

SIGNIFICANT DIRECT TAX AMENDMENTS

THE TAXATION LAWS (AMENDMENT) ACT, 2019

- **Prescribed electronic modes for purpose of section 269SU** : It has been notified that with effect from 01.01.2020, any debit card powered by Rupay, Unified Payments Interface(UPI)(BHIM-UPI) and Unified Payments Interface Quick Response Code (UPI QR Code)(BHIM-UPI QR Code) shall be the prescribed electronic modes as mandated under section 269SU, for accepting payments by businesses whose total sales exceeds ₹ 50 crore in the year immediately preceding the financial year.
- **Enhanced Depreciation on Automobiles** : In order to provide relief to tax payers purchasing new vehicles for the purpose of business or profession, enhanced depreciation of 30 % for motor cars and 45 % for motors buses/lorries has been provided with effect from 23.08.2019.
- **E-Assessment Scheme-2019** : In order to remove the existing human interface and personal interaction prevailing in the assessment procedure, a scheme of faceless assessment in electronic mode involving no human interface has been notified vide Notification No. 61/2019 dated 12.09.2019 through S.O. 3264(E) published in the Official Gazette.
- **Simplification of compliance norms for Startups** : A Start-up Cell under the aegis of Member (IT&C), CBDT has been constituted to redress grievances and to address various tax related issues in the cases of Start-ups. A consolidated circular clarifying the provisions pertaining to assessment of Startups has also been issued which clarifies that the outstanding income-tax demand relating to additions made relating to angel tax would not be pursued and no communication in respect of outstanding demand would be made with the Start-up entity. Further, other income-tax demand of the Start-ups would not be pursued unless the demand was confirmed by ITAT.
- **Document Identification Number (DIN)** : Every communication of the department whether it is related to assessment, appeals, investigation, penalty, and rectification among other things issued from 01.10.2019 onwards will mandatorily have a computer-generated unique document identification number (DIN). Any communication such as tax notice, summon or letter issued to any corporate or individual tax payer will be invalid without this number.
- **Reduction in Litigation** : The monetary thresholds for filing of departmental appeals have been raised from ₹ 20 lakh to ₹ 50 lakh for appeal before ITAT, from ₹ 50 lakh to ₹ 1 crore for appeal before High Court and from ₹ 1 crore to ₹ 2 crore for appeal before Supreme Court. Pending appeals involving tax effect lower than these thresholds shall also be withdrawn or not pressed by the Department.
- **Relaxation in norms for prosecution** : It has been provided that prosecution in appropriate cases will be launched only if the quantum of tax evasion is above a minimum threshold. Further, in cases where evasion is below the minimum monetary threshold, launch of prosecution has to be approved by a collegium comprising of two high ranking officers. Further, the 12-month time limit for filing compounding application has been relaxed as a one-time measure, to mitigate hardship in genuine cases.

THE FINANCE ACT, 2020 TAX RATES

- **Concessional slab rates for individuals and HUFs** : New section 115BAC inserted to provide an option to an individual or HUF to pay tax in respect of their total income at following rates if they do not avail certain exemptions/deductions like LTC, standard deduction under the head "Salaries", interest on housing loan, deductions under Chapter VI-A (other than 80CCD(2) or section 80JJAA) etc. :

Total Income (₹)	Tax Rate
Upto ₹ 2,50,000	Nil
₹ 2,50,001 – ₹ 5,00,000	5%
₹ 5,00,001 – ₹ 7,50,000	10%
₹ 7,50,001 – ₹ 10,00,000	15%
₹ 10,00,001 – ₹ 12,50,000	20%
₹ 12,50,001 – ₹ 15,00,000	25%
Above ₹ 15,00,000	30%

The option has to be exercised for every previous year where the individual or HUF has no business income. However, where the total income of an individual/HUF includes business income, the option once exercised would apply for that year and every subsequent year.

Existing tax rates would continue for individuals and HUFs not opting for provisions of section 115BAC. In respect of such individuals and HUFs, there is no change in the tax rates.

• **Concessional tax rate for co-operative society:** New section 115BAD has been inserted to provide an option to co-operative society, resident in India, to pay tax @ 22% (plus applicable surcharge, if any, for section 115BAD will not be liable to pay alternate minimum tax under section 115JC).

• **Concessional rate of tax for power generating companies:** Section 115BAB has been amended to include generation of electricity within the scope of manufacturing or production of an article or thing, so that electricity generation companies can opt to pay tax @ 15% in respect of their total income subject to certain conditions specified therein.

• **Period upto which loan can be sanctioned for availing deduction under section 80EEA** sanctioned between 1.4.2019 to 31.3.2020 for purchase of an affordable house. The period upto which loan can be sanctioned for availing such benefit is extended from 31.3.2020 to 31.3.2021.

• **Increase in permissible variation between actual consideration and stamp duty value for transfer of immovable property, being land or building or both:** Sections 50C, 43CA and 56 provide that no adjustments shall be made in respect of transfer of immovable property, being land or building or both, in a case where the variation between stamp duty value and the actual sale consideration is more than 5% of the actual sale consideration. The permissible variation is increased from 5% to 10%.

• **Conditions for residency modified:** Up to Assessment Year 2020-21, an Indian citizen or a person of Indian origin who comes on a visit to India would become resident in India only if he stays in India for a period of 182 days or more during the relevant previous year. Such minimum period of stay in India proposed to be reduced from 182 days to 120 days *u.e.f.* Assessment Year 2021-22.

The condition for "resident but not ordinarily resident" amended to provide that a resident would be resident but not ordinarily resident, if he has been non-resident in seven out of ten previous years, or residency or any other criteria of similar nature, would be deemed to be resident in India. In such case, the income derived from business or profession in India would only be taxable, and hence income, accrues or arises outside India would not be taxable.

• **Incentives to Start-ups:** At present, an eligible Start-up having turnover up to ₹ 25 crores is allowed deduction under section 80-IAC of 100% of its the profits for three consecutive assessment years out of seven years, if its total turnover does not exceed ₹ 25 crore.

The scope of section 80-IAC is expanded by increasing the threshold turnover limit from existing ₹ 25 crore to ₹ 100 crores. Moreover, the period for claiming deduction is proposed to be increased from 3 out of 7 years to 3 out of 10 years.

• **Deferral of tax liability on ESOP provided by eligible start-ups:** ESOPs are taxed as perquisite in the hands of employees at the time of exercising such option. Tax liability on ESOPs granted by an eligible start-up under section 80-IAC to its employees is proposed to be deferred by 48 months from the end of the relevant assessment year or till the employee ceases to be the employee of the person or when the said employee sells such specified security or sweat equity shares, whichever is earliest. Consequently, the tax needs to be deducted or paid by the eligible start-up within 14 days from the above specified date on the basis of rates in force for the financial year in which such specified security or sweat equity shares is allotted or transferred.

• **Time limit for approval of affordable housing project extended:** In order to incentivise building affordable housing to boost the supply of such houses, the period of approval of the project by the competent authority is extended by one more year i.e., from 31st March 2020 to 31st March, 2021 for availing deduction under section 80-IBA.

• **Tax Audit under section 44AB:** Turnover threshold for compulsory tax is increased audit from existing ₹ 1 crore to ₹ 5 crore in a case where cash receipt is not more than 5% of total receipt and cash payment is not more than 5% of total payment.

Further, tax audit report to be filed a month before the due date of filing income-tax return. Accordingly, the said due date for filing of income-tax returns is extended from 30th September to 31st October of the relevant assessment year so that there is no change in the date of filing tax audit report.

• **Claim of deduction under section 35AD to be optional:** Under section 35AD(1), an assessee shall be allowed a deduction in respect of the capital expenditure incurred in respect of specified business. As per section 35AD(4), no deduction is allowable under any other section in respect of capital expenditure, which has been fully allowed as deduction under section 35AD(1). The use of the word "shall" in section 35AD(1) conveys the intent that deduction under this section is mandatory where capital expenditure has been incurred in respect of specified business, and in such a case, no depreciation would be allowable by virtue of section 35AD(4).

In case a domestic company opts for concessional tax rate under section 115BAA or section 115BAB, deduction under section 35AD is not allowable. In such cases, even though no deduction is allowed under section 35AD, section 35AD(4) has been interpreted to also disallow normal depreciation is allowed under section 32 in respect of such capital expenditure, which does not reflect the correct legislative intent.

• **Tax to be deducted at source by co-operative society on interest paid under section 194A:** The scope of section 194A is proposed to be expanded by requiring tax to be deducted at source by a cooperative society whose:

- the total sales, gross receipts or turnover exceeds ₹ 50 crores during the financial year immediately preceding the financial year in which the interest is credited or paid; and
- the amount of interest credited or paid during the financial year is more than ₹ 50,000 in case of payee being a senior citizen and ₹ 40,000, in any other case.

Such co-operative society is required to deduct tax under section 194A on interest credited or paid by it:

- to its member or to any other co-operative society; or
- in respect of deposits with a co-operative bank or a co-operative land development bank or cooperative land mortgage bank or a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank or

in carrying on the business of banking

• **Definition of "work" under section 194C expanded:** The scope of definition of "work" for the purpose of tax deduction under section 194C expanded to include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate. "Associate" means a person related to the customer in such manner as defined under section 40A(2)(b), as if the customer is an assessee for the purpose of that section.

• **TDS on E-commerce transactions:** New section 194-O inserted to provide that E-commerce operator is required to deduct tax at source at the time of credit of amount of sale or service or both to the account of e-commerce participant or at the time of payment to such participant, whichever is earlier. Tax is required to be deducted @ 1%. However, where PAN/Aadhar is not furnished, tax @ 5% is required to be deducted at source.

Moreover, no tax would be deducted at source in case of an e-commerce participant (being an individual or HUF) whose gross amount of sales or services or both does not exceed ₹ 5 lakh and furnishes PAN/Aadhar.

• **Reduced rate of TDS on fees for technical services:** Rate of TDS under section 194J in case of fees for technical services other than professional services has been reduced from 10% to 2%.

• **TCS on overseas remittance, sale of overseas tour package and on sale of goods above certain limit:** Section 206C amended to require an authorised dealer to collect tax at source @ 5% on the amount or aggregate of amounts received by him under the Liberalised Remittance Scheme of the RBI for overseas remittance from a buyer, being a person remitting such amount out of India, if such PAN/Aadhar is not furnished, tax @ 10% is required to be collected at source. • The seller of an overseas tour package is also required to collect tax at source @ 5% on the amount received from the buyer who purchases the package. In case PAN/Aadhar is not furnished, tax @ 10% is required to be collected at source.

Note: In both such cases, covered under sub-section (1C) of section 206C, tax is required to be collected at the time of debiting the amount payable by the buyer or at the time of receipt of such amount, whichever is earlier.

• **TCS be levied on sale of goods not covered under sub-sections (1)(1F)(1G) in excess of ₹ 50 lakhs in a year by a seller whose turnover is more than ₹ 10 crore during the financial year immediately preceding such financial year in which sale has taken place.** Tax is to be collected at source @ 0.1% of the sale consideration exceeding ₹ 50 lakhs, at the time of receipt. In case of non-furnishing of PAN/Aadhar, tax @ 2% is required to be collected at source.

• **TDS rate has been reduced by 25% for Resident from 14.5.2020.**

• **Penalty for false entry in books of account:** New section 271AAD to provide for levy of penalty on a person if during any proceeding it is found that in the books of accounts there is a false entry or any entry relevant for computation of total income of such person has been omitted to evade tax liability, of sum equal to the aggregate amount of such false or omitted entry.

Levy penalty of a sum equal to the aggregate amount of such false or omitted entry on any other person, who causes the person referred above in any manner to make a false entry or omits or causes to omit any entry.

- **E-penalty Scheme** : Central Government is empowered to notify an e-scheme for the purpose of imposing penalty so as to impart greater efficiency, transparency and accountability by :
 - (a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;
 - (b) optimising utilisation of the resources through economies of scale and functional specialisation;
 - (c) introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities.
- **ITAT to order stay of demand only on payment of 20% of the tax payable including interest, penalty etc. by the assessee** : The Income Tax Appellate Tribunal (ITAT) may, after considering the merits of the application made by the assessee, pass an order of stay for a period not exceeding 180 days in any proceedings against the order of the Commissioner of Income-tax (Appeals). It is proposed to provide that stay may be granted by the ITAT, subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof.
- **Faceless appeal** : Central Government empowered to notify an e-appeal scheme for disposal of appeal in order to impart greater efficiency, transparency and accountability. It would eliminate the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.
- **Transparency in survey** : Section 133A amended to provide that, in a case where the information has been received from the prescribed authority, an income-tax authority below the rank of Joint Director or Joint Commissioner shall conduct any survey under this section only with the prior approval of the Joint Director or the Joint Commissioner. If the survey is not based on information provided by the prescribed authority, then prior approval of Director or Commissioner of Income-tax is required for conducting survey.
- **Taxpayer's Charter** : New section 119A inserted to empower the CBDT to adopt and declare a Taxpayer's Charter and issue necessary orders, instructions, directions or guidelines for the implementation of the Charter.

THE TAXATION AND OTHER LAWS (RELAXATION OF CERTAIN PROVISIONS) ORDINANCE, 2020

The ordinance was promulgated on March 31, 2020 in view of spread of the corona virus pandemic in India. Certain important features of the ordinance are :

- **Extension of time limits** : The time limit to complete or comply with certain actions under the Income Tax Act, 1961 was extended to June 30, 2020 or such other date after June 30, 2020 which the Central Government may notify.
- The rate of interest payable for delay in payment will not exceed 0.75% per month.
- The ordinance amend the Income Tax Act, 1961 to provide that donations made by a person to PM-CARES Fund will be eligible for 100% deduction.

PRESS RELEASE DATED 13.5.2020 AND NOTIFICATION NO. 35/2020 DATED 24.6.2020 ISSUED BY C.B.D.T.

- Rates of TDS on specified payments made to residents have been reduced by 25% for the period from 14.5.2020 to 31.3.2021.
- Tax Collection at Source (TCS) for the specified receipts has also been reduced by 25% for the period from 14.5.2020 to 31.3.2021.
- Due dates of all compliances falling between 20.3.2020 to 31.12.2020 extended to 31.3.2021 except filing of I.T.R. for Assessment Year 2020-21, furnishing of TDS/TCS statement of 4th quarter of Financial Year 2019-20, etc.
- Though the due date for filing of ITR for Assessment Year 2020-21 has been extended to 30.11.2020, but no relief shall be provided from the interest chargeable u/s 234A if the tax liabilities exceeds ₹ 1 lakh.
- The interest u/s 234A shall not be levied if the self assessment tax liability of taxpayer does not exceed ₹ 1 lakh and I.T.R. is filed by 30.11.2020.
- Date for making various tax saving investments or payments for the Financial Year 2019-20 (Section 80C to 80GGC) extended to 31.7.2020.

IMPORTANT DEFINITIONS

Under sections 2 and 3 of the Income Tax Act, 1961, definitions of important terms used in the Act have been given, some of which are as under:

I. INCOME

[Sec. 2(24)]

This is a very important term as income tax is charged on the income of a person. This term has not been defined in the Income Tax Act, except that it states as to what is included in income.

Under this section income includes:

- (i) profits and gains;
 - (ii) dividend;
 - (iii) voluntary contributions received by (a) a trust created for charitable or religious purposes, or (b) by a scientific research association, or (c) by a games or sports association or institution, or (d) any university or other educational institution, or (e) any hospital or other institution, or (f) an electoral trust;
 - (iv) the value of any perquisite or profits in lieu of salary taxable under the head 'salaries';
 - (v) any special allowance or benefit specifically granted to the assessee to meet his expenses wholly, necessarily and exclusively for the performance of his duties;
 - (vi) any allowance granted to the assessee either to meet his personal expenses at the place where he performs his duties or compensate him for the increased cost of living, for example, City Compensatory Allowance;
 - (vii) the value of any benefit or perquisite which is obtained by any representative assessee;
 - (viii) any sum chargeable to income tax under the head 'business' or 'profession';
 - (ix) any capital gains;
 - (x) the profits and gains of any business of insurance carried on by a mutual insurance company or by co-operative society;
 - (xi) any winnings from lotteries, crossword puzzles, races including horse races, card-games and other games of any sort or from gambling or betting of any form or nature whatsoever;
- Explanation:*
- (a) 'Lottery' includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever;
 - (b) 'Card game and other game of any sort' includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game;
 - (xii) any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set-up under the Employees' State Insurance Act or any other fund for the welfare of such employees;
 - (xiii) any sum received under a keyman insurance policy including the sum received by way of bonus on such policy.
- Keyman insurance policy means a life insurance policy taken by a person on the life of another person who is or was (a) an employee of the first person, or (b) connected in any manner with the business.
- The sum of keyman insurance policy is assessable as following:
- (a) When the sum is received by the organisation, who has taken the policy, it is assessable under the head profits and gains of business or profession.
 - (b) When the amount is received by the employee, it is assessable as profits in lieu of salary.
 - (c) When the amount is received by a person, where employer-employee relationship does not subsist (Chairman or Director etc. of a company), it is assessable under the head income from other sources.
 - (xiv) Any sum of money or value of property received without consideration or for inadequate consideration by an individual or HUF from any person or persons (other than relative etc.). (For details see chapter 10);

INCOME TAX (INTRODUCTION AND IMPORTANT DEFINITIONS)

(xiva) A firm or a closely held company receives shares of a company from any person or persons without consideration or for inadequate consideration. (For details see chapter 10).

