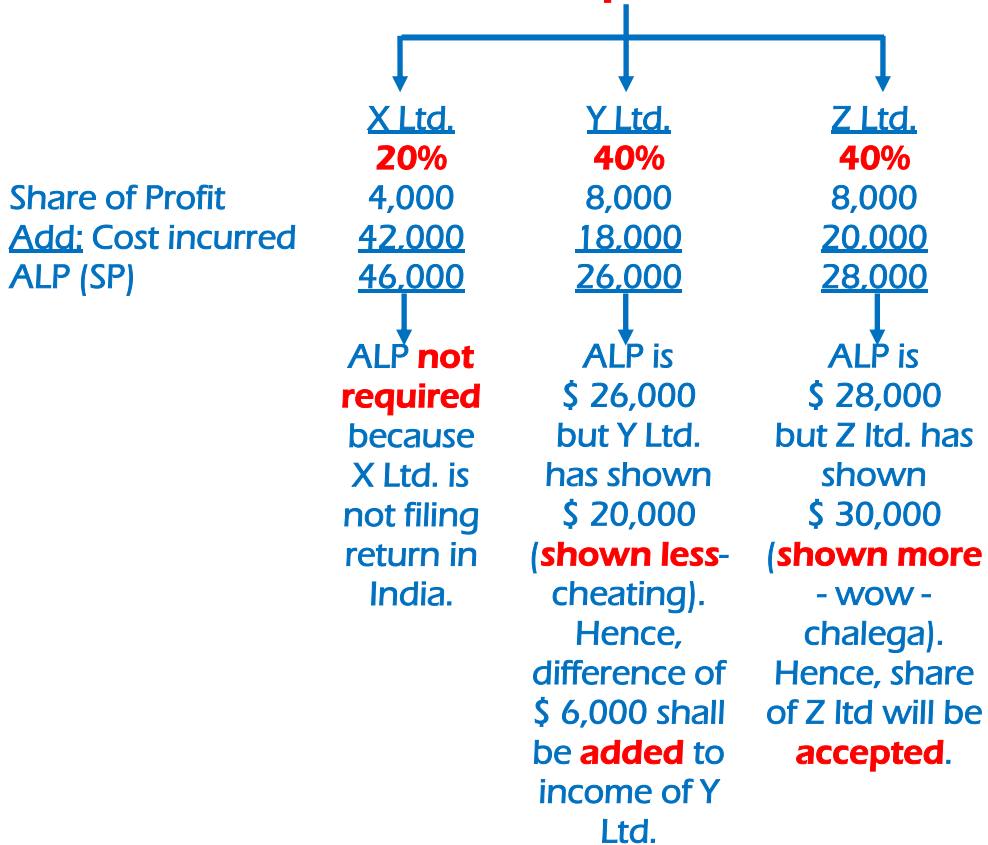
In the above example, X Ltd. has received an order of developing software for M Ltd. (for which X Ltd. has charged \$ 1,00,000). To execute this order, X Ltd. has entered into a joint venture with its associated enterprises Y Ltd. and Z Ltd. (share of X Ltd. \$ 50,000, Y Ltd. \$ 20,000 and Z Ltd. \$ 30,000).

The relative contribution of X Ltd., Y Ltd. and Z Ltd. is 20%, 40% and 40% respectively [measured in terms of manpower employed i.e. 2 engineers from X Ltd, 4 engineers from Y Ltd and 4 engineers from Z Ltd]. Compute ALP for Y Ltd. and Z Ltd. assuming the total cost of developing software is \$ 80,000 (out of which Y Ltd. has incurred \$ 18,000 and Z Ltd. has incurred \$ 20,000).

**Solution:**

|                         |                  |
|-------------------------|------------------|
| Total Revenue           | \$ 1,00,000      |
| <u>Less:</u> Total Cost | <u>\$ 80,000</u> |
| Total Profit            | <u>\$ 20,000</u> |

**Split**



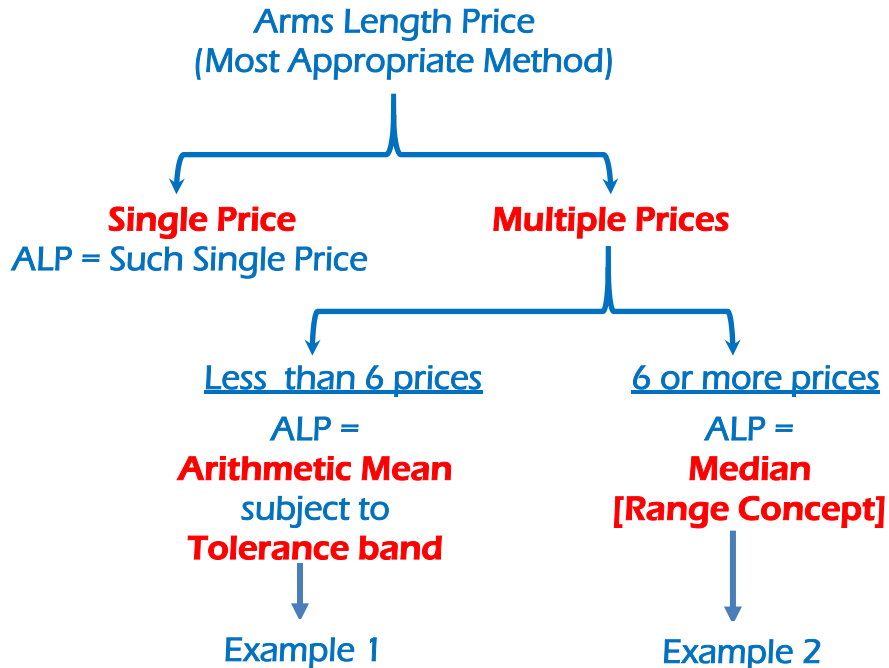
**iv) Cost Plus Method (CPM):**

|                                                                            | Amt. |
|----------------------------------------------------------------------------|------|
| Direct Cost                                                                | XXX  |
| <u>Add:</u> Indirect Cost                                                  | XXX  |
| Total Cost                                                                 | XXX  |
| <u>Add:</u> Standard G.P. Mark-Up                                          | XXX  |
|                                                                            | XXX  |
| <u>Add/Less:</u><br>Adjustments to account for differences between IT & UT | ± XX |
| Arms Length Price                                                          | XXX  |

**v) Transactional Net Margin Method (TNMM):**

|                                                                            | Amt. |
|----------------------------------------------------------------------------|------|
| Total Cost                                                                 | XXX  |
| <u>Add:</u> Standard Net Profit Margin                                     | XXX  |
|                                                                            | XXX  |
| <u>Add/Less:</u><br>Adjustments to account for differences between IT & UT | ± XX |
| Arms Length Price                                                          | XXX  |

**C) CONCEPT OF AVERAGE:**



→ **Tolerance Band:**

If less than 6 prices are computed as per the most appropriate method then ALP is the Arithmetical Mean of such prices.

In such cases, if the **difference** between such ALP and the actual price is **upto 3% of Actual Price** then such difference shall be **tolerated** i.e. the price declared by the assessee shall be accepted [ALP – Ignored]. However, if such difference is **more than 3% of Actual Price** then such difference **shall not be tolerated** and the **entire difference shall be added** to the income of assessee.

**Example 1: Arithmetical Mean:**

| Sr. No. | Sale Price |
|---------|------------|
| 1.      | \$ 150     |
| 2.      | \$ 120     |
| 3.      | \$ 110     |
| 4.      | \$ 140     |

Prices of 4 comparable uncontrolled transactions [computed as per the most appropriate method]

Actual Price = \$ 125

**Solution:**

Since there are less than 6 prices computed as per the most appropriate method, ALP = Arithmetical Mean of such prices. Hence,

$$ALP = \{150 + 120 + 110 + 140\} \div 4 = \$ 130$$

**# Check Tolerance Band:**

|                    |        |
|--------------------|--------|
| ALP                | \$ 130 |
| Less: Actual Price | \$ 125 |
| Difference         | \$ 5   |

> \$ 3.75 [3% of Actual Price i.e. 125]

**Conclusion:**

Since the difference of \$ 5 is more than 3% of Actual Price, the difference **shall not be tolerated** and the **entire difference** shall be **added** to the income of assessee.

**Example 2: Range Concept:**

Purchase Prices of 8 comparable uncontrolled transactions as per the most appropriate method are as follows:

|                |    |   |    |    |    |    |   |    |
|----------------|----|---|----|----|----|----|---|----|
| Sr.No.         | 1  | 2 | 3  | 4  | 5  | 6  | 7 | 8  |
| Purchase Price | 12 | 8 | 18 | 14 | 20 | 16 | 6 | 10 |

Actual Purchase Price paid to its AE = \$17

**Solution:**

Since the given data has 8 prices [**6 or more**], ALP shall be computed using the **Range concept** as follows:

**Step 1:** Arrange the data in **Ascending Order** as follows:

|                     |   |   |    |    |    |    |    |    |
|---------------------|---|---|----|----|----|----|----|----|
| Sr.No.              | 1 | 2 | 3  | 4  | 5  | 6  | 7  | 8  |
| Purchase Price (\$) | 6 | 8 | 10 | 12 | 14 | 16 | 18 | 20 |

**Step 2:** Calculate **35<sup>th</sup> Percentile**:

35<sup>th</sup> percentile = Total No. of Prices x **35/100** = 8 x 35/100 = 2.8

Since 2.8 is **not a whole number**, consider the **next higher** number i.e. 3

Hence, 35<sup>th</sup> percentile = Price against serial number 3 = \$10

**Note:** If 35<sup>th</sup> percentile is **whole number**, i.e. instead of 2.8, if the answer comes to 3 then 35<sup>th</sup> percentile = **Average** of 3<sup>rd</sup> and 4<sup>th</sup> price =  $10 + 12 / 2 = \$11$

**Step 3:** Calculate **65<sup>th</sup> percentile**:

65<sup>th</sup> Percentile = Total No. of Prices x **65/100** = 8 x 65/100 = 5.2

Since 5.2 is **not a whole number**, consider the **next higher** number i.e. 6

Hence, 65<sup>th</sup> percentile = Price against serial number 6 = \$16

**Note:** If 65<sup>th</sup> percentile is **whole number**, i.e. instead of 5.2, if the answer comes to 6 then 65<sup>th</sup> percentile = **Average** of 6<sup>th</sup> and 7<sup>th</sup> price =  $16 + 18 / 2 = \$17$

**Step 4:** Check the actual price in the **Range**.

Range means prices between **35<sup>th</sup>** and **65<sup>th</sup> percentile**.

Hence, Range = Prices between \$ 10 and \$ 16

|                     |              |              |                          |    |    |    |               |               |
|---------------------|--------------|--------------|--------------------------|----|----|----|---------------|---------------|
| Sr.No.              | 1            | 2            | 3                        | 4  | 5  | 6  | 7             | 8             |
| Purchase Price (\$) | <del>6</del> | <del>8</del> | 10                       | 12 | 14 | 16 | <del>18</del> | <del>20</del> |
|                     | Very Low     |              | <b>ARMS LENGTH RANGE</b> |    |    |    | Very High     |               |

If the actual price is **within the range**, then the **actual price** will be **accepted** (ignore the ALP)

However, in this case, the actual price is \$ 17 which is **outside the range**. This means, the purchase price paid by assessee to its AE is not genuine. Hence, we need to find the genuine purchase price i.e. **ALP** which is computed as **median** of all the prices.

Median = No. of Prices X **50/100** = 8 X 50/100 = 4

Since 4 is a **whole number**, Median = Average of 4<sup>th</sup>& 5<sup>th</sup> price

i.e.  $12+14 / 2 = \$13$

∴ ALP = \$13

**Conclusion:**

Since the ALP is \$13, the genuine purchase price is \$13 but assessee has shown \$17 [shown more expense – cheating]. Hence, the difference of \$4 (excess expense) shall be added back to the income of assessee.

**D) DETERMINATION OF ALP BY A.O. – Sec. 92C(3):**

Normally, the ALP is computed by the assessee.

However, in following circumstances, the ALP shall be computed by the A.O. :

- a) If the assessee **fails** to compute the ALP as per the **Most Appropriate Method**.
- b) If the Information & Documents required u/s 92D are **not maintained**.
- c) If the Information & Documents required u/s 92D are **not furnished**.
- d) If the Information & Data related to ALP are **incorrect/not reliable**.

Before determining ALP, the A.O. shall provide an opportunity of being heard to the assessee.

**E) CONSEQUENCES of AO computing ALP–Sec 92C(4):**

→ **First Consequence:**

If the ALP is computed by A.O. then the **addition** made by A.O. shall **not be eligible** for deductions under chapter VIA and deduction u/s 10AA.

Example:

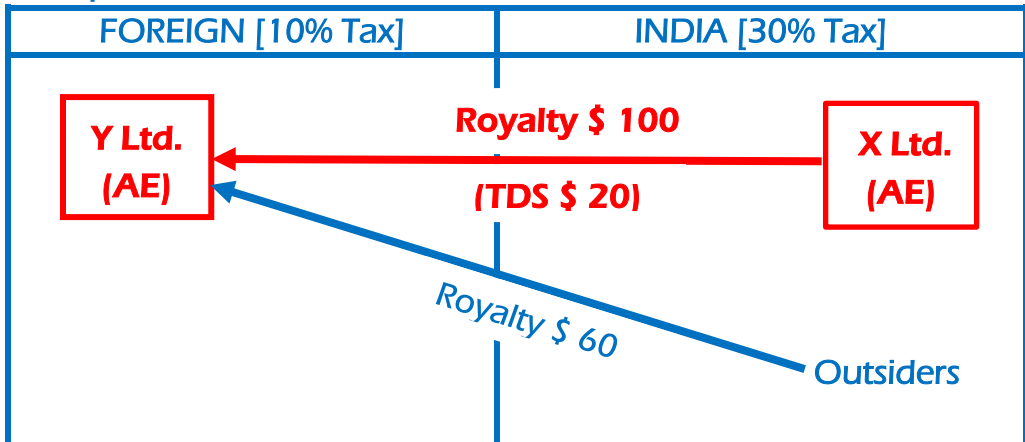
|                                 | Return      |                   | Asst        |
|---------------------------------|-------------|-------------------|-------------|
| Income from Salaries            | -           |                   | -           |
| Income from HP                  | -           |                   | -           |
| Income from Business            | 100         | + Rs. 40*         | 140         |
| Capital Gains                   | -           | <b>Addition</b>   | -           |
| IFOS                            | -           | <b>made by AO</b> | -           |
| <b>GROSS TOTAL INCOME</b>       | <b>100</b>  |                   | <b>140</b>  |
| <u>Less: Deduction u/c VIA:</u> |             |                   |             |
| → Sec. 80IB (30% of IFB)        | <b>- 30</b> | → same →          | <b>- 30</b> |
| <b>NET TAXABLE INCOME</b>       | <b>70</b>   |                   | <b>110</b>  |

\*Rs.40 = ALP computed by AO – Price declared by assessee

→ **Second Consequence:**

If the International Transaction involves a **payment subject to TDS** then determination of ALP by A.O. shall lead to **recomputation of** the income of assessee [**payer**] but it shall **not** lead to recomputation of the income of its associated enterprise [**receiver**] (i.e. the receiver cannot claim refund of excess TDS).

Example:



X Ltd. filed the return without computing ALP. Hence, the ALP was determined by A.O. and according to A.O., the ALP is \$60 (because outsiders pay \$60 for the use of same patent etc) i.e. the proper and fair amount of royalty expense should be \$ 60 but X Ltd. has shown \$ 100 (shown more expense – cheating). Hence, the excess royalty expense of \$ 40 (i.e. \$ 100 - \$ 60) shall be added back to the Net Profit of X Ltd. This means, income of X Ltd. is recomputed. However, income of Y Ltd. shall not be recomputed i.e. **for Y Ltd., the royalty income will remain as \$ 100** and Y Ltd. cannot claim refund of excess TDS on \$ 40 (i.e. \$8).

Computation of Income of Y Ltd:

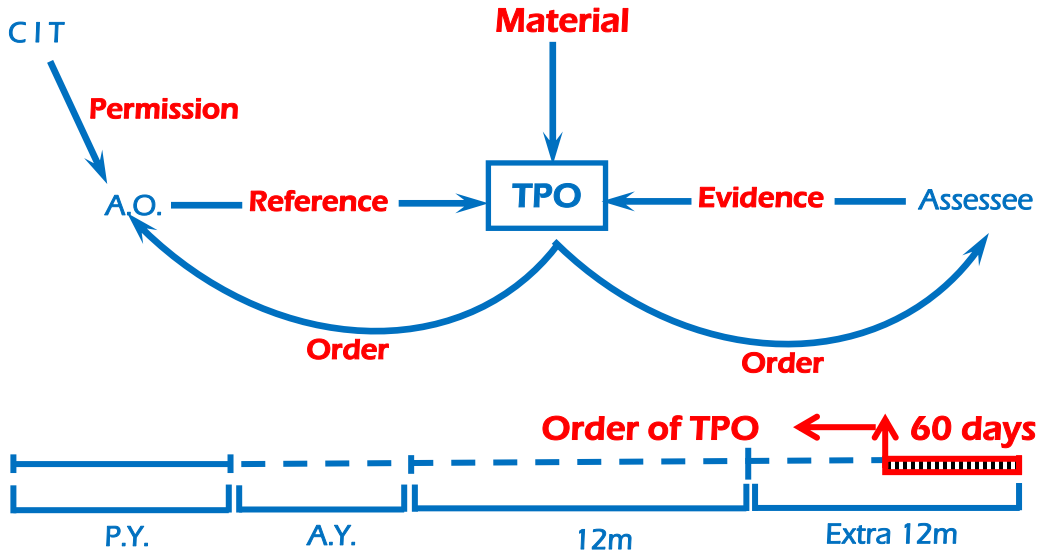
|                    | Return filed by Y Ltd. | Recomputation expected by Y Ltd. |
|--------------------|------------------------|----------------------------------|
| Royalty Income     | \$ 100                 | <del>\$ 60</del>                 |
| Tax @ 20% u/s 115A | \$ 20                  | <del>\$ 12</del>                 |
| Less: TDS u/s 195  | (\$ 20)                | <del>(\$ 20)</del>               |
| Refund             | NIL                    | <del>(\$ 8)</del>                |

Note: As per section 115A, royalty income of a foreign co. from India is taxable at a concessional rate of 20%. As per section 195, income of NR in India is subject to TDS u/s 195

**V. Sec 92CA**      **REFERENCE TO TPO**

- 1) If the A.O. considers **necessary** then he shall **refer** computation of ALP to TPO [Transfer Pricing Officer]. Before doing so, the A.O. shall take the **permission of CIT**.
- 2) After the reference is made to TPO, the TPO shall gather **materials** for computation of ALP and require the assessee to produce **evidence**.
- 3) On the basis of materials gathered by TPO and evidence produced by assessee, TPO shall compute the ALP and pass an **order**. The order of TPO shall be communicated to the A.O. and the assessee. The order of TPO is **binding on A.O.** The TPO shall pass the order **before 60 days** prior to last date allowed for completion of assessment.

Note: During any assessment proceeding, if reference is made to TPO then the A.O. shall get **extra 12 months** to complete the asst.



Important Note: Once reference is made to TPO, the TPO can compute ALP for all international transactions (whether referred by A.O. or not referred by A.O.)

## XII. **Sec 144C** → **DISPUTE RESOLUTION PANEL**

### → **Meaning:**

DRP is a panel of 3 CIT's. As per this section, the AO shall complete the regular assessment, Income escaping assessment etc with the help of 3 CITs. Hence, it will be a quality assessment and there are less chances of appeal [still if assessee wants to appeal then he can appeal directly to ITAT]. Following assessee's are eligible for DRP:

### → **Eligible Assesseees:**

- 1) A **Foreign Company/Non-resident** in whose case, the A.O. proposes to make **variations** in the income shown in return and such variations are **prejudicial** to such foreign co./NR.
- 2) Any **Other Assessee** in whose case, such **variations** arise due to the **order of TPO** and such variations are **prejudicial** to such assessee.

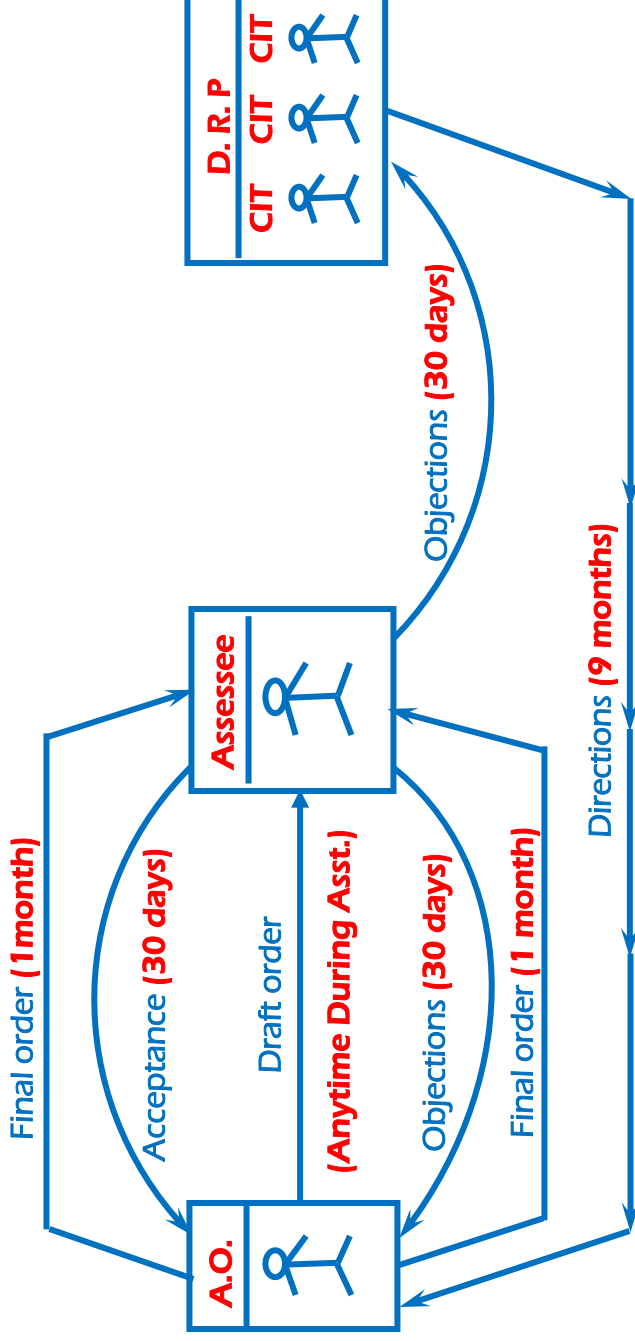
**With effect from 1/9/2024, this section shall exclude search cases.**

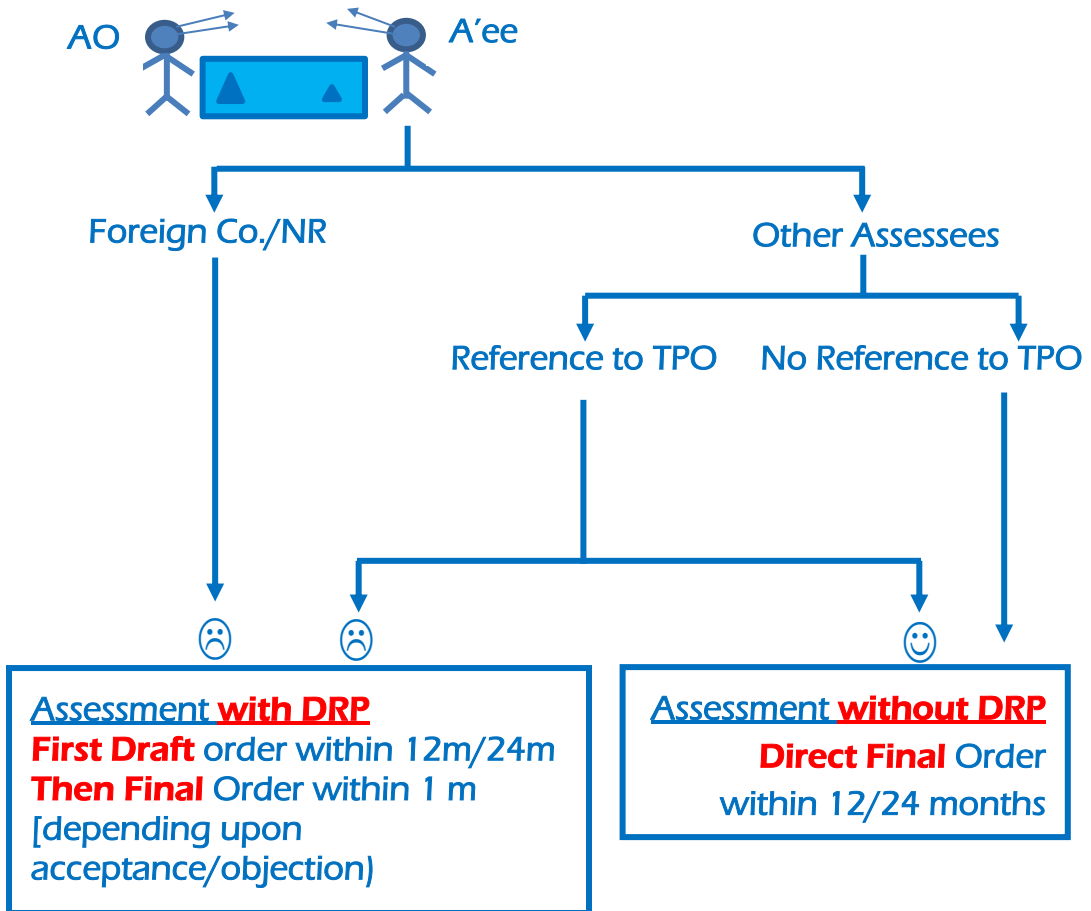
### → **Procedure**

- 1) The A.O. shall forward a copy of **draft order** to the assessee [Draft order can be forwarded at any time during the assessment proceedings i.e. if it is a regular assessment then anytime during 12 months or 24 months in case reference is made to TPO]
- 2) **Within 30 days** from the date of receipt of draft order, the assessee shall –
  - File his **acceptance to A.O.** or
  - File his **objections to A.O. and DRP.**
- 3) If the assessee files his acceptance, then the A.O. shall pass the **final order within 1 month** from the end of the month in which acceptance is received by A.O.
- 4) If the assessee files his objections, then the A.O. shall wait for the direction of DRP. The DRP shall **issue directions\* within 9 months** from the end of the month in which draft order is forwarded to the assessee. After receiving the directions of DRP, the A.O. shall pass the **final order within 1 month** from the end of the month in which directions are received by A.O.

**\*Note:**

- 1) The DRP shall issue directions on the **basis** of draft order, objections filed by assessee, materials gathered by DRP and evidence produced by assessee.
- 2) Before issuing directions, the DRP shall provide an **opportunity** of being heard to the A.O. and assessee.
- 3) The Directions of DRP are **binding** on A.O.





VI) **Sec 92CB** **SAFE HARBOUR RULES:**

This section empowers CBDT to make safe harbour rules i.e. the CBDT shall provide for circumstances in which price declared by the assessee shall be accepted [and ALP shall be ignored].

## VII. **Sec 92CC** ADVANCE PRICING AGREEMENT

### **CAP<sub>2</sub> B.V<sub>2</sub>**

- 1) This section empowers **CBDT** to enter into an advance pricing agreement with any person.
- 2) As per APA, either the **ALP** or the **method** of computing ALP for specified number of years is decided in **Advance**.
- 3) APA shall cover a **Period** of maximum **5 consecutive years** and such period shall be specified in the agreement.
- 4) **Procedure etc.** for entering into APA is prescribed in **Rule 10F to Rule 10T**. Procedure includes:
  - Pre-filing consultation [Form 3 CEC],
  - Application [Form 3 CED],
  - Negotiation i.e. meetings
  - FinalisationFees – Rs.10 / 15 / 20 lakhs depending upon the value of international transactions
- 5) The APA shall be **Binding** on –
  - i) The person who entered into APA and
  - ii) The Income Tax authority till the level of CITThis means, no one can appeal against the ALP/Method decided in APA
- 6) The APA shall remain **Valid** till the law and circumstances remain the same.
- 7) After entering into APA, if the CBDT discovers that a person had obtained APA by **fraud** or **misrepresentation** of facts then the CBDT shall declare such APA as **Void ab intio**. As a result, all the assessments which are completed on the basis of such APA shall be reopened.

VIII. **Sec 92CD**

**EFFECT OF APA ON RETURNS & ASST**

Example:

A person **applied** for APA on **4<sup>th</sup> Nov, 21** for following future yrs:

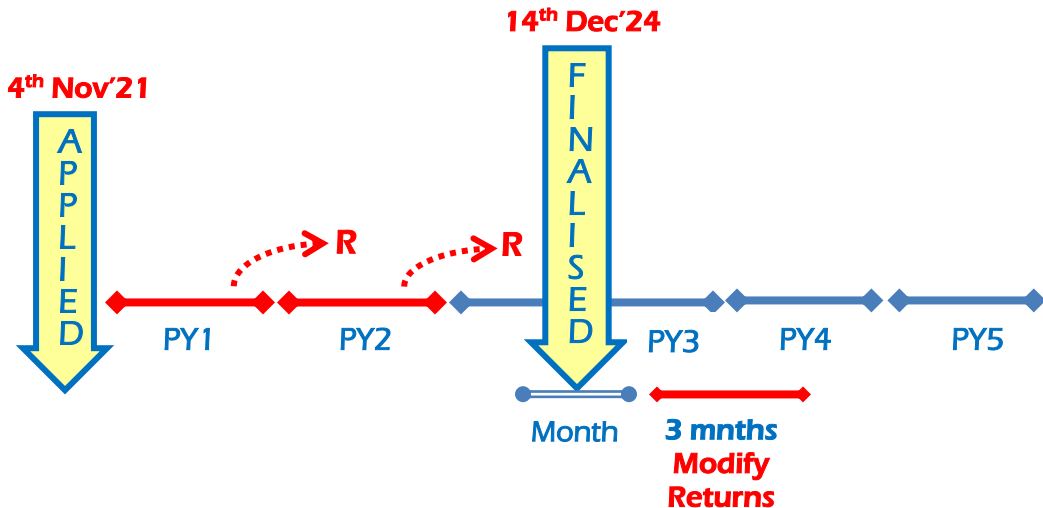
**PY 1: 2022-23**

**PY 2: 2023-24**

**PY 3: 2024-25** → The agreement was **finalised** on **14<sup>th</sup> Dec, 24**.

**PY 4: 2025-26**

**PY 5: 2026-27**



Before the APA got finalised on 14<sup>th</sup> Dec.,2024, the assessee has **already filed** the return of **PY 1 & 2** considering a particular ALP. Now, as per section 92CD:

→ The assessee is required to **modify** the returns of PY 1 & 2 [to modify income in lines with ALP as per APA] **within 3 months** from the end of the month in which APA is entered [finalised].

→ To complete assessment of PY 1 & 2, the AO shall get **extra 12 months**. In case the assessment of these years is already completed then it should be done again **within 1 year** from the end of the year in which modified return is filed.

**Note:**

**ROLL BACK PROVISION**

While applying for APA, the assessee can request for roll back of the agreement [by paying additional fees of Rs. 5 lakhs and filing an additional form i.e. Form 3 CEDA].

Roll back means the ALP/method decided in APA shall also be binding on a period **prior to the period of APA – max. 4 prior years**. Accordingly, in the above example, if there is roll back in APA then the ALP/method decided in APA shall also be binding on period of max. 4 years prior to PY 2022-23 [i.e. PY 2021-22, PY 2020-21, PY 2019-20 and PY 2018-19].

**→ Conditions:**

- 1) The return of such 4 years were **originally filed on time** [in case, return of any of these 4 years was belated then such year will not qualify and remaining years shall qualify].
- 2) Roll back can be requested for the **same international transactions** for which APA is applied for.

**→ After the APA is finalised:**

- The return of such years should also be **modified** within 3 months from the end of the month in which APA is finalised;
- For assessment of such years also, **extra 12 months** shall be allowed. If assessment of these years is already completed then it should be **done again within 1 year** from the end of the year in which modified return is filed;
- In case, appeal is filed by the **assessee** in respect of these years then the **appeal** in relation to ALP matter should be **withdrawn** by the assessee **before filing modified return** and
- If **department** has filed appeal on ALP matter then the department should **withdraw** the **appeal within 3 months** from the date of filing of modified return.

IX.

Sec 92CE

## SECONDARY ADJUSTMENT

After ALP is computed, the difference between ALP and Actual price is added to the income of assessee as follows:

|                        |     |                                     |
|------------------------|-----|-------------------------------------|
| IFS                    | xxx |                                     |
| IFHP                   | xxx |                                     |
| IFB                    | xxx | (+) Difference (ALP – Actual Price) |
| CG                     | xxx |                                     |
| IFOS                   | xxx |                                     |
| G T I                  | xxx |                                     |
| Less: Ded <sup>n</sup> | -xx |                                     |
| N T I                  | xxx |                                     |

This is called **PRIMARY ADJUSTMENT**

If this primary adjustment is done:

– By the assessee **on his own** (in the return)

OR

– By the **A.O.** (on Assessment) and **accepted by Assessee**

then the Assessee is required to adjust such difference in the books of accounts as follows:

|                       |     |
|-----------------------|-----|
| AE's A/c [Receivable] | Dr. |
| To Income/Expense A/c |     |

This is called **SECONDARY ADJUSTMENT**

This difference appearing in the books of accounts is required to be **repatriated** to India **within 90 days** from the:

**Due date of filing return**

(if difference was added by the assessee on his own); or

**Date of Order of AO/Appellate authority**

(if such difference was added by A.O. & accepted by A'ee).

If not repatriated as above then such difference amount is **deemed as advance** and the assessee will be assumed to have earned interest on such advance. Such **deemed interest income** will be **taxable** in the hands of assessee.

Amt. of Interest income =  
Advance Amt × Prescribed Int. rate (%) × Period up to the actual date of repatriation

**Note 1:**

Prescribed interest rate =

**SBI rate + 3.25 %** [if the international transaction is in Indian currency]

**LIBOR + 3 %** [if the international transaction is in foreign currency]

**Note 2:**

The above rule of secondary adjustment is applicable only if the amount of primary adjustment **exceeds Rs. 1 crore**.

**Note 3:**

→ If the assessee cannot bring back the excess money from the AE with whom IT was undertaken then the assessee can **bring back** the excess money **from some other non-resident AE**.

→ If the assessee cannot bring back the excess money from any AE within the prescribed time of 90 days then the assessee has an **option to pay one-time additional tax** at a special rate of **18%\*** [plus 12% SC and 4% HEC] **on the excess money** not repatriated.

In short, either **repatriate** the excess money from any non-resident AE **within 90 days** or **pay additional tax @ 18%** on such excess money **within 90 days**. Otherwise, deemed interest income will be computed till the date of actual repatriation or till the date of actual payment of additional tax.

\* 18% tax is computed on excess money on **gross basis without any deduction** under Income Tax Act and **no credit** is available in respect such additional tax.

## X. **Sec 92D** **INFORMATION & DOCUMENTS**

An assessee who enters into International Transaction (IT) with its Associated Enterprise (AE) is required to maintain following information and documents:

### → **Main Documents:**

#### **POBI FUAA**

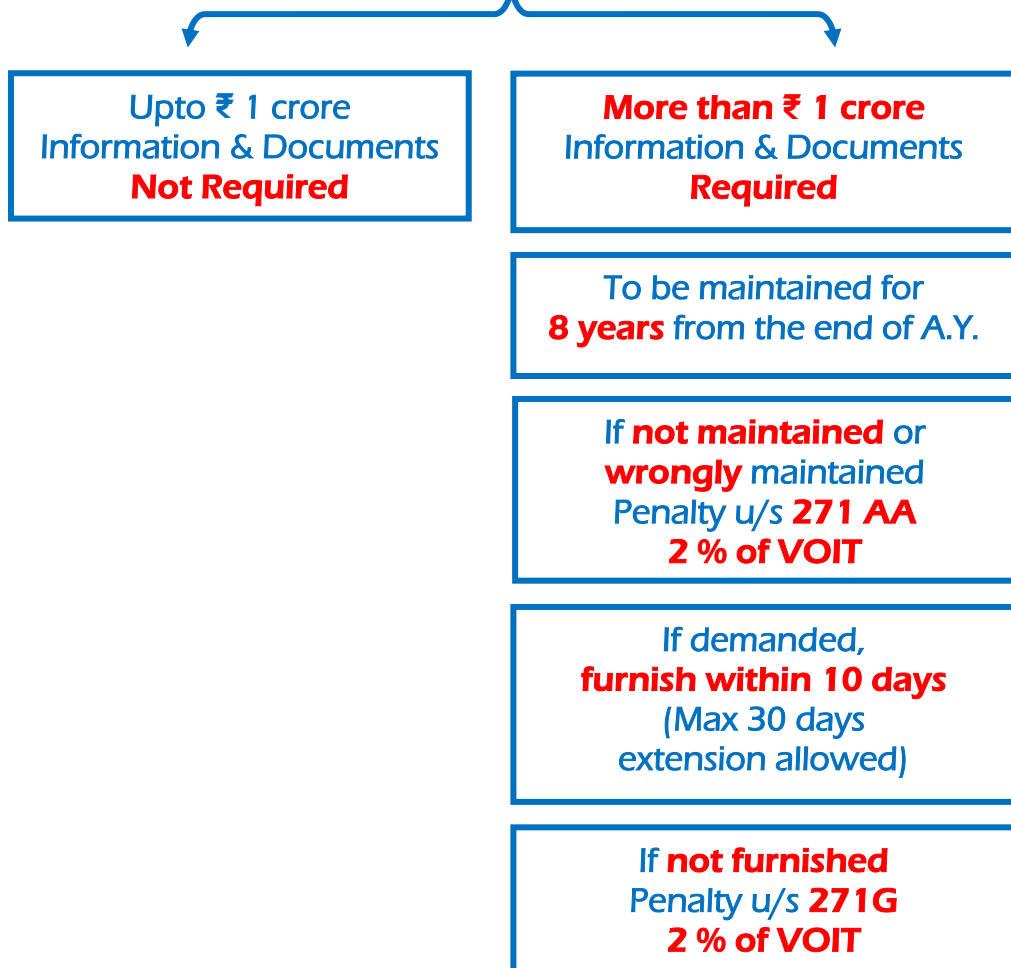
- **Profile** of multinational group to which assessee belongs.
- **Ownership** structure (shareholding pattern)
- Brief description of the **Business** of assessee and its AE.
- Nature & terms of **I.T.**
- Details of **Functions** performed, **Assets** employed and **Risks** undertaken by assessee and its AE
- Nature & terms of **UT**
- **Analysis** of comparison between IT & UT
- Computation of **ALP**
  - **A**ctual working
  - **M**ethods adopted
  - Most **A**ppropriate Method
  - **R**easons for selecting particular method
  - **A**adjustments made
  - Any **O**ther information related to ALP

### → **Supporting Documents:**

#### **OM PAL**

- **Official publication** of Government
- Report of **Market research**  
[Done by a person of national/international repute]
- **Price publication**  
[Stock Exchange and Commodity Exchange Quotation]
- **Agreements** & contracts of IT and UT
- **Letters** & correspondence of with its associated enterprise

**Value Of International Transaction**  
**VOIT**  
(As per Books)

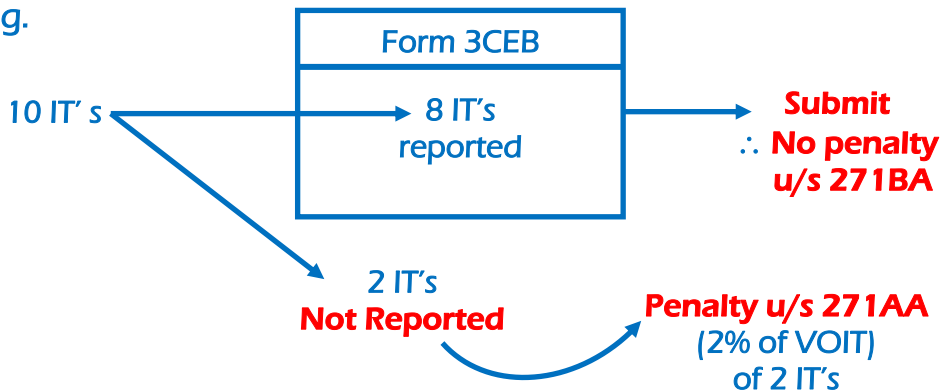


## XI. **Sec 92E** **REPORT OF CA**

An Assessee who enters into an international transaction with its associated enterprises is required to furnish a **Report of CA in Form 3CEB** (one month before the due date of filing of return). This is a report of all ITs with AE during the year. Failure to furnish such report shall attract **Penalty u/s 271BA (₹ 1 lakh)**.

Even if such report is submitted, the assessee will be liable to pay **Penalty u/s 271AA** if some of the **IT's are not reported** i.e. not included in Form 3CEB (**2% of the VOIT** – Value of unreported IT's)

E.g.



Note: If the above report is not submitted then:

- 1) Penalty u/s 271BA (Rs. 1,00,000)
- +
- 2) Penalty u/s 271AA (2% of VOIT i.e. Value of all ITs – because all the IT's are unreported)

→ **Summary of TP Penalties:**

| Sec. 271AA                                  | Sec. 271G                              | Sec. 271BA                        |
|---------------------------------------------|----------------------------------------|-----------------------------------|
| <b>2% of VOIT</b>                           | <b>2% of VOIT</b>                      | <b>Rs.1,00,000</b>                |
| Info.. & Doc..<br><b>Not Maintained</b>     | Info.. & Doc..<br><b>Not Furnished</b> | Form 3CEB<br><b>Not Submitted</b> |
| Info.. & Doc..<br><b>Wrongly Maintained</b> |                                        |                                   |
| IT's in Form 3CEB<br><b>Not Reported</b>    |                                        |                                   |

→ **3 Compliances of Transfer Pricing Assesseees:**

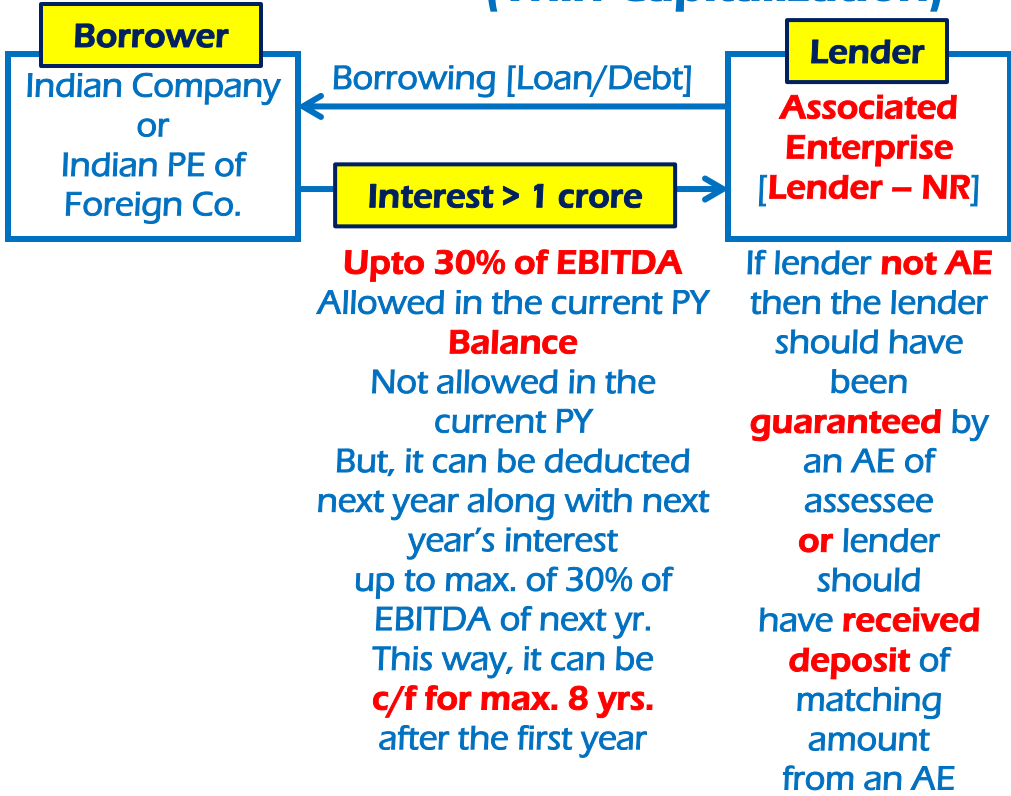
|                       |                 |           |
|-----------------------|-----------------|-----------|
| A.E. + I.T            | = ALP           | → Sec 92C |
| A.E. + I.T. > 1 Crore | = Info..& Doc.. | → Sec 92D |
| A.E. + I.T.           | = Report of CA  | → Sec 92E |

↓                      ↓

**Sec 92A              Sec 92B**

**XIII. Sec 94B** → **LIMIT ON INTEREST DEDN.**

**(Thin Capitalization)**



EBITDA = Earnings Before Interest, Tax, Depn. and Amortisation

**Note:**

Sec. 94B is **not applicable** to **Banking Co., NBFC, Insurance Co.** and **finance companies located in IFSC.**

**Example:**

(Amount in crores)

|                      | <b>Year 1</b> | <b>Year 2</b> | <b>Year 3</b> | <b>Year 4</b> |
|----------------------|---------------|---------------|---------------|---------------|
| EBITDA               | 100           | 80            | 10            | 200           |
| Interest (O/s)       | 10            | 20            | 12            | 15            |
| Interest (AE - CY)   | 36            | 28            | 13            | 45            |
| Interest (AE – B/f)  |               |               |               |               |
| <b>30% of EBITDA</b> | <b>30</b>     | <b>24</b>     | <b>3</b>      | <b>60</b>     |

## TRANSFER PRICING DOCUMENTATION

In order to understand the operations of multinational companies, it is necessary that a transfer pricing assessee maintains detailed information and documents. Hence, the Income Tax law requires a transfer pricing assessee to maintain following information and documents:

- A Local file
- A Master file and
- A Country by Country Report

### **LOCAL FILE** (Transaction details):

It contains information about **transactions** of transfer pricing assessee [nature and terms of controlled and uncontrolled transactions, comparability analysis, analysis of selection of most appropriate method etc.]. **Rule 10D** prescribes information required to be maintained under local file [POBI FUAA & OM PAL].

### **MASTER FILE** (Group details):

It contains information about the **group members** of multinational enterprise. It includes **transfer pricing policies** of the group and **high-level information** regarding their global business operations [like supply chain of 5 largest products of the group, entities engaged in developing intangibles, top ten unrelated lenders etc.]. **Rule 10DA** prescribes information required to be maintained under master file.

### **COUNTRY BY COUNTRY REPORT:**

It contains information regarding global allocation of the income of multinational group and taxes paid [this includes each country's **revenue, profit** before tax, **taxes** paid, total number of **employees, capital, accumulated earnings** and **tangible assets**]. The CbC Report has to be filed by the **parent entity** in its country [which is subsequently shared with other countries]. Hence, an Indian associate is required to file CBC report in India only if it is the parent entity.

|       | Country By Country Report |                   |     |                  |         |                      |                 |
|-------|---------------------------|-------------------|-----|------------------|---------|----------------------|-----------------|
|       | Revenue                   | Profit before tax | Tax | No. of Employees | Capital | Accumulated earnings | Tangible assets |
| Korea | xxx                       | xxx               | xxx | Xxx              | xxx     | xxx                  | xxx             |
| India | xxx                       | xxx               | xxx | Xxx              | xxx     | xxx                  | xxx             |
| U.K.  | xxx                       | xxx               | xxx | Xxx              | xxx     | xxx                  | xxx             |

| <b>Local file</b><br>Sec. 92D(1)<br>Filed by <b>T.P. Assessee</b>                                                                 | <b>Master file</b><br>Sec. 92D(1)<br>Filed by <b>Constituent entity</b>                                                             | <b>Cbc Report</b><br>Sec. 286<br>Filed by <b>Parent Entity</b>                                                                                                                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Aggregate VOIT > <b>1 cr.</b>                                                                                                     | Consolidated Group Revenue > <b>500 cr.</b><br>&<br>Agg. VOIT > <b>50 cr.</b> or<br>Agg. VOIT (Intangible Property) > <b>10 cr.</b> | Cons. Group Revenue >/= <b>6,400 cr.</b>                                                                                                                                                                                                                                                                                    |
| Furnish if <b>asked</b> [within <b>10 days</b> ] [ <b>extension</b> of max. <b>30 days</b> allowed]                               | Furnish in <b>Form 3CEAA</b> up to Due Date of Return [ <b>30<sup>th</sup> Nov of AY</b> ]                                          | Furnish in <b>Form 3CEAD</b> within <b>12 months</b> from the end of PY [or Reportable Accounting Year]                                                                                                                                                                                                                     |
| Not / Wrong maintained<br>[ <b>Penalty u/s 271AA</b> ]<br>or<br>Not furnished<br>[ <b>Penalty u/s 271G</b> ]<br><b>2% of VOIT</b> | Not Maintained/Furnished<br>[ <b>Penalty u/s 271AA</b> ]<br><b>Rs.5,00,000</b>                                                      | <b>Not Furnished</b><br>[ <b>Penalty u/s 271GB</b> ]<br><b>Rs.5,000 per day</b><br>[for delay up to 1 month]<br><b>Rs.15,000 per day</b><br>[after one month]<br><b>Rs. 50,000 per day</b><br>[after the dt. of service of penalty order]<br><b>Wrong Cbc Report</b><br>[ <b>Penalty u/s 271GB</b> ]<br><b>Rs. 5,00,000</b> |

## **FLING OF CBC REPORT IN INDIA**

An Indian associate [i.e. the constituent entity in India] is required to file CBC Report in following cases:

- ⇒ If such Indian Associate is the **Parent entity** or
  - ⇒ If such it is designated as **Alternate Reporting Entity**
- However, in following 3 cases, an Indian associate will be required to file CBC report even if it is not the parent/alternate reporting entity:

- a) if the **foreign country does not require** the parent entity to file such report **or**
- b) if such **foreign country does not** have an arrangement of **exchange** of report with India **or**
- c) if there is **systematic failure by such foreign country** in exchange of report with India [see note below].