(xv) The profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;

(xvi) Any consideration received for issuing shares as exceeds the fair market value of the shares.

(xvii) Any sum of money received as an advance in the course of negotiations for transfer of a capital asset and such negotiation fails, the amount so forfeited;

(xviii) If the assessee receives (in cash or kind) the following from the Central Government or a State Government or any authority or body or agency it will be treated as income: Subsidy or grant or cash incentive or duty drawback, or waiver or concession or reimbursement.

However, if such subsidy or grant or reimbursement is taken into account for determination of the actual cost of the asset, it will not be treated as income.

[The subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, will not be treated as income, *w.e.f.* A.Y. 2017-18]

The LPG subsidy and other welfare subsidies received by individuals shall not be included in income. (*Press Release, dated 5.5.2015*)

Concept of Income

The above definition of income is not conclusive. It includes some other receipts also which are ordinarily treated as income. In fact, income means a monetary income which is derived from definite sources with some sort of regularity or expected regularity. These definite sources of income are: Salaries, Income from House Property, Profits and Gains of Business or Profession, Capital Gains and Income from Other Sources.

Besides this, there are some other important rules regarding income, which are as under:

- (1) There should be a definite source of income.
- (2) An income earned, *whether legally or illegally*, is taxable under the Income Tax Act. The Income Tax Act does not make any distinction between legal and illegal income. However, any expenditure incurred to earn an illegal income is allowed to be deducted out of such income only.
- (3) It is not necessary that the income should be received regularly and periodically, say, weekly, monthly or quarterly. *Lump-sum received can also be income*, provided it is income in view of other factors and considerations.
- (4) Income should be *received from outside*. In an institution, if the income from subscription from its members exceeds its expenditure on its members the excess cannot be treated as taxable income, because the subscription was received from amongst the members themselves and the excess represents the excess of income over expenditure incurred for their own benefit or well-being, hence this excess is not received from outside, and will not be income.

Similarly, excess over expenditure, received by a club from facilities provided to members as part of advantages attached to such membership, is not taxable income.

[CIT vs. *Bankipur Club Ltd.* (1997) 226 ITR 97 (SC)]

(5) It is not essential that the income must be received *in the form of money*. Receipts in kind or service having money equivalent can also be income.

(6) *Temporary or Permanent Income*. Whether the income is temporary or permanent, it is immaterial from the tax point of view.

(7) If an assessee has *earned* an income but has not actually received it, it will be treated as the income of the assessee, because he is entitled to receive it.

(8) *Reimbursement of expenses* is not income. Reimbursement of actual travelling expenses to an employee is not his income.

(9) Where under a legal obligation a charge is created on the income of a person, then to the extent of such charge it will be deducted from his income.

(10) *Receipt on account of dharmada, gaushtala, etc.* is not income.

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(11) *Pin Money* received by wife for her personal expenses and small savings made by a woman out of money received from her husband for meeting household expenses is not her income.

(12) *Disputed Income*. Any dispute regarding the title of income will not postpone or held up the assessment of such income. It will be taxed in the hands of the recipient of such income.

(13) *Diversion of income vs. Application of income*. Diversion of income means that the income is diverted to some other person under some legal obligation. If after receiving the income it is given to some one else it is application of income. Where by an obligation, income is diverted to some other person voluntarily it is diversion of income and not taxable, but where the income is diverted before it reaches the assessee, it is diversion of income after such income reaches the assessee, the same is required to be applied to discharge an obligation cannot be avoided.

(14) Income may be in *plus* or *minus*. Minus income means loss, hence losses are also included in the term 'Income'.

II. GROSS TOTAL INCOME

[Sec. 80B(5)]

The aggregate of the income under the following heads is known as gross total income :

- (i) Income from salaries;
- (ii) Income from house property;
- (iii) Profit and gains of business or profession;
- (iv) Capital gains; and
- (v) Income from other sources.

The income under each head is computed after making deductions permissible under that head. Further, the brought forward losses shall be deducted (as provided in the Act) to arrive at the assessable income.

III. TOTAL INCOME

[Sec. 2(45)]

Total income means the amount left after making the deductions under sections 80C to 80U from the gross total income.

The amount so arrived is rounded off to the nearest multiple of ten rupees.

Difference between Gross Total Income and Total Income

Gross Total Income	Total Income
1. Aggregate of various heads of income is called Gross Total Income.	After deductions under Sections 80C to 80U, the balance is called Total Income.
2. Gross Total Income is not rounded off.	Total Income is rounded off to the nearest multiple of ten rupees.
3. Tax is not levied on Gross Total Income.	Tax is levied on the Total Income at the prescribed rates.
4. Gross Total Income cannot be less than Total Income.	Total Income can be equal to GTI or less than GTI.
5. Agricultural income is not included in GTI.	If agricultural income exceeds ₹ 5,000, it is included in the Total Income of an individual or HUF to determine the tax payable by the assessee.

IV. AGRICULTURAL INCOME

[Sec. 2(1A)]

V. CASUAL INCOME

Any receipt which is of a casual and non-recurring nature is casual income. In other words, casual income is that income the receipt of which is accidental and without any stipulation. It is in nature of an unexpected wind-fall.

Winings from lottery, crossword puzzles, card games and other games of any sort or from gambling or betting of any form or nature whatsoever are casual incomes. Receipts even from habitual betting are non-recurring receipts and assessable as casual income.

The casual income does not include :

- (i) (a) capital gains; or
- (b) receipts arising from business or the exercise of a profession or occupation; or
- (c) receipts, by way of addition to remuneration of an employee, such as bonus, gratuity, perquisites, etc.

(ii) Voluntary payment received in exercise of an occupation are not treated as casual income, e.g., tips given in the ordinary way to taxi-drivers in the employ of taxi-owners are income arising from the exercise of an occupation. Similarly, gratuities to waiters in a hotel are taxable. A receipt may be taxable as income arising from the legal exercise of the profession even if the amount is received as a gift from third parties to whom the legal services were not rendered and who were under no obligation to pay anything at all.

If an architect submitted a plan in a competition for construction of a building, the prize won by him, is income from profession.

(iii) A gift from a relative is not income at all. Birthday and wedding gifts are simplest instances in point. A gift from a relative does not become income merely because it is repeated year after year. A regular allowance given year after year purely as a voluntary gift by a parent to a child or by a husband to his wife, or by one relation to another, is merely a fresh gift every time it is paid and does not amount to income.

(iv) Payment by husband to his wife under an agreement to live apart as maintenance allowance is neither casual income nor a personal gift. Hence, it is taxable.

Other provisions relating to Casual Income

(i) *Expenses are not deductible*. If expenses are incurred to receive casual income, such expenses are not deductible from any income. For example, an individual purchases lottery tickets, the cost of lottery tickets is not deductible from any income whatsoever. Similarly, if postal charges have been paid for sending crossword puzzles, such charges (expenses) are not deductible from any income.

(ii) *Set-off of losses not permitted*. If instead of casual income there is casual loss, such loss cannot be set-off from any income. For example, if a person wins in a card game on the first day and loses the next day, he cannot set-off the loss against any income.

(iii) *Tax deduction at source* :

- (a) If the winnings from horse race exceed ₹ 5,000, tax will be deducted at source at the prescribed rate.
- (b) If the winnings from any lottery, crossword puzzle, card game and other game of any sort exceed ₹ 10,000, tax will be deducted at source at the prescribed rate.
- (iv) *Rate of tax*. On winning from lottery, crossword puzzle, races, gambling, betting, etc. tax is chargeable @ 30%.

Illustration 1

State whether the following receipts are casual incomes :

- (i) Mr. X received ₹ 5,000 for acting once as an arbitrator without any stipulation as to remuneration.
- (ii) Mr. Y received ₹ 5,000 for acting as an arbitrator with a clear and definite stipulation for the said remuneration.
- (iii) Mr. X, a decree-holder, received interest of ₹ 500 under an order of court granting stay of execution of the decree on judgment-debtor Mr. Y.
- (iv) Mr. X is in the service of Mr. Y. Mr. Y's son was lost and Mr. X traced him out without any stipulation of reward but Mr. Y gave him a reward of ₹ 500.

Solution

- (i) The receipt is of a casual and non-recurring nature as there was no stipulation for remuneration.
- (ii) Mr. Y was offered a definite remuneration for acting as an arbitrator and he accepted the work of the remuneration, hence, the receipt is not of a casual nature.

INCOME TAX / INTRAPRODUCTION AND IMPORTANT DEFINITIONS

VI. PERSON

Sec. 2131

- [Sec. 2(9)]

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[Sec. 2(7)]

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[Sec. 2(9)]

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XL PERMANENT ACCOUNT NUMBER

PAN means a number which the Assessing Officer may allot to any person for the purpose of identification. (Sec. 139A)

PAN has ten alphanumeric characters and it is issued in the form of laminated card. *Application for PAN.* If an assessee has not been allotted a Permanent Account Number, he must apply for it in Form No. 49A within the prescribed time. The Assessing Officer has also got power to allot to any other person a Permanent Account Number if tax is payable by such person.

Quoting PAN. Once a Permanent Account Number has been allotted, such number must be quoted in all Returns, correspondence with Income Tax Authorities, challans for payment and in all documents prescribed by the Board.

It helps in linking the aforesaid documents to his assessment records to facilitate quick disposal of his assessment and refund claim.

The assessee must intimate to the Assessing Officer about any change in the address, name or nature of business carried on by him.

TAX EVASION

When a person reduces his total income by making false claims or by withholding the information regarding his real income, so that his tax liability is reduced, is known as tax evasion. Tax evasion is not only illegal but it is also immoral, anti-social and anti-national practice. Therefore, under the direct tax laws provisions have been made for imposition of heavy penalty and institution of prosecution proceedings against tax evaders.

The tax evader reduces his taxable income by one or more of the following steps:

- (1) Unrecorded sales.
- (2) Claiming bogus expenses, bad debts and losses.
- (3) Charging personal expenses as business expenses, e.g., car expenses, telephone expenses, travelling expenses, medical expenses incurred for self or family may be shown in the account books as business expenses.
- (4) Submission of bogus receipts for charitable donations for deduction u/s 80G.
- (5) Non-disclosure of capital gains on asset.
- (6) Non-disclosure of income from 'Benami transactions'.
- (7) By showing excessive or bogus salary payments to near relatives.
- (8) By not showing taxable incomes in return of income.

In brief to evade tax he suppresses or omits receipts, inflates expenses and claims bogus deductions.

Now the question is why a person evades tax? The main reasons of tax evasion are:

1. Deterioration of moral values.
2. Declaration of voluntary disclosure schemes by the Government time to time. The tax evader knows that in such a scheme he can pay tax at a lower rate and save interest and penalty.
3. The tax management is not accountable for increase in tax evasion.
4. The tax management and tax experts help in tax evasion.
5. Misutilisation of public funds by the Government and its employees.
6. Imparting no education regarding the advantages of tax payment and disadvantages of tax evasion to the people.

TAX AVOIDANCE

Tax avoidance is an art of dodging tax without actually breaking the law. It is a method of reducing tax incidence by availing of certain loopholes in the law. The Royal Commission on Taxation for Canada has explained the concept of 'avoidance of tax' as under:

The expression 'Tax Avoidance' will be used to describe every attempt by legal means to prevent or reduce tax liability which would otherwise be incurred, by taking advantage of some provision or lack of provision in the law. It excludes fraud, concealment or other illegal measures.

INCOME TAX (INTRODUCTION AND IMPORTANT DEFINITIONS)

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In other words, 'tax avoidance' is a device which technically satisfies the requirement of the law but in fact it is not in accordance with the legislative intent.

Per Jagadishan J. (in Aruna Group of Estates vs. State of Madras (1965) 55 ITR 642 (Mad).), "Avoidance of tax is not tax evasion and it carries no ignominy with it, for it is a sound law and, certainly, not bad morality, for anybody to so arrange his affairs as to reduce the brunt of taxation to a minimum."

However, now the Supreme Court is of the view that the colourable devices to avoid tax should not be encouraged and this is the duty of the court to expose the persons who avoid tax and refuse to approve such practice because the social evils of tax avoidance are manifold, and may be summarised as under:

- (a) substantial loss of much needed public revenue, particularly in a welfare state like ours;
- (b) serious disturbance caused to the economy of the country by piling up of mountains of black money directly causing inflation;
- (c) large hidden loss to the community by some of the best brains in the country being involved in the perpetual war waged between tax avoider and his expert team of advisers, lawyers and accountants on one side, and Tax Officer and perhaps not so skilful advisers on the other side;
- (d) sense of injustice and inequality which tax avoidance arouses in the breasts of those who are unwilling or unable to profit by it;
- (e) ethics (or lack of it) of transferring the burden of tax liability to the shoulders of the guiltless, good citizens from those of artful dodgers.

[*McDowell & Co. Ltd. vs. Commercial Tax Officer (1983) 154 ITR 148*]

The legislature has inserted the provisions in direct tax laws for checking tax avoidance. But so long there are loopholes in the laws, tax avoidance cannot be checked by the Courts. The function of judiciary in India is clearly not legislative, its role lies in interpreting the law made by the legislature.

TAX PLANNING

Tax planning may be defined as an arrangement of one's financial affairs in such a way that without violating in any way the legal provisions of an Act, full advantage is taken of all exemptions, deductions, rebates and reliefs permitted under the Act, so that the burden of the taxation on an assessee, as far as possible, the least.

Actually the exemptions, deductions, rebates and reliefs have been provided by the legislature to achieve certain social and economic goals. For example section 80IB of the Income Tax Act, 1961 provides deduction from gross total income in respect of profits from newly established industrial undertakings in industrially backward State or industrially backward district as may be notified in this behalf. The object of the tax concession is clear, i.e. economic development of industrially backward district or State. Section 80C provides a deduction from gross total income, if an individual or H.U.F. saves the amount and invests or deposits it in the prescribed schemes. The deduction has been provided to encourage savings and investments for the economic development of the country. Thus, if a person takes the advantage of the aforesaid deductions, he not only reduces his tax liability but also helps in achieving the objective of the legislature, which is lawful, social and ethical.

Thus, tax planning is an act within the four corners of the Act and it is not a colourable device to avoid the tax.

Difference between 'Tax Planning' and 'Tax Evasion'

1. Tax planning is an Act within the four corners of the Act to achieve certain social and economic objectives and it is not a colourable device to avoid the tax. Tax evasion is a deliberate attempt on the part of tax payer by misrepresentation of facts, falsification of accounts including downright fraud.

RESIDENCE AND TAX LIABILITY

(BASIS OF CHARGE)

An assessee may earn his income in India or outside India or at both the places. Whichever income is assessable in India depends on the residential status of an assessee.

RESIDENCE OF ASSESSEES

The scope of total income of an assessee along with his residential status is determined with reference to his residence in India in the previous year. Residence and citizenship are two different aspects. The incidence of tax has nothing to do with citizenship.

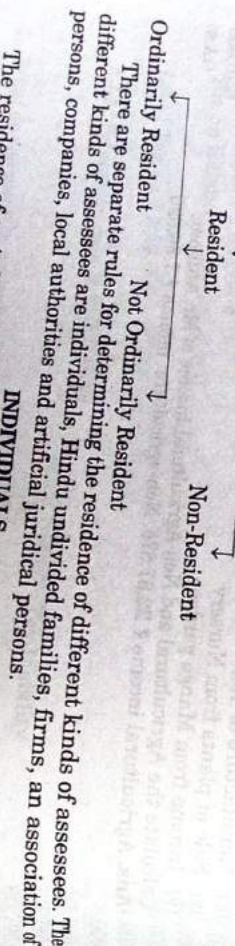
An Indian may be non-resident and a foreigner may be resident for income tax purposes. The residence of a person may change from year to year but citizenship cannot be changed every year.

A person may be resident in more than one country for the same previous year.

Different Types of Residents

On the basis of residence the assesses are divided into three categories, viz. :
 (1) Persons who are resident in India, popularly known as ordinarily resident.
 (2) Persons who are not ordinarily resident in India.
 (3) Persons who are non-resident.

Types of residents can be illustrated with the help of the following chart :



INDIVIDUALS

The residence of an individual is determined on the basis of the rules stated hereunder :
I. Resident (Ordinarily Resident). An individual is said to be resident in India in any previous year if he satisfies any one of the following basic conditions :

- he is in India in the previous year for a period of 182 days or more, or
- he has been in India for at least 365 days during the four years preceding the previous year and is in India for at least 60 days during the previous year.

[Sec. 6(1)]

Explanation 1. Exceptions to the above rules of 60 days' stay in India :

- An individual who is a citizen of India and leaves India in any previous year for the purpose of employment or as a member of the crew of an Indian ship must have stayed in India for at least 182 days during the previous year instead of 60 days;
- If any citizen of India or a foreign national of Indian origin, who is living outside India, comes on a visit to India in the previous year, he must have stayed in India for at least 182 days during the previous year instead of 60 days.

In other words, in the case of individual covered by the above two exceptions only condition (a) is to be satisfied to become a resident in India and condition (b) has no significance at all.

In exception (i) 'employment' includes self employment like business or profession taken up by assessee abroad.

[CIT vs. O. Abdul Razak (2011) 198 Taxman 1 (Ker.)]

Note : For calculating number of days stay in India, days of entry and exit should be included in the period of stay in India.

(The Authority for Advance Rulings 1995 ITR 223 p. 462)

'Indian origin' means that either he or either of his parents or any of his grand parents was born in undivided India. Further, 'comes on a visit to India in the previous year' means that he may come to India for any purpose, whatsoever. It may be business purpose or personal purpose of any nature or he may come to meet his relations or he may come for a pleasure trip only.

Explanation 2. An individual who is a citizen of India and a member of the crew of a foreign bound ship leaving India, the period or periods of stay in India shall, in respect of such voyage, be determined as may be prescribed.

(a) Stay in India for 182 days or more

As per the first basic condition it is necessary that the individual must have stayed anywhere in India for at least 182 days during the previous year. It is not at all necessary that he should stay at a stretch for 182 days. His total stay for at least 182 days may be with gaps. It is also not necessary that the entire stay should be at one place. It may be at different places in India.

(b) Stay in India for at least 365 days during the four years preceding the previous year and for at least 60 days or 182 days, as the case may be, during the previous year

If an individual's total stay in India during the four years preceding the previous year is for at least 365 days and rather he remains in India for at least 60 days or 182 days, as the case may be, during the previous year he will become resident for that previous year.

Here again, it is not necessary that he should stay during the previous year in India at a stretch for 60 days or 182 days, as the case may be, or the entire stay need not be at one place only.

[Sec. 6(6)(a)]

Additional Conditions

In fact, in order that an individual may become ordinarily resident in India, he is to satisfy both the following conditions besides satisfying any one of the above mentioned basic conditions :

- he has been resident in India in at least two out of the ten previous years preceding the relevant previous year, and
- he has been in India for at least 730 days in all during the seven previous years preceding the relevant previous year.

In condition (i) residence of two years out of ten years preceding the previous year means that the assessee must have satisfied at least one of the basic conditions for two years out of ten years preceding the previous year. In condition (ii) the assessee must be physically present in India for at least 730 days during the seven previous years preceding the relevant previous year.

II. Not Ordinarily Resident. If an individual satisfies any one of the above basic conditions (a) or (b) but does not satisfy the aforesaid two additional conditions, he is said to be 'Not Ordinarily Resident'.

[Sec. 6(6)(a)]

It means that in order to be classified as not ordinarily resident an individual resident has to prove that either he has been resident in India in less than two out of ten previous years preceding the relevant previous year or has been in India for less than 730 days during the seven previous years preceding the relevant previous year.

In other words an individual is said to be "Not Ordinarily Resident" in India in any previous year if :

(i) he has been a non-resident in India in nine out of the ten previous years preceding the year, or (ii) he has during the seven years preceding that year been in India for a period of periods amounting in all to, seven hundred and twenty-nine days or less.

Since the incidence of tax is lesser in the case of a not ordinarily resident as compared to an ordinarily resident it is for the assessee to prove that he does not satisfy at least one of the additional conditions in order to be called Not Ordinarily Resident.

III. Non-resident. If an individual satisfies none of the aforesaid *basic conditions* (a) and (b) stated under the head 'Resident' he is said to be Non-Resident. In this case additional conditions are irrelevant.

Illustration 1

(1) A German individual having remained in India for 15 years left for Germany in March 2013 and came back to India in March 2016. During the previous year 2015-16 he did not remain in India for 182 days or more. Of course, he remained in India for a period amounting in all to more than 365 days during the four years preceding the previous year 2015-16, but he was not in India for 60 days or more during the said previous year; hence, he will be 'non-resident' in the previous year 2015-16.

(2) A German individual having remained in India for 15 years left for Germany in March 2013 and came back to India on 30th September, 2015. He remained in India for more than 182 days during the previous year 2015-16; he was not non-resident in India in nine out of the ten previous years (2005-06 to 2014-15) preceding the previous year 2015-16. Further, he had been in India for a period amounting in all to more than 729 days during the seven previous years preceding the previous year 2015-16. Hence, he is 'ordinarily resident'.

(3) Mr. X, an Indian citizen, serving in a company in London, comes to India every year for five months. He will be non-resident for the previous year 2015-16 because he was not in India for at least 182 days during the previous year. [Exception to Condition (b)]

(4) A Bengali gentleman has been doing business in Dacca (Bangladesh) for the last 15 years and he comes to India every year for seven months. He remained in India for at least 365 days during the four years preceding the relevant previous year and remained in India for at least 182 days during the previous year. Hence, he satisfied the second *basic condition* for becoming a resident. He was resident in India in two out of ten years preceding the relevant previous year and he also remained in India for 730 days during the seven years preceding the relevant previous year. Hence, he is 'ordinarily resident'.

(5) A foreign individual came to India for the first time in June 2011 and left India on 1st July, 2014. He again came back to India in January 2016. He remained in India on 1st January 2015-16 and has been in India for more than 365 days during the four years preceding the previous year satisfies the second *basic condition*. Further, he was in India for more than 729 days during seven years preceding the previous year and he was not non-resident in India in nine out of ten years preceding the relevant previous year he will be 'ordinarily resident' for the previous year 2015-16.

HINDU UNDIVIDED FAMILY, FIRM OR ASSOCIATION OF PERSONS

I. Resident. A Hindu undivided family, firm or association of persons are resident in India in any previous year if the control and management of its affairs is situated wholly or partly in India during the relevant previous year, i.e., if even a part of their control and management is ordinarily resident only when they will be called resident in India. A resident H.U.F. In this context, the clause 'control and management' satisfies both the additional conditions of 'control and management of affairs' mean *de facto* and not merely the right to control and

manage. The place of control and management is the place where the head and seat and directing power are situated. It is not necessary that the control and management must be situated at the place where the business or profession is being carried on. The place of business can be different from the place of its control and management. The control and management of affairs must be situated *wholly* outside India in order to make them non-resident.

II. Not Ordinarily Resident. Firm and Association of persons cannot be 'not ordinarily resident'.

A Hindu Undivided Family is 'not ordinarily resident' in India, if, its *karta* or manager does not satisfy both the following additional conditions :

- He has been resident in India (according to the rules applicable to an individual) in two out of ten years, preceding that previous year, i.e., he fulfilled at least one of the *basic conditions* to become resident for at least two years; and
- He has been in India, during the seven years preceding that previous year, for a period amounting in all to at least 730 days.

In other words, a H.U.F. is ordinarily resident only when its *karta* satisfies both the above conditions. If the *karta* satisfies either only one or none of the above conditions the family becomes not ordinarily resident. [Sec. 6(6)(b)]

Note : Where during the last ten years preceding the previous year the managers or 'Kartas' of H.U.F. had been different from one another, the total period of stay of successive Kartas of the Family should be aggregated to determine the residential status of the Kartas and consequently its H.U.F. (Maramuthu Pillai vs. CIT 13 ITR 186)

III. Non-resident. All the three types of assesses (i.e., H.U.F., Firm or A.O.P.) are 'non-resident' only when the control and management of their affairs is situated wholly outside India. [Sec. 6(3)]

COMPANIES

I. Resident. A company is said to be resident in India in any previous year, if :

- it is an Indian company; or
- during the year, the control and management of its affairs is situated wholly in India. W.e.f. A.Y. 2017-18 point (ii) will be as under :

Its place of effective management, in that year, is in India.
Explanation. 'Place of effective management' means a place where key management and commercial decisions that are necessary for conduct of the business of an entity as a whole are, in substance made.

II. Not Ordinarily Resident. A Company is never 'not ordinarily resident'.

III. Non-resident. If a company does not satisfy both the aforesaid conditions of residence, it is said to be a 'non-resident' company. It means neither the company is an Indian company nor the control and management of its affairs is situated wholly in India. [Sec. 6(4)]

EVERY OTHER PERSON

Every other person (local authority, artificial juridical person, e.g., Idols) is said to be resident in India in any previous year in every case, except where during that year the control and management of its affairs is situated wholly outside India.

It means the residence of 'every other person' is determined in the same manner as of a firm or association of persons.

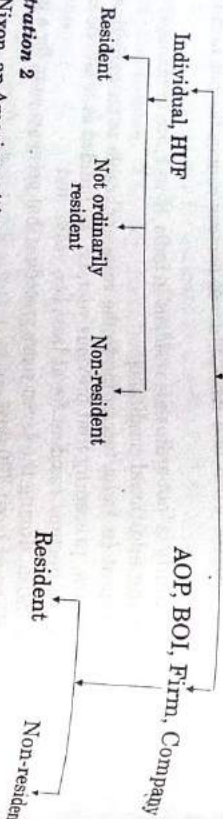
In brief, only an individual and a H.U.F. can be resident, not ordinarily resident or non-resident in India. All other persons can be either resident or non-resident in India.

If a person is resident in India in a previous year relevant to an assessment year in respect of any source of income, he shall be deemed to be resident in India in the previous year relevant to the assessment year in respect of each of his other sources of income. Thus, different residential status for different sources of income for the same assessment year is not possible. [Sec. 6(5)]

It is the duty of the assessee to prove before the Assessing Officer whether he is resident or non-resident.

Importance of determining Residential Status

Since the determination of total income depends upon the residential status of an assessee, there is great importance of determining the residential status for every previous year separately.

Chart Showing Residential Status**Illustration 2**

Nixon, an American citizen, was appointed a Senior Scientific Officer in India on 1st April 2005. On 31st January, 2013 he went to Uganda on deputation for a period of 3 years, but he and his wife and children in India. On 1st May, 2014 he came to India and took with him his family to Uganda on 30th June, 2014. He returned to India and joined his original job on 2nd February year 2016-17.

Solution What would be the residential status of Nixon for income tax purposes for the assessment year 2016-17?

During the previous year 2015-16 he did not fulfil any of the two basic conditions, as he was neither in India, for at least 182 days, nor was in India for at least 60 days during the previous year. Hence, he will be non-resident for this assessment year.

Illustration 3

Shri Om Prakash, an Indian citizen was born in U.K. He came to India, when he was of 12 years age and went outside India for the first time when he was 25 years of age. He left for U.K. in May 2013 and again came back to India in March 2016.

Solution What is his residential status for the Assessment Year 2016-17?

Shri Om Prakash came to India in March 2016. Neither he was in India for at least 182 days nor 60 days during previous year. Hence, he is non-resident in India for the A.Y. 2016-17.

Illustration 4

Shri Ramesh, who was born and brought up in India, went for further studies to U.K. on 1st March, 2014 and came back to India on 1st October, 2015 early in the morning.

Solution Find out his residential status for the Assessment Year 2016-17.

Assessment Year 2016-17 or Previous Year 14.2015 to 31.3.2016. Stay in India during the previous year 2015-16: 31 + 30 + 31 + 31 + 29 + 31 = 183 days. (First basic condition satisfied). Hence, he is resident all during the previous year.

For determining whether he is ordinarily resident, we shall see his status during the preceding 10 years as under:

Previous Year 2014-15—

Previous Year 2013-14—

He was not non-resident in India for 9 out of 10 years preceding the Assessment Year 2016-17.

He has been in India for more than 729 days during the preceding 7 years. Therefore, he is Resident and Ordinarily Resident for the Assessment Year 2016-17.

Illustration 5

Mr. AB a foreign citizen leaves India for the first time in the last 20 years on November 20, 2013.

During the calendar year 2014 he came in India on September 1 and stayed for a period of 30 days. During the calendar year 2015, he did not visit India at all. He came to India on January 16, 2016 and did not leave thereafter. Determine the Residential status of Mr. AB for the Assessment Year 2016-17 if (a) he is an Indian origin, (b) he is not an Indian origin.

Solution

(a) Mr. AB, an Indian origin:

(i) During the last 20 years (upto A.Y. 2014-15) he has been resident in India.

(ii) During the PY 2014-15 (A.Y. 2015-16) he came to India for 30 days. Hence, he is non-resident.

(iii) During the PY 2015-16 (A.Y. 2016-17) he has been in India for 76 days. He was not in India for a visit for at least 182 days, hence, he is non-resident for the A.Y. 2016-17.

(b) Mr. AB, not an Indian origin:

(i) Same as above

(ii) Same as above

(iii) A.Y. 2016-17: During four years preceding the previous year, he was in India for more than 365 days and during previous year he was in India for more than 60 days. Further, he was not non-resident for 9 years out of 10 years preceding the previous year and was in India for more than 729 days during 7 years preceding the previous year. Hence, he is ordinarily resident for the A.Y. 2016-17.

Illustration 6

A Hindu undivided family carries on the business of export of dry fruits from Afghanistan, and for this purpose it has a permanent office there which is controlled by the younger brother of the *karta* of the family who resides there permanently. The *karta* permanently resides in India but sometimes visits his office in Afghanistan for a few days. The policy decisions are taken by the *karta* but in emergency his younger brother can also take decision himself. Day to day affairs are, however, controlled by the younger brother. What will be the residential status of the family?

Solution

As the control and management of the family business is, at least, partially situated in India and as the *karta* permanently resides in India but only sometimes visits Afghanistan for a few days, he becomes resident and ordinarily resident in India. Hence, the family is ordinarily resident in India.

Illustration 7

Determine the residential status of the Company:

X Ltd. is an Indian company carrying on business in India as well as in British East Africa. Its income accruing or arising in British East Africa in the previous year far exceeded its income accruing or arising in India.

Solution

Since X Ltd. is an Indian Company, it is a resident company. It is immaterial whether its foreign income exceeded the Indian income or vice-versa.

Illustration 8

X Ltd. and Y Ltd. are registered in Pakistan and India respectively. All meetings of Board of Directors of X Ltd. were held in India, whereas all Board meetings of Y Ltd. were held in Pakistan during the previous year 2015-16. Determine their residential status for the assessment year 2016-17.

Solution

X Ltd. is registered in Pakistan. Hence, it is a foreign company, but its whole management and control is situated in India. Hence, it is resident in India.

Y Ltd. is registered in India. Hence, it is an Indian company. An Indian company is treated as resident in India, whether its management is situated in India or abroad.

SCOPE OF TOTAL INCOME ON THE BASIS OF RESIDENCE Or INCIDENCE OF TAX

Relationship between residential status and incidence of tax. Incidence of tax on tax-payer depends on his residential status and also on place and time of accrual or receipt of income.

I. Incidence of tax in case of Resident (Ordinary). The total income of any previous year of a person who is a resident includes all income from whatever source derived which : [Section 51]

- is received or deemed to be received in India in such year by or on behalf of such person whether accrued or arisen anywhere; or
- accrues or arises or is deemed to accrue or arise to him in India during such year whether received anywhere; or
- accrues or arises to him outside India during such year.

II. Incidence of tax in case of Not Ordinarily Resident. The total income of any previous year of a person who is 'Not Ordinarily Resident' includes all income from whatever source derived which :

- is received or deemed to be received in India in such year by or on behalf of such person whether accrued or arisen anywhere; or
- accrues or arises or is deemed to accrue or arise to him in India during such year whether received anywhere; or
- accrues or arises to him outside India from a business controlled in or a profession set-up in India.

III. Incidence of tax in case of Non-Resident. The total income of any previous year of a person who is non-resident includes all income from whatever source derived which :

- is received or deemed to be received in India in such year by or on behalf of such person whether accrued or arisen anywhere; or
- accrues or arises or is deemed to accrue or arise to him in India during such year whether received anywhere.