### **Note:**

In case of **systematic failure** by foreign country in exchanging the report with India, the Indian I.Tax Authority shall inform the Indian constituent entity about such failure and then the time limit for filing CbC Report for the Indian constituent entity will be different i.e. **6 months** from the end of the month in which it is informed.

~~~~~

TAXATION OF DIVIDEND

DEEMED DIVIDEND

For taxation of dividend, dividend includes normal dividend as well as deemed dividend. As per section 2(22), following distributions by a company to its shareholders are deemed as dividend (to the extent of accumulated profits whether capitalised or not).

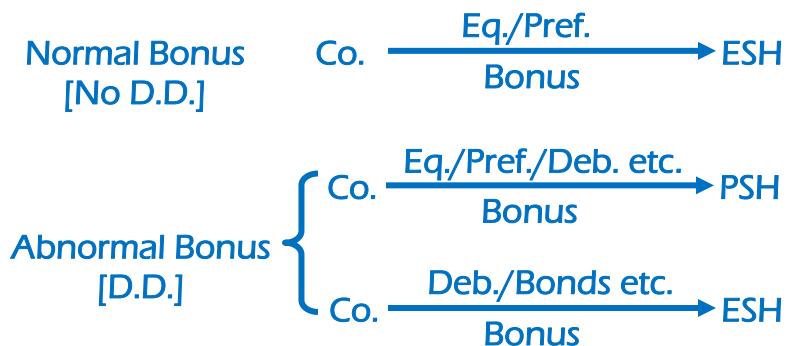
Sec 2(22)(a): **Release of Company's Asset:**

Any distribution by a company which leads to release of company's asset is deemed as dividend (to the extent of accumulated profits whether capitalised or not).

Sec 2(22)(b): **Bonus:**

Any distribution of **Equity or Debt** item by way of bonus to **Preference shareholders** is deemed as dividend to the extent of accumulated profits (whether capitalised or not).

Any distribution of **Debt** item by way of Bonus to **Equity Shareholders** is deemed as dividend to the extent of accumulated profits (whether capitalised or not).



Sec 2(22)(c): Liquidation [Closure] of Company:

Any distribution by a company to its shareholders at the time of liquidation is deemed as dividend (to the extent of accumulated profits whether capitalised or not).

Example:

Balance Sheet of A Ltd.

ESC [Incl. ₹ 70,000 Bonus]	3,00,000	Assets	5,00,000
Reserves	2,00,000		
	5,00,000		5,00,000

On liquidation, the company distributes Rs. 5,00,000 to its shareholders out of which Rs. 2,70,000 [i.e. the amount of reserves whether capitalised or not] will be deemed as dividend u/s 2(22)(c)

Sec 2(22)(d): ReDuction of Share Capital:

Any distribution by a company to its shareholders at the time of reduction of share capital is deemed as dividend (to the extent of accumulated profits whether capitalised or not).

Example:

Balance Sheet of A Ltd.

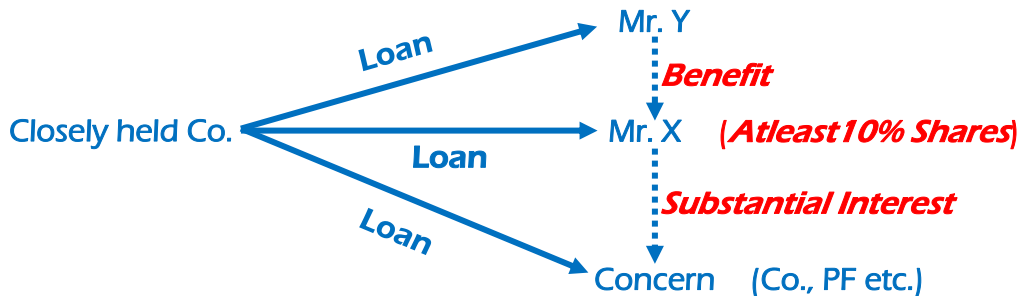
ESC (30,000 shares x 10)	3,00,000	Assets	5,00,000
Reserves	2,00,000		
	5,00,000		5,00,000

The company reduces its share capital from ₹ 10 to ₹ 2 per share by returning ₹ 8 per share. Hence, the company distributes Rs. 2,40,000 [30,000 x 8 per share] to shareholders out of which Rs. 2,00,000 [i.e. the amount of reserves] will be deemed as dividend u/s 2(22)(d).

Sec 2(22)(e): Loan by Closely held Co...: [Exception]

In the following cases, any loan or advance given by a closely held company is deemed as dividend (to the extent of accumulated profits which is **not capitalised**).

- a) Loan given to a **shareholder** having minimum **10%** shares
- b) Loan given to **any concern** in which such shareholder has a **substantial interest** (minimum 20% stake)
- c) Loan given to **any person** for the **benefit of such shareholder**.



Note: Any Loan/Advance given in the **ordinary course** of its business of money lending **shall not be deemed as dividend** u/s 2(22)(e).

Sec 2(22)(f): Buy back of shares:

With effect from 1/10/2024, any amount received by a shareholder on **buy back** of shares [in accordance with the provisions of sec. 68 of the Companies Act, 2013] is **deemed as dividend**.

Note: **Cost of shares** bought back is allowed as **capital loss**.

TAX TREATMENT OF DIVIDEND

Deduction for expenses:

Dividend/income from units of UTI/MF is taxable under the head IFOS. In respect of Dividend/Units income, **only one deduction** is allowed i.e., deduction in respect of **interest expense** on loan to invest in shares/units [up to **maximum 20%** of dividend/units' income].

Deduction for Inter-Corporate Dividend (Section 80M)

Dividends received by a domestic company [from any other domestic co./foreign co./business trust] shall be:

First included in the Gross Total Income and

Then deducted u/s 80M if such company *distributes* dividend

→ Amt. of deduction:

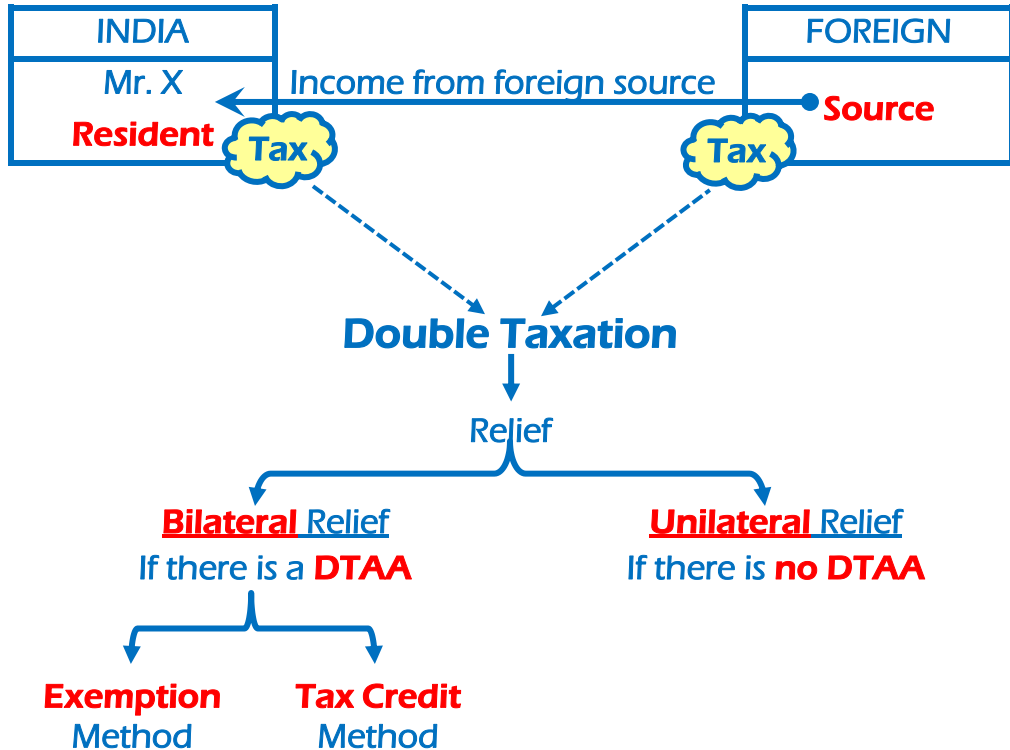
- 1) Dividend received
- 2) Dividend **distributed before one month* prior to the due date of filing of return.**

Whichever is less

*Eg: If the due date of filing return is 31st October, consider dividend distributed up to 30th September of the AY,

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# DOUBLE TAXATION RELIEF



## BILATERAL RELIEF: [Section 90]

Relief under this section is possible only if there is **Double Taxation Avoidance Agreement (DTAA)** between India and Foreign country.

As per DTAA, relief can be provided either by **exemption** method or by **Tax credit** method.

As per exemption method, income is **taxed in one country** and **exempted in other country**.

As per Tax Credit Method, the income is **taxable in both the countries** and then the country of residence shall provide a **credit in respect of foreign taxes**.

**Note:**

1. Section 90 empowers **Central Government** to enter into DTAA with **foreign country/foreign territory**. The purpose of entering into DTAA is as follows: [DER]
  1. To avoid / provide relief from **Double Taxation**
  2. To control and prevent **Tax Evasion**.
  3. To promote **Economic Relations** with foreign country.
2. Section 90A empowers **specified associations** to enter into DTAA and [Section 90 empowers Central Government].
3. If there is **conflict** between the provisions of DTAA and the Income Tax Law then the provisions of DTAA or Income Tax Act, 1961 [**whichever is beneficial**] shall prevail.

**UNILATERAL RELIEF: [Section 91]**

If there is **no DTAA**, between India and Foreign Country then a person shall get relief under this section provided he is a **resident of India**.

$$\Rightarrow \text{Amount of Relief} = \text{Doubly Taxed Income} \times \begin{matrix} \text{Avg. Indian Tax Rate} \\ \text{or} \\ \text{Avg. Foreign Tax Rate} \\ \text{[whichever is less]} \end{matrix}$$

Avg. Tax Rate = Total Tax / Net Taxable Income

**Rule 115 of Income Tax Rules, 1962:**  
**Rate of exchange for conversion of**  
**income in foreign currency**

|                             | Buying rate          |                                                                             |
|-----------------------------|----------------------|-----------------------------------------------------------------------------|
| Income from salaries        | Month end rate       | <b>Preceding</b> the month in which salary is <b>due</b>                    |
| <b>Income from HP</b>       | <b>Year end rate</b> |                                                                             |
| <b>Income from Business</b> | <b>Year end rate</b> |                                                                             |
| Capital Gains               | Month end rate       | <b>Preceding</b> the month in which asset is <b>transferred</b>             |
| IFOS                        |                      |                                                                             |
| → Interest on securities    | Month end rate       | <b>Preceding</b> the month in which interest is <b>due</b>                  |
| → Dividend                  | Month end rate       | <b>Preceding</b> the month in which dividend is <b>declared or received</b> |
| <b>IFOS (Other incomes)</b> | <b>Year end rate</b> |                                                                             |

**Foreign tax paid** is converted at the buying rate of the end of the month **preceding the month** in which **tax is paid** in foreign.



## ASSESSMENT OF AOP

|                                       | AOP                                               | Members                       |                               |
|---------------------------------------|---------------------------------------------------|-------------------------------|-------------------------------|
|                                       |                                                   | A                             | B                             |
| Income of AOP                         | XXX                                               | —                             | —                             |
| Share in AOP (PSR)                    |                                                   | <b>XXX</b><br><b>(Note 1)</b> | <b>XXX</b><br><b>(Note 1)</b> |
| Personal Income of member             | —                                                 | XXX                           | XXX                           |
| <b>GTI/NTI</b>                        | <b>XXX</b>                                        | <b>XXX</b>                    | <b>XXX</b>                    |
| Tax on Above                          | <b>XXX</b><br><b>(Slab Rt)</b><br><b>(Note 1)</b> | XXX<br>(Slab Rt.)             | XXX<br>(Slab Rt.)             |
| <u>Less:</u> Rebate u/s 87A           | —                                                 | - XX                          | - XX                          |
| <u>Add:</u> Surcharge                 | XXX<br>+ XX                                       | XXX<br>+ XX                   | XXX<br>+ XX                   |
| <u>Add:</u> HEC @ 4%                  | XXX<br>+ XX                                       | XXX<br>+ XX                   | XXX<br>+ XX                   |
| TOTAL TAX                             | XXX                                               | XXX                           | XXX                           |
| <b>Less: Rebate u/s 110</b>           | —                                                 | <b>- XX</b>                   | <b>- XX</b>                   |
| <b>Share in AOP x Avg.Tax Rt</b>      |                                                   | <b>(Note 1)</b>               | <b>(Note 1)</b>               |
| <b>Avg.Tax Rate = Total Tax ÷ NTI</b> |                                                   |                               |                               |
| Tax Payable                           | XXX                                               | XXX                           | XXX                           |

### **Note 1:**

The above method of **including the share** of member in their personal assessment and then **providing rebate** is applicable only if the **AOP** is with **All Gareeb members** (i.e. AOP with all members personal income below basic exemption limit).

However, if any 1 or more of the members has personal income above basic exemption or a company, firm etc. is a member then it is a case of **Ameer AOP**. In such case, the AOP will be **taxed @ MMRT [42.74%]** and **member's share** will be **exempt u/s 86** (then no need of Rebate u/s 110).

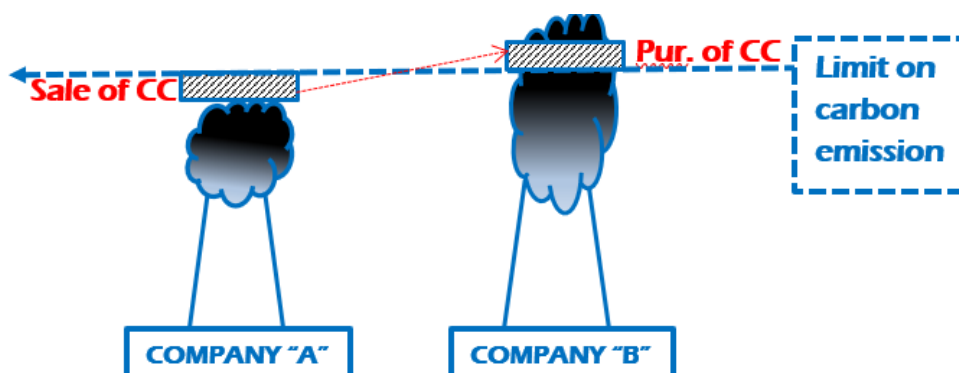
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SUNDRY IMPORTANT TOPICS

1) Section 115 BBG : INCOME FROM CARBON CREDIT:

An assessee is given a limit upto which he is permitted to emit carbon dioxide (Green House Gas) say for e.g. 100 units. If, in case, the assessee emits carbon dioxide of 80 units then the unused limit of 20 units is called carbon credit. This credit of 20 units can be sold to some other person who is need of such credit (because the other person is emitting carbon dioxide more than permitted).

In such case, the income earned by the assessee by transferring the CC of 20 units is **taxable as business income @ 10% (Expense deduction - not allowed)**.



2) Section 115 BBF : ROYALTY FROM PATENTS:

As per this section, royalty income from patents is taxable @ **10%** (tax rate) **on gross** amount [Expense Deduction – Not Allowed].

⇒ **CONDITIONS:**

1. **Resident** Assessee (first & true inventor).
2. The patent should be **Developed in India** (i.e. atleast 75% of the expense on invention should be incurred in India).
3. The patent should be **Registered** under Patents Act, 1970.

Note:

This special provision for taxation of patents is **optional** [option to be exercised in prescribed manner on or before the due date of filing return]. Once the option is exercised in a particular PY, then in the **succeeding 5 PYs**, assessee should **continuously follow** such option. If, in any of these 5 PYs, the assessee **fails** to follow such option then in the **coming 5 PYs**, the assessee is **not eligible** for this option.

3) **Sec. 115 BBE : TAX ON UNEXPLAINED CREDITS ETC.**

As per section 68,
any **unexplained credit** shall be **deemed** as **income**.
As per section 69, 69A and 69B,
any **unexplained investments** etc.. shall be **deemed** as **income**.
As per section 69C,
any **unexplained expenditure** shall be **deemed** as **income**.

Tax on such deemed income is levied u/s 115BBE @**60%** [plus **SC @25%** plus **EC @4%**] [Effective rate 78%]

The assessee is required to include such deemed income in his **return** and **pay** the **tax** thereon **up to the end of PY**.
If the assessee fails to do so then he is liable to pay **penalty** u/s **271AAC @ 10% of the tax** computed u/s 115BBE.

Example:

Unexplained credit etc..	100
Tax on above @60% u/s 115BBE	60
<u>Add:</u> SC @25%	+ 15
	75
<u>Add:</u> HEC @4%	+ 3
	78
<u>Add:</u> Penalty u/s 271AAC [10% of 60] [if above tax not paid on his own]	+ 6
Total amount payable	84

4) **Section 115 QA : BUY BACK OF SHARES before 1/10/24:**

As per this section, a company is liable to pay distribution tax on amount distributed by it on buy-back of shares **before 1/10/24**.

Amount of **distribution tax** on buy-back
 = **20%** of (Amt. distributed on buy-back of shares – Amt. received on issue of such shares) **plus 12% SC (confirm) plus 4% HEC.**

Since the company has to pay distribution tax on buy-back, amount received by the shareholder is **fully exempt u/s 10(34A).**

5) **Sec 270A : PENALTY FOR UNDER - REPORTING**

→ **On Regular assessment:**

If income determined u/s **143(1)** is **less than** income assessed u/s **143(3)** then it is under reporting of income. Penalty u/s 270A, in such case, is calculated as follows:

Amount of penalty = **50%** of {Tax u/s 143(3) – Tax u/s 143(1)}

→ **On Reassessment:**

Similarly, if income assessed u/s **143(3)** is **less than** income assessed u/s **147** then it is under reporting of income. Penalty u/s 270A, in such case, is calculated as follows:

Amount of penalty = **50%** of {Tax u/s 147 – Tax u/s 143(3)}

Example:

	Summary Asst	Regular Asst	Income Esc Asst
Income	xxx	xxx	Xxx
Tax	100	150	180

Tax on underreporting =

50 30

x **50%**

x **50%**

Penalty u/s 270A =

25

15

Note 1: NO PENALTY:

If under-reporting is explained by the assessee by offering satisfactory **bonafide explanation** and such explanation is substantiated.

If assessee **himself made some addition** and under-reporting is because of **lower** amount of such addition (provided assessee disclosed all the facts material to such addition)

Note 2: 200% PENALTY:

Penalty u/s 270A will be **200%** of the tax on under-reported income if under-reporting is due to **misreporting** and misreporting means under-reporting arising due to **FRIME**:

- Recording **FALSE ENTRY** in the books
- Failure to record any **RECEIPT** in the books
- Failure to record any **INVESTMENTS** in the books
- Failure to report **International transaction** [T.P.Assessee]
- **MISREPRESENTATION** and **SUPPRESSION** of facts
- Claim of **EXPENDITURE** not substantiated by evidence

Note 3: PENALTY IN CASE OF SEARCH:

In case of **search**, penalty is levied u/s **271AAB @60% of undisclosed income**. However, the penalty will be **30%** of undisclosed income, if the assessee:

- **admits** the undisclosed income during search;
- specifies the **manner** in which such income was earned;
- **pays** tax [including interest] on such income and
- shows such income in the **return**.

6) Section 94 A : TRANSACTIONS WITH PLINJA:

Section 94A is introduced with a view to discourage transaction with a **Person Located in Notified Jurisdictional Area (PLINJA)**. NJA is a Foreign country/territory (as may be notified by Govt.) **which do not exchange information** with India.

In respect of transactions with PLINJA, following special provisions are applicable:



- 1) The transactions between assessee and PLINJA will be treated as International Transaction between Associated Enterprises. Accordingly, **TRANSFER PRICING** provisions shall apply to such transaction [except tolerance band].
- 2) If the assessee fails to give sufficient explanation about the **RECEIPTS** from PLINJA then, such receipts shall be treated as income of the assessee.
- 3) If the assessee claims deduction for the **EXPENSE** related to transaction with PLINJA then, the assessee is required to maintain prescribed documents and furnish prescribed information.
- 4) In respect of payments to PLINJA, the assessee is liable to deduct **TDS AT MINIMUM 30%** or the Applicable Rate [whichever is high].

7) **Section 269 SS: CASH LOANS ≥ 20,000**

- Loan ≥ ₹ 20,000 or
- Deposit ≥ 20,000 or
- Advance for immovable property ≥ 20,000

should be **TAKEN** by Account-payee cheque, draft or ECS.
Otherwise, Penalty u/s **271D** = Amount of loan etc. taken.

8) **Section 269 T: CASH REPAYMENT ≥ 20,000**

- Loan ≥ ₹ 20,000 or
- Deposit ≥ 20,000 or
- Advance for immovable property ≥ 20,000

should be **REPAID** by Account-payee cheque, draft or ECS.
Otherwise, Penalty u/s **271E** = Amount of loan etc. repaid.

Finance Act, 2023 has increased the threshold of ₹20,000 to **₹2,00,000** in case of loan/deposit transaction between **PACS/PCARDB** and its members.

- ⇒ PACS = Primary Agricultural Credit Society and
- ⇒ PCARDB = Primary Co-operative Agricultural and Rural Development Bank

9) **Section 269 ST: CASH RECEIPT ≥ 2,00,000**

If a person receives **₹ 2,00,000 or more** in aggregate:

- from a person in a **Single Day**; or
- from a person on various days in respect of a **Single Transaction**; or
- from a person in respect of various transactions relating to **Single Event** or occasion

then such amount should be received by an account-payee cheque, draft or ECS.

Otherwise, Penalty u/s **271DA** = Amount of such receipt

Note: Section 269ST is not applicable to Govt., banks [incl. co-op. banks] and post office.

10) **STATEMENT OF FINANCIAL TRANSACTIONS:****Statement of Financial Transactions or Reportable Accounts**

As per **section 285BA**, following financial transactions (specified in **Rule 114E**) should be reported to Income Tax Department if the **aggregate value** of such transaction exceeds the threshold limit **in a financial year** (**Reported in Form 61A** up to **31st May**, immediately following the year in which transaction is recorded or registered)

Nature of Transaction	Threshold limit	To be Reported by
Draft purchased from Bank (<i>In Cash</i>)	≥ 10 lakhs	Bank
Deposit in Current A/c (<i>In Cash</i>)	≥ 50 lakhs	Bank
Deposit in Time Deposit A/c	≥ 10 lakhs	Bk/PO/NBFC
Deposit in Other A/c (<i>In Cash</i>)	≥ 10 lakhs	Bk/PO
Withdrawal from Current A/c (<i>In Cash</i>)	≥ 50 lakhs	Bank
Payment of Credit Card Bill (<i>In Cash</i>)	≥ 1 lakh	Card issuer
Payment of Credit Card Bill (Otherwise)	≥ 10 lakhs	Card issuer
Receipt for Issue of Shares	≥ 10 lakhs	Issuer
Receipt for Issue of Debentures	≥ 10 lakhs	Issuer
Receipt for Issue of Bonds	≥ 10 lakhs	Issuer
Receipt for Issue of Units	≥ 10 lakhs	Mutual Fund
Buy back of shares	≥ 10 lakhs	Company
Sale of Foreign Currency	≥ 10 lakhs	Authorised Dealer
Purchase/Sale of Immovable Property	≥ 30 lakhs per transaction	Registrar
Sale of Goods/Services (<i>In Cash</i>)	> 2 lakhs per transaction	Seller subject to Tax Audit

STATEMENT – NOT FURNISHED:

If the above statement is **not furnished** up to specified due date [31st May] then the I.T. Authority shall **serve a notice** to the person requiring him to furnishing such statement within the **period specified** in the notice [**max. 30 days**].

→ **Penalty u/s 271FA** for Non-filing =
After 31st May till the due date specified in the above notice
Rs. 500 per day
After the due date specified in the notice:
Rs. 1,000 per day

STATEMENT – DEFECTIVE

If the above statement is defective then the Income Tax Authority shall intimate the defect to the reporting entity giving a time of **max. 30 days** to rectify the defect. If the reporting entity fails to rectify the defect within 30 days or such extended time as may be allowed by I.T. Authority then the statement is treated as **inaccurate**.

→ **Penalty u/s 271FAA** for inaccurate information in the statement or non-compliance of due diligence requirement = **Rs. 50,000**

In addition to Rs. 50,000, a reporting entity is liable to pay an **additional penalty of Rs. 5,000**:

- ⇒ If the reporting entity is **banks/financial institution** and
- ⇒ If the inaccurate information in SFT is **due to inaccurate information supplied by Account holder**.

However, this additional penalty of Rs. 5,000 can be recovered by the reporting entity from the Account holder.

OTHER POINTS

1) **Section 43D: INTEREST ON BAD & DOUBTFUL DEBTS**

In case of **PFI/SFC/SIIC/SB/NBFC**, interest on Bad and Doubtful debts is taxable in the:

- i) Year in which it is **credited** to P & L A/c or
- ii) Year of **Receipt**
Whichever is **earlier**

2) **Section 269 SU : FACILITY FOR E - PAYMENT:**

Every person shall provide facility for accepting payment through **prescribed electronic modes**, in addition to the other electronic modes [if his total sales, **turnover** or gross receipts **exceeds Rs. 50 crores** during the immediately preceding previous year.]

In case of failure to provide such facility, the Joint Commissioner shall levy a **penalty of Rs. 5,000 per day u/s 271DB**.

3) **Section 271 J : PENALTY FOR CA etc..:**

Penalty for a CA/Merchant Banker/Registered Valuer
= **Rs. 10,000 per report/certificate**

- ⇒ for furnishing **incorrect information** in a report or certificate.

4)

Section 271AAD : PENALTY FOR FALSE ENTRY OR OMISSION OF ANY ENTRY IN THE BOOKS OF A/C:

Amount of penalty = Aggregate amt. of such false/omitted entries
This penalty is payable by the **person who made** the false entry/omitted the entry as well as the **person who causes to make** such false entry/omit such entry.

"**False entry**" includes use of or intention to use:

- (a) **False invoice** or any false documentary evidence; or
- (b) **Invoice** in respect of sale/purchase of goods/services **without actual sale/purchase** of such goods/services; or
- (c) **Invoice** in respect of sale/purchase of goods/services to or from a **person who does not exist**.

5) **Section 281B**

During the pendency of:

→ Any assessment proceeding or

→ Penalty Proceedings u/s 271AAD* [if the penalty amount exceeds Rs. 2 crores],

the Assessing Officer may pass an order of **provisional attachment** of any property belonging to the assessee for a period of **6 months** from the date of such order. Before doing so, the A.O. shall take the **permission of CIT/CCIT**. Provisional attachment for 6 months means that the assessee cannot sell his property for 6 months.

*Section 271AAD levies penalty for false invoices.

6) **Section 10(23FE) :**

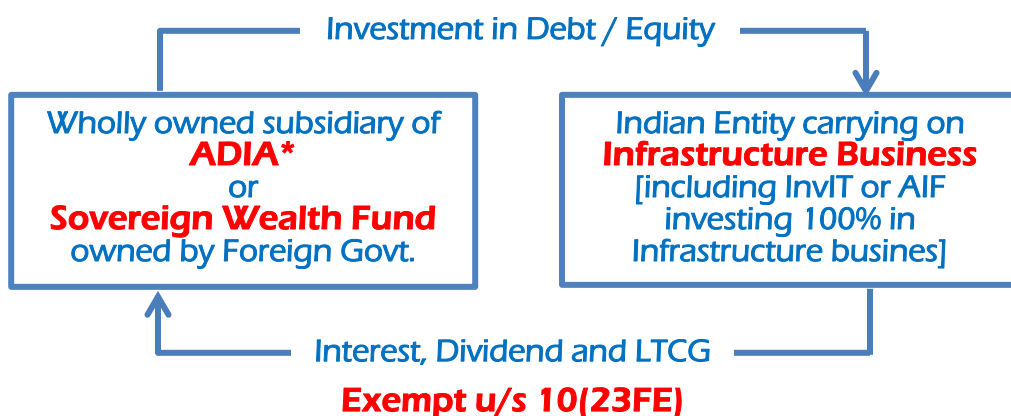
As per this section, income of following persons is fully exempt:

⇒ Wholly owned subsidiary of ADIA

[Abu Dhabi Investment Authority]

⇒ Sovereign wealth fund owned by foreign Government

Interest, dividend and LTCG arising from investment made by above persons in India in infrastructure business is fully exempt.



*ADIA = Abu Dhabi Investment Authority

7) **Undisclosed Income in Search/Survey cases:**

As per **section 79A**, losses cannot be set-off against undisclosed income brought to tax as a consequence of search and seizure.

8) **Virtual Digital Asset (VDA):**

→ **Definition:**

As per sec. 2(47A), VDA means –

- (a) any **information/code/number/token** generated through cryptographic means or otherwise having inherent value which can be transferred, stored or traded electronically;
- (b) a **non-fungible token** or any other similar token.
- (c) any **other digital asset**, as may be notified by the CG.

However, following virtual digital assets would be **excluded** from the definition of virtual digital asset–

- (i) Gift card or vouchers,
- (ii) Mileage points, reward points or loyalty card
- (iii) Subscription to websites or platforms or application

→ **Taxability:**

- Income from transfer of VDA shall be taxable @ **30% u/s 115BBH** [30% Tax on (SP – Cost)]
- Taxable as business income, if held as stock-in-trade.
- Taxable as Capital Gains, if held as investments [If LTCG **indexation is not allowed**].
- **No dedn** allowed **except cost** of acquisition
- **No set off** of any loss is allowed **against** such income.
- Loss from transfer of VDA **cannot be set-off or c/f**.
- Receipt of VDA **as gift** is **taxable** u/s 56(2)(x) if FMV exceeds ₹ 50,000.

→ **T.D.S:**

Buyer is required to deduct TDS on payment for VDA [u/s 194S]. If buyer purchases VDA **through Exchange** then:

Case 1:



In this case, payment is done at 2 stages [first, the buyer will pay to exchange then, the exchange will pay to seller]. However, **TDS will be deducted only once** and as per CBDT's clarification, the **Exchange will deduct TDS** while making the payment to the seller.

Case 2:



If buyer purchases VDA which is owned by exchange then if the **exchange agrees to pay the tax** on its own then **buyer is not required** to deduct TDS. However, if there is no such agreement then the buyer is required to deduct TDS.

9) **E-auction – No TDS u/s 194-O:**

The provisions of section 194-O would not apply in relation to e-auction activities carried out by e-auctioneers if following conditions are satisfied:

- (a) The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible **for the price discovery only** which is reported to the client.
- (b) The transaction of **purchase/sale** takes place directly between the buyer and the seller **outside the electronic portal**.

10) **Sec. 170A: Business Reorganisation [Merger etc..]:**

A company [which is loss making or going through insolvency] may apply for business reorganization to High Court* [i.e. the company may want to get merged with a profit making company]. This application takes time to get approved by HC i.e. the **HC may take time to approve the merger**. Till the HC approves the merger [i.e. business reorganization], the predecessor [one who applies to HC] and the successor will file their respective returns. However, once the business reorganization is approved, it becomes **effective from a back date** i.e. the date when predecessor applied to HC. Hence, any return filed by successor for the period between application to HC and its approval should be **modified within 6 months** from the end of the month in which HC passed the order [Modification is required because originally the return filed by successor included its own income only but now, after the merger is approved by HC, the return of successor should have its own income plus the income/loss of predecessor].

*Application for business reorganization can be made to either HC or Tribunal or an Adjudicating authority under IBC, 2016.

Example: If A Ltd. merges with B Ltd. with effect from 1.4.2021 vide order of the High Court dated 1.11.2022, and B Ltd. has already filed its return of income for the P.Y. 2021-22 on 30th October, 2022, then, B Ltd. has to file a modified return for P.Y.2021-22 in accordance with the order of the High Court on or before 31st May, 2023.

11) Sec. 263: Revision by CIT/CCIT:

CIT/CCIT can revise the order of A.O. **as well as order of TPO**. Also, the CIT/CCIT is empowered to set aside the order of TPO and **direct him to recompute the ALP**. Accordingly, the TPO shall recompute the ALP and forward the same to A.O. In such case, the **A.O. shall recompute the total income of assessee within 2 months** from the end of the month in which TPO forwards the recomputed ALP to A.O.

12) Section 245 (1): Setting-off Refund:

As per this section, the A.O., CIT or CCIT can **set-off refund** due to the assessee against the sum payable by the assessee [however, the assessee should be given a **prior intimation** for the same].

Section 245(2): Withholding Refund:

If the refund is not set-off or partly set-off and if any assessment is pending then the A.O. can **withhold the refund up to 60 days** from the date on which such assessment is made. This can be done by A.O. after **recording the reasons** in writing and after taking **prior approval of CIT**.

13) Sec.285B: Statement by Film producers etc..:

This section requires a producer of **film, television programs, web series** and **event managers** to furnish a statement indicating payment **exceeding ₹50,000** to each person engaged by him. Such statement should be furnished **within 60 days** from the **end of previous year**.

14) Sec.285: Statement by NR having liaison office in India:

A non-resident having a liaison office in India shall prepare and deliver to the Assessing Officer a statement in respect of its **activities** in a financial year in **Form 49C** within **such period** as may be prescribed.

Failure to deliver such statement shall attract penalty u/s 271GC as follows:

- **₹ 1,000 per day for delay up to 3 months or**
- **₹ 1,00,000 for delay in other cases**

15) Agniveer Scheme:

Under this scheme, an individual [between the age of 17.5 yrs. and 21 yrs.] is employed with Central Govt. in **Indian Army for 4 years** and gets Salary for 4 years. **After 4 years**, such individual has an **option to apply for permanent position in Indian Army**. During these 4 years, some amount is deducted from his salary and contributed to Agniveer Corpus Fund. A matching contribution is made by the employer [i.e. Govt. – Indian Army] to this fund.

→ Tax Treatment in the hands of Employee [Agniveer]:

1. Monthly Salary – Fully Taxable
2. **His Contribution to Agniveer Corpus Fund** – Entire amount is eligible for **Deduction u/s 80CCH(1)**
3. **Employer's Contribution to Agniveer Corpus Fund** – Taxable under the head **Income from Salaries** and Entire amount is eligible for **Deduction u/s 80CCH(2)** [i.e **First include** in Income from Salaries and **then dedn** under chapter VIA]
4. **Lumpsum amount** received from Agniveer Corpus Fund is fully **exempt u/s 10(12C)**.

16. SEC. 115BBJ: WINNINGS FROM ONLINE GAMES:

As per this section, winnings from online games shall be taxable **@30%**. If the winnings are not from online games, then also it will be taxable at 30% but under section 115BB.

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# CONCESSIONAL TAX REGIME

## Sec. 115 BAA

### 22% TAX OPTION FOR INDIAN COMPANIES:

Normally, Indian companies have to pay 30% tax or 25% tax [if turnover of PY 2022-23 is up to 400 crores].

However, if an Indian company sacrifices following tax incentives [deductions] then such Indian company has an **OPTION** to pay **22% tax u/s 115BAA**.

#### → Tax incentives to be sacrificed:

The company **should not claim** following deductions:

|                                                       |                                                            |
|-------------------------------------------------------|------------------------------------------------------------|
| 10AA                                                  | Dedn for Exporters in SEZ                                  |
| Chapter VIA                                           | (except sec 80JJAA, 80M and 80LA)                          |
| 32(1)(iia)                                            | Additional depreciation                                    |
| 33AB/ABA                                              | Dedn. for Tea/Coffee/Rubber business & PNG Business        |
| 35                                                    | Contribution for Research [In-house Res.. exp. is allowed] |
| 35AD                                                  | Dedn for Specified Business                                |
| 35CCC                                                 | Exp. on Agriculture Extension Project                      |
| 35CCD                                                 | Exp. on Skill Development Project                          |
| Set-off of b/f losses arising due to above deductions |                                                            |

#### NOTES:

- 1) Sec.115BAA is **optional**. The company should exercise the option in prescribed manner **up to the due date of filing return** (option is **irrevocable**). The option can be exercised in **any year**.
- 2) Company availing option u/s 115BAA is **exempt from MAT**.
- 3) Under section 115BAA, **22%** tax is payable on **all the regular incomes** of the company [excluding incomes subject to special tax rates i.e. STCG u/s 111A, LTCG u/s 112A etc].
- 4) Under sec.115BAA, **surcharge** is payable **@10% irrespective of the amount of NTI** [Net Taxable Income].

**Sec. 115 BAB**

**15% TAX OPTION FOR NEW MFG. INDIAN COMPANIES:**

Normally, Indian companies have to pay 30% tax or 25% tax [if turnover of PY 2022-23 is up to 400 crores].

However, if an Indian company [engaged in **manufacturing business** or business of **power generation** - no other business - **set up & registered on/after 1/10/19**] sacrifices following tax incentives [deductions] then such Indian company has an **OPTION** to pay **15% tax u/s 115BAB**.

→ **Tax incentives to be sacrificed:**

The company **should not claim** following deductions:

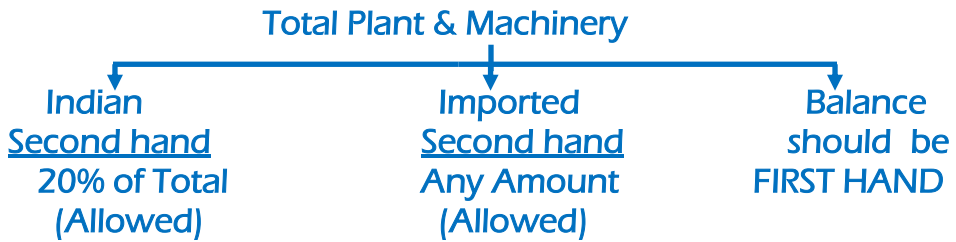
|                                                       |                                                            |
|-------------------------------------------------------|------------------------------------------------------------|
| 10AA                                                  | Dedn for Exporters in SEZ                                  |
| Chapter VIA                                           | (except sec 80JJAA, 80M and 80LA)                          |
| 32(1)(iia)                                            | Additional depreciation                                    |
| 33AB/ABA                                              | Dedn. for Tea/Coffee/Rubber business & PNG Business        |
| 35                                                    | Contribution for Research [In-house Res.. exp. is allowed] |
| 35AD                                                  | Dedn for Specified Business                                |
| 35CCC                                                 | Exp. on Agriculture Extension Project                      |
| 35CCD                                                 | Exp. on Skill Development Project                          |
| Set-off of b/f losses arising due to above deductions |                                                            |

**NOTES:**

- 1) Sec.115BAB is **optional**. The option can be exercised in the **first year of business**. The option should be exercised in prescribed manner **up to the due date of filing of first return** (option is **irrevocable**).
- 2) Company availing option u/s 115BAB is **exempt from MAT**.
- 3) Option u/s 115BAB is available if the Indian company is engaged in **manufacturing** or **power generation business only**. The company should not carry on any other business. **15% Tax** is applicable **only on income from manufacturing** or **power generation** business and on **STCG [depreciable assets]**. All **other incomes** [other than incomes subject to

special tax rates] shall be taxable **@22% on Gross basis** [i.e. Incomes like IFHP, IFOS etc will be taxable @22% **without any deduction** for expenses].

- 4) Under sec.115BAB, **surcharge** is payable **@10% irrespective of the amount of NTI** [Net Taxable Income].
- 5) The **Business** should be **newly** established. It should not be formed by splitting up or reconstruction of an existing business.
- 6) **Plant & Machinery** required in the business should be **new** (first hand). However, use of second-hand P & M is allowed as follows:



- 7) Section 115BAB is applicable to manufacturing business and manufacturing means production of any article or thing other than following business i.e. following business are not treated as manufacturing and **not eligible** for option u/s 115BAB:  
**CM<sub>2</sub> GPO**
  - Developing **Computer Software**
  - **Mining** business
  - Converting **Marble blocks** or similar items into slabs
  - Bottling of **Gas** into cylinders
  - **Printing** of books and production of cinematographic films
  - Any **Other business** as may be notified.
- 8) If assessee enters into an arrangement with any other person and **declares more than reasonable profits** then the A.O. shall compute the reasonable profits based on ALP/FMV. In such case, only **reasonable profits** shall be eligible for **15% tax** and the amount of **excess profits** declared by the assessee shall be **taxable @30%**.

CA SHIRISH VYAS / CA FINAL / DIRECT TAX / CONCESSIONAL TAX REGIME

| Section 115BAA                                                                                                        | Section 115BAB                                                                                                                                                                                                                               |
|-----------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>All companies</b> – old or new<br>[any business]                                                                   | Only <b>new manufacturing companies</b>                                                                                                                                                                                                      |
| If incentives sacrificed,<br><b>22%</b> tax on all the regular incomes [other than incomes taxable at special rates]. | If incentives sacrificed,<br><b>15%</b> tax only on reasonable profits from mfg/power business.<br><b>30%</b> tax on excess profits<br>Other regular incomes [other than incomes taxable at special rates]–<br><b>22%</b> tax on Gross basis |
| Irrevocable option which can be exercised in <b>any year</b> [up to the due date of return]                           | Irrevocable option which can be exercised only at the time of filing <b>first return</b> [up to the due date of return]                                                                                                                      |
| Exempt from MAT                                                                                                       | Exempt from MAT                                                                                                                                                                                                                              |
| Surcharge @10% irrespective of N.T.I [plus 4% HEC]                                                                    | Surcharge @10% irrespective of N.T.I [plus 4% HEC]                                                                                                                                                                                           |

**Section 115 BAC: CONCESSIONAL TAX FOR IND./HUF etc.**

As per this section, **Individuals, HUFs** and **other assessees** have an **option** to pay tax at **concessional slab rates** and get **other benefits** if certain deductions/exemptions are **sacrificed**:

→ **Concessional Slab Rates:**

| Net Taxable Income          | Tax |
|-----------------------------|-----|
| up to Rs. 3,00,000          | 0%  |
| > 3,00,000 up to 7,00,000   | 5%  |
| > 7,00,000 up to 10,00,000  | 10% |
| > 10,00,000 up to 12,00,000 | 15% |
| > 12,00,000 up to 15,00,000 | 20% |
| > 15,00,000                 | 30% |

→ **Other benefits u/s 115BAC:**

- 1) Surcharge of **37%** is **not applicable** u/s 115BAC.
- 2) Alternate Minimum Tax (**AMT**) is **not applicable**.
- 3) **Increased Standard deduction** for **salaried** employees of **₹75,000** instead of ₹ 50,000.
- 4) **Increased Standard deduction** limit for **Family Pension** under the head IFOS = **₹ 25,000** instead of ₹ 15,000.
- 5) For employers contribution to NPS, all employees (Govt. or Non-Govt.) can claim deduction upto **14% of Basic + DA** u/s **80CCD(2)**.
- 6) Rebate u/s 87A of **max.25,000** will be allowed if **NTI is upto Rs. 7 lakhs**. Marginal Rebate is allowed if the NTI increases marginally above ₹7,00,000.  
 Amt of marginal rebate  
 = Extra Tax above ₹7 lakhs – Extra income above ₹7 lakhs.

Example:

|                               |          |                            |
|-------------------------------|----------|----------------------------|
|                               |          | <b>Extra Income 10,000</b> |
| Total Income                  | 7,00,000 | 7,10,000                   |
| Tax u/s 115BAC [after rebate] | Nil      | 21,000                     |
|                               |          | <b>Extra Tax 21,000</b>    |

|                           | Amt.     |
|---------------------------|----------|
| Extra Tax                 | 21,000   |
| <u>Less:</u> Extra Income | - 10,000 |
| Marginal Rebate           | 11,000   |

→ **Deductions/Exemptions to be sacrificed:**

|                                                                    |                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10AA                                                               | Dedn for Exporters in SEZ                                                                                                                                                                                                                                                                                                                                                       |
| Chapter VIA                                                        | {except u/s 80CCD(2), 80CCH(2), 80JJAA and 80LA}                                                                                                                                                                                                                                                                                                                                |
| 32(1)(ia)                                                          | Additional depreciation                                                                                                                                                                                                                                                                                                                                                         |
| 33AB/ABA                                                           | Dedn. for Tea/Coffee/Rubber business & PNG Business                                                                                                                                                                                                                                                                                                                             |
| 35                                                                 | Contribution for Research [In-house Res. exp. is allowed]                                                                                                                                                                                                                                                                                                                       |
| 35AD                                                               | Dedn for Specified Business                                                                                                                                                                                                                                                                                                                                                     |
| 35CCC                                                              | Exp. on Agriculture Extension Project                                                                                                                                                                                                                                                                                                                                           |
| Set-off of b/f losses/depreciation arising due to above deductions |                                                                                                                                                                                                                                                                                                                                                                                 |
| 10(5)                                                              | Leave Travel Concession                                                                                                                                                                                                                                                                                                                                                         |
| 10(13A)                                                            | House Rent Allowance                                                                                                                                                                                                                                                                                                                                                            |
| 10(14)                                                             | Exemption for Children Education/Hostel allowance and Special Compensatory allowances cannot be claimed. However, exemption for following allowances can be claimed:<br>1) Conveyance allowance for office purpose,<br>2) Travelling on Tour or Transfer allowance,<br>3) Daily allowance for day-to-day exps. on tour/transfer<br>4) Commutation allowance to handicapped emp. |
| 10(17)                                                             | Daily allowance to MPs/MLAs                                                                                                                                                                                                                                                                                                                                                     |
| 10(32)                                                             | Minor Child's Income [Ex. of 1,500 per child to parents]                                                                                                                                                                                                                                                                                                                        |
| 16                                                                 | Dedn for Entertainment Allow and Prof. Tax                                                                                                                                                                                                                                                                                                                                      |
| 24(b)                                                              | Interest dedn. for Self-occupied property                                                                                                                                                                                                                                                                                                                                       |
| Set-off of HP loss against other heads                             |                                                                                                                                                                                                                                                                                                                                                                                 |

**Note 1:**

Section 115BAC is **optional**. Sec. 115BAC is the **default tax regime**. By default, an assessee will be assessed as per the provisions of sec.115BAC. If assessee wants the normal slab rates [old tax regime] then he should inform the I.Tax Dept. This option can be exercised in **any year**. This option should be exercised in **prescribed manner** on or before the **due date of filing return**. This option is revocable i.e. the Assessee can **change** the option **every year**. However, if the assessee has Income from **Business or profession**, the option of normal slab rates can be **revoked only one time** and once revoked, the assessee can never opt for normal slab rates (till the assessee has Income from Business/Profession)

**Section 115BAD: 22% TAX OPTION FOR CO-OP. STY**

Normally, a co-operative society is taxed as follows:

| Net Taxable Income | Tax |
|--------------------|-----|
| First 10,000       | 10% |
| Next 10,000        | 20% |
| Balance            | 30% |

However, a **resident co-operative society** has an **option** to pay **tax @22%** [plus **10%** confirm **surcharge** plus **4% HEC**] if following tax incentives are **sacrificed**:

|                                                       |                                                            |
|-------------------------------------------------------|------------------------------------------------------------|
| 10AA                                                  | Dedn for Exporters in SEZ                                  |
| Chapter VIA (except sec 80JJAA and 80LA)              |                                                            |
| 32(1)(iia)                                            | Additional depreciation                                    |
| 33AB/ABA                                              | Dedn. for Tea/Coffee/Rubber business & PNG Business        |
| 35                                                    | Contribution for Research [In-house Res.. exp. is allowed] |
| 35AD                                                  | Dedn for Specified Business                                |
| 35CCC                                                 | Exp. on Agriculture Extension Project                      |
| Set-off of b/f losses arising due to above deductions |                                                            |

**Note 1:**

Section 115BAD is **optional**

This option can be exercised in **any year**

This option should be exercised in **prescribed manner** on or before the **due date of filing return**.

This option is **irrevocable**

**Note 2:**

If a resident co-operative society opts for this section then provisions of **AMT** are **not applicable**.

**New section 115BAE** was introduced in Budget 2023 which is **same as sec. 115BAB**. The only difference is that sec.115BAB is for new Indian companies engaged in manufacturing/power business [registered on/after 1/10/2019] but sec. 115BAE is for **new resident co-operative societies** engaged in **mfg. or power business [regd on or after 1/4/2023]**. All the provisions u/s 115BAB are applicable u/s 115BAE also.

**COMPARATIVE ANALYSIS OF SECTION 115BAA / 115BAB / 115BAC / 115BAD / 115BAE**

| <p><b>Section 115BAA</b><br/>All <u>Domestic Companies</u></p>  | <p><b>Section 115BAB</b><br/>New <u>Domestic Companies</u><br/>(Mfg./Power business only) regd on/after <b>1/10/19</b></p> | <p><b>Section 115BAC</b><br/><b>Individual/HUF</b></p>                 |
|-----------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|
| <p><b>Section 115BAD</b><br/>All <u>Resident Co-op. Sty</u></p> | <p><b>Section 115BAE</b><br/>New <u>Resident Co-op. Sty</u><br/>(Mfg./Power business only) regd on/after <b>1/4/23</b></p> |                                                                        |
| <p><b>Sacrifice</b> some deductions</p>                         | <p><b>Sacrifice</b> some deductions</p>                                                                                    | <p><b>Sacrifice</b> some dedn/ex.</p>                                  |
| <p><b>22%</b> Tax</p>                                           | <p><b>15%</b> Tax</p>                                                                                                      | <p><b>Concessional Slab rates and Extra benefits</b></p>               |
| <p>Confirm surcharge 10%</p>                                    | <p>Confirm surcharge 10%</p>                                                                                               | <p>Surcharge as usual except 37%</p>                                   |
| <p>HEC 4%</p>                                                   | <p>HEC 4%</p>                                                                                                              | <p>HEC 4%</p>                                                          |
| <p>Opt in <b>any year</b></p>                                   | <p>Opt in <b>first year</b></p>                                                                                            | <p>Opt in <b>any year</b></p>                                          |
| <p><b>Irrevocable</b> option</p>                                | <p><b>Irrevocable</b> option</p>                                                                                           | <p><u>Ind/HUF</u> <b>[Business]</b><br/>Can <b>revoke once</b></p>     |
| <p>No MAT/ AMT</p>                                              | <p>No MAT/ AMT</p>                                                                                                         | <p><u>Ind/HUF</u> <b>[Others]</b><br/>Can <b>change every year</b></p> |
|                                                                 |                                                                                                                            | <p>No AMT</p>                                                          |

# RETURNS & ASSESSMENT

## → SUMMARY:

- I] RETURNS
- II] INQUIRY
- III] ASSESSMENT
- IV] OTHER SECTIONS

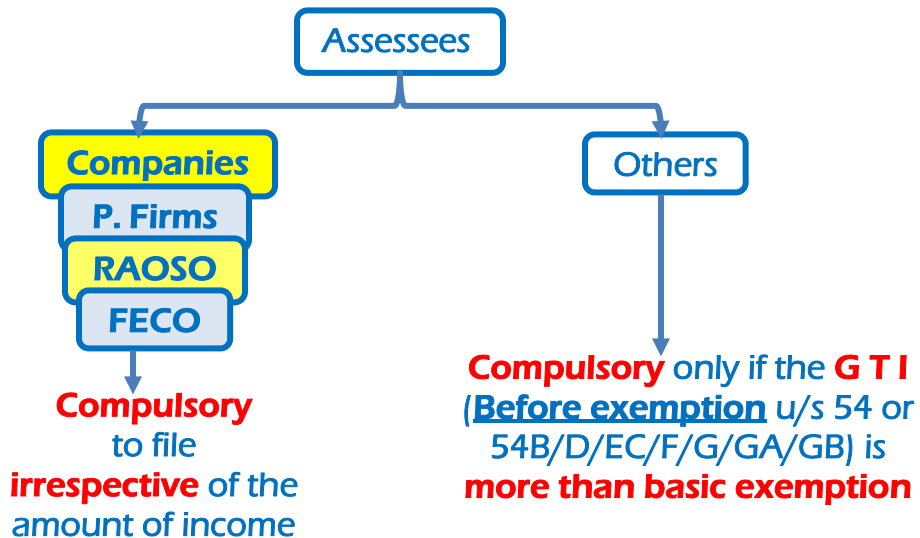
## PART - I

## RETURNS

Section 139(1):

VOLUNTARY RETURN:

### a) Who should file?



### RAOSO

- R**esident person having
- A**sset located
- O**utside India or having
- S**igning authority in an account
- O**utside India

### **FECO**

A person, who during the PY, has

- Incurred > **Rs. 2 lakhs** on **Foreign Travel** [for himself/others]
- Incurred > **Rs. 1 lakh** on consumption of **Electricity**
- Deposited > **Rs. 1 crore** in one or more **Current A/c** with a bank [incl. Co-op. bank]
- Fulfilled such **Other conditions** as may be prescribed. For this, the CBDT has prescribed following conditions:
  - If the **turnover** is > **Rs. 60 lakhs** (in case of a **business**) or if the gross receipts is > **Rs. 10 lakhs** (in case of a **profession**)
  - If the aggregate amount of (**TDS+TCS**) is  $\geq$  **Rs. 25,000** [In case of senior citizens  $\geq$  **Rs. 50,000**].
  - If amount deposited in one or more **savings account** with a bank is  $\geq$  **Rs. 50 lakhs**.

### **b) When to file? [Due Dates]:**

- CAP – **31<sup>st</sup> October** of the A.Y.
- Transfer Pricing [TP] Assesseees [incl. partner of a TP firm] – **30<sup>th</sup> November** of the A.Y.