Received—explained :

The term 'received' means the receipt of income on the first occasion. The place of its receipt shall be the place where it is received for the first time and not the place of its receipt on subsequent remittance. Thus, the foreign income of a non-resident is not taxable even if it is deemed to be received—*explained :*

Deemed to be received' means that the income has not been actually received, but it is deemed to be received under the Income Tax Act. Its instances are : (Sec. 7 and Sec. 8)

- The annual accretion to the account of any employee participating in a recognised provident fund is not actually received by the employee but it is deemed to be received during the previous year by him under the law.
- Taxable portion of transferred balance of unrecognised provident fund is deemed to be received during the previous year.
- Dividend is deemed to be received in the year in which it is declared but the interim dividend is deemed to be the income of that previous year in which it is unconditionally made available to the shareholder.
- Tax deducted at source.
- Where an individual has been employed by the Central Government on or after 1.1.2004 or any other employer and the employer has contributed in the previous year, to the interim the employee under a pension scheme, such contribution is deemed to be the income received in the previous year.

Accrue or Arise—explained :

Accrue or arise means right to receive the income as against receipt of income.

'Deemed to Accrue or Arise'—explained :

(Sec. 9)

The words 'deemed to accrue or arise' mean that the income has actually not accrued or arisen in India but it is deemed to accrue or arise in India under the Income Tax Act. Under section 9(1), the following incomes are deemed to accrue or arise in India :

(1) **Income is deemed to accrue or arise in India, if it accrues or arises, directly or indirectly :** [Sec. 9(1)(i)]

- through or from any business connection in India; or
- through or from any property in India; or
- through or from any asset or source of Income in India; or
- through the transfer of a capital asset situated in India.

Explanation : If all the operations of a business are not carried out in India, its income that will be deemed to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India.

(2) **Salary earned in India and received outside India.** [Sec. 9(1)(ii)]

(3) **Salary payable by the government to a citizen of India for service outside India.** [Sec. 9(1)(iii)]

(4) **Dividend paid by an Indian Company outside India.** [Sec. 9(1)(iv)]

(5) **Income by way of interest.** Interest payable by the Indian Government is deemed to accrue or arise in India, whether it is paid on debts incurred or on moneys borrowed in India or outside India. [Sec. 9(1)(v)]

Interest payable by a person who is resident in India or by a non-resident person in respect of any debt incurred, or moneys borrowed and used, for the purposes of a business or profession carried on by such person in India is deemed to accrue or arise in India. But if it is payable in respect of any moneys borrowed or debt incurred for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India, it will not be deemed to accrue or arise in India.

(6) **Income by way of royalty.** Income from royalty shall be deemed to accrue or arise in India, if it is payable by the Indian Government. [Sec. 9(1)(vi)]

Income from royalty payable by a person who is resident in India or by a non-resident person in respect of any right, property or information used or services utilised for the purpose of a business or profession carried on by such person in India or for making or earning any income from any source in India, is deemed to accrue or arise in India. If it is payable in respect of any right, property or information used or services utilised from the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India, it will not be deemed to accrue or arise in India.

(7) **Income by way of fees for technical services.** Income from fees for technical services shall be deemed to accrue or arise in India, if it is payable by the Indian Government. [Sec. 9(1)(vii)]

Income by way of fees for technical services payable by a person who is resident in India or by a person who is non-resident in India in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India, shall be deemed to accrue or arise in India. If it is payable in respect of services utilised in a business or profession carried on by such person outside India or for the purpose of making or earning any income from any source outside India, it will not be deemed to accrue or arise in India.

The income from following shall not be deemed to accrue or arise in India for non-residents:

- Merely purchase of goods in India for export.
- Collection of news and views in India for transmission out of India for business of running a news agency or publishing magazines etc.
- Shooting of a cinematograph film in India.

Tax Incidence in Brief:

The following table highlights the tax incidence in brief:

Incomes	Whether Taxable or Not		
	Resident	Not Ordinarily Resident	Non-Resident
(1) Income received in India whether accrued or arisen in India or outside India.	Yes	Yes	Yes
(2) Income deemed to be received in India whether accrued or arisen in India or outside India.	Yes	Yes	Yes
(3) Income accruing or arising in India whether received in India or outside India.	Yes	Yes	Yes
(4) Income deemed to accrue or arise in India whether received in India or outside India.	Yes	Yes	No
(5) Income received and accrued or arisen outside India from a business controlled in or a profession set-up in India.	Yes	No	No
(6) Income received and accrued or arisen outside India from a business controlled from outside India or a profession set-up outside India.	Yes	No	No
(7) Income received and accrued or arisen outside India from any other source.	No	No	No
(8) Income accrued or arisen and received outside India in earlier years but later on remitted to India during the previous year.	No	No	No

Illustration 9

The following are the incomes of Shri Ram Prasad for the previous year 2015-16:

- Profit from business in Iran received in India ₹ 5,000;
 - Income from house property in Iran received in India ₹ 500;
 - Income from house property in Pakistan deposited in a Bank there ₹ 1,000;
 - Profits of business established in Pakistan deposited in a bank there ₹ 20,000 (out of ₹ 20,000 a sum of ₹ 10,000 is brought into India)—this business is controlled from India;
 - Accrued in India but received in England ₹ 2,000;
 - Profit earned from business in Kanpur ₹ 6,000;
 - Income from agriculture in England—it is all spent on the education of children in London ₹ 5,000; and
 - Past untaxed foreign income brought into India during the previous year ₹ 10,000.
- From the above particulars ascertain the taxable income of Shri Ram Prasad for the previous year 2015-16 if Shri Ram Prasad is (i) a resident, (ii) a not ordinarily resident, and (iii) a non-resident.

Solution

Computation of Taxable Income
(for the Assessment Year 2016-17)

Income accrued and received in India:		Resident	Not Ordinarily Resident	Non-Resident
(f) Profit earned from business in Kanpur	₹	₹	₹	₹
(e) Accrued in India but received outside India:				
(c) Accrued in India but received in England	2,000	2,000	2,000	2,000

Income accrued outside India but received in India:

- Profit from business in Iran received in India 5,000 5,000 5,000
- Income from house property in Iran received in India 500 500 500

Income accrued outside India and not received in India:

- Income from house property in Pakistan deposited in a bank there 1,000 — —
- Profits of business established in Pakistan deposited in a bank there, the business being controlled from India 20,000 20,000 —
- Income from agriculture in England 5,000 — —
- Past untaxed foreign income brought into India during the previous year — — —

Total Income

₹ 39,500 33,500 13,500

Note: Past untaxed foreign income brought into India in the previous year is not taxable as it is not income of the previous year.

Illustration 10

Discuss the assessability of the following items of receipts in the case of resident but not ordinarily resident:

- A sum equivalent to ₹ 40,000 was earned from a business in the U.K. but the profits have been remitted to India. The assessee used to attend the business only when he was in U.K.
- Remuneration of ₹ 20,000 due to him for services rendered in Singapore was credited to his Bank account in Singapore and immediately thereafter remitted to India.
- Remuneration of ₹ 20,000 due to him from an Indian Company carrying on business in Singapore for services rendered in Singapore and the same having been directly deposited by the Indian Company in his bank account in India.

Solution

(a) In the case of a not ordinarily resident foreign income is taxable in India if it is derived from a business controlled from or any profession set-up in India. In this case the income of ₹ 40,000 is not derived from a business controlled from India merely because he attends to the business while in U.K. and hence, this income is not assessable. He has also not received the income in India, as the profits were first received in the U.K., and then remitted to India. Receipt is only when it is received for the first time and not the subsequent remittance of it. Hence, it is not assessable even on receipt basis.

(b) As the remuneration was received in Singapore for services rendered in Singapore and was subsequently remitted to India, it is a case of income that accrued and was received outside India, hence it is not assessable in India.

(c) As this remuneration was for the first time received in India, as it was directly deposited in his bank account in India, it will be assessable on receipt basis.

Illustration 11

Following are the particulars of income of Shri Naresh Sharma for the previous year 2015-16:

- Profit from business in England received in India 12,000
 - Income from house property in Pakistan received in India 2,000
 - Income from house property in Bangladesh deposited in a bank there 4,000
 - Profit from business in Indonesia deposited in a bank there, this business is controlled from India 5,000
 - Income accrued in Bhopal but received in Singapore 6,000
 - Profit from business in India 15,000
 - Past untaxed foreign income brought into India during the previous year 20,000
- From the above particulars, compute the total income of Shri Naresh Sharma for the assessment year 2016-17, if he is (a) Resident, (b) Not Ordinarily Resident, and (c) Non-resident.

EXEMPTIONS FROM TAX

(NON-TAXABLE INCOME)

Exempted income is that income on which income tax is not chargeable. Exempted incomes are not even included in total income.

Exempted incomes can be classified in the following categories :

- (a) For all assessees;
- (b) For employees; and
- (c) For institutions.

(a) For all Assesseees [not covered under (b) or (c)]

(1) **Agricultural Income.** Such income is exempt if agricultural land is situated in India. [Sec. 10(1)]
For details see chapter on 'Agricultural Income'.

(2) **Sums received from H.U.F.** Any sum received by an individual as a member of a Hindu Undivided Family out of income of the family is exempt from tax. [Sec. 10(2)]

(3) **Share of income of a partner from the firm.** A partner of a firm will be exempt from tax on his share of income in the firm, which shall be computed by dividing the taxable profits of the firm in the same proportion as the profit sharing ratio mentioned in the partnership deed. [Sec. 10(2A)]

(4) **Payments under Bhopal Gas Leak Disaster Act, 1985.** Such payments received by a person will be exempt from tax but any payment in this connection for which deduction has already been allowed will not be exempt. [Sec. 10(10BB)]

(5) **Compensation of disaster.** Any amount received or receivable from the Central Government or a State Government or a local authority by an individual or his legal heir by way of compensation on account of any disaster shall be exempt. [Sec. 10(10BC)]

However, such amount to the extent allowed as a deduction under this Act on account of any loss or damage caused by such disaster shall not be exempt.

(6) **Life Insurance Money.** Any sum received under a life insurance policy including bonus shall be exempt. [Sec. 10(10D)]

Exceptions. The amount shall not be exempt in the following cases :

- (i) Amount received under a Keyman insurance policy.
- (ii) Any sum received under an insurance policy issued after 31.3.2003 but before 1.4.2012 in respect of which the premium payable for any of the years during the term of the policy exceeds 20% of the actual capital sum assured.
- (iia) Any sum received under an insurance policy issued after 31.3.2012 in respect of which the premium payable for any of the years during the term of the policy exceeds 10% of the actual capital sum assured.
- (iib) Any sum received under an insurance policy issued after 31.3.2013 in respect of which the premium payable for any of the years during the term of the policy exceeds 15% of the capital sum assured, if the policy is for insurance on life of any person, who is
 - (a) a person with disability or a person with severe disability; or

specified commodity in India, from or through the Rubber Board, Coffee Board, Spices Board or any Board in respect of any other commodity for the following purposes shall be exempt: [Sec. 10(23D)]

- (i) Replantation or replacement of rubber, coffee, cardamom or other plants; or
- (ii) For rejuvenation or consolidation of areas used for cultivation of such commodity.
- (19) *Income of a minor child.* If the income of an individual includes the income of his minor child or minor children (boy or girl whose age is below 18 years) such individual shall be entitled to exemption of actual amount or ₹ 1,500 in respect of each minor child, whichever is less. [Sec. 10(23D)]

(20) *Income from units of Unit Scheme, 1964.* Any income from transfer of a unit of the Unit Scheme, 1964 of the Unit Trust of India, where the transfer takes place on or after 1.4.2002 [Sec. 10(23D)]

The benefit of exemption is available to an investor and not to a person holding units in stock-in-trade of business.

(21) *Dividend Income.* Dividend received by a shareholder from a domestic company shall be exempt. [Sec. 10(34A)]

However, dividend in aggregate in excess of ₹ ten lakh shall be chargeable to tax @ 10% in the case of an individual, HUF or firm resident in India, u.e.f. A. Y. 2017-18]

(22) Any income arising to a shareholder on account of buy back of shares (not being shares listed on a recognised stock exchange) by the domestic company shall be exempt. [Sec. 10(34A)]

(23) Income from units :

- (a) Income received in respect of units of a Mutual Fund specified u/s 10(23D); or
- (b) Income received in respect of units from the Administrator of the specified undertaking.
- (c) Income received in respect of units from the specified company.

However, the income arising from transfer of aforesaid units shall not be exempt.

(24) *Income from Equity Shares.* Any income arising from the transfer of a long-term capital asset, being equity shares of a company (listed in recognised stock exchange in India) purchased after 28.2.2003 and before 1.3.2004 and held for a period of twelve months or more. [Sec. 10(34A)]

(25) *Capital gains on transfer of Agricultural land.* Any capital gain arising on the transfer of agricultural land situated in an urban area shall be exempt subject to the following conditions: [Sec. 10(37)]

- (i) The agricultural land is owned by an individual or a HUF.
- (ii) The agricultural land was, in the two years immediately preceding the date of transfer, being used either by the HUF or individual or his parent for agricultural purposes.
- (iii) The transfer of land is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined by the Central Government or the R.B.I.
- (iv) Such income has arisen from the compensation or consideration (including enhanced compensation or consideration) for such transfer.

(26) *Long-term capital gains on transfer of an equity share or a unit.* If the following conditions are satisfied, the capital gains shall be exempt: [Sec. 10(38)]

- (a) Equity shares in a company or units of an equity oriented fund or unit of a business trust are long-term capital asset.
- (b) Such transaction is chargeable to Securities Transaction Tax. [Sec. 10(38)]

[Nothing contained in (b) shall apply to a transaction undertaken on a recognised stock exchange located in any International Financial Services Centre and the consideration for such transaction is paid or payable in foreign currency, u.e.f. A. Y. 2017-18]

However, long-term capital gain of a company shall be taken into account in computing book-profit u/s 115JB.

Explanation : Equity oriented fund means a fund:

- (i) where more than 65% of the investible funds are invested by way of equity shares in domestic companies, and
- (ii) which has been set-up under a scheme of a Mutual Fund specified u/s 10(23D).

(27) *Income from international sporting event.* Any specified income (notified by the Central Government) arising from any international sporting event held in India shall be exempt if the following conditions are satisfied: [Sec. 10(39)]

- (i) The sporting event is approved by the international body regulating the international sport relating to such event.
- (ii) More than two countries have participated in the sporting event.

(28) *Income of Subsidiary Company.* Any income of any subsidiary company by way of grant or otherwise received from Indian holding company engaged in the business of generation, transmission or distribution of power shall be exempt if: [Sec. 10(40)]

- (i) the receipt of such income is for settlement of dues in connection with reconstruction or revival of an existing business of power generation;
- (ii) the Indian company is formed before 30.11.2005 with majority equity participation by public sector companies and notified by the Central Government before 31.12.2005.

(29) *Specified Income of a Body or Authority.* Any specified income arising to a body or authority which: [Sec. 10(42)]

- (a) has been established or constituted or appointed under a treaty or an agreement entered into by the Central Government with two or more countries or a convention signed by the Central Government;
- (b) is established or constituted or appointed not for the purposes of profit;
- (c) is notified by the Central Government in the Official Gazette for the purposes of this clause.

Explanation. 'Specified income' means the income, of the nature and to the extent, arising to the body or authority which the Central Government may notify in this behalf.

(30) Any amount received by an individual as a loan, either in lump sum or in instalment, in a transaction of reverse mortgage shall be exempt. [Sec. 10(43)]

(31) *Allowance or perquisite paid to the Chairman or member of the Union Public Service Commission :* [Sec. 10(45)]

Any allowance or perquisite paid to the Chairman or a retired Chairman or any other member or retired member of the Union Public Service Commission shall be exempt, provided it is so notified by the Central Government.

(32) *Income from newly established Units in Special Economic Zones.* (Sec. 10AA)

Who is entitled to deduction. An undertaking being the Unit, which fulfils the following conditions :

- (i) It begins to manufacture or produce articles or things or provide any services (including computer, software) after 31.3.2005 but before 1-4-2020 in any Special Economic Zone.
- (ii) It is not formed by splitting up or the reconstruction of a business already in existence.
- (iii) It is not formed by the transfer to a new business of machinery or plant (not exceeding 20% of total value) previously used for any purpose.

Quantum of Deduction : (i) 100% of profits and gains derived from the export of such articles or things or from services for five initial assessment years.

(ii) 50% of such profits and gains for further five assessment years.

(iii) For the next five consecutive assessment years, 50% of such profits and gains or the amount debited to P & L A/c and credited to the 'Special Economic Zone Re-investment Allowance Reserve Account', whichever is less.