- Other Assesseees – **31<sup>st</sup> July** of the A.Y.

**C** – **C**ompanies

**A** – Other assesseees whose accounts are subject to **A**udit

**P** – **P**artner of a firm whose accounts are audited

### **c) How to file?**

Return should be filed in **prescribed form**.

### Section 139(4A): RETURN BY CHARITABLE TRUST

In case of a charitable trust, it is compulsory to file the return. If the total income of the trust (**before exemption u/s 11 & 12**) is more than basic exemption.

**Note:**

The **person who receives** the income on behalf of trust is **responsible** to file the return of trust.

### Section 139(4B): RETURN BY POLITICAL PARTY

In case of a political party, it is compulsory to file the return. If the total income of the trust (**before exemption u/s 13A**) is more than basic exemption.

**Note:**

The **Chief Executive Officer** of the political party is **responsible** to file the return of political party.

### Section 139(3): LOSS RETURN:

It is necessary to file the return of loss because as per **sec. 80**, if the return of loss is **not filed in time** then losses **cannot be carried forward**. However, **house property** loss and **unabsorbed depn.** can be carried forward even if the return is filed **after the due date**.

**Notes:**

- 1) If the return of loss is not filed in time then carry forward is not allowed but **set-off in the same year is allowed**.
- 2) If the delay in filing the return is due to **genuine reason**, then such delay can be **condoned** by following authority (and loss can be carried forward):
  - Loss up to Rs.1 crore - CIT/Principal CIT
  - Loss > Rs.1 crore up to Rs.3 crores - CCIT
  - Loss > Rs.3 crores - Principal CCIT

The above rule of condonation is applicable for carry forward of losses as well for claim of refunds. Application for condonation should be made **within 5 years** from the **end of the A.Y.** for which application is made. However, if the refund claim arises due to the **order of Court**, then condonation application can be filed **within 6 months** from the end of the month in which order of Court is issued or the **end of financial year** [whichever is later].

The condonation application should be disposed of **within 6 months** from the end of the month in which such **application is received** [if possible].

| RETURN                                                                      | ASSESSMENT                                                 |
|-----------------------------------------------------------------------------|------------------------------------------------------------|
| Return is computation by the <b>Assessee</b>                                | Assessment is computation by <b>Assessing Officer</b>      |
| Return is filed in <b>Prescribed forms</b>                                  | Assessment is done in <b>Assessment Order</b>              |
| Return is filed by <b>everyone</b>                                          | Assessment is done of <b>selected assesseees</b>           |
| Return is filed up to <b>31st July</b> or <b>31st Oct./30th Nov</b> of A.Y. | Assessment is done within <b>12 mnths</b> from end of A.Y. |

**Section 139(4):**

**BELATED RETURN:**

- a) An Assessee can file a belated return either:
- (i) Up to **31st December of A.Y.**
  - or** (ii) Before **Completion of Assessment** whichever is **earlier**
- b) For delay in filing the return, the assessee is liable to pay **Interest u/s 234A** as follows:
- Interest Amt. = Tax Amt × **1% p.m.** × No. of months of delay  
[Part of the month is treated as full month]
- c) For delay in filing the return, the assessee is also liable to pay **Late Filing Fees u/s 234F** as follows:

| Net Taxable Income     | Late Filing Fees |
|------------------------|------------------|
| Up to Rs. 5,00,000     | Rs. 1,000        |
| More than Rs. 5,00,000 | Rs. 5,000        |

**Section 139(5):**

**REVISED RETURN:**

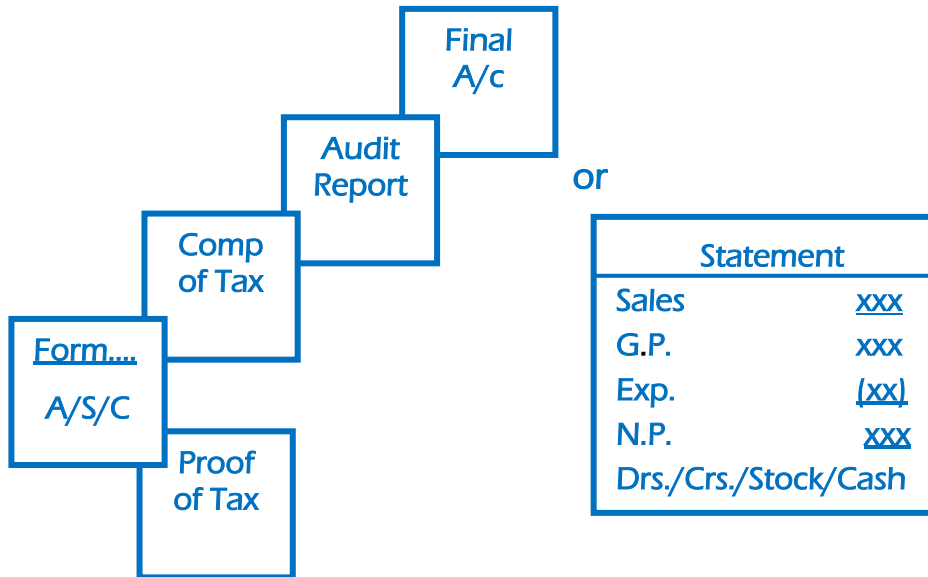
- a) If there is any **mistake** or **omission** in the return (whether filed **timely** or **belated**) then the assessee can file a revised return within the following time limit:
- (i) Up to **31st December of A.Y.**
  - or** (ii) Before **Completion of Assessment** whichever is **earlier**
- b) A Revised return can be **further revised**.

Note: Once the **original** return is filed **on time**, the assessee shall not be treated as late filer just because the revised return is filed at a later date. Accordingly, there will be **no interest** u/s 234A or **late filing fees** u/s 234F and if there is loss in the revised return then such loss **can be carried forward**.

**Section 139(9):**

**DEFECTIVE RETURN:**

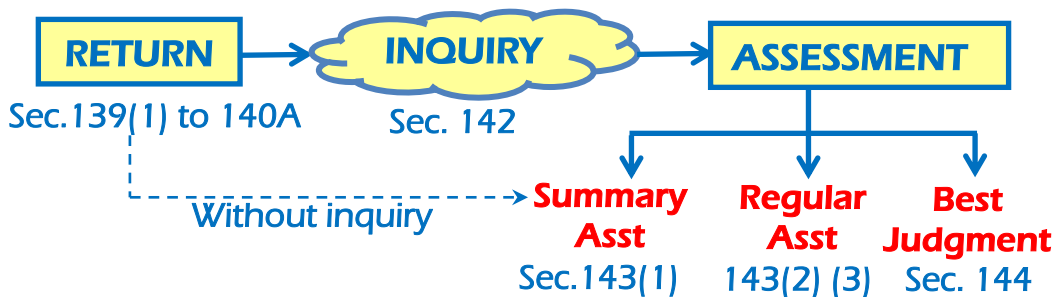
- a) A return is treated as defective in **any one** of the following circumstances:
- i) The Annexures, statements and columns in the return are **not duly filled in**; or
  - ii) The return is **not accompanied** by a copy of:
    - Computation of tax or
    - Proof of tax paid or
    - Audit Report or
    - Final Accounts [If the books are maintained] or
    - Statement indicating amount of Sales, GP, Exps, NP, Drs, Crs, Stock & Cash [If the books are not maintained]
- b) If the return is defective, the Assessing Officer (A.O.) shall **intimate the defect** to the assessee giving him a **time of 15 days** to rectify the defect. If the assessee fails to rectify the defect within 15 days or such extended time as may be allowed by A.O. then the return is treated as **Invalid**.



**Section 140A:**

**SELF-ASSESSMENT:**

This section requires that the assessee **himself** should **compute** his Total Income/Tax and the assessee **himself** should **pay** the tax (along with Interest and late filing fees, if any)



## PART - II

## INQUIRY BEFORE ASST..

### Section 142(1):

### SENDING NOTICE (RAI Notice):

As per this section, the A.O. can send a notice to the assessee requiring him to:

- i) File the **RETURN** of Income (if the same is not filed up to the due date of filing return)
- ii) Produce **ACCOUNTS** and documents (Accounts of maximum 3 preceding years can be demanded).
- iii) Furnish such **INFORMATION** as the A.O. may require.

### Section 142(2):

### INFORMATION - OTHER SOURCES:

In order to obtain full information about the income of assessee, the A.O. can make **any such inquiry** as he thinks fit.

Eg: Gathering information from **third party** etc.

Note: U/s **142(1)**, information is gathered from **assessee** but u/s **142(2)**, information is gathered from **other sources**.

### Section 142(2A):

### SPECIAL AUDIT:

- 1) As per this section, the A.O. can issue a **direction** to the assessee requiring him to get his **accounts audited** by a **C.A. nominated by CIT/CCIT** or get his **stock valued** by a **cost accountant nominated by CIT/CCIT**
- 2) This audit/stock valn is **compulsory** even if it's already done.
- 3) **Audit Report/Stoct valn report** should be furnished by the assessee to the A.O. within the **time prescribed by A.O.** However, this time can be extended by AO but the total time (original + extension) should not exceed **180 days**.
- 4) **Expenses** of the audit/stock valuation (incl.. remuneration of C.A./Cost accountant) shall be determined by **CIT/CCIT** and it shall be paid by **Central Govt.**

**Note 1:**

Direction issued under this section is valid only if following 3 conditions are satisfied:

**N.P.O**

**N:** The A.O. should consider to the audit as **NECESSARY** having regard to the **N.V. DMN** and **interest of revenue** [benefit of Govt]

**N:** Nature and complexity of accounts,

**V:** Volume of accounts,

**D:** Doubts about the correctness in accounts,

**M:** Multiplicity of the transactions in accounts or

**N:** Nature of business

**P:** The A.O. should take the **PERMISSION** of CIT/CCIT.

**O:** The A.O. should provide an **OPPORTUNITY** of being heard to the assessee.

**Note 2:**

Failure to comply with notice u/s 142(1) or direction u/s 142(2A) shall attract **penalty u/s 272A** [Rs. **10,000 per default**]

**Note 3:**

Sec 142 inquiry **may** or **may not** happen and if it happens then it can happen **any time** before passing the assessment order.

**PART - III**

**ASSESSMENT**

- Summary Assessment
- Regular Assessment
- Best Judgment Assessment
- Income Escaping Assessment

**Section 143(1):**

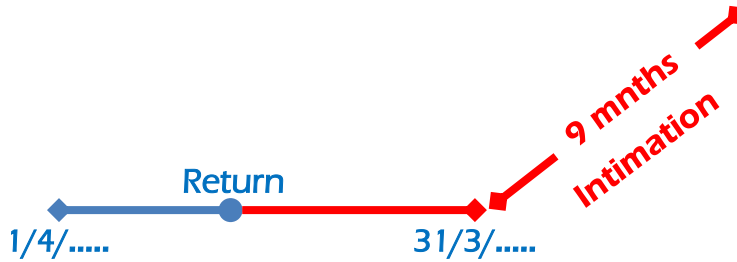
**SUMMARY ASSESSMENT:**

**(Processing of Returns)**

- a) Summary assessment means assessment **without inquiry**.
- b) Summary assessment is done **on the basis of RETURN** subject to following adjustments:

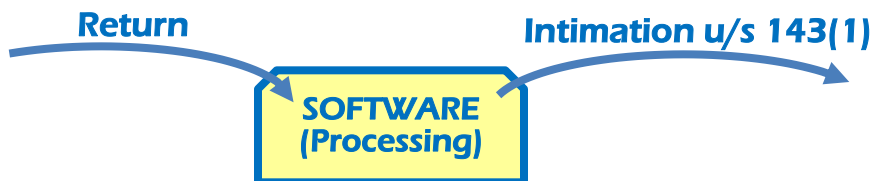
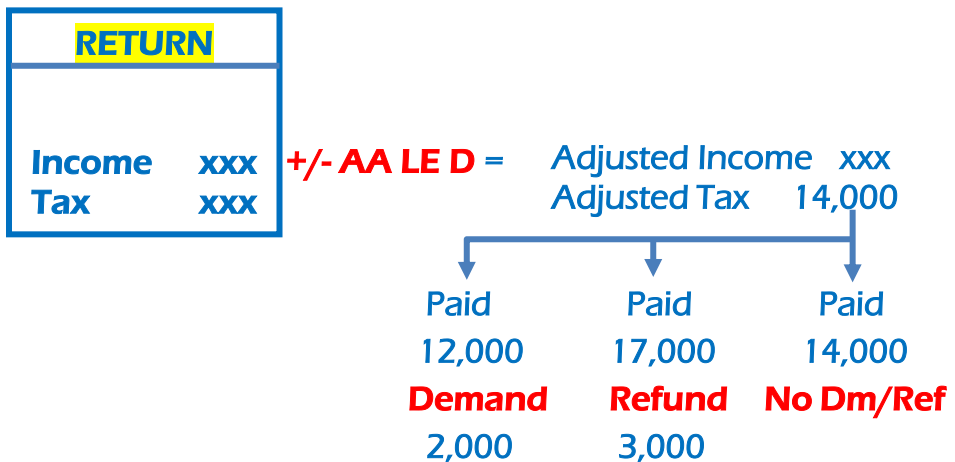
**AA L E D**

- i) Adjustment of **Arithmetical Errors**;
  - ii) Adjustment of **Apparent Incorrect Claims**; [Apparent means obvious & not debatable. Eg: Standard deduction in HP claimed in the return @40% instead of 30%]
  - iii) Adjustment of Brought Forward **Losses** [claimed in the return] in respect of past year, return of which was not filed in time;
  - iv) Adjustment of **Expenses** claimed in the return but disallowed as per audit report; or
  - v) Adjustment of **Deduction u/s 80IA to 80RRB and 10AA** claimed in the return but the return is not filed in time.
- c) Before making above adjustments, the assessee will be **informed** and he will be given a time of **30 days to respond** to above adjustments. After considering the response of the assessee, the return will be **processed** [and if the assessee fails to respond within 30 days then the return will be processed without waiting for his response].
- d) After the return is processed, if any amount is payable, it shall be **demanded** and if any **refund** is due, it shall be granted. This is done by sending an **INTIMATION u/s 143(1)** to the assessee. Intimation u/s 143(1) should be sent **within nine months** from the end of the year in which **return is filed**.



**Note:**

An assessee can revise the return even after receiving intimation u/s 143(1) because **Summary Assessment is as good as No Assessment.**



**Section 143(2)(3):**

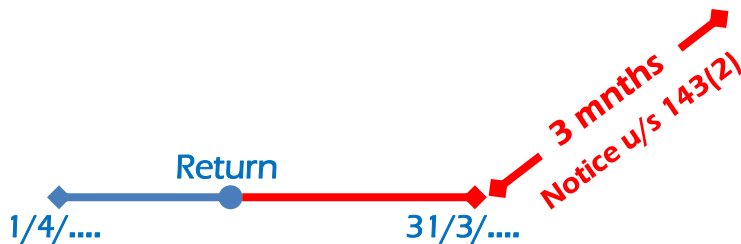
**REGULAR ASSESSMENT:**

**(Scrutiny Assessment)**

- a) Regular Assessment means assessment **with inquiry**.
- b) Regular Assessment is done by following 2 steps:

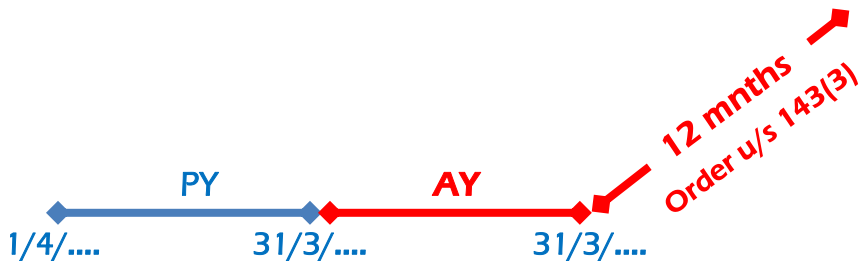
**Step 1:**

First, the A.O. shall send a **notice u/s 143(2)** to the assessee requiring him to **attend the office** of A.O. or **produce evidence** on which the assessee may rely. This notice should be **received** by the assessee **within 3 months** from the end of the year in which **return is filed**.



**Step 2:**

After calling the assessee and after hearing the assessee the A.O. shall compute the total income/tax & if any amount is payable, it shall be **demanded** and if any **refund** is due, it shall be granted. This is done by passing an **ASSESSMENT ORDER u/s 143(3)**. This order should be passed i.e. the assessment should be completed **within 12 months** from the end of **A.Y.**



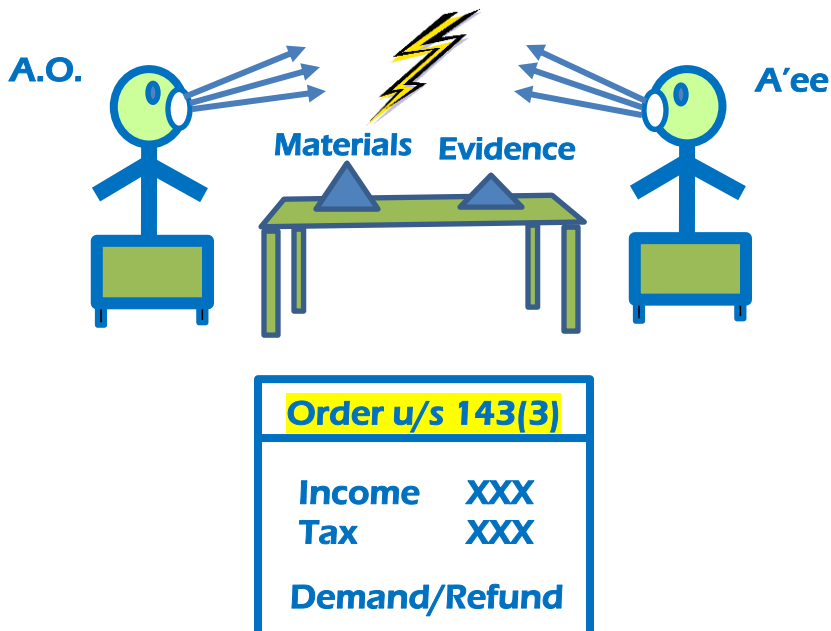
**Note 1:**

Regular assessment is done **on the basis of:**

- (i) **Materials** gathered by A.O. and
- (ii) **Evidence** produced by Assessee

**Note 2:**

**Scrutiny** can be initiated **even after summary** assessment u/s 143(1) because summary assessment is as good as no assessment.



**Note:**

Government has announced scheme of **faceless assessment** where assessment will be done electronically without face to face meeting of assessee and AO. This will be discussed later u/s 144B.

**Section 144:**

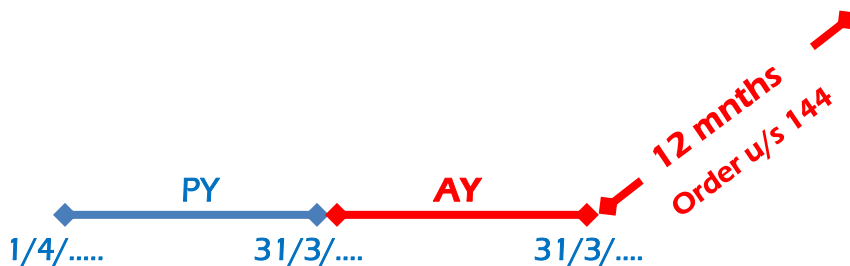
**BEST JUDGMENT ASSESSMENT:**

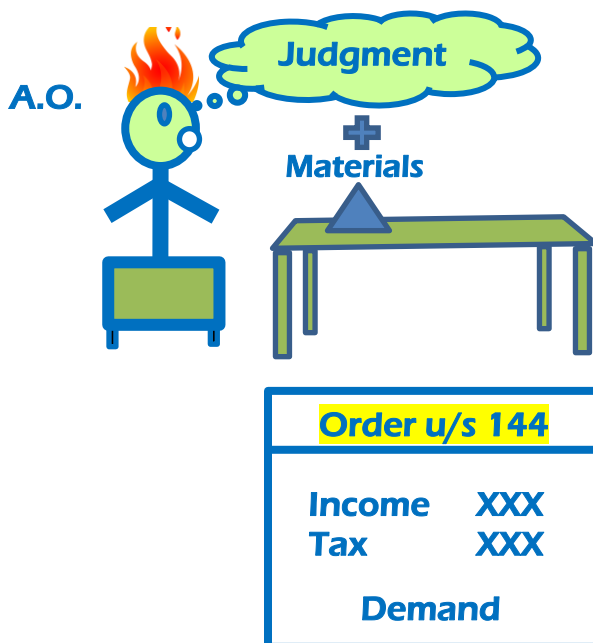
**(Ex-parte Assessment)**

- a) Best judgement assessment is done when the assessee **does not co-operate**. It is done **on the basis of**:
  - i) **Materials** gathered by A.O. and
  - ii) **Judgement** of A.O.  
(Judgement should be best – honest & no guess work)
- b) Best judgement assessment is done in **any one** of the following **circumstances**:
  - i) Failure to file return u/s **139(1)** or **139(4)** or
  - ii) Failure to comply with notice u/s **142(1)** or direction u/s **142(2A)** or
  - iii) Failure to comply with notice u/s **143(2)**
- c) Before making best judgement assessment i.e. before passing the order, the A.O. shall issue a **show cause notice** to the assessee requiring him to give reason as to why assessment should not be done as per the judgement of A.O. However, if best judgement is done because of assessee failure to comply with notice u/s **142(1)** then show cause notice is **not required**.

**Note:**

**Assessment u/s 144** should be completed i.e. the order should be passed **within 12 months** from the end of **A.Y.**





| SUMMARY ASST                                           | REGULAR ASST                                                                                                  | BEST JUDGMENT                                                                                                      |
|--------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------|
| No Inquiry                                             | With Inquiry                                                                                                  | With Inquiry                                                                                                       |
| Return is <b>must</b>                                  | Return is <b>must</b>                                                                                         | Return <b>may/may not</b> be filed                                                                                 |
| On the <b>basis</b> of:<br>i) Return                   | On the <b>basis</b> of:<br>i) Materials [A.O.] &<br>ii) Evidence [Assessee]                                   | On the <b>basis</b> of:<br>i) Materials [A.O.] &<br>ii) Judgment [A.O.]                                            |
| Direct Intimation u/s <b>143(1)</b><br><b>9 months</b> | First,<br>Notice u/s <b>143(2)</b><br><b>3 months</b><br>Then,<br>Order u/s <b>143(3)</b><br><b>12 months</b> | First,<br><b>Show-Cause</b> Notice<br><b>No specific time</b><br>Then,<br>Order u/s <b>144</b><br><b>12 months</b> |

**Sec. 147 to 152:**

**INCOME ESCAPING ASSESSMENT:**

**→ MEANING:**

Normally, income of a particular PY should be assessed by the AO within 12 months from the end of AY [either u/s 143(3)/144]. However, it is not possible to assess each and every assessee within such time. Hence, if the income of an assessee is **not assessed within such time**, then the income is said to have **escaped** assessment. Even if the assessment is done, sometimes the income is **under-assessed**. Even in such cases, the income is said to have **escaped** assessment. In all such escaping cases, the assessment or reassessment is done u/s **147**. Such assessment / re-assessment is also known as **reopening of cases**.

**→ CONDITION:**

Proceeding u/s 147 can be initiated only if the A.O. has **INFORMATION** which suggests that the income of a particular year has escaped assessment. Information, for this purpose, means:

- (i) Information received by A.O. as per the **Risk Management Strategy [RMS]** formulated by CBDT;
- (ii) Information received from **foreign country** as per agreement u/s 90/90A (Double Taxation Avoidance Agreement or Tax Information Exchange Agreement).
- (iii) Information received by A.O. as per the scheme of **Faceless collection of information** (notified u/s 135A).
- (iv) Information as per the order of Tribunal / **Court**.
- (v) **Audit objection** to the effect that the assessment of a particular person is not done properly (this is discovered when the income tax department is audited by Comptroller and Auditor General of India).

**→ Exception:**

Normally, proceeding u/s 147 can be initiated only if the A.O. has "Information". However, in **Search Cases** and **Survey Cases**, the A.O. is **deemed to have Information**.

| <b>Regular/Best Judgment Asst.</b>                      | <b>Income Escaping asst.</b>                                   |
|---------------------------------------------------------|----------------------------------------------------------------|
| <b>Timely</b> action<br>(Choron ko waqt pe pakda)       | <b>Late</b> action<br>(Choron ko late pakda)                   |
| On the basis of doubts<br>( <b>shaq</b> ki buniyaad pe) | On the basis of information<br>( <b>yakeen</b> ki buniyaad pe) |

### → **PROCEDURE:**

#### **Step 1:**

Once the A.O. has information suggesting escapement, he shall comply with provisions of **SECTION 148A** as follows

- (i) With the prior approval of CIT/CCIT, the A.O. shall conduct **enquiry** with respect to such information [if required].
- (ii) After conducting enquiry, the A.O. shall issue a **show-cause notice** to the assessee requiring him to give reason as to why his case should not be reopened. The assessee is required to **reply within** the time prescribed in such notice or such extended time as may be allowed by A.O. [Time prescribed in the notice should be **min. 7 days to max. 30 days** from the date of issue of such notice].
- (iii) After considering the reply of assessee, the A.O. shall decide whether or not it is a fit case for reopening. This is done by passing an **order within one month** from the end of the month in which reply of assessee is received or time allowed to furnish the reply expires. Such order shall be passed with the prior approval of CIT/CCIT.

#### → **Exception:**

Normally, it is compulsory to follow Step 1 (i.e. complying with section 148A).

However, in following **2 cases**, Step 1 is **not required** (i.e. the A.O. is not required to comply with Section 148A):

- a. **Search** cases
- b. Cases where A.O. has received the information as per the scheme of **Faceless collection of information**.

**Step 2:**

If the A.O. decides to reopen the case then he shall issue a **NOTICE u/s 148** [along with order u/s 148A] to the assessee requiring him to **file the return** of the relevant AY. Notice u/s 148 can be issued **within 3 years** from the end of **relevant A.Y.**

The Return in response to notice u/s 148 should be filed **within 3 months** from the end of the month in which such notice is issued or such extended time as may be allowed by A.O.

Before issuing notice u/s 148, the A.O. shall take the **prior approval of CIT/CCIT** (in cases where **Step 1 is not followed**).

**Step 3:**

After the assessee files the return, the A.O. shall send a **NOTICE u/s 143(2)** to the assessee requiring him to **attend the office** of A.O. or produce evidence on which assessee may rely. This notice should be **received** by the assessee **within 3 months** from the end of year in which **return** (in response to notice u/s 148) **is filed** by the assessee.

**Step 4:**

After calling the assessee and after hearing the assessee, the A.O. shall **compute the Total Income/Tax** of the relevant AY and if any amount is payable, it shall be **demanded**. This is done by passing an **ASSESSMENT ORDER u/s 147**.

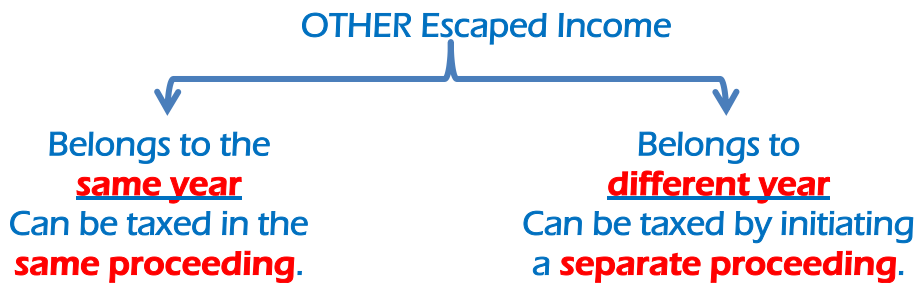
Assessment u/s 147 should be completed i.e. the order should be passed **within 12 months** from the end of year in which **notice u/s 148 is received** by the Assessee.

→ **NOTES [OTS GDR]:**

**○ OTHER ESCAPED INCOMES:**

Once a valid proceeding is initiated u/s 147, the A.O. **can also** assess/reassess **OTHER escaped income** which is subsequently discovered by him during the course of proceedings under this section (**even if provisions of sec. 148A are not complied with** in respect of such other escaped income).

This means, for the main escaped income, the AO should comply with provisions of sec. 148A but for the other escaped income, the AO is not required to comply with provisions of sec. 148A.



**T**

**TIME LIMIT FOR ISSUE OF NOTICE U/S 148:**

Normally, notice u/s 148 can be issued within 3 years from the end of the relevant A.Y.

However, there are **2 exceptions** to this rule:

⇒ **EXCEPTION (I):**

If following conditions are satisfied then notice u/s 148 can be issued **within 10 years** from the end of relevant A.Y.

- 1) The Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income has escaped assessment.
- 2) Such income is represented in the form of:
  - An **Asset** [like Immovable property, shares & securities, loans & advances, deposits in bank etc.]
  - An **Expenditure** in relation to a transaction, event or occasion.
  - An **Entry** or entries in the books of accounts.
- 3) The amount of escaped income is Rs.50 lakhs or more (either individually in one year or in aggregate for 2 or more years).

⇒ **EXCEPTION (II):**

If reopening is directed by authority under **appeal/reference/revision**, then the notice u/s 148 can be issued anytime (**No time limit**).



**Why no time limit?**

This is because the appeal authorities hear the case of a particular year after long time and by the time they look in to the case, the time limit of 3/10 years expires.

**Why Appeal authorities have to direct reopening?**

It may happen that in the appeal of a particular person for a particular year, the **judgment may affect some other person or some other year**. In such case, the appeal authorities shall direct AO to reopen the case of such other person or such other year.

**Example:**

Case of Mr. X was in appeal with ITAT. Appeal was for the year 2009-10 but it was heard by ITAT during 2024-25 [so late]. In this appeal, the ITAT found that an income of Rs. 5 lakhs which accrued in 2007-08 was wrongly shown by assessee in 2009-10 on receipt basis. Hence, the ITAT gave a direction to A.O. to reopen the case of 2007-08 in order to include income of Rs. 5 lakhs in 2007-08. In such case, A.O. can reopen the case of 2007-08 in year 2024-25 even if the time of 3/10 yrs has expired (because this reopening is directed by appellate authority and it is not at A.O.'s initiative).

**S** **SANCTIONING AUTHORITY:**

Sanctioning authority for the purpose of sec. 148 and sec. 148A shall be CIT [if the case is reopened within 3 years from the end of relevant A.Y.] and CCIT [if the case is reopened after 3 years from the end of relevant A.Y.].

**G** **BENEFIT OF GOVERNMENT:**

- 1) Proceeding u/s 147 is for the benefit of government and the scope of sec.147 is restricted to **escaped incomes only\***.
- 2) In this proceeding, the assessee **cannot claim** any benefit like deduction, set off etc. **which he could not claim earlier** (because the assessee had the remedy to revise the return).
- 3) In this proceeding, the assessee **cannot reagitate** the matters which were **already decided** in the previous assessment (because the assessee had the remedy to file an appeal).
- 4) However, the assessee **can claim** the expenses **related to the escaped** income (but deduction of such expenses should not exceed the amount of escaped income).

The above ruling was given by Supreme Court in the case of **Sun Engineering Pvt. Ltd.**

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\*In the return filed in response to notice u/s 148, the assessee cannot claim benefits which were not claimed earlier [such return should be same as past return + at the most escaped income]

In short,

New Return u/s 148 =  
Past Return + **only escaped incomes** and no other changes  
Order u/s 147 =  
Past income + **only escaped incomes** and no other changes  
Appeal against order u/s 147 =  
On matters related to **escaped incomes only**

---

**D DROPPING OF PROCEEDINGS:**

Proceeding u/s 147 shall be dropped if following 2 conditions are satisfied:

- 1) The assessee has **already** been **assessed** on an amount which is **more** than or equal to what he would have been rightly liable for (if assessment was properly made with the escaped income).
- 2) The Assessee **did not oppose** the original assessment.

**Example:**

Assessment of Mr. X for the PY 2020-21 was completed as follows:

| Order u/s 143(3)         |              |
|--------------------------|--------------|
| Net profit               | 2 L          |
| Add: Expense disallowed* | <u>+ 4 L</u> |
|                          | <u>6 L</u>   |

\* Expense of ₹4,00,000 was **wrongly disallowed** and Mr. X **did not appeal**.

During 2024-25, the A.O. discovered an escaped income (interest income) of ₹1,50,000 related to the same PY 2020-21. Hence, he initiated the proceeding u/s 147. During the proceeding, the Assessee can claim for dropping of proceeding because he has already been assessed on an income of ₹6,00,000 which is more than or equal to what he would have been rightly liable for i.e. ₹3,50,000 (NP ₹ 2,00,000 + Escaped income ₹1,50,000) if assessment was properly made. Hence, the A.O. shall drop the proceedings and shall excuse the escaped income of ₹1,50,000 (because Iss Insaan se jitna milna tha usse kai jyada mil chuka hai). No new order will be passed (original order u/s 143(3) shall remain as it is).

If in the above e.g., the Escaped Income is ₹10,00,000 instead of 1,50,000 then the Assessee cannot claim for dropping of proceeding because he has been assessed on an income of

₹6,00,000 only which is less than what he would have been rightly liable for i.e. ₹ 12,00,000 (NP ₹ 2,00,000 + Escaped income ₹ 10,00,000) if assessment was properly made. Hence, the A.O. shall continue the proceeding u/s 147 and a new order shall be passed as follows:

| Order u/s 147          |                      |
|------------------------|----------------------|
| Net Profit             | 2 L                  |
| (+) Exp. disallowed**  | + <u>4 L</u>         |
|                        | 6 L                  |
| <b>(+) Esc. Income</b> | <b>+ <u>10 L</u></b> |
|                        | <u>16 L</u>          |

\*\*Expense of ₹ 4,00,000 which was wrongly disallowed earlier cannot be claimed as allowed because u/s 147 the assessee cannot reagitate the matters which were decided earlier (Sun Engineering Pvt. Ltd.)

**R**

**RATE OF TAX:**

The escaped income shall be taxable as per the rates **applicable to relevant A.Y.**

→ **Section wise Summary:**

| Sections | Particulars                                                                                                                                                                                                                                                          |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 147      | Power of A.O. to assess/reassess escaped incomes                                                                                                                                                                                                                     |
| 148      | Notice to file the return of relevant A.Y.                                                                                                                                                                                                                           |
| 148A     | Show cause notice before reopening of case                                                                                                                                                                                                                           |
| 148B     | In <b>search</b> and <b>survey</b> cases, the A.O. should not be below the rank of JC i.e. the A.O. should be either <b>JC or Additional CIT</b> .<br>However, if an A.O. below the rank of JC conducts the assessment, then permission of JC/Addl. CIT is required. |
| 149 (1)  | Time limit for issuing such notice (3/10 years)                                                                                                                                                                                                                      |
| 149 (2)  | Before issuing such notice, permission is required                                                                                                                                                                                                                   |
| 150      | No time limit (if reopening directed by appeal authority)                                                                                                                                                                                                            |
| 151      | Sanctioning authority                                                                                                                                                                                                                                                |
| 152      | Rate of tax & dropping of proceeding                                                                                                                                                                                                                                 |

**Hierarchy in Income Tax Department**

- CBDT
  - CCIT (Chief Commissioner of Income Tax)
  - CIT (Commissioner of Income Tax)
    - Additional CIT
    - JC (Joint Commissioner)
    - AC/DC (Assistant Commissioner/Deputy Commissioner)
    - ITO (Income Tax Officer)
- A.O. (Assessing Officer) {

**LATEST AMENDMENTS in RE-OPENING PROCEDURE**

| Re-opening<br><b>before 1/9/24</b>                                            | Re-opening<br><b>on/after 1/9/24</b>                                                                                                                     |
|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Search cases<br>Assessment u/s 147                                            | <b>Search cases</b><br><b>Sec. 147 - Not Applicable</b><br>Block Assessment                                                                              |
| Survey cases<br>A.O. is deemed to have<br>Information                         | <b>Survey cases</b><br><b>Specifically included</b> in the<br>definition of "Information"                                                                |
| Enquiry before SCN                                                            | <b>No Enquiry before SCN</b>                                                                                                                             |
| SCN not accompanied by<br>Information                                         | SCN <b>accompanied by</b><br><b>Information</b>                                                                                                          |
| Time to reply to be<br>prescribed in SCN<br><b>[min. 7 to max. 30 days]</b>   | Time to reply to be<br>prescribed in SCN<br><b>[Anytime]</b>                                                                                             |
| Order u/s 148A<br><b>within 1 month</b>                                       | Order u/s 148A<br><b>No Time limit</b>                                                                                                                   |
| <u>Issue of SCN u/s 148A</u><br>No Time limit                                 | <u>Issue of <b>SCN u/s 148A</b></u><br>Time limit:<br>⇒ Normally – <b>3 yrs.</b><br>⇒ Esc. income ≥ 50L – <b>5 yrs.</b><br>[From the end of relevant AY] |
| <u>Notice u/s 148</u><br>⇒ Normally – 3 yrs.<br>⇒ Esc. income ≥ 50L - 10 yrs. | <u><b>Notice u/s 148</b></u><br>⇒ Normally – <b>3 yrs.3 m</b><br>⇒ Esc. income ≥ 50L – <b>5 yrs.3m</b><br>[From the end of relevant AY]                  |
| <u>Permission</u><br>Within 3 yrs. – CIT<br>After 3 yrs. – CCIT               | <u>Permission</u><br>Addl. CIT/JC                                                                                                                        |

**Section 153:**

**TIME LIMIT FOR COMPLETION OF ASST.**

→ Regular assessment u/s **143(3)** and Best Judgment assessment u/s **144** should be completed within **12 months** from the end of **A.Y.**

→ Income escaping asst u/s **147** should be completed within **12 months** from the end of the year in which **notice u/s 148 is received** by the assessee.

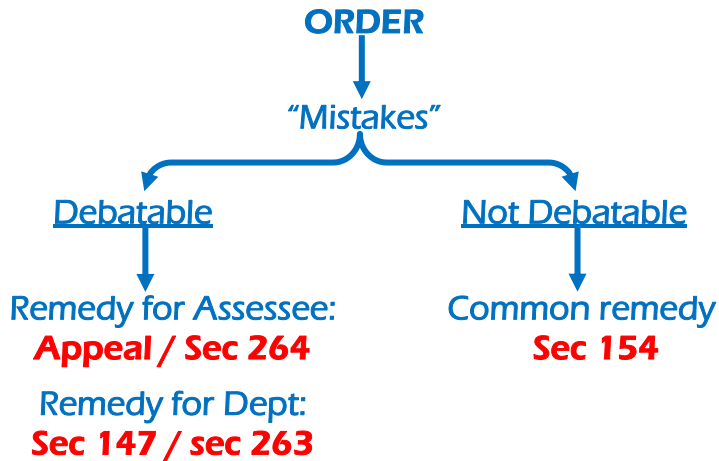
**PART - IV**

**OTHER SECTIONS**

**Section 154:**

**RECTIFICATION OF MISTAKES**

- a) As per this section, the I.T. Authority (**A.O. + Commissioner**) can rectify a mistake in his **order** or **intimation** if such mistake is "**apparent**" from the record (i.e. the mistake is obvious/not debatable). E.g. LTCG wrongly taxed at slab rates instead of 20%, depn. allowed at wrong rate etc.
- b) Rectification can be done by I.T. Authority either:
  - On his **own motion**
  - or** → On an **application** made by the **assessee**
- c) If rectification is done by I.T. Authority on his **own motion** then it should be done within **4 years** from the end of the year in which order (containing the mistake) is passed. If the assessee applies for rectification then he should **apply** within such **4 years** and the I.T. Authority shall **rectify** within **6 months** from the end of the month in which application is received (**if possible**).
- d) Rectified mistake can be **further rectified** and the time limit of **4 years** is reckoned [counted] from the end of the year in which **rectified order** is passed.



### Section 156:

### NOTICE OF DEMAND

- a) After the assessment is completed, if any amount is **due from assessee** then it should be demanded by issuing a **Notice of Demand**.
- b) There is time limit for completion of assessment but there is **no time limit** for issuing notice of demand.
- c) Issuing notice of demand is **compulsory** because without issuing such notice, the department cannot initiate recovery proceedings.
- d) After receiving the notice of demand, the assessee should pay the amount demanded **within 30 days** from the date of receipt of such notice. If the assessee fails to pay the demand within such time, the department shall initiate recovery proceedings.
- e) In case of **Summary Assessment**, intimation u/s 143(1) is deemed as Notice of Demand. Hence, Notice of Demand is **not required**.

**Section 144A**

**POWER OF JC TO ISSUE DIRECTIONS**

- a) The J.C. may **call for and examine the records** of the proceedings in which assessment is **pending**.
- b) After examining the records, if the J.C. considers it **necessary** (having regard to the nature of the case, amount involved or any other reason) then he shall **issue directions** to the A.O. [to complete the assessment]
- c) The directions of JC are **binding** on A.O.
- d) If the directions are **prejudicial** to the assessee then the Assessee should be given an **opportunity** of being heard.
- e) The J.C. can exercise this power either:
  - On his **own motion** or
  - On an **application** made by **assessee** or
  - On a **reference** made by **A.O.**

**Section 145:**

**METHOD OF ACCOUNTING**

- a) Income under the head **Income from Business** and **Income from Other Sources** shall be taxable on accrual basis or receipt basis depending upon the method of accounting followed by the assessee. This means, if the Assessee follows **mercantile** system then such income shall be taxable on **accrual** basis and if the assessee follows **cash** system then such income is taxable on **receipt** basis.
- b) This section empowers the A.O. to reject the accounts of the assessee and complete the assessment as per his **Best Judgment** in **any one** of the following circumstances:
  - 1] If the accounts of the assessee are **incomplete** or **incorrect** or
  - 2] If the **method** of accounting is not followed consistently i.e. **frequently changed** or
  - 3] If the income is not computed as per **ICDS** [Income Computation and Disclosure Standards].

## UPDATED RETURN

### SECTION 139(8A): UPDATED RETURN

As per this section, a person can file return **upto 24 months** from the **end of AY**. Any return filed after 31<sup>st</sup> December of AY is called updated return. Updated Return (UR) can be filed irrespective of whether such person has already filed the return earlier or not.

This is beneficial for a person who didn't file the return but he wants to file the return for getting loan from bank etc. Also beneficial for those who have shown very low income and want to confess the actual higher income.

### CONDITIONS

1. Updated return cannot be filed to **reduce tax liability** or claim additional refund or to claim loss.
2. Updated return cannot be filed in respect of a year for which **Prosecution** is initiated under Income Tax Act.
3. Updated Return cannot be filed if it is **already filed** earlier. This means, UR can be filed **only once** for a particular year.
4. UR cannot be filed in respect of a year in which **search/survey** is conducted and the years preceding the year of search/survey.
5. UR cannot be filed in respect of a year for which **Assessment** is pending / completed.
6. UR cannot be filed once the Assesse is communicated about the **information received by AO**. (Received from Foreign Country u/s 90/90A or received under other law like Smugglings Act, Black Money Act, Benami Transaction Act, Money Laundering Act etc.

**Note 1:**

As per **section 140B**, a person filing UR is required to pay **Additional Tax** (before filing the UR) as follows:

⇒ If UR is filed upto **12m** from the end of AY:  
Additional Tax  
= **25 %** of (Tax as per UR incl. Interest – Tax incl. Int. paid earlier)

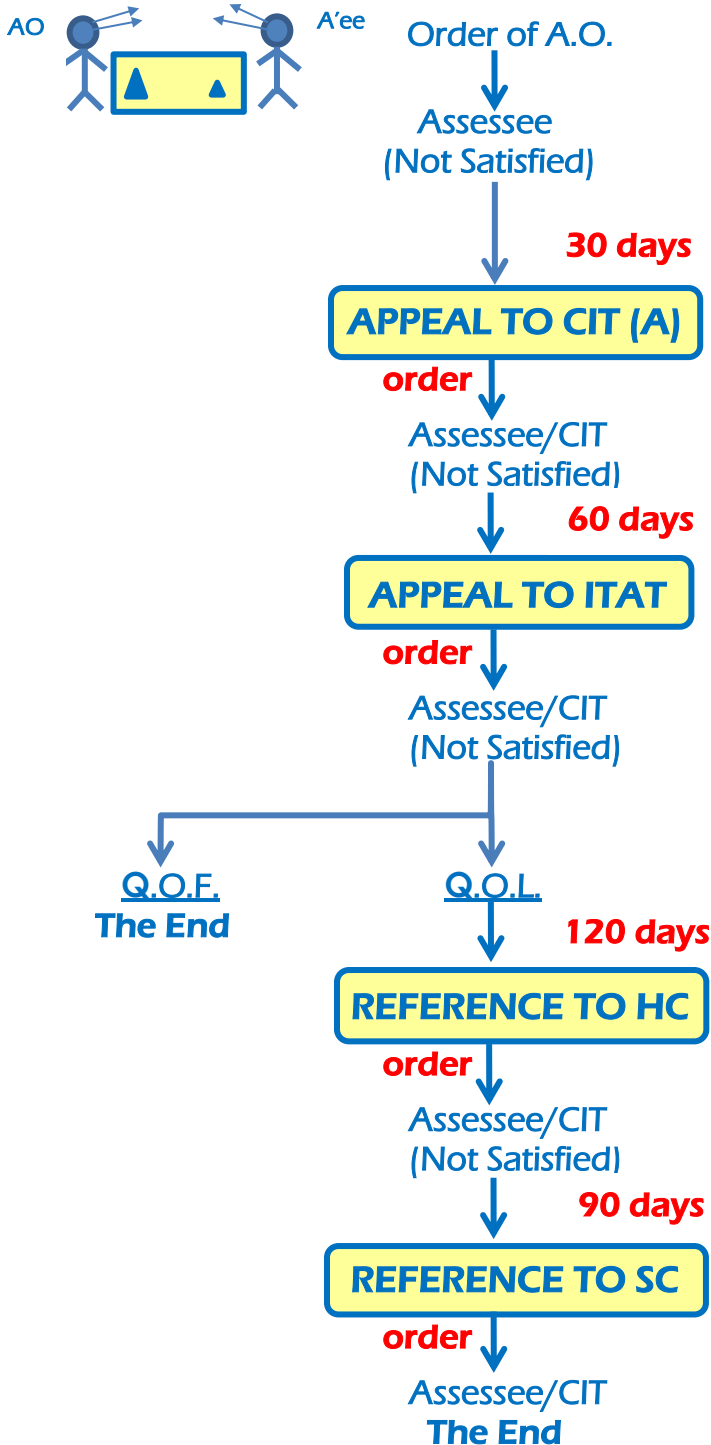
⇒ If UR is filed after **12m upto 24m** from the end of AY:  
Additional tax  
= **50%** of (Tax **as per UR** incl. Interest – Tax incl. Int. **paid earlier**)

**Note 2:**

As per **section 153**, the time limit for completion of asset in cases where UR is filed is **12 months** from the end of the year in which **UR is filed**.

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APPEALS, REFERENCE & REVISION



Q.O.F:

Question of fact is a question which is decided on the basis of **inquiry** and **evidence**.

Eg: Whether the notice was received or not, whether opportunity of being heard was given or not, whether a trust is charitable or not etc.

Q.O.L:

Question of law is a question which is decided on the basis of application of **legal principle**, **legal knowledge** and **interpretation of law**.

Eg: Whether depreciation should be allowed or not, whether the expense is capital or revenue etc.

→ Summary:

APPEALS	REFERENCE	REVISION	OTHERS
CIT (A)	HC	Sec. 263	Sec. 158A
ITAT	SC	Sec. 264	Sec. 268A

Sec. 246A to 251

APPEAL TO CIT(A)

F T T – HOGE

F FILING OF APPEAL:

Appeal to CIT (A) should be filed in **Form 35** along with Order of A.O., Notice of Demand and prescribed fees.

T TIME LIMIT:

Appeal to CIT (A) should be filed **within 30 days** from the date of receipt of notice of demand (in demand cases) or from the date of receipt of order of A.O. (in other cases)

T PAYMENT OF TAX:

Before filing the appeal, the assessee should **pay the tax as per return** and for the **disputed amount**, the assessee can apply for **stay of demand** to A.O. or CIT (A). If the stay is granted, the assessee is required to pay only 20% of the disputed amount and the balance amount need not paid **till CIT (A) gives his judgement**.

Note: Assessee will apply for stay within 30 days from the date of receipt of notice of demand and will get the reply within 2 weeks.

H CALLING FOR HEARING:

The CIT (A) shall fix a date and time and call the A.O. and Assessee for hearing. The CIT(A) shall provide opportunity of being heard to the A.O. as well as assessee.

O ORDER OF CIT (A):

The CIT (A) shall give the judgement i.e. he shall pass the order **within 1 year** from the end of the year in which **appeal is filed, if possible**.

G **GROUND OF APPEAL:**

Normally, the assessee can **discuss only those** grounds with CIT(A) which were **mentioned** by him while filing the appeal. However, the CIT (A) may allow the assessee to **discuss additional** grounds if the **omission** of such grounds is **not willful**.

E **ADDITIONAL EVIDENCE:**

Normally, the assessee can **produce only those** evidences in front of CIT (A) which were originally **produced** by him **in front of A.O.** i.e. the assessee cannot produce additional evidence in front of CIT (A).

However, in following **4 cases**, the CIT (A) may allow assessee to produce **new / additional evidence**:

- a) Where the assessee produced such evidence but the **A.O. rejected**.
- b) Where the A.O. **completed** the assessment **without giving an opportunity** to produce such evidence.
- c) Where the A.O. **demand**ed such evidence but the assessee **could not produce** such evidence for sufficient cause.
Eg: Third party confirmation was demanded by A.O. but 3rd party was not in country.
- d) Where the A.O. **did not demand** such evidence and the evidence was relevant but the assessee **could not produce** such evidence for sufficient cause.

Eg: Supreme Court judgment which recently came

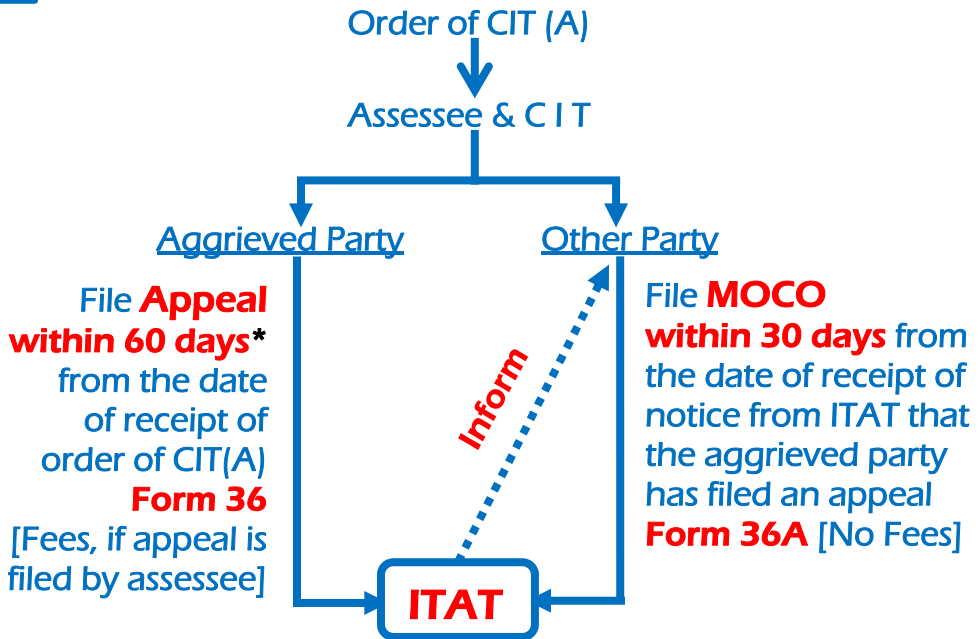
Note: First appeal can be heard by either CIT(A) or **Joint CIT(A)**. To reduce to workload of CIT(A), **an additional authority is introduced i.e. Joint CIT(A)**.

CIT(A) can **confirm, reduce, enhance** or **annul** the assessment and where the appeal is against **assessment u/s 144**, he may **set aside** the assessment and refer the case back to A.O. for making a fresh assessment.

Sec. 252 to 255: **APPEAL TO ITAT**

P O S R

P **PROCEDURE:**



Form 36 should be filed along with Order of A.O. and CIT (A)
MOCO – Memorandum of Cross Objections

Note 1: Normally, appeal to ITAT is heard by a bench of 2 members (1- judicial member & 1- Account member). However, if the Net Taxable Income of the Assessee [as per the order of AO] is **upto ₹50 lakhs** then the appeal can be heard by a **single member bench**.

*W.e.f. 1/10/24, the time limit for filing appeal to ITAT is amended to **2 months** from the from the end of the month in which the order of CIT(A) is received.

O **ORDER OF ITAT:**

The ITAT shall give the judgement i.e. it shall pass the order **within 4 years** from the end of the year in which **appeal is filed** to ITAT, **if possible**.

S

STAY OF DEMAND:

While filing appeal to ITAT, the assessee can apply to ITAT for stay of demand. If the ITAT is satisfied then it can grant a stay of **maximum 180 days**. During this period, the ITAT shall give its judgement (if possible). If the ITAT fails to give the judgement with this period and if the delay is not due to the fault of assessee then the assessee can apply for extension of stay. In such case, the ITAT can **extend** the stay but the total period of stay (original + extension) should not exceed **365 days**.

After this period, the order of stay shall stand vacated. This means, the assessee has to pay his dues even if the judgement of ITAT is still pending (and there is no scope of further stay).

R

REVIEW AND RECTIFICATION (Sec.254):

The ITAT **cannot review** its order i.e. it cannot change its opinion (First view should be the last view and there should be no review). However, if there is any **apparent mistake** in the order of ITAT then it **can rectify** such mistake [either on its own motion or on an application made by Assessee/AO]. If rectification is done on its own motion, then it should be done **within 6 months** from the end of the month in which order is passed. If assessee/AO applies for rectification then he should apply within such 6 months [no time prescribed for reply].

Rectification u/s 154	Rectification u/s 254
This section empowers A.O. + CIT including CIT (A) to rectify apparent mistakes	This section empowers ITAT to rectify apparent mistakes
4 years from the end of the year	6 months from the end of the month
Reply in 6 months (if assessee applies)	No such time is prescribed

Note: There is no section in the Income Tax Act for rectification by HC/SC [but they can rectify].

HC/SC are governed/regulated by Code of Civil Procedure, 1908.

Important Note:

Earlier **CBDT** had issued instructions to the department that if an assessee is granted stay of demand by **AO/CIT(A)** then the assessee should **not** be required to pay **more than 20%** of the disputed amount. The instructions also provide that, in fit cases, assessee **may not be required to pay anything** or pay **less than 20%**.

However, now if an assessee applies for stay of demand to ITAT then **ITAT will grant stay only if the assessee has paid at least 20%** of the disputed amount [**minimum 20%**]. This means, if the assessee was granted stay of demand by AO/CIT(A) on payment of 5% of the disputed amount then while filing stay application to ITAT, he will have to pay additional 15% [20% - 5%]; otherwise ITAT won't grant stay.

Sec. 260A & 260B:

REFERENCE TO HC

Order of ITAT shall be communicated to Assessee and CIT. The one who is not satisfied (with Q.O.L) shall make a reference to HC **within 120 days** from the date of receipt of order of ITAT. If the Question of Law is **substantial**, then only the HC shall accept the case and give judgement (No time limit)

Sec. 261 & 262:

REFERENCE TO SC

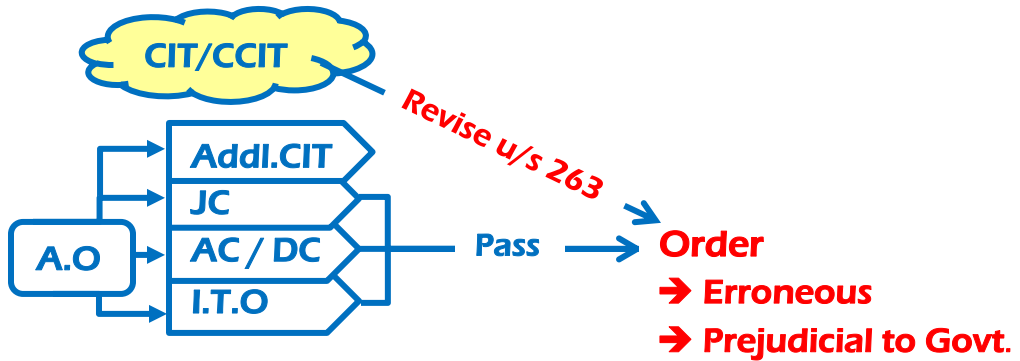
Order of HC shall be communicated to Assessee and CIT. If the **HC certifies that the case is fit** for reference to SC, then the aggrieved party can refer the case to SC **within 90 days** from the date of receipt of order of HC. Supreme Court judgment is final (No time limit).

Note:

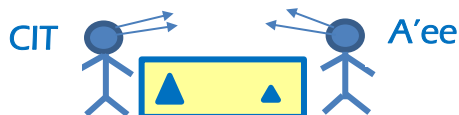
Appeal should be filed within **30/60/120/90 days** and if there is **delay** in filing the appeal due to **genuine reason** then the delay can be **condoned**.

Sec. 263

REVISION BY CIT/CCIT [For Govt.]



1. Section 263 empowers CIT/CCIT to revise an order passed by his **subordinate** authority (A.O) if such order is:
 - a) **Erroneous [Note 1]**
 - and b) **Prejudicial to Government**
 Before revising the order, the CIT/CCIT shall call for & examine all the **records** of the proceedings **available at the time of examination** by him.
2. Revision u/s 263 is in the **favour of Govt.**
3. Revision u/s 263 is done by CIT/CCIT on this **own motion**.
4. Revision u/s 263 can be done by CIT/CCIT **within 2 years** from the end of the year in which order [containing error] is passed.
5. Before revising the order, the CIT/CCIT shall provide an **opportunity of being heard** to assessee.



6. The CIT/CCIT **cannot revise appeal matters**. However, the CIT/CCIT **can** revise the **other matters** of same order. This is known as **Doctrine of partial merger**.

Example:

Order u/s 143(3)		
Exp. (A)	Disallow	→ Appeal (Allowed) – Error
Exp. (B)	Allowed	

In a regular asst. of an assessee – while passing order u/s 143(3), the AO disallowed exp. “A” and allowed exp. “B”. The assessee filed an appeal for exp. “A” and the appellate authority allowed this exp. Finally, both the exps. were allowed [Exp “A” by Appellate authority and Exp “B” by AO]. Later on, there comes a SC judgment on both the exps in case of some other assessee which states that these exps are disallowed. This gives CIT/CCIT a reason to believe that there is error in the order of AO. In such case, the CIT/CCIT cannot revise the error in Exp “A” because it’s an error by appeal authority and **appeal authority** is at **same level or higher level** [The CIT could have filed a counter appeal earlier]. However, the CIT/CCIT can revise the error in Exp “B” by passing a revisionary order u/s 263 [because it’s an error made by his subordinate i.e. AO]

7. If the assessee is not satisfied with the revisionary order of CIT/CCIT, the Assessee **can appeal** against such order **[directly to ITAT]**

Note 1:

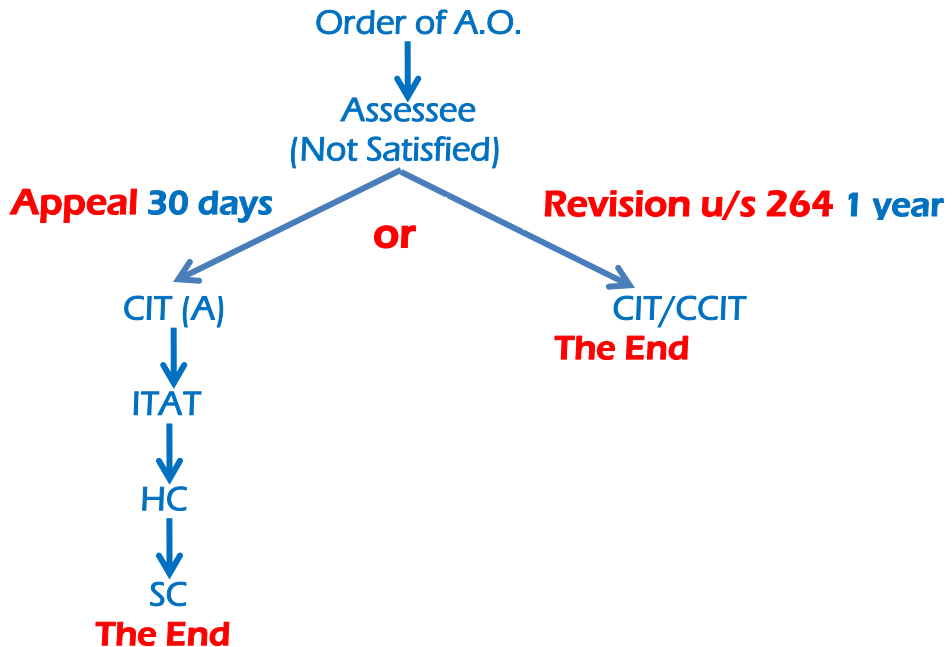
Meaning of ERRONEOUS:

Order passed by the A.O. shall be deemed to be erroneous if:

- (a) the order is passed **without making inquiries** or verification
- (c) the order passed by A.O. is **not in accordance with:**
 - the instruction of **CBDT** or
 - the decision of jurisdictional **High Court** or **Supreme Court**

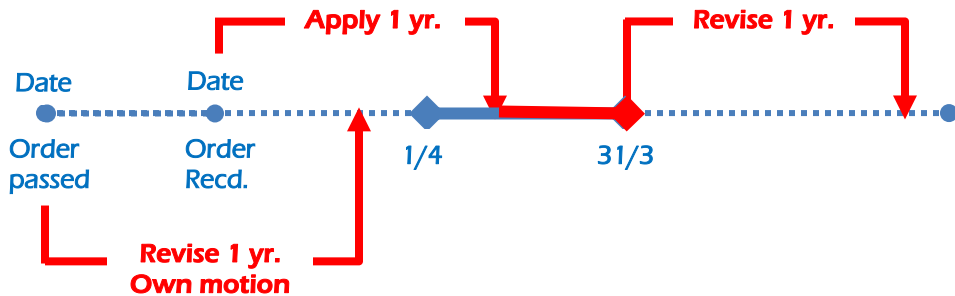
Sec. 264

REVISION BY CIT/CCIT [For Assessee]



1. Section 264 empowers CIT/CCIT to revise an order passed by this **subordinate** authority (A.O) if such order is:
 - a) **Prejudicial to the assessee.**

Note: Before revising the order, the CIT/CCIT shall call for & examine the records of the proceeding.
2. Revision u/s 264 is in the **favour of assessee.**
3. Revision u/s 264 is done by CIT/CCIT on his **own motion** or on an **application** by assessee. The Assessee can apply either **after the time limit of filing appeal** to CIT(A) expires and if he applies before such time limit expires then he should expressly waive his right to appeal.
4. If CIT/CCIT revises the order on his **own motion** then it should be done **within 1 year** from the date on which the order is passed. If Assessee applies for revision then he should **apply within 1 year** from the date on which order is received and the CIT/CCIT shall **revise within 1 year** from the end of the year in which application is received by him.



5. Before revising the order, the CIT/CCIT shall provide an **opportunity of being heard** to assessee.
6. Once an assessee files an appeal on a particular matter, the **CIT/CCIT can neither revise that matter nor any other matter** of the same order. This means, the assessee can either go for appeal or revision u/s 264 (partly in appeal & partly in revision u/s 264 is not allowed). This is known as **Doctrine of Total Merger**.
7. If the assessee is not satisfied with the revisionary order u/s 264 then the assessee **cannot appeal** against it.

Re-asst u/s 147	Re-vision u/s 263	Re-ctification u/s 154
For Escaped income (debatable)	For Errors (Debatable)	For Apparent Mistake (not debatable)
Assess/reassess	Revise	Rectify
A.O. passed order & AO himself reopens	A.O. passed order & CIT/CCIT reopens	A.O. rectifies his own mistake & CIT/CCIT rectifies his own mistake.

General Note:

CIT(A) can **set aside best judgment** assessment order and direct fresh assessment.

ITAT and CIT/CCIT [u/s 263/264] can **set aside any assessment** order and direct fresh assessment.

When assessment is set aside and a fresh assessment is directed then such fresh assessment should be completed **within 12 months** from the end of the year in which order setting aside assessment is:

- Received by CIT [if set aside by CIT(A) or ITAT] or
- Passed by CIT/CCIT [if set aside u/s 263/264]

Sec. 158A:

AVOIDANCE OF REPETITIVE APPEALS

- 1) An Assessee may **claim** that a:

Question
pending before
AO/Comm/ITAT
for a particular year

**is
identical
With**

Question
pending before
HC/SC
for another year

- 2) In such case, the assessee can furnish a **declaration in Form 8** to AO/Commissioner/ITAT stating that **if** the A.O./ Comm./ ITAT agrees to apply the judgement of H.C/S.C in his current case **then** the assessee shall not file an appeal.
- 3) The A.O./ Comm./ ITAT may **admit or reject** the claim of the assessee. If the claim of the assessee is admitted then the A.O./Comm./ITAT shall pass the order in the current case and when the judgement of HC/SC becomes final, the order shall be amended accordingly.

Sec. 268A:

APPEALS BY DEPARTMENT

1) This section empowers **CBDT to fix monetary limits** for regulating appeals by department (the underlying objective is to reduce litigation in small cases).

2) As per the instruction of CBDT, the department shall **file appeal only if the tax effect* is more** than following amount:

→ For Appeal to ITAT	₹ 60,00,000
→ For Reference to HC	₹ 2,00,00,000
→ For Reference to SC	₹ 5,00,00,000

*Tax effect means difference between Current tax and the Estimated tax (if the department wins). Eg: Current Tax = Rs. 20,00,000 and Estimated tax (if department wins) = Rs. 27,00,000. Thus, Tax effect = Rs.7,00,000.

3) Accordingly,

IF the dept. **did not file appeal:**

- ⇒ on a particular issue
- ⇒ in case of particular assessee
- ⇒ in a particular year

THEN it shall **not stop** the department from filing appeal:

- ⇒ on the same issue
- ⇒ in case of same assessee
- ⇒ in **another year**

or

- ⇒ on the same issue
- ⇒ in case of **another assessee**
- ⇒ in any year.

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## ASST/APPEALS/REFERENCE/REVISION [TIME LIMITS]

|                                  |                                                                                                                                                      |
|----------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Voluntary return u/s 139(1)      |                                                                                                                                                      |
| ⇒ Companies                      | <b>31<sup>st</sup> Oct.</b> of AY                                                                                                                    |
| ⇒ Audit assesseees               | <b>31<sup>st</sup> Oct.</b> of AY                                                                                                                    |
| ⇒ Partner of Audit Firm          | <b>31<sup>st</sup> Oct.</b> of AY                                                                                                                    |
| ⇒ T.P assesseees & it's Partners | <b>30<sup>th</sup> Nov.</b> of AY                                                                                                                    |
| ⇒ Others                         | <b>31<sup>st</sup> July</b> of AY                                                                                                                    |
| Belated Return u/s 139(4)        | up to <b>31<sup>st</sup> Dec. of AY</b> or before <b>completion of asst.</b> [whichever is <b>earlier</b> ]                                          |
| Revised Return u/s 139(5)        | up to <b>31<sup>st</sup> Dec. of AY</b> or before <b>completion of asst.</b> [whichever is <b>earlier</b> ]                                          |
| Defective Return                 | Defect to be rectified within <b>15 days</b>                                                                                                         |
| Issue of RAI Notice u/s 142(1)   | Anytime within <b>12 months</b> from the end of <b>AY</b>                                                                                            |
| Issue Direction u/s 142(2A)      | Anytime within <b>12 months</b> from the end of <b>AY</b><br>Audit Report submitted within <b>prescribed time</b> [extendable upto <b>180 days</b> ] |
| Intimation u/s 143(1)            | <b>9 months</b> from the end of the year in which <b>return</b> is filed                                                                             |
| Notice u/s 143(2)                | <b>3 m</b> from the end of the year in which <b>return</b> is filed                                                                                  |
| Order u/s 143(3)                 | <b>12 m</b> from the end of <b>AY</b>                                                                                                                |
| Show cause notice u/s 144        | <b>Before passing order u/s 144</b>                                                                                                                  |
| Order u/s 144                    | <b>12 m</b> from the end of <b>AY</b>                                                                                                                |