Where a deduction has been claimed and allowed in this section in respect of any specified business (see Sec. 35AD) for any assessment year, no deduction shall be allowed under sec. 35AD in relation to such specified business for the same or any other assessment year.

Utilisation of the amount credited to reserve account. The amount credited to the Reserve Account should be utilised :

- (i) for acquiring machinery or plant which is first put to use before the expiry of three years next following the previous year in which the reserve was created; and

(ii) until the acquisition of plant or machinery for the purposes of the business of undertaking.

However, the amount cannot be distributed by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India.

Exceptions regarding period of deduction:

(i) Where the Unit has claimed exemption u/s 10A, it shall be entitled to deduction only the unexpired period.

(ii) Where the Unit had already availed, before the commencement of the Special Economic Zones Act, 2005, the deductions u/s 10A for ten consecutive assessment years, it shall not be entitled to deduction under this section.

Computation of Profits for deduction. Profits derived from the aforesaid business shall be the amount which bears to the profits of the business carried on by the undertaking as the 'export turnover' bears to the total turnover of the business in respect of export by the assessee.

Explanation: (i) 'Export turnover' means the consideration in respect of export by the assessee of the articles or things or services received in, or brought into, India by the assessee.

(ii) 'Export in relation to the Special Economic Zones' means taking goods or providing services out of India from a Special Economic Zone by land, sea, air or by any other mode whether physical or otherwise.

Withdrawal of certain benefits: (i) The unabsorbed depreciation allowance, the unabsorbed capital expenditure on scientific research, the unabsorbed capital expenditure on family planning relating to the relevant assessment years ending before 1.4.2006 will not be carried forward and set-off.

(ii) Unabsorbed business losses or loss under the head 'capital gains' relating to the relevant assessment year ending before 1.4.2006 will not be carried forward and set-off.

(iii) No deduction shall be allowed u/s 80-IA or section 80-IB in relation to such profits.

Set-off of loss. Business loss or loss under the head 'capital gains' relating to the business of the Unit shall be allowed to be carried forward or set-off.

Deduction in case of amalgamation or demerger. Where a Unit which is entitled to deduction is transferred before the expiry of the period specified in this section to another Unit in a scheme of amalgamation or demerger:

(a) No deduction shall be allowed to the amalgamating or the demerged Unit being a company for the previous year in which the amalgamation or the demerger takes place.

(b) The deduction shall be allowed to the other Unit for the unexpired period.

IMPORTANT EXEMPTED INCOMES: AT A GLANCE ✓

Exempted Income	Exemption Limit
1. Agricultural Income—if land is situated in India	Exempt
2. Receipt from H. U. F.	Exempt
3. Share of income of a partner from the firm	Exempt
4. Interest on 7% Capital Investment Bonds, 8% Relief Bonds, 2002; 6.5% Savings Bonds, 2003; Post office Savings Bank Account, etc.	Exempt
5. Scholarship	Exempt
6. Approved awards	Exempt
7. Income of a minor child, which has been included in the income of parent	Exempt upto ₹ 1,500 for each minor child
8. Dividend from units of Unit Scheme, 1964	Exempt
9. Capital gains on transfer of agricultural land	Exempt
10. LTCG on transfer of equity shares or units of an equity oriented fund	Exempt
11. LTCG on transfer of equity shares or units of an equity oriented fund	Exempt
12. Payment from Sukanya Samridhi Account	Exempt

(b) For Employees

(1) **Leave Travel Concession to an Employee.** See the chapter on Salaries, sub-head 'Tax-free Perquisites'. [Sec. 10(5)]

(2) **Allowances or Perquisites outside India.** See the chapter on 'Salaries', sub-heads 'Allowances' and 'Tax-free Perquisites'. [Sec. 10(7)]

(3) **Death-cum-retirement Gratuity.** See the chapter on 'Salaries', sub-head 'Different Forms of Salary'. [Sec. 10(10)]

(4) **Commutation of Pension.** See the chapter on 'Salaries', sub-head 'Different Forms of Salary'. [Sec. 10(10A)]

(5) **Leave Salary or Encashment of Earned Leave.** See the chapter on 'Salaries', sub-head 'Different Forms of Salary'. [Sec. 10(10AA)]

(6) **Compensation on Retrenchment.** See the chapter on 'Salaries', sub-head 'Different Forms of Salary'. [Sec. 10(10B)]

(7) **Compensation on Voluntary Retirement.** See the chapter on 'Salaries', sub-head 'Different Forms of Salary'. [Sec. 10(10C)]

(8) **Tax Paid by Employer on the Value of Perquisites.** See the chapter on 'Salaries'. [Sec. 10(10CC)]

(9) **Payment from Statutory Provident Fund.** See the chapter on 'Salaries', sub-head 'Payments Received from Funds'. [Sec. 10(11)]

(10) **Payment from Recognised Provident Fund.** See the chapter on 'Salaries', sub-head 'Payments Received from Funds'. [Sec. 10(12)]

(11) **Payment from Approved Superannuation Fund.** See the chapter on 'Salaries', sub-head 'Payments Received from Funds'. [Sec. 10(13)]

(12) **House Rent Allowance.** See the chapter on 'Salaries', sub-head 'Allowances'. [Sec. 10(13A)]

(13) **Special Allowances for meeting certain expenditure.** See the chapter on 'Salaries', sub-head 'Allowances'. [Sec. 10(14)]

(c) For Institutions

(1) **Income of a Local Authority.** Following incomes of a local authority are exempt: [Sec. 10(20)]

(i) Income from House Property, or

(ii) 'Capital Gains', or

(iii) Income from Other Sources, or

(iv) From services or a business carried on by it within its own jurisdiction, or

(v) From the supply of water or electricity outside its jurisdiction.

Explanation. 'Local authority' shall mean: (i) Panchayat; or (ii) Municipality; or (iii) Municipal Committee and District Board, legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund; or (iv) Cantonment Board.

(2) **Income of Research Association.** Any income of a research association approved under section 35(1)(ii) or under section 35(1)(iii) is fully exempt. [Sec. 10(21)]

Exemption shall be available to a research association which undertakes scientific research or research in social science or statistical research, provided such research association is approved and notified u/s 35(1)(ii) or 35(1)(iii).

(3) **Income of News Agency.** The income of a notified news agency set-up in India solely for collection and distribution of news, shall be exempt if the following conditions are satisfied:

(i) The news agency applies its income or accumulates it for application solely for collection and distribution of news. [Sec. 10(22B)]

(ii) It does not distribute its income in any manner to its members.

(4) *Income of Professional Institutes.* Any income (other than income from House Property) received for rendering any specific services or income by way of interest or dividend or income received for rendering an association or institution established in India with the object derived from its investments) of an encouragement of the profession of law, medicine, accountancy, control, supervision, regulation or encouragement of the Central Government may notify in engineering, architecture or such other profession as the Central Government may notify in time to time in Official Gazette.

This income is exempt only when the following conditions are satisfied :

- (i) The association or institution applies its income or accumulates it for application, solely for its objects; and
- (ii) The association or institution is approved for the purpose of this clause by the Central Government.

(5) *Income of Regimental Fund or Non-Public Fund.* The income derived by any Regimental Fund or Non-Public Fund established by the armed forces of the Union for the welfare of the past and present members and their dependants is fully exempt. [Sec. 10(23A)]

(6) *Income of a Fund for Welfare of Employees or their Dependants.* Income of a notified fund established for the welfare of employees or their dependants, if such employees are all members of this fund, shall be exempt. [Sec. 10(23A)]

(7) *Income of Pension Fund set-up by L.I.C. of India or other Insurer.* The income is exempt provided the fund is set-up by : [Sec. 10(23A)]

- (i) the Life Insurance Corporation of India on or after 1st August, 1996, under a pension scheme; or
- (ii) any other insurer under a pension scheme to which contribution is made by any person for receiving pension from such fund and which is approved by the Controller of Insurance/the Insurance Regulatory and Development Authority.

(8) *Income of Khadi and Village Industries.* The income of an institution established as a trust or society for the purpose of development of Khadi and Village Industries (not for profit from the production, sale or marketing of Khadi or products of Village Industries is fully exempt. [Sec. 10(23B)]

(9) *Income of Khadi and Village Industries Board.* The income of Khadi and Village Industries Boards established in a State by or under a State or Provincial Act for the development of Khadi or Village Industries in the State is fully exempt. [Sec. 10(23B)]

(10) *Income of a statutory authority for the administration of Public Religious or Charitable Trusts.* The income of any body or authority established under any Act for the administration of any public religious or charitable trusts or endowments (including madrasas, temples, gurdwaras, wakfs, churches or other places of public religious ownership or societies for religious or charitable purpose) is fully exempt. It is very clear in this provision that exemption will not apply to the income of any such trust, endowment or society. [Sec. 10(23B)]

(11) *Income of European Economic Community.* Any income of the European Economic Community derived in India by way of interest, dividends or capital gains from investments made out of its funds under a notified scheme is exempt. [Sec. 10(23BB)]

(12) *Income of SAARC Fund.* Any income of the South Asian Association for Regional Co-operation Fund for Regional Projects set-up by the Colombo Plan Declaration for Regional exempt. [Sec. 10(23BB)]

(13) Any income of the Insurance Regulatory and Development Authority shall be exempt. [Sec. 10(23BB)]

(14) Any income of the Central Electricity Regulatory Commission shall be exempt. [Sec. 10(23BB)]

[Sec. 10(23BB)]

(14A) Any income of the Prasar Bharati (Broadcasting Corporation of India) shall be exempt. [Sec. 10(23BBH)]

(15) *Income of Specified Charitable Funds.* The income of the following funds or trusts is fully exempt : [Sec. 10(23C)]

- (i) The Prime Minister's National Relief Fund;
- (ii) The Prime Minister's Fund (Promotion of Folk Art);
- (iii) The Prime Minister's Aid to Student Funds;
- (iv) The National Foundation for Communal Harmony;
- (iva) Swachh Bharat Kosh;
- (ivb) Clean Ganga Fund;
- (v) Any university or other educational institution existing solely for educational purposes and not for purposes of profit :

(a) which is wholly or substantially financed by the Government; or

(b) the aggregate annual receipts of such university or educational institution do not exceed one crore rupees; or

(c) which may be approved by the CBDT;

(vi) Any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit :

(a) which is wholly or substantially financed by the Government; or

(b) the aggregate annual receipts of such hospital or institution do not exceed one crore rupees; or

(c) which may be approved by the CBDT;

(vii) Any other Fund or Institution established for charitable purpose and approved by the prescribed authority;

(viii) Any trust or institution established wholly for public religious purpose or public religious and charitable purpose which is approved by the prescribed authority.

However, any anonymous donation shall be included in the total income.

Accumulation of Income. A trust, institution, university, other educational institution, hospital or other medical institution can accumulate its income for the objects for which it is established.

Where more than 15% of income is accumulated the period of accumulation of amount exceeding 15% of its income shall not exceed five years.

(16) *Income of Mutual Fund.* Any income of a notified Mutual Fund set-up by a public sector bank or a public financial institution or authorised by the SEBI or the Reserve Bank of India, is fully exempt. [Sec. 10(23D)]

(17) Any income of a securitisation trust from the activity of securitisation shall be exempt. [Sec. 10(23DA)]

(18) *Income of Investor Protection Fund from recognised stock exchanges* [Sec. 10(23EA)]

The following income of such Fund set-up by recognised stock exchanges in India, either jointly or separately, is exempt :

The income by way of contributions received from recognised stock exchanges and the members thereof.

Where any amount standing to the credit of the Fund and not charged to income tax during any previous year is shared, either wholly or in part, with a recognised stock exchange, the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income tax.

(19) *Income of Investor Protection Fund from commodity exchanges*. Any income, by way of contributions received from commodity exchanges in India, either jointly or separately, of such Investor Protection Fund set-up by the commodity exchanges and the members thereof, of such Investor Protection Fund may not be chargeable to income tax.

Where, any amount standing to the credit of the Fund and not charged to income tax under this clause, any amount shared, either wholly or in part, with a commodity exchange, the amount so shared shall be deemed to be the income of the previous year in which such amount was shared, and shall accordingly be chargeable to income tax.

(20) Any income by way of contributions received from a depository, of such Investor Protection Fund set up by a depository shall be exempt.

Where any amount in the Fund and not charged to income tax during any previous year is shared (Wholly or partly) with a depository, the amount so shared shall be deemed to be the income of the previous year in which the amount so shared and chargeable to income tax.

The following new clauses are inserted in Sec. 10 *u.e.f.* A.Y. 2016-17:

(A) Any specified income of Core Settlement Guarantee Fund, set-up by a recognised clearing corporation, shall be exempt.

[Sec. 10(22A)]

(B) Any income of an investment fund (other than the income chargeable under the head "Profits and gains of business or profession") shall not be included in the total income of such fund.

[Sec. 10(22B)]

(C) Any income of a person accruing or arising to, or received by, a unit holder of an investment fund, being that proportion of income which is of the nature as income chargeable under the head "Profits and gains of business or profession" shall not be included in total income of such person.

[Sec. 10(22C)]

(D) Any income of a business trust, being a real estate investment trust, by way of rent or leasing or letting out any real estate asset owned directly by such business trust shall not be included in total income.

[Sec. 10(22D)]

(21) *Income of Venture Capital Fund or Venture Capital Company*. Any income of a venture capital company or venture capital fund from investment in a venture capital undertaking shall be exempt.

[Sec. 10(22E)]

(21A) *Income of Business Trust*. Income of a Business Trust by way of (i) interest received or receivable from a special purpose vehicle for (ii) dividend from a specified company (1150(7), *u.e.f.* A.Y. 2017-18).

"Special purpose vehicle" means an Indian Company in which the business trust holds specific percentage of shareholding or interest as may be required by the regulations under which such trust is granted registration.

"Business trust" means a trust registered as:

[Sec. 10(23F)]

(i) an Infrastructure Investment Trust, or
(ii) a Real Estate Investment Trust, or
recognised stock exchange in India.

[Sec. 10(23G)]

(22) *Income of Registered Trade Unions*. Any income chargeable under the head "Income from House Property" and "Income from Other Sources" of (i) a registered trade union, and (ii) an association of registered trade unions, would be exempt.

[Sec. 10(24)]

(23) *Income of Provident Funds, etc.* The following incomes are fully exempt under this clause:

[Sec. 10(25)]

(i) Interest on securities held by a Statutory Provident Fund and Capital Gains arising from the sale of such securities; or
(ii) The income received by the trustees on behalf of a Recognised Provident Fund or an Approved Superannuation Fund or an Approved Gratuity Fund; or

(iii) The income received by the Board of Trustees constituted under the Coal Mines Provident Fund Act, 1948; or
(iv) Income received by the trustees under the Employees' Provident Fund Act, 1952, on behalf of the Deposit-linked Insurance Fund.

(24) *Income of the Employees' State Insurance Fund* is exempt.

[Sec. 10(25A)]

(25) *Income of a body for promoting interest of Scheduled Castes or Scheduled Tribes*. The income of a corporation established by a Central, State or Provincial Act or any other body, institution or association wholly financed by government, which is formed for promoting the interests of the members of the Scheduled Castes or the Scheduled Tribes or backward classes, is fully exempt.

[Sec. 10(26B)]

(26) *Income of Corporation set-up for the benefit of Minority Community*. Any income of a corporation set-up by the Central Government or any State Government for promoting the interest of the members of a minority community, shall be exempt.

[Sec. 10(26BB)]

Minority communities are (i) Muslims, (ii) Christians, (iii) Sikhs, (iv) Buddhists and (v) Parsis.

[Notification No. 613(E) dated 5.7.1995]

(27) *Income of a Corporation*. Any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen being the citizens of India, shall be exempt.

[Sec. 10(26BBB)]

(28) *Income of a Co-operative Society formed for Promoting the Interests of Scheduled Castes or Scheduled Tribes*. The income of a co-operative society formed for promoting the interests of Scheduled Castes or Scheduled Tribes is fully exempt.

[Sec. 10(27)]

(29) *Income of Board, etc.* Any income accruing or arising to the following shall be exempt:

[Sec. 10(29A)]

(a) The Coffee Board; (b) The Rubber Board; (c) The Tea Board; (d) The Tobacco Board; (e) The Marine Products Export Development Authority; (f) The Agricultural and Processed Food Products Export Development Authority; (g) The Spices Board; (h) The Coir Board.

(30) Any Income by way of distributed income received before 1-6-2016 from a securitisation trust by an investor of the said trust shall be exempt.