| Show cause notice u/s 148A       | <b>3/5 yrs.</b> from the end of relevant <b>AY [if on/after 1/9/24]</b>                                                                              |
| Notice u/s 148                   |                                                                                                                                                      |
| ⇒ Directed by Appeal authority   | <b>No Time Limit</b>                                                                                                                                 |
| ⇒ Other cases                    | <b>3/10 yrs.</b> from the end of relevant <b>AY [before 1/9/24]</b><br><b>3 yrs.3m./5 yrs.3m.</b> from end of relevant <b>AY [on/after 1/9/24]</b>   |
| Order u/s 147                    | <b>12 m</b> from the end of the yr. in which <b>notice u/s 148 is recd</b>                                                                           |
| Rectification u/s 154            |                                                                                                                                                      |
| ⇒ Own Motion                     | <b>4 yrs.</b> from the end of the <b>year</b> in which <b>order is passed</b>                                                                        |
| ⇒ Apply                          | <b>4 yrs.</b> from the end of the <b>year</b> in which <b>order is passed</b>                                                                        |
| ⇒ Reply                          | <b>6 m</b> from the end of the <b>month</b> in which <b>appln. is received</b> , if possible                                                         |
| Pymt of tax as per NOD           | <b>30 days</b> from the <b>date of receipt of notice of demand</b>                                                                                   |
| Appeal to CIT(A)                 | <b>30 days</b> from the <b>date of receipt of notice of demand/Order of AO</b>                                                                       |
| Appeal to ITAT                   | <b>60 days</b> from the <b>date of receipt of Order of CIT(A)</b>                                                                                    |
| Reference to HC                  | <b>120 days</b> from the <b>date of receipt of Order of ITAT</b>                                                                                     |
| Reference to SC                  | <b>90 days</b> from the <b>date of receipt of Order of HC</b>                                                                                        |
| Judgment of CIT(A)               | <b>1 yr.</b> from the end of the yr in which <b>appeal is filed</b> , if possible                                                                    |
| Judgment of ITAT                 | <b>4 yrs.</b> from the end of the yr in which <b>appeal is filed</b> , if possible                                                                   |
| Rectification by ITAT            | <b>6 mnths</b> from the end of the month in which <b>Order of ITAT is passed</b>                                                                     |
| Stay by ITAT                     | Initially <b>max. 180 days</b> [Extendable up to <b>365 days</b> ]                                                                                   |
| Revision u/s 263 by CIT/CCIT     | <b>2 years</b> from the end of the year in which <b>AO's order is passed</b>                                                                         |
| Revision u/s 264 by CIT/CCIT     |                                                                                                                                                      |
| ⇒ Own Motion                     | <b>1 yr.</b> from the <b>date of passing</b> of AO's Order                                                                                           |
| ⇒ Apply                          | <b>1 yr.</b> from the <b>date of receipt</b> of AO's Order                                                                                           |
| ⇒ Reply                          | <b>1 yr.</b> from the end of the <b>year</b> in which <b>appln. is received</b>                                                                      |

## SURVEY u/s 133A

1. This section empowers the IT authority to enter a **Place Of Business** or a place of charitable activity and require the proprietor, trustee, employee or any other person:
  - a. to afford him necessary facility to **inspect BD**;
  - b. to afford him necessary facility to **check & verify CSO**
  - c. to furnish such **information** as he may require
2. If the proprietor, employee etc. informs that the required BDCSO is kept at some other place then the IT authority can also enter such **Other Place**.
3. For survey at place of business/place of charitable activity, the IT authority can enter\* during **Office Hours**.  
For survey at other places, the IT authority can enter\* **After Sunrise** and **Before Sunset**.  
\*The time of entry is prescribed but **time of exit is not prescribed**.
4. Normally, the IT authority can survey a place/person **Within His Jurisdiction**. However, if IT authority intends to survey a place/person not in his jurisdiction then he can do so by taking the prior approval of the IT authority having jurisdiction over such other place/person.
5. During survey, the IT authority shall:
  - Place **Marks** of identification on BD inspected.
  - Make **Inventory** of CSO verified.
  - Record **Statements** of information provided.During survey, the IT authority **Cannot Seize** assets. However, the IT authority can **Impound BD** for maximum **15 days** (excluding public holidays). For retaining BD beyond this period, permission of CIT/CCIT is required.
6. The IT authority can also survey at any **Function Or Event** if he considers it necessary having regard to the nature and scale of expenditure. Such survey can be done only **after the function etc. is over**. During such survey, the IT authority shall require the person (who incurred such expenditure) to **furnish** such **information** as he may require.

**BDCSO**

**Books of A/cs, Documents, Cash, Stock & Other valuable articles**

**→ Important Note:**

The above survey is called survey u/s 133A (1) / (2).

There is another survey called **Survey u/s 133A (2A)**. This survey is conducted to find out whether **TDS is deducted or not**. For this, the Income Tax Authority shall check the journal entries of all the expenses which are subject to TDS.

If the journal entry has "To TDS Payable A/c" then it means TDS is deducted and if the journal entry does not have "To TDS Payable A/c" then it means TDS is not deducted. In such case, the I.T. Authority shall note down that TDS is not deducted and there are consequences of not deducting TDS at the time of assessment.

| Survey u/s 133(A)(1)/(2)                                                            | Survey u/s 133A(2A)                                                                         |
|-------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------|
| <b>General</b> purpose                                                              | <b>Specific</b> purpose (TDS deducted/not)                                                  |
| Place of business<br><b>[Office hours]</b><br>Other place<br>[after SR - before SS] | Place of business<br><b>[After SR - Before SS]</b><br>Other place<br>[after SR - before SS] |
| BD can be <b>impounded</b>                                                          | BD <b>cannot</b> be impounded                                                               |
| BD ✓ CSO ✓ Info ✓                                                                   | BD ✓ CSO × Info ×                                                                           |

**Note 1:**

Who authorizes survey – **CCIT**

Who conducts survey – I.Tax Authority [**subordinate** to CCIT]

**Note 2: ASSESSMENT u/s 147 after SURVEY**

After survey [**other than survey u/s 133A(2A)**], assessment can be done u/s 147 because such survey is treated as an information suggesting escapement.

**→ Procedure**

1. The A.O. shall comply with provisions of section 148A.
2. The A.O. shall issue notice u/s 148.
3. The A.O shall serve notice u/s 143(2).
4. The A.O. shall pass order u/s 147.

Distinction between Search and Survey

| Search u/s <b>132</b>                 | Survey u/s <b>133A</b>           |
|---------------------------------------|----------------------------------|
| Assessee paapi                        | Assessee may or may not be paapi |
| Reasons to believe required           | Not required                     |
| Enter any place [B.PAV <sub>2</sub> ] | Enter only place of business     |
| Searching allowed                     | Not allowed                      |
| Assets can be seized                  | Not allowed                      |

⇒ **Sec.133B** empowers I.T.Authority to enter a place of business and **collect information**. While exercising power u/s 133B, the I.T.Authority can simply collect the information. He **cannot impound books of accounts and documents**.

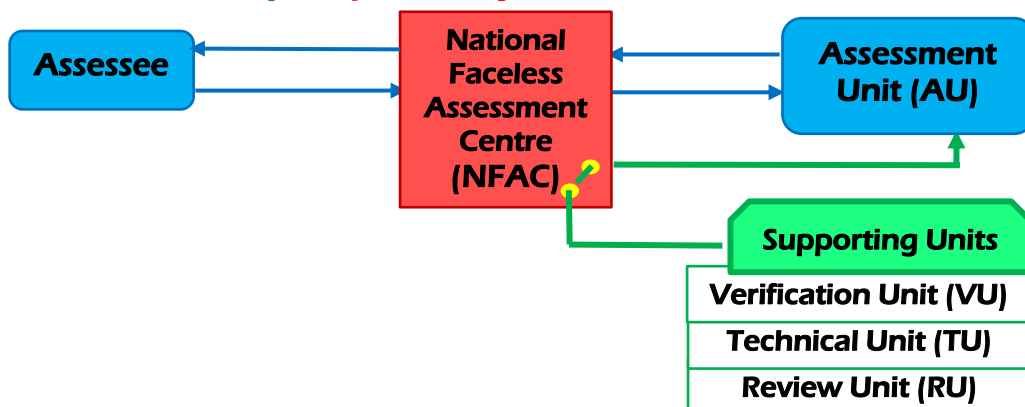
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Section 144B

FACELESS ASSESSMENT

The Faceless Assessment shall be made in respect of **such persons** or **such cases** as may be **specified by the Board**.

such cases as may be **specified by the Board**.



PROCEDURE FOR FACELESS ASSESSMENT

- 1) The NFAC shall **assign** the case to a specific **assessment unit** and **intimate** the **assessee** that assessment in his case shall be completed in Faceless manner;
- 2) The NFAC shall serve a **notice u/s 143(2) or u/s 142(1)** to the assessee and the assessee shall file his response to the NFAC which shall be forwarded to the assessment unit;

Where the **assessee fails** to comply with above notices, the NFAC shall intimate such failure to the assessment unit. In such case, the AU shall serve a **show cause notice** to the assessee through NFAC requiring the assessee to give reason as to why assessment should not be done as per **best judgment**.

- 3) The Assessment unit shall request the NFAC to –
 - obtain further **information, documents** or **evidence** from the assessee or any other person;
 - conduct enquiry or **verification** by Verification unit;
 - seek **technical assistance** from the Technical unit
[like determination of ALP, valuation of property etc.];Accordingly, the NFAC shall **serve a notice** to the assessee or any other person & **assign request** to Verification unit/Technical unit.

4) After taking into account all the relevant material available on the record:

- ⇒ If AU **proposes** to make **variations** in the income which are prejudicial to the assessee then the AU shall serve a **show cause notice** to the assessee through NFAC requiring him to give reason as to why proposed variations should not be made. After considering the reply of assessee, the AU shall prepare an **income determination proposal** and send the same to the NFAC.
- ⇒ If AU **does not propose** to make any **variations** prejudicial to the assessee then the AU shall directly prepare an **income determination proposal without** issuing **show cause** notice and send a copy of the same to the NFAC.

After receiving the income determination proposal, the NFAC shall ask the AU to prepare a **Draft order** on the basis of such proposal and send the same to the NFAC. However, if the NFAC considers it necessary then it may send such proposal to a Review unit for conducting review of such proposal. In such case, the AU shall prepare a draft order **(after considering the modifications proposed by review unit)** and send the same to NFAC.

5) After receiving the Draft order,

- ➔ If the assessee is **not eligible for DRP** then the NFAC shall ask the AU to pass the **final order** which will be served to the assessee through NFAC [along with notice of demand] and
- ➔ If the assessee is **eligible for DRP** then the NFAC shall serve the draft order to the assessee. After receiving the draft order, the assessee shall —

- (a) file his **acceptance** to the **NFAC** or
- (b) file his **objections** to the **NFAC** and **DRP**

within 30 days from the date of receipt of draft order.

If the assessee files his **acceptance** then the NFAC shall ask the AU to pass the **final order** which will be served to the assessee through NFAC [along with notice of demand]. However, if the assessee files **objections** with the NFAC and DRP, the NFAC shall send a copy of objections filed to the AU. The **DRP shall issue** its **directions** to NFAC which shall be forwarded to AU. On the basis of directions of DRP, the AU shall pass the **final order** which will be served to the assessee through NFAC [along with notice of demand].

Notes:

- 1) After completion of assessment, the NFAC shall **transfer all the electronic records** of the assessee **to the A.O.** having jurisdiction over such assessee.
- 2) If at any stage of the proceedings before it, the AU considers it necessary then it can refer the case to NFAC for requiring the assessee to get his accounts audited u/s **142(2A)**.
- 3) The assessment unit, verification unit, technical unit and the review unit shall have the following **authorities**, namely:—
 - Additional CIT
 - JC
 - AC/DC
 - ITO and
 - Such other I.T. Authority as considered necessary by CBDT.
- 4) All communications among the AU, VU, TU or RU or with the assessee or any other person shall be **through the NFAC by electronic mode**.
- 5) **Personal hearing** of assessee before any unit is **not required**. However, if **variations** are proposed in the income determination proposal or the draft order then the assessee may **request for personal hearing**. Personal hearing shall be conducted exclusively through **video conferencing** or video telephony, including use of any telecommunication application software.

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Dispute Resolution committee (DRC) is a committee to resolve disputes of **small and medium taxpayers**. The Scheme of DRC is **optional**. It is an **alternative to appeal** i.e. the assessee can either chose to appeal or resolve the disputes through DRC.

The main advantage of DRC is **speedy** resolution of disputes plus DRC has powers to **waive penalty** or grant **immunity from prosecution** under this Act.

### → **CONDITIONS:**

An assessee is eligible to resolve disputes through DRC if following conditions are satisfied:

- (i) **Returned income** of such assessee is **upto Rs. 50 lakhs**.
- (ii) The aggregate amount of **Variation** made in the order is **upto Rs. 10 lakhs** and if the assessee is eligible u/s 144C, then the aggregate amount of variation *proposed* in the draft order is up to Rs. 10 lakhs.
- (iii) The disputed order should **not be based on Search/ Survey** or **information** received under DTAA.
- (iv) Such person **should not be Convicted** under laws like the Indian Penal Code, Prevention of Corruption Act, Prevention of Money Laundering Act, Unlawful Activities Act etc.

### → **PROCEDURE:**

- 1) Once an assessment order is passed or a draft order is forwarded u/s 144C, the assessee can make an **application** in **Form 34BC** to DRC **within 1 month** from the **date of receipt** of such order (alongwith fees of Rs.1,000 and proof of payment of tax on returned income).
- 2) After receiving the application, the DRC shall check the conditions and decide whether to **allow or reject** the application. If DRC decides to reject the application, then it shall issue a **show cause notice** to the assessee and after considering the reply of assessee, the application shall be allowed or rejected. The decision allowing/rejecting the application shall be communicated to the assessee.

- 3) If the application is allowed then **within 30 days** from the date of such communication, the assessee shall submit a proof of **withdrawal of appeal** or convey that **no such appeal** proceedings is pending in his case.
- 4) After receiving the response of assessee within above 30 days, the DRC shall:
  - call for **records** from the income-tax authority
  - **examine** issues covered in the application
  - seek a **report from the A.O.** on such issues
  - call for further **information from assessee**
- 5) After considering above materials and information, the DRC may decide whether to make modifications in the order or not and decide whether to waive penalty/prosecution or not. This is done by passing an **order of resolution within six months** from the end of the month in which application for dispute resolution is admitted by DRC. The DRC shall serve a copy of such order to the assessee and A.O.
- 6) After receiving such order, the A.O. shall:
  - ⇒ In case of assessee eligible u/s 144C, **pass an order** of assessment or
  - ⇒ In other cases, **modify the order** of assessment, **within one month** from the end of the month in which order of DRC is received.
- 7) The A.O. shall serve a copy of the modified order along with **notice of demand** to the assessee specifying a date for making the payment.

The assessee shall, **furnish proof** of making payment to the **DRC** and the **A.O.**

The DRC shall [on receipt of **confirmation** of payment of demand] pass an **order granting immunity** from prosecution and **waiver** of penalty.

**Notes:**

- 1) The DRC may decide to **terminate** the proceedings if,—
  - (i) the assessee fails to **cooperate** with DRC
  - (ii) the assessee fails to **submit** any information to DRC
  - (iii) the assessee has **concealed** materials
  - (iv) the assessee has given **false evidence**.
  - (v) the assessee fails to **pay the demand**

In such cases, the DRC shall intimate the I.Tax Authority for taking necessary action as per the provisions of the Act.

- 2) If DRC **rejects** the application, the assessee may file an **appeal** to the CIT(A) or file **objections with DRP** and the **period taken by DRC** in deciding on the admission or rejection of application shall be **excluded** from the period available to file such appeal.
- 3) Each DRC shall consist of **3 members** [out of which, **2 members** shall be **retired officers** who have held the post of CIT level or higher post for atleast 5 years; and **1 member** shall be a **servicing officer** not below the rank of CIT].

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ADVANCE RULING



SUMMARY:

- I) MEANING
- II) WHO CAN APPROACH?
- III) PROCEDURE

I)

MEANING:

Advance ruling is a facility in which a person can get **clarity** in respect of an "issue" **** before** such **issue actually arises**. For this, a person has to approach **BAR [Board for Advance Rulings]**. The clarity given by BAR about such issue is known as **Ruling** because it rules. This **avoids litigation** in future.

****The issue can be as follows:**

- Whether a particular expenditure is allowed or not?
- Whether an income is taxable or not?
- Whether a payment is subject to TDS or not? **etc....**


II)

WHO CAN APPROACH?

1. A **Non - Resident** can approach BAR for determination of a question arising out of a transaction undertaken or proposed to be undertaken by him.
2. A **Resident** can approach BAR for determination of a question arising out of a transaction undertaken or proposed to be undertaken by him **with a NR** (to determine the tax implication on NR)
3. A **Resident** can approach BAR for determination of a question arising out of a transaction undertaken or proposed to be undertaken by him if aggregate value of such transactions is **Rs. 100 crores or more**.
4. **Other Notified Residents** (notified* by Central Govt.) can approach BAR for determination of a question arising out of issues pending before A.O or Commissioner or ITAT (but not before H.C/ S.C)
* Presently, Public Sector Undertakings are notified.

Note 1:

	Before issue arises	I S S U E	Issue Pending before				
			A.O	Comm	ITAT	H.C	S.C
NR	✓		⊗	⊗	⊗	⊗	⊗
R with NR	✓		⊗	⊗	⊗	⊗	⊗
R >= Rs. 100 cr	✓		⊗	⊗	⊗	⊗	⊗
Notified 'R' [PSU]	⊗		✓	✓	✓	⊗	⊗

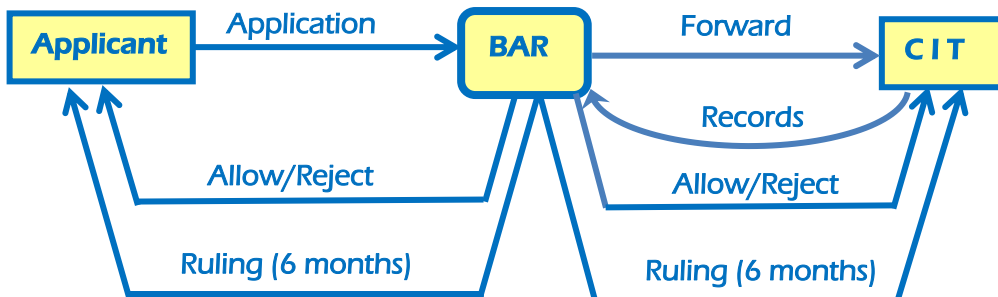


Note 2:

A person **cannot** approach BAR for determination of **fair market value**.

III) **PROCEDURE:**

- 1) The person who wants the Ruling should make an **application** in the **prescribed form** with **prescribed fees**. The application should **state the question** for which the ruling is sought. The application can be **withdrawn** within **30 days** from the date of application.
- 2) After receiving the application, the BAR shall **forward** the application **to CIT** and call for the **records from CIT** (to know whether the issue has arisen or not).
- 3) After examining the records, the BAR shall **allow or reject** the application. The order allowing or rejecting the application shall be communicated to applicant and CIT.
- 4) If the application is allowed then the BAR shall **pronounce its ruling** within **6 months** from the date of receipt of application. The copy of the Ruling should be communicated to the applicant and CIT.



Value of transaction	Fees
Up to Rs. 100 crores	Rs. 2,00,000
> Rs. 100 crores up to 300 crores	Rs. 5,00,000
> Rs. 300 crores	Rs. 10,00,000
For PSUs	Rs. 10,000

Note 1:

BAR can declare the advance ruling as **void ab initio**, if it finds that a person had sought the ruling by **fraud or misrepresentation** of facts. As a result, all the assessment proceedings which were completed on the basis of such ruling shall be reopened.

IMPORTANT NOTE

Before 1/9/2021, advance ruling was pronounced by AAR (Authority for Advance Rulings). However, from **1/9/2021**, the AAR shall cease to operate and ruling shall be pronounced by BAR (Board for Advance Rulings). At present, the Central Govt. has constituted **3 BARs** (2 in Delhi and 1 in Mumbai). Every such board shall consist of **2 members [not below the rank of CCIT]**.

Earlier, ruling pronounced by AAR was not appealable. However, w.e.f 1/9/2021, any ruling pronounced by BAR is **appealable** i.e. if the applicant or CIT is not satisfied with the ruling of BAR then as per **sec.245W**, he can file an appeal to **High Court within 60 days** from the date of receipt of ruling of BAR. This time can be **extended by max. 30 days**.

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## TAX DEDUCTION AT SOURCE

→ **SUMMARY:**

- Part – I : SIDI W<sub>2</sub>C<sub>4</sub>RF CP / PAYER / RECEIVER
- Part – II : SECTION WISE NOTES
- Part – III: GENERAL NOTES

### PART - I

### SIDI W<sub>2</sub>C<sub>4</sub>RF CP / PAYER / RECEIVER

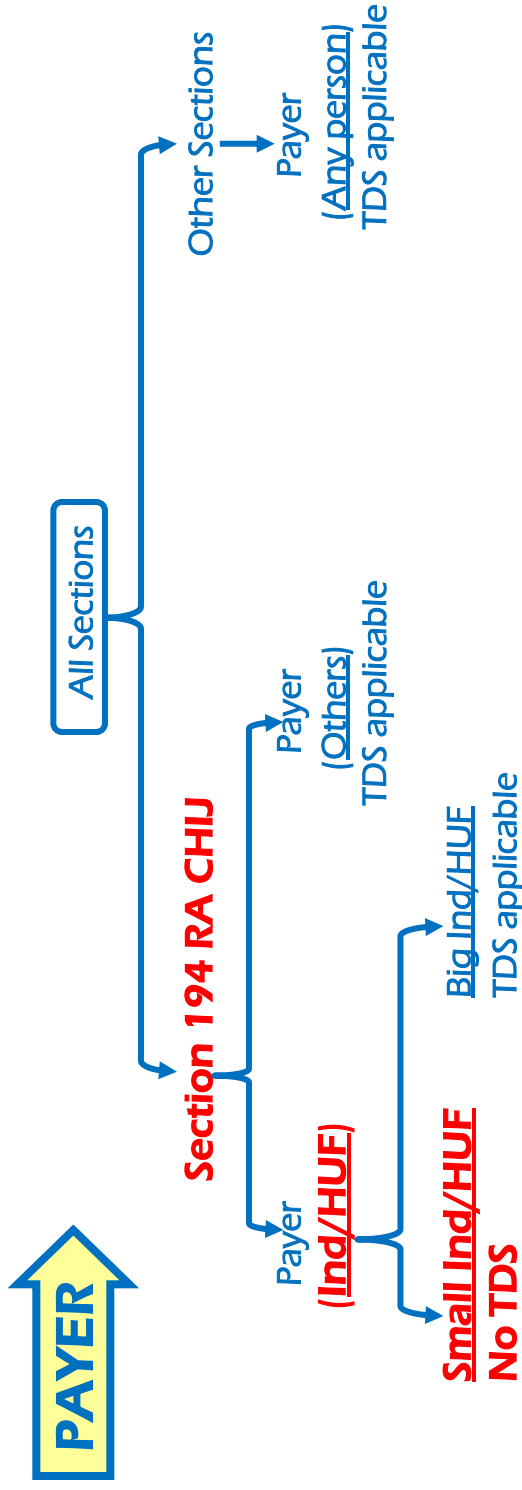
| 192                             | 193                        | 194        | 194A                        | 194<br>BB/B/BA       | 194<br>C                                                                      | 194<br>D/G/H         | 194<br>I              | 194<br>J    | 194<br>LA         | 194<br>IA        |
|---------------------------------|----------------------------|------------|-----------------------------|----------------------|-------------------------------------------------------------------------------|----------------------|-----------------------|-------------|-------------------|------------------|
| <b>S</b>                        | <b>I</b>                   | <b>D</b>   | <b>I</b>                    | <b>W<sub>2</sub></b> | <b>C</b>                                                                      | <b>C<sub>3</sub></b> | <b>R</b>              | <b>F</b>    | <b>C</b>          | <b>P</b>         |
| More than<br>Basic<br>Exemption | <u>Deb.Int.</u><br>> 5,000 | ><br>5,000 | <u>Bank/P.O</u><br>> 40,000 | ><br>10,000          | <u>Single<br/>pymt</u><br>><br>30,000<br>or<br><u>Agg.<br/>pymt.</u><br>> 1 L | ><br>15,000          | ><br>2,40,000<br>p.a. | ><br>30,000 | ><br>2.5<br>lakhs | ≥<br>50<br>lakhs |
| Slab Rt.                        | 10%                        | 10%        | 10%                         | 30%                  | 1%/2%                                                                         | 5%*                  | 10/2%                 | 10/2%       | 10%               | 1%               |

**\* U/s 194G & 194H, TDS @2% w.e.f. 1/10/2024**

CA SHIRISH VYAS / CA FINAL / DIRECT TAX / TDS

| Section  | Nature of Payment                                                                                           | When to deduct?                                                        | How much?                                   |
|----------|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------|---------------------------------------------|
| 192      | <b>S</b><br><b>Salary</b>                                                                                   | If Taxable IFS > Basic Exemption                                       | Slab Rates                                  |
| 193      | <b>I</b><br><b>Interest</b> on Securities                                                                   | Debt Interest > ₹ 5,000<br>Other Interest – Any Amount<br>If > ₹ 5,000 | 10%                                         |
| 194      | <b>D</b><br><b>Dividend</b> from Indian Company                                                             | Bank/PO Interest – If > ₹ 40,000<br>Other Interest – If > ₹ 5,000      | 10%                                         |
| 194A     | <b>I</b><br><b>Interest</b> other than Int. on Securities                                                   |                                                                        | 10%                                         |
| 194BB/B  | <b>W<sub>2</sub></b><br>Horse Race/Other <b>Winnings</b>                                                    | If > ₹ 10,000                                                          | 30%                                         |
| 194BA    | Winnings from Online Games                                                                                  | Any Amount                                                             | 30%                                         |
| 194C     | Payment to Works <b>Contractor</b>                                                                          | Single Payment > ₹ 30,000 or<br>Aggregate Payment > ₹ 1,00,000         | <u>Receiver</u><br>Ind./HUF 1%<br>Others 2% |
| 194D/G/H | Insurance <b>Commission</b> /Lottery<br><b>Commission</b> /Other <b>Commission</b>                          | If > ₹ 15,000                                                          | 5%*                                         |
| 194I     | <b>Rent</b> of L/B/F/P/M/E [Land/Bldg/<br>Furniture/Plant/Machinery/Equip.]                                 | If Rent > ₹ 2,40,000 p.a.                                              | L/B/F 10%<br>P/M/E 2%                       |
| 194J     | <b>Fees</b> for Prof./Technical services/ <b>Non -</b><br>compete fees/ <b>Royalty &amp; Directors fees</b> | If > ₹ 30,000 each<br>Directors fees – Any Amount                      | 10%/2%                                      |
| 194LA    | <b>C</b><br><b>Compulsory Acquisition</b> of<br>immovable property (except Ag.land)                         | If Compensation > ₹ 2,50,000                                           | 10%                                         |
| 194IA    | <b>P</b><br><b>Purchase of immovable property</b><br>(except Rural Ag. Land)                                | If Consideration ≥ ₹ 50,00,000                                         | 1%                                          |

\* Under section 194G and 194H, TDS @2% w.e.f. 1/10/2024



**Small** Individual/HUF means an Ind/HUF who does not carry on any business/profession or :

- whose **Total Sales/Turnover in preceding FY is up to Rs. 1 crore** [if such Ind/HUF carries on a **business**]
  - whose **Gross receipts in preceding FY is up to Rs. 50 lakhs** [if such Ind/HUF carries on a **profession**]
- Or

Under section **194C & J**, there is **no requirement** of deducting TDS if the payment is **personal** in nature.

# RECEIVER

All Sections



Section **192/194BB/BA/B/N**  
 TDS is deducted under **same section**  
 whether receiver is **R / NR**

Other Sections in above table  
 TDS is deducted under **these sections**  
 only if the receiver is **Resident**.  
 If the receiver is **NR** then TDS  
 is deducted under **different sections**  
 (Sec. 194LB/LC/LD, 195, 196B, 196C and 196D)

|                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Payment to <b>Residents</b><br>Sections 192/193/194A ..... 194LA<br><b>Selected</b> payments subject to TDS<br>TDS at <b>ad hoc</b> rates<br>Up to some limit ( <b>threshold</b> ) not deducted<br>In some cases, <b>Ind/HUF Payer exempted</b><br><b>Ignore surcharge and cess</b> | Payment to <b>Non-Residents</b><br>Sections 194LB/LC/LD, 195, 196B, 196C & 196D<br><b>All</b> payments subject to TDS<br>TDS at <b>actual</b> rates<br><b>No threshold</b> limits<br><b>No one exempted</b><br><b>Consider</b> surcharge and cess |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**IMPORTANT POINTS:**

- 1) In the chapter of TDS, always think from **payer's point of view**. Deducting TDS increases the **compliance burden for the payer**.
- 2) In order to decide whether TDS is deductible or not, following is the line of thinking:
  - ⇒ **Always check the receiver first**
  - ⇒ If the receiver is **NR** then **pakka TDS aayega** (mainly u/s **195**) (irrespective of the type of payment, type of payer and the threshold limits).
  - ⇒ If the receiver is **Resident** then TDS is deducted only in case of selected payments (SIDI W<sub>2</sub>C<sub>4</sub>RF CP). Check the type of payer (especially in sec 194 A CHIJ) and the threshold limits.
- 3) All the **threshold** limits are **aggregate of the financial year except** in case of compulsory acquisition and purchase of immovable property [where the threshold limit is *per transaction*].
- 4) If a payment includes GST then TDS is deducted on the amount paid **excluding GST** [if GST specified separately in the bill].

## PART - II

## SECTION WISE NOTES

### **Section 192: TDS ON SALARIES:**

- (a) For the purpose of computing TDS, the employee can inform following to his employer:
- His other incomes along with TDS and TCS on other incomes
  - Chapter VIA details like some investments for sec. 80C, mediclaim premium for sec. 80D etc.
  - House property loss [However, the employee **cannot inform other losses**]

#### **Note 1:**

→ As per **section 192A**, premature **withdrawal from RPF** by an employee is also subject to **TDS @ 10%** if the amount withdrawn is **Rs.50,000 or more** [premature means **service less than 5 years**].

#### **Note 2:**

Shares / securities allotted under Employees Stock Option Plan either free or at concession is a benefit taxable under the head "Salaries". Normally, TDS on this benefit is deducted u/s 192 in the year in which shares are allotted. However, in case of **ESOP by Start-up companies**, TDS\* is deducted **within 14 days**:

- From the **expiry of 48 months** from the end of the AY relevant to the year of allotment **or**
- From the **date of sale** of such shares **or**
- From the **date of leaving** the employment  
Whichever is earlier

\*TDS at **rates** applicable to the year in which **shares are allotted**

**Section 193: INTEREST ON SECURITIES:**

In following cases, there is **NO** requirement of deducting **TDS**:

- a) Interest on Central/State **Government Securities** [no TDS].  
But, in case of 7.75% Savings Taxable Bonds, 2018, Floating Rate Savings (Taxable) Bonds (FRSB) 2020 and other notified Govt. securities, TDS is deducted if interest exceeds ₹ 10,000.
- b) Interest received by **LIC/GIC/any other insurer** [no TDS].

**Note 1:** In case of **debenture interest upto ₹ 5,000**, TDS is not deducted only if the receiver is **individual/HUF** and payment is made by **account payee cheque**.

**Section 194: DIVIDEND ON SHARES:**

In following cases, there is **NO** requirement of deducting **TDS**:

- a) Dividend received by **LIC/GIC/any other insurer** [no TDS].

**Note 1:** In case of **Dividend upto ₹ 5,000**, TDS is not deducted only if the receiver is **individual** and payment is made by **any mode other than cash**.

**Section 194A: INTEREST OTHER THAN INTEREST ON SECURITIES:**

In following cases, there is **NO** requirement of deducting **TDS**:

- a) Interest paid **by Banks** on **Savings A/c**.
- b) Interest paid **by Banks** on **fixed deposits** in the name of **Registrar General of the High Court** [in relation to certain proceedings].
- c) Interest paid to **Banks / LIC / GIC / Other Insurance Companies**
- d) Interest paid by partnership firm to **Partners**.
- e) Interest on **PINK**  
**M T R**
- f) Interest paid **by a co-operative society** to its members or to another co-operative society. However, if the *total sales/turnover/gross receipts* of a co-operative society **exceed Rs. 50 crores** in the *preceding F.Y.* then TDS is deducted if **interest exceeds Rs. 40,000** [or Rs. 50,000, in case of senior citizens].

Post Office Monthly Income A/c, Time Deposit A/c, Recurring Deposit A/c,

Indira Vikas Patra (At present, not available),

National Savings Certificate, Kisan Vikas Patra

**Note 1:**

TDS is deducted by Bank [including Co-op. Banks] only on FD/RD account. If a person has FD/RD accounts in different branches of same bank then TDS is deducted by such bank if the **aggregate of interest from all branches** exceeds Rs.40,000 **provided such bank adopts CBS** [Core Banking Solutions]. Otherwise, the limit of 40,000 is checked branch-wise.

**Note 2:** In case of **Bank/PO**, threshold is **Rs.50,000** instead of Rs.40,000 [if the receiver is **senior citizen**].

**Section 194BB/B: WINNINGS:**

If winning is in kind, then the payer should **first ensure** that the tax is paid by the winner & **then release** the prize.

**Section 194C: PAYMENT FOR WORKS CONTRACT:**

a) As per Section 194C, Works contract includes **ABC<sub>2</sub> JL** :

- **A**dvertisement
- **B**roadcasting and Telecasting
- **C**atering
- **C**arriage of goods\* and passengers by any mode of transport [except railways]
- **J**ob work [Mfg. as per our specification out of materials supplied by us or our associate – Meaning of associate is same as meaning of relative u/s 40A(2)].
- Supply of **L**abour for works contract

In general, works contract means getting the **work done** from someone **as per our requirement/specification**.

b) \* In case of contract for **Goods transport** – **No TDS** if the goods transporter owns **up to 10 trucks** [provided such transporter furnishes his **PAN** & a **declaration** that he does not own more than 10 trucks]

**Works contract specifically excludes payments covered u/s 194J.**

**Section 194H: OTHER COMMISSION/BROKERAGE:**

Commission/Brokerage is subject to TDS if such commission/brokerage is for agency of goods/assets/properties [**excluding securities**]. Hence, commission for agency of securities is not subject to TDS [Eg: Commission/Brokerage paid to share brokers].

**Section 194J: FEES FOR PROFESSIONAL SERVICES ETC.:**

a) Professional Service includes -

**MA<sub>2</sub>LE FIT CO.:** Medical, Accountancy, Architecture, Legal, Engineering, Film Artist, Interior Decoration, Information Technology, Technical Consultancy, Company Secretary and Others (notified by the CBDT)

**SUP<sub>2</sub>AC<sub>3</sub>E:** Sports person, Umpires & Referees, Physician, Physiotherapists, Anchors, Coaches, Commentators, Sports Columnist, and Event Managers in relation to Sports Activities.

b) Technical Service means **managerial, technical and consultancy** services.

**E.g.:** Payment made to **Call Center** for managing the calls of customers is a payment for managerial service [technical service].

Normally, TDS u/s 194J is @10% but in following cases, TDS will be **2%**.

⇒ Payment for **technical services** and

⇒ Payment of **royalty** for sale, distribution or exhibition of **cinematographic films**.

There is one common point in Section 194C & 194J i.e. someone is working as per our requirement and specification. If the work done by someone as per our requirement is **professional/technical** then TDS u/s **194J**. However, if the work done by someone as per our requirement is a **general work** then TDS u/s **194C**. Hence, **first priority** should be given to section **194J** (because it is a specific section and section 194C is a general section). **Now, even section 194C specifically excludes payments covered u/s 194J.**

**Section 194IA: PURCHASE OF IMMOVABLE PROPERTY:**

- a) TDS is deducted if **Actual Consideration** or **Stamp Duty Value** (whichever is **higher**) is more than or equal to Rs. 50 lakhs.
- b) Actual consideration = Purchase price **including charges** for club membership, car parking, electricity and other charges.
- c) Where there are multiple buyers or sellers of a **single property** then the threshold of 50 lakhs is applicable on **aggregate amount paid/payable by all the buyers** to all the sellers.

**Section 194K: INCOME FROM UNITS OF UTI/MUTUAL FUND:**

TDS will be deducted by Mutual fund/UTI @ **10%** if the income from units **exceeds Rs. 5,000** during the financial year.

**Section 194 DA: LIFE INSURANCE CLAIM ON MATURITY**

Amount received from Life Insurance Policy

On Death

**Exempt u/s 10(10D)**

On Maturity

Small premium policy  
**Exempt u/s 10(10D)**

Big premium policy  
**Taxable (IFOS)**

**TDS @ 5%\* u/s 194DA on Income element if the total amt. paid by insurance company is  $\geq$  1,00,000**

**\* 2%, if payment is on/after 1/10/2024**

→ Big premium policy means a Life Insurance Policy where the **premium** payable for any year during the term of policy **exceeds** specified\* % (or **Rs. 5,00,000, if policy is issued on/after 1/4/2023**).

\*Annual premium > **20%/10%/15%** of sum assured.

If policy issued  
**before 1.4.12**

If policy issued  
**on or after 1.4.12**

If policy issued  
**on or after 1.4.13 &**

**policyholder is handicapped**

**Section 194 IB: TDS ON RENT:**

Small Ind/HUF are exempted from deducting TDS u/s 194-I. However, if a **small Ind/HUF** pays rent **exceeding Rs.50,000 pm** in respect of an **immovable property** then such Ind/HUF is required to deduct **TDS @5% u/s 194IB [2% w.e.f. 1/10/2024]**.

**Section 194M: WORKS CONTRACT, PROFESSIONAL SERVICES AND COMMISSION:**

Small Ind/HUF are excluded from deducting TDS u/s 194C/J/H.

In case of personal transactions, even big Ind/HUF are excluded from deducting TDS u/s 194C & J. Such **Ind/HUFs** [who are **excluded from deducting TDS u/s 194C/J/H**] are required to deduct TDS @ **5%\* u/s 194M** if the **aggregate** of payment for [works contract + professional services + Commission/Brokerage] to a **particular person** during the financial year **exceeds Rs. 50 lakhs**. \* **2% w.e.f. 1/10/2024**

**Section 194 N: TDS ON CASH WITHDRAWAL:**

If any person (R/NR) withdraws cash from a particular BANK [incl. co-op. bank] or a POST OFFICE then TDS is deducted @2% if the total cash withdrawn during the PY **exceeds Rs.1 crore (3 crores, in case of co-operative societies)**.

⇒ Amount of TDS = 2% of (Total withdrawal – 1 crore)

The purpose of this TDS is to discourage cash transactions and promote cash-less economy.

Limit of Rs. 1 crore is not branch-wise. It is bank-wise. Cash withdrawn from all the accounts with a particular Bank or PO should be > 1 crore during the PY.

However, if a person withdrawing cash has **not filed the return in all the preceding 3 PYs\*** then TDS is deducted as follows:

| Total Cash Withdrawal during the PY | TDS |
|-------------------------------------|-----|
| up to Rs. 20 lakhs                  | 0%  |
| > Rs. 20 lakhs up to Rs. 1 crore*   | 2%  |
| > Rs. 1 crore*                      | 5%  |

**\*3 crores, in case of co-operative societies**

Example:

If total cash withdrawn = Rs. 1.25 crores then

|                                      |                       |
|--------------------------------------|-----------------------|
| TDS up to Rs. 20 lakhs               | Nil                   |
| TDS above Rs. 20 L up to Rs. 1 crore | 1,60,000 (2% of 80 L) |
| TDS above Rs. 1 crore                | 1,25,000 (5% of 25 L) |

\* 3 PYs are those **3 preceding PYs** in respect of which **due date of filing return has expired**.

Example 1:

If cash is **withdrawn on 15<sup>th</sup> July, 2024** then as on 15<sup>th</sup> July, 2024, due date of filing return of PY 2023-24 has not expired [assuming due date of return as 31<sup>st</sup> July]. Hence, we don't consider PY 2023-24 in preceding 3 PYs. Accordingly, preceding 3 PYs shall be:

**PY 2022-23**      **PY 2021-22**      **PY 2020-21**

Example 2:

If cash is **withdrawn on 15<sup>th</sup> Sep., 2024** then as on 15<sup>th</sup> Sep., 2024, due date of filing return of PY 2023-24 has expired [assuming due date of return as 31<sup>st</sup> July]. Hence, we consider PY 2023-24 in preceding 3 PYs. Accordingly, preceding 3 PYs shall be:

**PY 2023-24**      **PY 2022-23**      **PY 2021-22**

⇒ No TDS under section 194N if cash is withdrawn by following persons [because they genuinely require huge amount of cash in their day-to-day functioning]:

- **Post office**
- **Banks** [incl. Co-op. banks] and their business correspondent [retail agents of banks]
- White label **ATM** operator [WLATMO] of banks
- **Government**
- Any **Other** notified person

Presently, following persons are notified:

- 1) **Commission agents** or traders registered under **APMC** [Agricultural Produce Market Committee]  
→ if cash is withdrawn for payment to farmers for purchase of agricultural produce.
- 2) **Cash replenishment agencies** and franchise agents of WLATMO  
→ if cash is withdrawn for replenishing cash in ATM operated by WLATMO
- 3) **Authorised Forex dealer**/its franchise agent and Full-Fledged Money Changer/its franchise agent  
→ if cash is withdrawn for purchase of foreign currency

**Section 194-O: TDS ON E-COMMERCE TRANSACTIONS:**

If a resident person carrying on business **sells** his goods/services (**online**) by using an E-Commerce **platform owned** or managed **by some other person** then his revenue from such sales is subject to TDS @ **1%\* u/s 194-O [\*0.1% w.e.f. 1/10/2024]**.

The person who sells the goods/services is called **E-Commerce Participant**.

The person who owns/manages E-Comm.. platform is called **E-Commerce Operator** [Eg: Amazon, Flipkart]. Once the sale/service is facilitated by E-Commerce operator, TDS will be deducted by the E-Commerce operator [whether the payment for such sale/service is **directly** made to the seller **or through** E-Commerce operator].

Example: Fab India Ltd. sold goods online through Flipkart Ltd.

During PY 2024-25, it sold goods of Rs. 65 lakhs through Flipkart out of which Rs.30 lakhs is directly received by Fab India and Rs. 35 lakhs is received first by Flipkart Ltd. and later on it is remitted to Fab India. In such case, Flipkart Ltd. shall deduct TDS @ 1% on the entire online sale of Rs. 65 lakhs [whether payment for sales is directly made to Fab India or through Flipkart Ltd.].

**No TDS** if the seller of goods/services is an **Ind./HUF** and the gross amt. of sales/services during the PY is **up to Rs. 5 lakhs** [provided such Ind./HUF furnishes his **PAN/Aadhar** to the E-Comm. Operator]



**Section 194P: TDS ON PENSION INCOME OF SENIOR CITIZEN:**

If a **senior citizen** receives **pension** in a bank and has no other income except **interest income** from such bank then such bank is required to compute the **tax at slab rates** on total income of such senior citizen [**after considering deductions under chapter VIA and rebate u/s 87A**] and deduct the same from the income of such senior citizen. Once, TDS is deducted u/s 194P then such senior citizen is **not required to file return** of his income. This section is applicable only if the senior citizen receives pension in such bank and has **no other income** except interest income from such bank. Here, senior citizen = **Resident person 75 years and above**.

**Section 194Q: TDS ON PURCHASE OF GOODS:**

This section requires a buyer of any goods to deduct **TDS @0.1%** on payment for **purchase of such goods** if aggregate value of such purchase is **more than Rs. 50 lakhs** in a financial year.

**TDS of 0.1% is on the amount in excess of Rs. 50 lakhs.**

This section is applicable **only if the turnover/gross receipts of such buyer is more than Rs. 10 crores** in the preceding financial year.

**Section 194R: ANY BENEFIT/PEQUISITE ARISING IN THE COURSE OF BUSINESS/PROFESSION:**

This TDS is on additional benefit / perquisite received by a business person (over & above the normal fees received from clients/supplier).

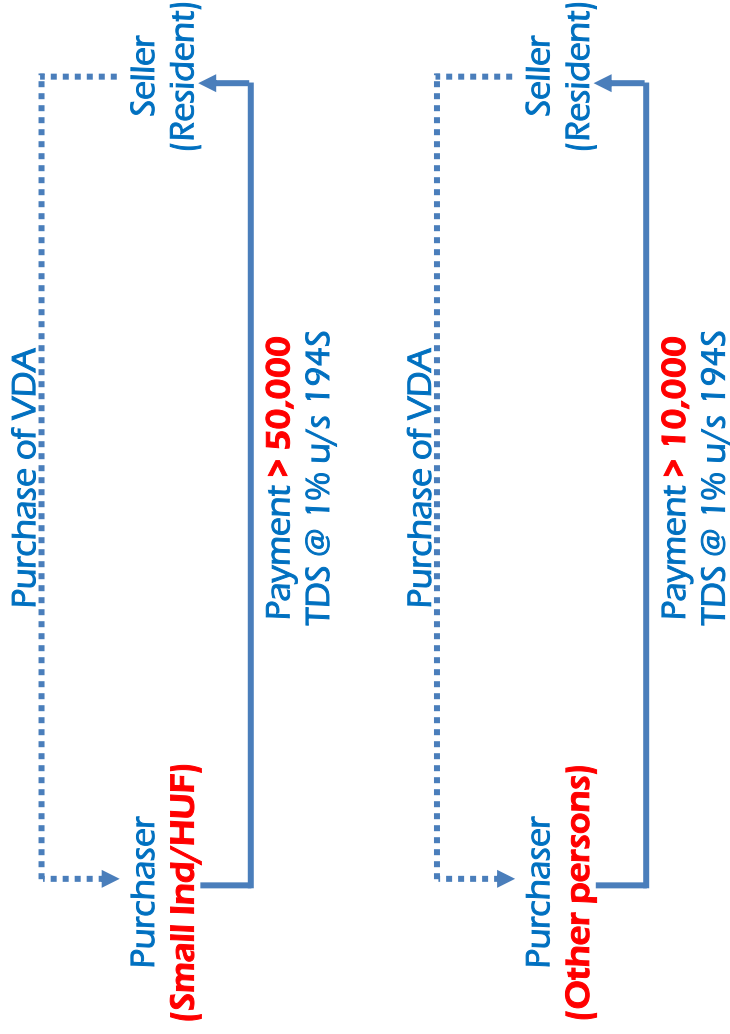


If benefit is in kind then the provider of benefit shall first ensure that the tax is paid by the receiver and then provide the benefit.

**Example:** A lawyer received fees of Rs. 5,00,000 from his client and a **free air ticket** valued at Rs. 40,000 (because he provided good service to his client). In such case, the client will first ensure that the tax of Rs. 4,000 is paid by the lawyer as TDS and then he should give the free air ticket to the lawyer.

**Section 194S: PAYMENT FOR PURCHASE OF VIRTUAL DIGITAL ASSETS:**

Virtual Digital Assets = Crypto Currency and NFT (Non-Fungible Token)



## PART - III

## GENERAL NOTES

### 1) WHEN TO DEDUCT TDS?

| Nature of Payment                                                  | When to Deduct?                                                                                                                                                                                           |
|--------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Salary, Winnings, Compensation, Cash withdrawal & Life ins.. claim | At the time of Actual <b>payment</b>                                                                                                                                                                      |
| Online winnings                                                    | At the time of Actual <b>payment</b> or at <b>the end of F.Y.</b> whichever is <b>earlier</b>                                                                                                             |
| All other payments except u/s 194IB                                | At the time of: Actual <b>payment</b> <b>or</b> when party's a/c is <b>credited</b> whichever is <b>earlier</b>                                                                                           |
| Rent u/s 194IB                                                     | At the time of:<br>i) Actual <b>payment</b> of the rent of <b>last month</b> of the FY*<br>or ii) When party's a/c is <b>credited</b> with the rent of such <b>last month</b> Whichever is <b>earlier</b> |

\*last month of tenancy, if property is vacated during the FY

**2) WHEN TO DEPOSIT TDS?**

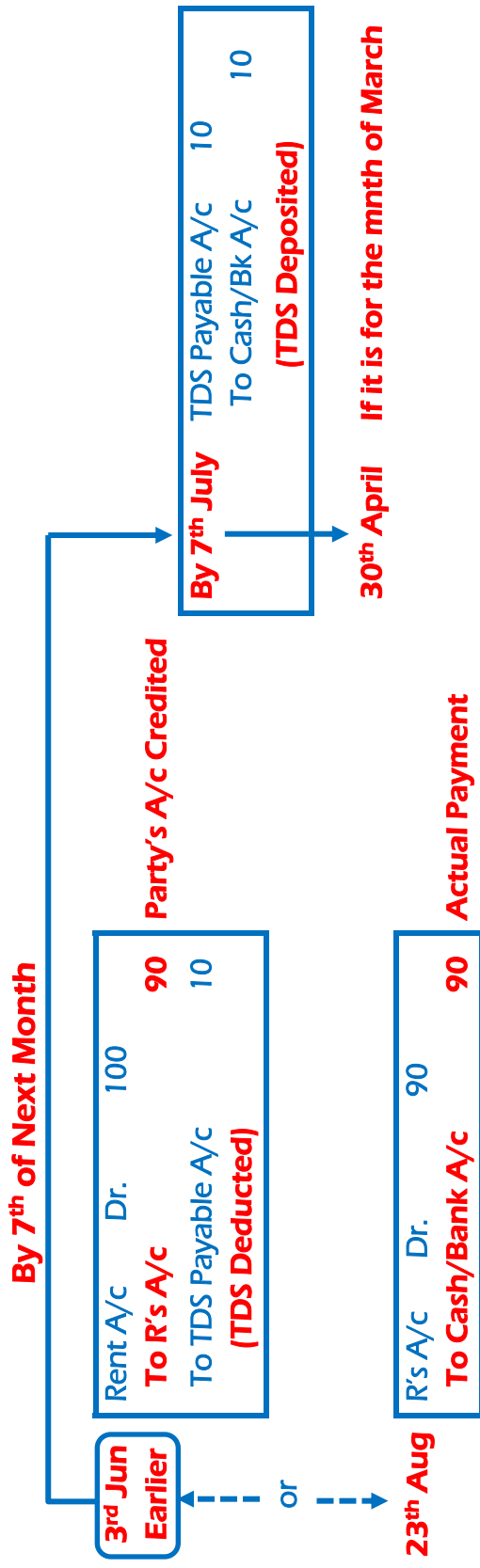
Normally

TDS deducted in the month of **March**

TDS deducted u/s **194IA/IB/M/S\*** [\*small Ind/HUF]

- By **7<sup>th</sup> of next month.**
- By **30<sup>th</sup> April**
- **Within 30 days** from the end of the month in which TDS is deducted.

→ **Example:**



**3) FAILURE TO DEDUCT/DEPOSIT:**

| Late Deduction                                                                                                                                                                                                                  | Late Deposit                                                                                                                                                                                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Interest u/s <b>201(1A)</b><br/>                     = TDS Amt x <b>1% pm</b> x Period* [in months]<br/>                     [Period = From the date when tax was <b>deductible up to the date when tax is deducted]</b></p> | <p>Interest u/s <b>201(1A)</b><br/>                     = TDS Amt x <b>1.5% pm</b> x Period* [in months]<br/>                     [Period = From the date when tax was <b>deducted up to the date when tax is deposited]</b></p> |
| <p>Non-Deduction</p> <p>Penalty u/s <b>271C</b><br/>                     [Amt. of penalty = <b>Amt. of TDS</b>]</p>                                                                                                             | <p>Non-Deposit</p> <p>Prosecution u/s <b>276B</b><br/>                     [3 months to 7 years]<br/> <b>If TDS not deposited up to the due date of filing TDS return</b></p>                                                    |

\*Part of the month is treated as full month

→ **EXAMPLE ON LATE DEPOSIT:**

Interest on late deposit

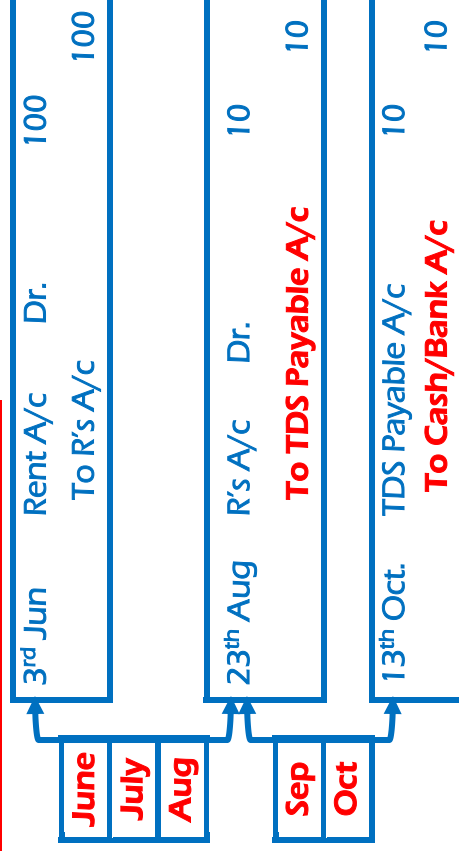
= 10 x 1.5% p.m. x 4 months



→ **EXAMPLE ON LATE DEDUCTION & LATE DEPOSIT:**

Interest on late deduction

= 10 x 1% p.m. x 3 months



**4) TDS RETURNS:**

TDS returns [Statements of TDS] are filed on quarterly basis as follows:

| Quarter ended on | Due Date                       |
|------------------|--------------------------------|
| June 30          | <b>31<sup>st</sup> July</b>    |
| September 30     | <b>31<sup>st</sup> October</b> |
| December 31      | <b>31<sup>st</sup> January</b> |
| March 31         | <b>31<sup>st</sup> May</b>     |

**Note:**

- 1) Late filing fees ₹ **200 per day u/s 234E** (maximum upto the TDS amount of that quarter).
  - 2) Penalty u/s **271H** for late filing of TDS return (**minimum 10,000 to maximum 1,00,000**).
- This penalty is **not levied** if the person has filed the TDS return [after paying TDS along with interest & late filing fees] **within 1 month** from the due date of the return.
- 3) TDS Returns i.e. Quarterly statements can be rectified by delivering a **correction statement within 6 years** from the end of the year in which such statement is required to be delivered.

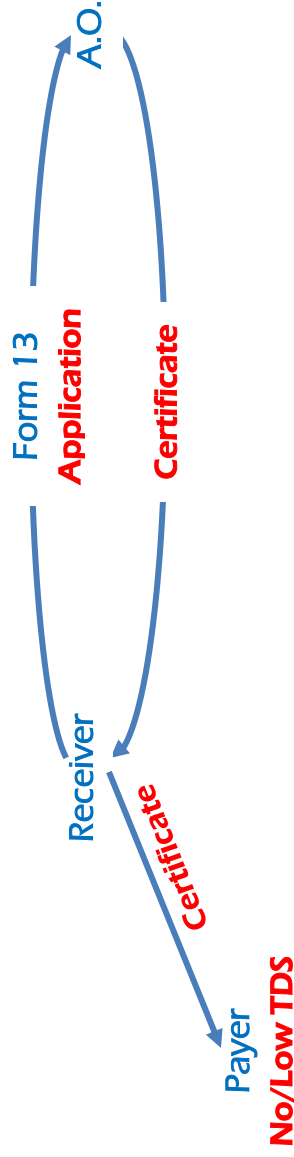
**5) SECTION 197A: NO TDS ON D R<sub>2</sub> I<sub>3</sub> M: (For Ind/HUF)**

In case of **D**ividend, **R**ent u/s 194I, withdrawal from **R**PF, **I**nterest, **I**nsurance commission/ Life **I**nsurance claim and income from **M**utual Fund, the payer shall not deduct TDS if the receiver furnishes a **declaration in Form 15G/H to the payer** [Declaration that the tax on his estimated total income will be Nil] – [Form 15H, for senior citizen].



**6) SECTION 197: NO TDS/LOW TDS: (For All assessee)**

Under all the sections including sec. 195 [except Section 194BB/B/DA/IA/IB and 194N/P/R/S], the receiver can make an **application in Form 13 to the A.O.** [for No TDS/Low TDS]. If the A.O. is satisfied then he shall issue a Certificate of no TDS/Low TDS. Certificate is valid until its cancellation by A.O.



## 7) SECTION 40(a): EXPENSES SUBJECT TO TDS:

While computing income from business, expenses [subject to TDS] incurred in a PY shall be **allowed in the same PY** if following 2 conditions are satisfied:

- 1) TDS should be **deducted** latest up to **31<sup>st</sup> March** of the PY **and**
- 2) TDS should be **deposited** latest up to the **due date of filing return** of income.

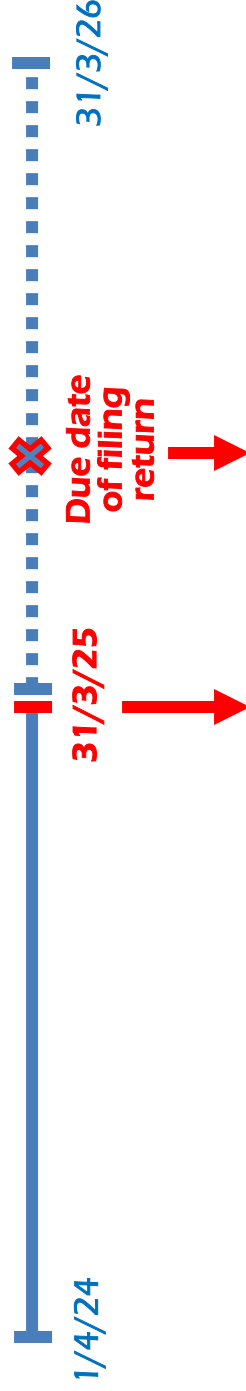
If any one of the above conditions is **not satisfied** then 30% [in case of Resident] and 100% [in case of NR] shall be **disallowed** in the **current PY**. However, this 30%/100% shall be **allowed** in future i.e. the **year in which TDS is deposited\*\***.

**\*\***Sometimes, the payer has paid the full amount to the receiver and it is not possible for the payer to deposit the TDS. In such case, TDS is **deemed to be deposited** on the date on which **receiver files the return** if following conditions are satisfied:

- a. The Receiver should **show** such income in the return.
- b. The Receiver should **pay** the tax on the income declared in such return.
- c. The Receiver should **file** the return.
- d. The Payer should furnish a **certificate of CA** to this effect.

**Section 40(a)**

Eg: 31/7/25



**Allowed (PY 24-25)**

✓

✓

30%/100% **Allowed** in the Yr. of Deposit of TDS

30%/100% **Disallowed (PY 24-25)**

✓

⊗

30%/100% **Disallowed (PY 24-25)**

⊗

✓

30%/100% **Allowed** in the Yr. of Deposit of TDS

Party o/s

30%/100% **Disallowed (PY 24-25)**

⊗

**Not possible**

30%/100% of **Allowed** in the yr. in which TDS is deemed to be deposited i.e. **Yr. in which receiver files return**

Party paid

**8) Section 206AA: HIGHER TDS IF PAN NOT FURNISHED:**

In all the transactions, which are subject to TDS, the receiver shall furnish his PAN to the payer. If he fails to furnish his PAN or if the furnishes a wrong PAN then TDS shall be deducted **at the rate 20%\*** [or the actual TDS rate whichever is higher]. **\*5%, in case of TDS u/s 194 O and 194O.**

**Note:** If declaration in **Form 15G/H does not contain PAN** then also TDS is deducted at higher rate of **20%**.

**9) Section 206AB: HIGHER TDS IF THE RECEIVER IS NON-FILER:**

As per this section, TDS will be deducted at **double the rate** or **5%** [whichever is **high**] if:

- the receiver has **not furnished return** of income for such immediately **preceding year** [for which **due date** of filing return has **expired**]; and
- in such preceding year, his aggregate amount of (TDS+TCS) is  $\geq$  50,000.

However, this section of higher TDS is **not applicable** if payment is made to **NR (not having PE in India)** and payment subject to TDS u/s **192, 192A, 194BB/B, 194IA, 194IB, 194LBC, 194M, 194N and 194S** [if payment is made by **small Ind./HUF**].

### **10) EFFECT OF SURCHARGE/EDUCATION CESS:**

Normally, surcharge and HEC are ignored while deducting TDS [because TDS is at ad-hoc rate]. However, in case of payment of **salary, winnings, pension u/s 194P** & payment to **non-residents**, surcharge [if payment exceeds 50L/1 crore etc..] and HEC shall be considered [because in such cases, TDS is deducted at actual tax rates].

### **11) TDS CERTIFICATE:**

The payer shall issue a TDS Certificate to the receiver in:

- Form 16 – in case of salaries
- Form 16A – in case of others
- Form 16B – in case section 194IA
- Form 16C – in case of section 194IB
- Form 16D – in case of section 194M
- Form 16E – in case of section 194S (Small Ind/HUF)

### **12) SECTION 198/199:**

As per Section 198, TDS [whether deducted in India or outside India] is deemed to be received i.e. the receiver has to **show Gross** amount while computing his total income. As per Section 199, the **receiver shall get the credit of TDS.**

**13) SECTION 203A: TAX DEDUCTION ACCOUNT NUMBER:**

Every payer liable to deduct TDS is required to obtain TAN [Tax Deduction Account Number]. TAN is required to be quoted in TDS returns, TDS challans and TDS certificates. However, a person deducting TDS u/s **194IA/194IB/194M/194S (Small Ind/HUF)** is **not required** to obtain TAN.

**14) COMPLIANCE RELIEF U/S 194IA/194IB/194M/194S (Small Ind/HUF):**

- Obtaining **TAN not required**.
- TDS of any month is required to be **deposited within 30 days** from the end of the month in which TDS is deducted [This means, rule of 7th of next month is not applicable].
- Challan for depositing TDS is a **Challan cum Return** [Form 26OB u/s 194IA, Form 26OC u/s 194IB, Form 26OD u/s 194M and Form 26OE u/s 194S-Small Ind/HUF] which is required to be filed within above 30 days [This means, there is **no requirement of filing quarterly returns separately**].

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