[Sec. 10(35A)]

(31) *Income of New Pension System Trust*. Any income received by any person for, or on behalf of, the New Pension System Trust, shall be exempt.

[Sec. 10(44)]

(32) *Income of a body or authority or Board or Trust or Commission*:

[Sec. 10(46)]

Specified income of the above mentioned person shall be exempt, if:

(a) It has been established or constituted by or under a Central, State or Provincial Act or constituted by the Central Government or State Government, with the object of regulating or administering any activity for the benefit of the general public.

(b) It is not engaged in any commercial activity.

(c) It is notified by the Central Government for the purpose of this clause.

"Specified income" means the income of the nature and to the extent arising to it, as notified by the Central Government.

(33) *Income of Infrastructure Debt Fund*:

[Sec. 10(47)]

Any income of Infrastructure Debt Fund shall be exempt provided it is set up in accordance with the prescribed guidelines notified by the Central Government.

(34) *Income received in India in Indian currency*:

[Sec. 10(48)]

Any income received in India in Indian currency by a foreign company on account of sale of crude oil or any other goods or rendering of services, as may be notified by the central Government, to any person in India shall be exempt if the following conditions are satisfied.

(i) Receipt of such income in India by the foreign company is pursuant to an agreement or an arrangement entered into by the Central Government or approved by the Central Government.

(ii) Having regard to the national interest, the agreement or arrangement is notified by the Central Government.

(iii) The foreign company is not engaged in any activity other than receipt of such income in India.

(35) **Income of a Political Party.** Income of a political party which is chargeable under head 'Income from House Property' or 'Income from Other Sources' or any income by way of voluntary contributions received by a political party; provided that :

(a) such political party keeps and maintains such books of account and other documents in the total income of the previous year of such political party; provided that :

(b) as would enable the Assessing Officer to properly deduce its income; and the name and address of the person who has made such contribution; and

(c) the accounts of such political party are audited by a Chartered Accountant. If the treasurer of such political party/authorised person fails to submit a report to the Election Commission regarding donations received in excess of ₹ 20,000, before the due date of filing the return of income (u/s 139), exemption shall not be available for such financial year.

(36) **Income of Electoral Trust.** Any voluntary contributions received by an electoral trust shall not be included in the total income of the previous year of the trust, if :

(i) it distributes to any registered political party during the previous year, 95% of its aggregate donations received by it during the previous year along with the surplus brought forward from any earlier previous year; and

(ii) it functions in accordance with the rules made by the Central Government.

SUMMARY

Fully Exempted Incomes at a Glance
(Excluding exempted incomes in relation to salaries)

Items	Who is entitled to relief	Notes/Conditions
(a) For All Assessee's not covered under (b) or (c) :	All Assessee's.	
1. Agricultural Income.		If the taxable income is more than the minimum taxable limit and the agricultural income is more than ₹ 500, agricultural income shall be included in determining the amount of tax payable on the taxable income.
2. Share of income from Hindu Undivided Family.	An individual who is member of the Hindu Undivided Family.	—
3. Share of income of a partner from his firm.	Partners.	Share of income shall be computed by dividing the taxable profits of the firm in the agreed ratio of profits. Provided any deduction has not already been allowed in this connection.
4. Payment under Bhopal Gas Leak Disaster Act.	An individual.	—
5. Compensation on disaster.	Individual.	—
6. Life Insurance Policy Money.	All assessee's.	—
6A. Payment from Sukanya Samriddhi Account.	Individual.	—
7. Interest income u/s 10(15).	—	—
8. Educational Scholarships.	An individual.	—
9. Allowances to M.P.s, M.L.As. : (a) Daily Allowances	Members of Parliament or Legislature.	Scholarship should be for meeting educational expenses.

(b) Other Allowances	Members of Parliament, Members of Legislature.	—
(c) Constituency Allowance	—	—
10. Awards made by the Government in public interest.	All assessee's.	—
11. Pension of gallantry awardee	Individual	—
12. Family pension	Widow or heirs of a member of armed forces	Member of armed forces died in the course of operational duties.
13. Annual Value of one palace of Rulers of Indian States.	An individual.	If any part of the palace is let out, its annual value will not be exempt.
14. Income of Scheduled Tribes.	An individual.	Provided that : (i) he resides in Tribal area or Nagaland, Manipur, Tripura, Arunachal Pradesh or Mizoram or Sikkim or Laddakh region of J & K. (ii) the income arises from any source in tribal area or places stated above or by way of dividend or interest on securities.
15. Income of Sikkimese	An individual.	—
16. Income of Agricultural Produce Market Committee	—	—
17. Subsidy from Tea Board for replantation or replacement of tea bushes or for rejuvenation of area under tea cultivation.	All assessee's who are growing and manufacturing tea.	The company will have to submit the certificate received from the Tea Board regarding the amount of subsidy along with its Return of Income.
18. Subsidy received by planters, for replantation or replacement of rubber, coffee, cardamom, etc., or for rejuvenation of area under cultivation of such commodities.	All assessee's who are growing and manufacturing rubber, coffee, cardamom in India.	—Do—
19. Income of his minor child included in the income of the assessee.	Individual assessee.	Exempt upto the actual amount so included or ₹ 1,500 in respect of each minor child.
20. Income from units of Unit Scheme, 1964.	—	—
21. Dividend from domestic company.	—	—
22. Income of a shareholder on account of buy back of shares	—	—
23. Income from units.	—	—
24. Income from transfer of eligible equity shares.	—	—
25. Income from transfer of agricultural land.	Individual or HUF.	Consideration received after 31.3.2004.
26. LTCG from transfer of shares or units of equity oriented fund or unit of a business trust.	All assessee's.	Securities transaction tax paid on such transactions.
27. Income from international sporting event.	—	Event held in India.
28. Income of subsidiary company.	—	Grant etc. received from Indian holding company.
29. Specified income of a Body or Authority	—	—
30. Loan received under reverse mortgage	Individual	—
31. Allowance or perquisite received by the Chairman or Member of the UPSC	—	—
32. Income from newly established unit in Special Economic Zone	Unit	Exempt for fifteen consecutive years.

(b) For employee—See chapter on Salaries.

(c) For Institutions :

	Local Authority	Income from House Property, Gains, Other Sources, Income from any other source, or income from any other source.
1. Certain incomes of Local Authority		Provided that (i) the Association has its entire income for the objects of the Association; (ii) The Association has funds only in investments described in 11(5) with certain exceptions.
2. Income of Research Association.	Scientific Research, Research in Social Science, Statistical Research.	Provided that : (i) it applies its income solely for collection or distribution of news; (ii) it does not distribute its income to its members.
3. Income of News Agency.	News Agency.	Provided that, it applies the whole of its income or accumulates it for application solely for its objects,
4. Income of Professional Institutes.	Any institution having its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture, etc.	
5. Income of Regimental Fund or Non-Public Fund established by the armed forces for the welfare of their past and present members on their dependents.	Regimental Fund or Non-Public Fund.	—
6. Income of a Fund for welfare of employees or their dependents.	Fund.	Fund is approved by the Commission and is used for its objects only.
7. Income of Pension Fund set-up by L.I.C. of India.	Pension Fund of L.I.C.	—
8. Income of Khadi and Village Industries.	Public charitable trust or registered society which is engaged in the development of Khadi & Village Industries.	Provided that : (i) it applies its income for application for the development of Khadi & Village Industries; (ii) it should be approved by the Khadi & Village Industries Commission.
9. Income of Khadi and Village Industries Board established under a State Act.	Statutory Khadi and Village Industries Board.	—
10. Income of a statutory authority for the administration of public religious or charitable trust.	Statutory Body or Authority.	—
11. Income of European Economic Community.	—	Income from interest, dividends or capital gains from investments made out of its funds.
12. Income of SAARC.	SAARC	—
13. Income of Insurance Regulatory and Development Authority.	—	—
14. Income of the Central Electricity Regulatory Commission.	—	—
14A. Income of Prasar Bharati (Broadcasting Corporation of India)	—	—

EXEMPTIONS FROM TAX

	Concerted Authority.	Responsible Authority.	Specified funds are : (i) Following funds of the Prime Minister : (a) National Relief Fund, (b) Fund for Promotion of Folk Art, (c) Aid to Students Fund, (d) National Foundation for Communal Harmony; (ii) Fund established for charitable purpose and Specified Funds are : (a) Fund notified by the Central Govt.; (b) Public Religious and/or Charitable Trust notified by the Central Government.
15. Income of Specified Charitable Funds.			Its object should not be to earn profit.
16. Income of Mutual Fund.	Hospital.	Mutual Fund established by any public sector bank, public financial institution, or authorised by the Securities and Exchange Board of India or the RBI.	Its object should not be to earn profit. Should be notified by the Central Government.
17. Income of securitisation trust.	—	—	—
18. Income of Investor Protection Fund from recognised stock exchanges.	—	—	Contribution by Recognised Stock Exchanges.
19. Income of Investor Protection Fund from commodity exchanges.	—	—	Contribution by Commodity Exchanges.
20. Contribution received from a depository	—	—	—
21. Income of venture capital fund or venture capital company	Venture Capital Fund or Company.	Income from investment in a venture capital undertaking.	—
21A. Income of Business Trust	Real Estate Investment Trust and Infrastructure Investment Trust	Interest income from a special purpose vehicle.	—
22. Income of Registered Trade Unions and Association of Trade Unions from House Property and Other Sources.	Registered Trade Unions and Association of Trade Unions.	—	—
23. Income from interest on securities and profit on sale of securities held by the trustees of provident funds, approved superannuation fund, gratuity fund, etc.	Trusts of funds for retirement benefits.	—	—
24. Income of Employees' State Insurance Fund	ESI Co.	—	—
25. Income of body for promoting interest of Scheduled Castes/Scheduled Tribes.	Statutory Corporation or any other body or institution wholly financed by the government.	—	—
26. Income of Corporation for benefit of Minority Community.	Corporation.	—	—
27. Income of a Corporation.	—	—	—
28. Income of Co-operative Society formed for promoting interest of Scheduled Castes/Scheduled Tribes.	Co-operative Society.	Members of the Society should be only other Co-operative Societies formed for similar purpose and the Society should be financed by the government.	—
29. Income of Certain Boards.	—	—	—
30. Income received from a securitisation trust	—	—	—
31. Income of New Pension System Trust, —	—	—	—

(1) **Salaries.** Every kind of remuneration of this term used in the Income Tax Act, there is no distinction between the wages of labourer and salaries of high officials.

(2) *Foreign Salary and Pension.* It is very essential for a payment to fall under the head 'Salaries' and employee. It is very essential for a payment to fall under the head 'Salaries'.

(3) *Relationship of employer and employee.* It is the relationship of employer and employee that the head 'salaries' that the relationship of employer and employee must exist between the employer and the employee.

Every servant is an employee but all employees are not servants. For example, a director of a company holds an office under the company but as a director he is not a servant or an employee of the company and therefore the fees he receives are taxable under the head 'Income from Other Sources' and not under the head 'Salaries'.

Similarly, whether the remuneration paid to selling agents is assessable as business profits or as salary, depends upon the facts and circumstances of each case. The remuneration paid by a mill in their discretion to the selling agents for running and managing a retail cloth shop which was owned by the mill and profit from which belonged to the mill, was held to be assessable as salary but on the other hand, the profits derived from the selling agency of a manufacturing concern are taxable as business profits, if they are not subject to the control of the mill in the matter of the establishment and organization to be maintained by them.

If an employee does any work for his employer which is not connected with his service, the remuneration for such a work will not be treated as salary. For example, examining the remuneration received by a University teacher from his University.

(4) **Salaries and professional income.** Where the employment is merely incidental to the exercise of a profession the income from such employment would be professional income, taxable under the head 'Profit and gains of business or profession'. For instance, a professional lawyer may be engaged in a case, his remuneration from this engagement will be taxable as professional earnings. If he is employed by a company as its legal adviser and also to work as standing counsel for the company, the remuneration received by him would be taxable under the head 'Salaries'. When a person occupies a regular post or office amounting to service, it is an employment distinct from mere engagement in the course of the profession.

(5) **Receipts from person other than employer.** Where the employee receives any sum from a person other than his employer, it is taxable as income from other sources.

received from person other than the employer would be taxable under the head 'Income from Other Sources' even if they accrue to the employee by reason of his employment. For example remuneration received by a professor of a college for acting as an external member of the Board.

(6) *Payment made after cessation of employment.* Payment made by an employer to his employee after the cessation of his employment is also taxable under the head 'Salaries'. It is taxable under this head because it represents remuneration for services rendered in the past. (7) *Payments made to employee or to the widow or legal heirs.* (a) Lump-sum payment made gratuitously or by way of compensation or otherwise to the widow or other legal heirs of an employee, who dies while still in active service, will not be taxable as income.

(Circular No. 573, dated 21-8-1991)

(b) Where a person or his heir receives *exgratia* payment from the Central Government/State Government/Local Authority/Public Sector Undertaking, consequent upon injury to the person/death of family member, while on duty is not liable to income tax.

(8) *Pension*. Pension received by an employee after his retirement is taxable as salary;

(9) *Application of salary—Voluntary foregoing.* The voluntary foregoing by an employee of the salary due to him is normally mere application of the income and the salary is nonetheless taxable. It will be taxable on the further ground that salary is taxable if it is due, whether paid or not. But where in reality there is an agreement not to pay any salary, the apparent foregoing of a fictional salary would not attract tax. For example, where a person out of missionary spirit agrees to work as Principal in an institution without accepting any salary from the institution, no amount of salary would be taxable in this case, because it has never become due.

(10) *Tax-free salary.* When a salary is paid tax-free, the employee has to include in his total income the gross salary, i.e. the aggregate of the net salary received *plus* the amount of tax paid on his behalf by the employer, except under the provisions of Sec. 10(10CC).

(11) *Deductions by employer.* Compulsory deductions from salary are also instances of mere application of income. The fact that a portion of the salary has to be devoted compulsorily to some purpose under a contractual obligation does not prevent it from being assessable as income under the head 'Salary', for it is only a case of application of income. For example, an assessee was engaged on fixed salary upon the obligatory condition that the employer should provide him with board and lodging etc., for which he should pay an amount which was deducted from his gross salary before payment. In this case, the tax is chargeable on the gross salary without deducting the compulsory deductions made by the employer.

(12) *Salary of a Member of Parliament.* This is not chargeable under the head 'Salaries', as a Member of Parliament is not an employee of the Government. The relation between him and the government is not that of a servant and master. It is taxable under the head 'Income from Other Sources'.

(13) *Salary of a Partner.* Any salary received by a partner from the firm in which he is a partner is not chargeable under the head 'Salaries'. It is taxable under the head 'Profits and Gains of Business or Profession'.

(14) *Family Pension.* Any family pension received by the widow or legal heirs of a deceased employee is taxable under the head 'Income from Other Sources'.

(15) *Salary grade or Scale of Pay.* Salary grade means that at what starting salary any employee is to be appointed and during the entire service period (if there is no revision of grade or no promotion), what will be his increment per year and what will be his maximum salary after which there will be no increment. Here salary means basic salary. For example, if a person is appointed in the grade ₹ 2,200-100-3,000-200-5,000-300-8,000, it means that his starting salary will be ₹ 2,200 p.m. after one year of service he will get an increment of ₹ 100 p.m. i.e., his salary will become ₹ 2,300 p.m., and similarly he will get an annual increment of ₹ 100 p.m. till his salary reaches ₹ 3,000 p.m. Thereafter, he will get an annual increment of ₹ 200 p.m. till the salary becomes ₹ 5,000 and thereafter he will get an annual increment of ₹ 300 p.m. till his salary reaches the maximum amount of ₹ 8,000 in this grade. After this there will be no increment and he will continue to draw ₹ 8,000 p.m. This will be his maximum salary. This is called salary grade.

(16) *Due date of Salary.* Following are the general rules regarding this :

(a) *In the case of employees of the government and semi-government.* Salary for a particular month is due on the first of the next month. Thus, in such a case, salary for the month of March of the preceding financial year upto the salary for the month of February of the current financial year is taken into account.

(b) *In the case of employees of banks and non-government bodies.* Salary for a particular month is due on the last date of the same month. Thus, in such a case salary for April of the current financial year upto the salary for the month of March of the current financial year is taken into account.

Definitions

Under section 17 of the Act the following have been defined :

(1) Salary, (2) Perquisites and (3) Profits in lieu of salary.

[Sec. 10]

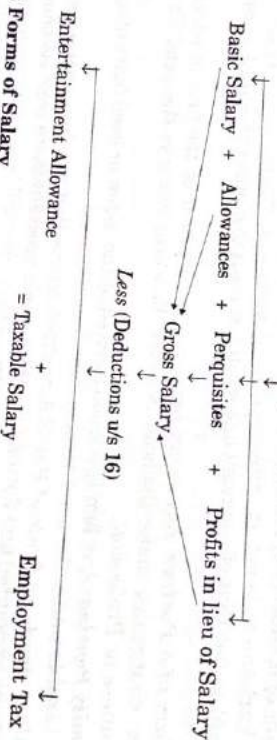
Salary includes :

- wages;
- any annuity or pension;
- any gratuity;
- any fees, commission, perquisites or profit in lieu of or in addition to any salary wages;
- any advance of salary, but not loan for purchasing a car, cycle, scooter or a house, or
- any payment received by an employee in respect of any period of leave not availed by him;

[Note: Encashment of earned leave at the time of retirement whether on superannuation or otherwise, exempt subject to the provisions of Sec. 10(10AA)]

- the annual accretion to the balance at the credit of any employee participating in recognised provident fund i.e., employer's contribution in excess of 12% of the employee's salary and interest on provident fund in excess of 9.5% (w.e.f. A.Y. 2002-03) rate;
- taxable portion of the transferred balance;
- the contribution made by the Government or other employer, in the previous year, to the account of an employee, under a pension scheme notified by the Central Government.

Computation of Taxable Salary can be illustrated with the help of the following chart.



Different Forms of Salary

Different forms of salary are: Leave salary, compensation for retrenchment, fees and commission, bonus, death-cum-retirement gratuity, commutation of pension, receipts by employees of public sector and other companies at the time of voluntary retirement, annuity, salary and pension from UNO and other foreign pension.

(1) **Leave Salary.** It is also called encashment of earned leave. If an employee does not avail his earned leave and receives payment in respect of any period of leave, while he continues to remain in service, it is taxable in full.

If he encashes it after retirement or leaving the job, it is exempt upto a specified limit. (See next Chapter).

(2) **Death-cum-retirement Gratuity :** [Section 10(10AA)]

(a) In the case of Government Employees : Any death-cum-retirement gratuity received by all categories of Government employees or employees of a local authority is exempt from income tax in full.

(b) In the case of non-government employees. It is exempt upto a specified limit. (See next Chapter)

(3) **Pension :** (i) Whatever pension is received by an employee (Government or non-government) after retirement, it is chargeable under the head "Salaries". [Sec. 10(10)]

(ii) **Other foreign pension.** If pension is received in India by persons living in India for services rendered abroad it will be taxable on receipt basis. If it is received outside India and then remitted to India it will be taxable in the case of ordinarily residents only.

(iii) **Salary and Pension from U.N.O.** Salary and pension received from the United Nations Organization is totally exempt in India.

(iv) **Pension of gallantry award.** Pension received by an individual who has been in service of the Central or State Government and has been awarded 'Param Vir Chakra' or 'Mahavir Chakra' or 'Vir Chakra' or such other gallantry award as the Central Government may notify shall be exempt. [Sec. 10(18)]

Commutated Value of Pension. It is exempt upto a specified limit. (See next Chapter)

(4) **Transferred Balance.** When an unrecognised provident fund is recognised for the first time, the balance standing to the credit of employee's P.F. A/c at the time of its recognition, is called 'Transferred Balance'.

Taxable portion of the transferred balance. The taxable portion of the transferred balance of the employee will be the aggregate of annual accretions chargeable to tax for each year of the existence of unrecognised provident fund deeming this fund to be recognised from the very beginning. This annual accretion forms part of the transferred balance of the employee.

Illustration 1 (Taxable Annual Accretion)

Mr. X is employed in Bharat Paper Co. at ₹ 6,000 per month. He is a member of Recognised Provident Fund to which he and his employer contribute 14% of his salary. During the year he was given credit of ₹ 2,100 as interest on the provident fund balance of ₹ 20,000. Calculate the taxable amount of annual accretion to be included in his income under the head 'Salaries' for the assessment year 2016-17.

Solution

Computation of Taxable Annual Accretion (for the Assessment Year 2016-17)

(i) Excess of employer's contribution to provident fund over 12% of salary	₹ 1,440
(ii) Interest in excess of 9.5%	200
Taxable Annual Accretion	₹ 1,640

(5) **Compensation for retrenchment.** (See next Chapter) [Sec. 10(10B)]

(6) **Receipts of Employees of Public Sector or other Companies or Local Authority at the time of voluntary retirement.** (See next Chapter) [Sec. 10(10C)]

(7) **Tax paid by employer on the value of perquisites.** In the case of an employee (individual) deriving income in the nature of perquisite, not provided for by way of monetary payment [Sec. 17(2)] the tax on such income paid by his employer (at the option of employer), on behalf of such employee, shall be exempt. [Sec. 10(10CC)]

(8) Other receipts :

(a) **Fees and Commission.** This is paid by an employer to his employee for doing any extra work (not overtime) other than the job assigned to him as an employee. For example, if a senior and experienced employee is entrusted with the work of negotiating with some outside party for acquisition of any business or disposing of any of its own business on its any branch, he may be paid some fees or commission by the employer for this purpose. It will be included under the head 'Salaries' in the computation of the income of the employee.

(b) **Bonus.** Bonus paid by employer to his employees is taxable as salary in the year of receipt.

(c) **Annuity.** Annuity received by an employee from his employer is taxable under the head 'Salary'. If it is received from the present employer it is taxable as salary but if it is received from a former employer it is taxable as profit in lieu of salary u/s 17(3)(ii).

ALLOWANCES

Payments in cash made by the employer to his employees monthly, other than salary, called an allowance. It is a fixed sum of money paid regularly in addition to salary for the purpose of meeting some particular requirement connected with the services rendered by an employee. From income tax point of view, there are three types of such allowances which are as under:

- A. Taxable Allowances,
- B. Allowances Exempt upto Specified Limit,
- C. Fully Exempted Allowances.

A. Taxable Allowances

(1) **Dearness Allowance and Dearness Pay.** Dearness allowance is paid to employees to compensate the rise in price level. This amount is included in income under the head Income from Salary.

Dearness Pay. When the whole or part of dearness allowance is converted in dearness pay it becomes a part of basic salary.

Dearness allowance as per terms of employment. When dearness allowance is given as per terms of employment, it is also treated as part of basic salary.

When Dearness allowance is given under the terms of employment it is included in salary for purposes of determining the exemption limits of house rent allowance, recognised provident fund, gratuity and for determining the value of rent-free house and is also taken into account for the purposes of retirement benefits.

(2) **City Compensatory Allowance.**

(3) **Fixed Medical Allowance.** It is fully taxable.

(4) **Tiffin Allowance.** It is given for lunch and refreshments to the employees. It is also called Meal Allowance and Refreshment Allowance. It is fully taxable.

(5) **Servant Allowance.** It is fully taxable even if it is given to a low paid employee, not being an officer, i.e., it is taxable for all categories of employees.

(6) **Non-practising Allowance.** It is generally given to those medical doctors who are in government service and they are banned from doing private practice. It is to compensate them for this ban. It is fully taxable.

(7) **Hill Allowance.** It is given to employees working in hilly areas on account of high cost of living in hilly areas as compared to plains. It is fully taxable, if the place is located at less than 1,000 metre height from sea level.

(8) **Warden Allowance and Proctor Allowance.** These allowances are given in educational institutions for working as Warden of the hostel and/or working as Proctor in the institution. These allowances are fully taxable.

(9) **Deputation Allowance.** When an employee is sent from his permanent place of service to some other place or institution or organization on deputation for a temporary period, he is given this allowance. It is fully taxable.

(10) **Overtime Allowance.** When an employee works for extra hours over and above his normal hours of duty he is given overtime allowance as extra wages. It is fully taxable.

(11) **Other Allowances.** There may be several other types of allowances, for example, Family Allowance, Rural Allowance, Telephone Allowance, Project Allowance, Marriage Health Allowance, Holiday Allowance, Special Qualification Allowance, Dinner Allowance, unless specifically exempted.

B. Allowances Exempt upto Specified Limit

(1) **House Rent Allowance.** An allowance granted to an assessee by his employer to meet expenditure incurred on payment of rent in respect of residential accommodation occupied by him is exempt from tax to a certain extent.

Rule 2A prescribes that the least of the following amounts shall be exempt:

(a) House Rent Allowance actually received by the assessee, or

(b) Excess of rent paid by the assessee over 10% of salary due to him for the relevant period; or

(c) (i) if the accommodation is situated at Mumbai, Kolkata, Delhi or Chennai—50% of salary due to the assessee, and
(ii) if the accommodation is situated at any other place—40% of salary due to the assessee.

In case an employee is living in his own house and is getting H.R.A. or is living in a house for which he is not paying any rent, full amount of H.R.A. receivable is taxable.

In this rule:

(i) 'Salary' includes dearness allowance and Dearness Pay, if the terms of employment so provide. It also includes the commission based on fixed percentage of turnover, but excludes all other allowances, perquisites and bonus.

(ii) 'Relevant period' means the period during which the said accommodation was occupied by the assessee during the previous year. It means that the salary of the period during which rented accommodation is not occupied by the employee will be excluded.

House Rent Allowance (HRA)

Employee who is residing in his own house or in a house where he doesn't pay any rent, entire HRA is taxable.

Employee who is paying rent for residential accommodation

Least of the following is exempt:

- (a) Rent paid - 10% of salary
- (b) 40% of salary
- (c) HRA actually received.

Salary includes - Basic Salary + D.A. (If part of salary) + Commission (If fixed % of turnover) Where there is any change in any factor during the relevant previous year such as change of salary, change of rent paid, change of city etc., it is always better to calculate taxable HRA on a monthly basis and later annualised.

Illustration 2 (House Rent Allowance)

From the following informations compute the exempted amount of House rent allowance of Mr. Ram who resides at Kanpur:

	I	II	III
Salary per Month	₹ 4,500	₹ 6,000	₹ 6,000
H.R.A. received per month	₹ 525	₹ 300	₹ 1,050
Rent paid per month	₹ 300	₹ 960	₹ 750

Solution

Computation of Exempted Amount of H.R.A.

	I	II	III
1. H.R.A. received	₹ 525	₹ 300	₹ 1,050
2. Excess of Rent paid over 10% of salary	Nil	₹ 360	₹ 150
3. As the accommodation is not situated in specified cities, 40% of salary	₹ 1,800	₹ 2,400	₹ 2,400
The least of the above three is exempt	Nil	₹ 300	₹ 150

In the first case the whole amount of H.R.A. is assessable.

In the second case the whole amount of H.R.A. is exempt.

In the third case ₹ 150 p.m. is exempt and ₹ 900 p.m. is assessable.

Illustration 3

Mr. Prasang is employed in a Private Company at ₹ 70,000 per month, ₹ 6,000 per month as dearness pay and ₹ 10,000 per annum as commission during the previous year. He pays ₹ 2,500 per month rent allowance. He paid ₹ 2,000 per month as house rent allowance. Compute the tax payable.

Solution

Computation of Exempted HRA
Salary ₹ 8,40,000 + Dearness pay ₹ 72,000 = ₹ 9,12,000

Amount exempted least of the following:

- H.R.A. received
 - Rent paid - 10% of Salary (₹ 30,000 - 91,200)
 - 40% of Salary
- H.R.A. exempt—Nil.

Illustration 4

X is employed by X Ltd. at Delhi upto 30-11-2015 on the following terms:

- Basic salary ₹ 5,000 p.m.
 - D.A. 30% of basic salary (60% forms part of salary).
 - House rent allowance ₹ 2,000 p.m.
 - Rent paid by X ₹ 2,900 p.m.
- We.f. 1.12.2015 X joined Y Ltd. at Amritsar on the following terms:
- Basic salary ₹ 10,000 p.m.
 - D.A. ₹ 8,000 p.m. (forms part of salary).
 - House Rent allowance ₹ 6,000 p.m.
 - Rent paid by X ₹ 1,900 p.m.

Find the taxable House rent allowance for the assessment year 2016-17.

Solution**Computation of Taxable House Rent Allowance**

(for the Assessment Year 2016-17)

Taxable HRA has been calculated in two stages and on per month basis and later annualised.

Least of the following is exempt:

	Delhi	Amritsar
1. HRA received p.m.		
2. Rent paid - 10% of Salary	2,000	6,000
Delhi ₹ 2,900 - 10% (5,000 + 900)		
Amritsar ₹ 1,900 - 10% (10,000 + 8,000)	2,310	
3. Delhi 50% of salary (5,000 + 900)	—	—
Amritsar 40% of salary (10,000 + 8,000)	2,950	100
Exempt HRA p.m.	2,000	7,200
Taxable HRA p.m.	—	2,000
Annualised Taxable HRA:		
Delhi	Nil	100
Amritsar ₹ 5,900 × 4 months	Nil	5,900
(2) Entertainment Allowance. It is an allowance given by an employer to his employee if first included in the income from salary under section 15, and then deduction is allowed to a government employee under section 16(ii). Its detailed description is given under the sub-head 'Deductions'.	23,600	23,600

(3) **Special allowance for meeting certain expenditure.** Special allowances which are exempt from tax while computing income under the head 'Salaries' have been notified by the Central Government. There are two types of special allowances, viz., (A) Those which are

exclusively to be incurred in the performance of the duties of his office. These are exempt to the extent actually spent. (B) Those which are to meet the personal expenses. These are exempt upto specified limit. [Sec. 10(14)]

(A) **Special allowance exclusively to be incurred in the performance of the duties of his office**

Special allowance which is granted to meet expenses wholly, necessarily and exclusively incurred in the performance of the duties of an office will be exempt from tax, to the extent to which such expenses are actually incurred for that purpose and notified by the Central Government. [Sec. 10(14)(i)]

The following special allowances have been notified as exempt u/s 10(14)(i):

(a) **Travelling Allowance.** The allowance granted to meet the cost of travel on tour or on transfer. The cost of travel on transfer includes any sum paid in connection with transfer packing, transport and transportation of personal effects on such transfer. For example, Sri Amar Nath has been transferred from Agra to Lucknow. He is granted ₹ 2,000 as transfer allowance and ₹ 500 for packing etc. He actually spent only ₹ 2,000, then the balance of ₹ 500 will be taxable income.

(b) **Daily Allowance.** Any allowance granted for the period of journey on tour or on transfer to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty. For example, Mr. Ram Nath is paid ₹ 100 per day for 8 days as daily allowance on official tour to meet his expenses. He spent only ₹ 600 in eight days, then the balance of ₹ 200 will be his taxable income.

(c) **Conveyance Allowance.** The allowance granted to meet the expenditure incurred on conveyance in the performance of duties of an office or employment of profit. For example, Sri Prakash Chandra gets ₹ 200 p.m. as conveyance allowance to meet the expenditure for conveyance for official work. He spent only ₹ 150 p.m. on conveyance. Here ₹ 600 will be his taxable income @ ₹ 50 p.m.

(d) **Helper Allowance.** Any allowance granted to meet the expenditure incurred on a helper where such helper is engaged for the performance of official duties. For example, on account of heavy work-load the employer of Sri Ram Kishan has allowed him to engage one helper and granted to him ₹ 500 p.m. as helper allowance for this purpose. He appointed one helper @ ₹ 400 p.m. Here ₹ 1,200 will be his taxable income @ ₹ 100 p.m.

(e) **Academic Allowance.** Any allowance granted for encouraging the academic, research and other professional pursuits. For example, Dr. Hangopal is a professor in Lucknow University. He gets academic allowance from the University @ ₹ 200 per month for promoting research. In this connection he spent ₹ 2,000 during the year. Here ₹ 2,000 will be exempt and the remaining ₹ 400 will be taxable.

(f) **Uniform Allowance.** Any allowance granted to meet the expenditure incurred on the purchase or maintenance of uniforms for wear during the performance of official duties. For example, Sri Arun Kumar was employed as a foreman in a factory. He has to wear a proper uniform in the factory at the time of his duty for which he gets ₹ 200 p.m. for the preparation and maintenance of the uniform. He spends ₹ 1,800 for the preparation of the uniform and ₹ 400 for its washing etc. Here ₹ 200 will be taxable and ₹ 2,200 will be exempt. [Notification No. 143(E), dated 21-2-1989, Notification No. 8386, dated 9-6-1989 and Notification No. 267(E), dated 29-3-1989]

Where a foreign technician is deputed to India for the purpose of implementing the project and he receives living allowance (daily allowance) and lodging expenses from his employer (Foreign concern or Indian concern, the amount is exempt u/s 10(14)(i) to the extent such expenses are actually incurred for that purpose even if his stay in India extends beyond 183 days.

(B) **Special Allowance to meet the personal expenses**

Any such allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office are ordinarily performed by him or at a place where he ordinarily resides, or to compensate him for the increased cost of living, will be exempt from tax, to the extent notified by the Central Government. See full notification in Appendix given at the end of the Chapter.

The Central Government has notified the following allowances as exempt u/s 10(14)(ii):

- (i) **Special Compensatory Allowance of the nature of (i) Special Hill Compensatory Allowance, (ii) High Altitude Allowance, (iii) Uncongenial Climate Allowance, (iv) Snow Bound Area Allowance and (v) Avalanche Allowance.** (For rate of allowance—see Appendix at the end of the chapter.)

(2) **Special Compensatory Allowance in the nature of (i) Border Area Allowance, (ii) Remote Locality Allowance, or (iii) Difficult Area Allowance, or (iv) Disturbed Area Allowance.** (For rate of allowance—see Appendix at the end of the chapter.)

(3) **Special Compensatory (Tribal Areas/Scheduled Areas/Agency Areas) Allowance.** (For rate of allowance—see Appendix at the end of the chapter.)

(4) **Any Allowance granted to an employee working in any Transport System.** Any allowance granted to an employee working in any transport system to meet his personal expenditure on his duty performed in the course of running of such transport from one place to another place, exempt in the whole of India : (i) 70% of such allowance, or (ii) ₹ 10,000 per month, whichever is less.

(5) **Children Education Allowance** is exempt in the whole of India @ ₹ 100 per month per child upto a maximum of two children.

(6) **Children Hostel Allowance.** Any allowance granted to an employee to meet the expenditure on his child is exempt in the whole of India @ ₹ 300 per month per child upto a maximum of two children.

(7) **Transport Allowance.** The transport allowance granted by the Government to employees or by an employer to employees, by whatever name called, to compensate them for the cost incurred on account of commuting between the place of residence and the place of work will be exempt subject to a maximum of ₹ 1,600 p.m.

However, if the employee is blind or deaf and dumb or orthopaedically handicapped or disabled of lower extremities, the transport allowance shall be exempt up to ₹ 3,200 p.m.

(8) **Underground Allowance.** It is granted to an employee who is working in underground or in an area which is at a height of more than 9,000 ft. in the State of Jammu & Kashmir, in which is also covered by Serial No. 1(I) and Category A of Serial No. 2 of the notification issued under section 10(14)(ii). Compute the taxable amount of these allowances :

(9) **Special Allowance to members of Armed Forces.** (See Appendix in the end of the chapter.)

Illustration 5
A resident employee is getting the following special allowances besides salary. He is working in an area which is at a height of more than 9,000 ft. in the State of Jammu & Kashmir, in which is also covered by Serial No. 1(I) and Category A of Serial No. 2 of the notification issued under section 10(14)(ii). Compute the taxable amount of these allowances :

1. Climate Allowance	₹ 700 p.m.
2. Snow Bound Area Allowance	300 p.m.
3. Disturbed Area Allowance	800 p.m.
4. Border Area Allowance	600 p.m.
5. His two children are studying in Delhi and are living in the hostel. For the reimbursement of their expenses he is getting Hostel Allowance	800 p.m.
6. For reimbursement of expenses on the education of both the children he is getting allowance	300 p.m.

Solution

Computation of Taxable Amount	
1. Climate Allowance	₹ 700
2. Snow Bound Area Allowance	300
3. Disturbed Area Allowance	800
4. Border Area Allowance	600
Less : Maximum amount exempted is @ ₹ 800 p.m.	(800)
5. Hostel allowance (Exempt upto ₹ 300 p.m. per child)	1,200
6. Education Allowance (Exempt upto ₹ 100 p.m. per child)	200
Taxable Amount of Special Allowance	₹ 1,200

Notes : 1. The first two allowances are of the same category 1(I), i.e. @ ₹ 800 per month is the maximum amount exempt in their case, hence, they have been grouped together.
2. Similarly, the third and fourth allowances are of the same category serial No. 2(A), i.e. @ ₹ 1,300 p.m. is the maximum amount exempt in their cases.

C. Fully Exempted Allowances

(1) **Foreign Allowance.** This allowance is usually paid by the government to an Indian citizen outside India for rendering service abroad. It is not taxable at all. There may be several types of foreign allowances, e.g., Overseas Allowance, Children Education Allowance, Car Allowance, Entertainment Allowance, etc. This exemption is not available to non-government employees and to those who are not citizens of India.

(2) **Sumptuary Allowance to High Court or Supreme Court Judges.** Such allowance given to High Court/Supreme Court Judges is fully exempt from tax.

(3) **Allowance from U.N.O.** Allowance paid by a U.N. Organization to its employees is fully exempt from tax.

(4) **Per-diem Allowance.** If per-diem allowance is paid for the purposes of use of hotel, boarding and lodging facilities to an employee, any surplus accruing to him from such allowance is exempt from tax.

In brief, all the above allowances can better be understood at a glance with the help of the following table :

Fully Taxable Allowances	Allowances Exempted upto specified limit	Fully Exempted Allowances
1. Dearness Allowance or Dearness Pay	1. House Rent Allowance	1. Foreign Allowance
2. Medical Allowance	2. Entertainment Allowance	2. Sumptuary Allowance to High Court/Supreme Court Judges
3. Tiffin Allowance	3. Special Allowances notified u/s 10(14)(i) :	3. Allowances from U.N.O.
4. Servant Allowance	(a) Travelling Allowance	4. Per-diem allowance for use of hotel, boarding and lodging.
5. Non-practising Allowance	(b) Daily Allowance	
6. Hill Allowance	(c) Conveyance allowance for performance of official duty	
7. Warden Allowance and		
8. Proctor Allowance	(d) Helper Allowance	
9. Deputation Allowance	(e) Academic Allowance	
10. Over-time Allowance	(f) Uniform Allowance	
Other Allowances unless specifically exempt	4. Special Allowances exempt u/s 10(14)(ii) :	
	(a) Special Hill Compensatory Allowance, High Altitude Allowance, Uncongenial Climate Allowance, Snow Bound Area Allowance, and Avalanche Allowance.	
	(b) Border Area Allowance, Remote Locality Allowance, Difficult Area Allowance, or Disturbed Area Allowance.	
	(c) Special Compensatory (Tribal Areas/Scheduled Areas/Agency Areas) Allowance.	
	(d) Allowance to an employee working in any transport system.	
	(e) Children Education Allowance	
	(f) Children Hostel Allowance	
	(g) Transport Allowance	
	(h) Underground Allowance	
	(i) Special Allowances to the members of armed forces	

The term 'perquisite' means any benefit, attached to an office or position in addition to salary or wages. Perquisite denotes a personal advantage in terms of money. For income tax purposes, it is given in kind it should be capable of being measured in kind and which are convertible into money. Perquisites received in cash are termed as allowances for income tax purposes. we limit the scope of perquisites to the benefits received in kind and which are convertible into money. Perquisites received in cash are termed as allowances for income tax purposes.

I. Perquisites taxable in all cases :

The following perquisites are taxable in all cases :

- (i) The value of rent-free accommodation provided to the assessee by his employer [Sec. 17(2)(ii)]
- (ii) The value of any concession in the matter of rent regarding any accommodation provided to the assessee by his employer, but for such concession, the assessee is liable to pay rent. [Sec. 17(2)(iii)]
- (iii) Any sum paid by the employer in respect of any obligation which, but for such payment, would have been payable by the assessee. Given below are some examples of obligations :
 - (a) payment by the employer of the employee's club or hotel bills provided that they are not connected with the employer's business;
 - (b) payment by the employer of any loan due on his employee;
 - (c) payment by the employer of education expenses of the children of his employee;
 - (d) payment by the employer of the salary of the domestic servant of an employee;
 - (e) income tax paid by the employer in respect of the salary of his employee; however, the employee is liable to pay income tax on value of perquisites (not provided for by way of monetary payment) which are exempt u/s 10(10CC);
 - (f) legal expenses incurred by the employer to save or defend the employee; [Sec. 17(2)(iv)]
- (iv) Any sum payable by the employer, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund or a Deposit Insurance Fund, to effect an insurance on the life of the employee or in respect of a contract for an annuity on the life of the employee. [Sec. 17(2)(v)]
- (v) The value of any specified security or sweat equity shares allotted or transferred directly or indirectly by the employer, or former employer, free of cost or at concessional rate to the assessee. [Sec. 17(2)(vi)]
- (vi) The amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent exceeding ₹ one lakh. (₹ one lakh fifty thousand u.e.f. A.Y. 2017-18). [Sec. 17(2)(vii)]
- (vii) The value of any other fringe benefit or amenity as may be prescribed. [Sec. 17(2)(viii)]

In terms of Sec. 17(2)(viii), the value of the following benefits or amenities shall be included in the income of an employee :

- (i) Interest-free or concessional loan;
- (ii) Holiday employment;
- (iii) Free food;
- (iv) Gift;
- (v) Expenses charged to a credit card;
- (vi) Club expenses;
- (vii) Use of movable asset;
- (viii) Transfer of movable asset;
- (ix) Any other benefit or amenity.

II. Perquisites Taxable in the case of specified employees only

Specified Employees. The employees who fulfil any of the following three conditions are called specified employees : [Sec. 17(2)(iii)]

- (a) **A Director-employee.** An employee, who is also a director in the employer-company, whether full-time or part-time and whether continuing as director for the whole or part of the year, is a specified employee.
 - (b) **Employee having substantial interest in the employer-company.** An employee is said to have substantial interest in the employer-company if he is the beneficial owner of equity shares carrying not less than 20% of voting power. He is also termed as a specified employee.
 - (c) **Any other employee** (i.e. not covered by the above two conditions) whose income chargeable under the head Salaries, including all monetary payments from one or more employers, but excluding the value of all benefits or amenities given in kind, exceeds ₹ 50,000 is called a specified employee. For determining the limit of ₹ 50,000 the deductions which are allowable under section 16 will be deducted and the balance only will be considered whether it exceeds ₹ 50,000 or not. Salary, for this purpose, shall include all taxable monetary payments, like, basic salary, dearness allowance, bonus, commission, taxable allowances, etc., but shall not include the value of any non-monetary benefit or perquisite. Taxable monetary benefits perquisites shall also be included in salary for this purpose.
- Given below are some examples of free or concessional benefits/amenities provided by the employer to his employee, the value of which shall be included in the salary income of the specified employee :
- (i) Facility of car;
 - (ii) Sweeper, Watchman, Gardener and personal attendant;
 - (iii) Gas, electric energy and water;
 - (iv) Education facility to the members of employee's household;
 - (v) Transport facility.

IMPORTANT NOTE

The value of certain perquisites is taxable in case of specified employees. To become a specified employee the monetary income from salary should exceed ₹ 50,000. If monetary salary does not exceed ₹ 50,000, the employee should be a director of that company or he must have substantial interest in that company.

According to the Minimum Wages Act, 1948 the annual monetary salary of an employee will exceed ₹ 50,000. Hence, for the value of perquisites all the employees will become specified employees.

Whatever perquisites are provided to an employee, the value of such perquisites (as per the provisions of the Income Tax Act and Income Tax Rules) should be included in his income from salary.

The Income Tax Act, 1961 has not been amended keeping in view the Minimum Wages Act. Hence, the provisions in the book are given keeping in view the specified employees and non-specified employees, which have no practical utility.

III. Tax-free Perquisites

The value of the following perquisites shall not be included in the salary income of an employee :

- (i) Medical benefits.
- (ii) Tea or snacks provided in office or factory (work place).
- (iii) Residential accommodation provided at site.
- (iv) Expenses on telephones including mobile phone.

- (v) Employer's contribution to *Staff Group Insurance Scheme*.
- (vi) *Scholarships to employees or their children* paid by the employer.
- (vii) The facility of conveyance provided by the employer from residence to place of employment and *vice versa*.
- (viii) *Refresher courses, etc.* If the employer pays fees for an employee taking refresher courses or management course in order to enable, the employee to perform his services more efficiently. Such expenses are treated as scholarship.
- (ix) Tax paid by the employer on the value of perquisites.
- (x) *Perquisites to Government Employees posted abroad.* Any perquisites allowed outside India by the Government of India to a citizen of India for enduring service outside India. This exemption is not available to non-government employees and also to those who are not citizens of India.
- (xi) Rent-free house and conveyance facility provided to High Court Judges.
- (xii) Rent-free house and conveyance facility provided to Supreme Court Judges.
- (xiii) The value of rent-free furnished residence provided to a Minister, specified officers of Parliament or a Leader of the Opposition in Parliament.
- (xiv) Laptops and computers provided by employer for personal use of employee or any member of his household.
- (xv) Interest-free or concessional loan, if the amount of loan in aggregate does not exceed ₹ 20,000 during the previous year.
- (xvi) Transfer without consideration to an employee of a movable asset (other than computers, electronic items and car) by the employer after using it for a period of ten years or more.
- (xvii) Periodicals and journals required for discharge of work.
- (xviii) Leave travel concession u/s 10(5).

Medical Benefits—

(A) For Treatment within India :

- (a) The value of any medical treatment provided free to an employee or any member of his family in any hospital maintained by the employer;
- (b) Any sum paid by the employer in respect of any expenditure incurred by the employee on medical treatment of himself and members of his family :
 - (i) in a hospital maintained by government or any local authority or approved by the government for medical treatment of its employees;
 - (ii) in respect of the prescribed diseases or ailments in any hospital approved by the Chief Commissioner.
- (c) Premium paid by the employer on the health insurance of the employee (including members of his family).
- (d) Reimbursement by the employer of any premium paid by the employee on his health insurance or on the health insurance of any member of his family.
- (e) *Limited Exemption.* If the medical treatment of the employee or any member of his family is done at any private hospital, nursing home or clinic other than those stated in clauses (a) and (b) above the exemption will be restricted to ₹ 15,000.

(B) Medical Treatment outside India :

- (a) If the employer incurs any expenditure on the medical treatment of the employee or any member of his family outside India, to the extent permitted by the Reserve Bank of India; and
- (b) If the employer incurs any expenditure on travel and stay abroad of the patient (employee or any member of his family) and one attendant who accompanies the patient in connection with such treatment, it will be exempt subject to the conditions that

(i) the expenditure on medical treatment and stay abroad will be exempt to the extent permitted by the Reserve Bank and (ii) the expenditure on travel shall be exempt in the case of an employee whose gross total income (excluding this expenditure) does not exceed ₹ 2 lakh.

- (c) If the employer reimburses to the employee in respect of any expenditure actually incurred by the employee for any of the purposes specified in (B) (a) and (b), it will be exempt subject to the same conditions as stated above in (b)(i) and (b)(ii).

MEDICAL BENEFITS : AT A GLANCE

<i>Treatment in India</i>	<i>Treatment outside India</i>
1. Value of treatment of employee and/or members of his family in employer's hospital. —Fully exempt	1. Expenses incurred by the employer on the medical treatment of an employee or his family members is fully exempt to the extent approved by the Reserve Bank of India.
2. Any sum paid by the employer in respect of expenditure incurred by the employee on medical treatment of himself and/or members of his family : (i) in a hospital of government or local authority or govt. approved hospital; (ii) in respect of the prescribed diseases or ailments in a hospital approved by the Chief Commissioner of I. Tax provided that he fulfils certain conditions. —Fully exempt	2. Expenses incurred by employer on travel and stay abroad of the patient and one attendant is also exempt subject to the fulfilment of the following conditions : (i) The expenditure on medical treatment and stay abroad is exempt to the extent permitted by the Reserve Bank; and (ii) Expenses incurred on travel of the patient and one attendant is fully exempt provided the G.T.I. of the employee does not exceed ₹ 2,00,000.
3. Payment or reimbursement of premium in respect of health insurance of the employee and/or any member of his family. —Fully exempt	3. Reimbursement of expenses actually incurred by the employee for purposes specified in (1) and (2) above is exempt, subject to the same conditions as stated above.
4. Reimbursement of expenses incurred for the treatment of employee or any member of his family in a private nursing home or clinic. —Exempt upto ₹ 15,000	

Illustration 6 (Reg. : Medical Benefits)

From the following information find out the income from salary of Mr. Ram :	₹
(1) Gross Annual Salary	1,95,000
(2) Medical expenditure directly paid by the employer to private practitioner	30,000
(3) Medical expenditure directly paid by the employer to hospital approved by the Chief Commissioner of Income tax	50,000
(4) Reimbursement of medical expenses incurred by the employee in a hospital approved by the Chief Commissioner	10,000
(5) Expenditure on travelling abroad (including that of attendant) borne by the employer	1,00,000
(6) Expenditure incurred on stay and treatment abroad borne by the employer	1,50,000
(7) Out of (6) amount permitted by the Reserve Bank of India	1,00,000
(8) The employer reimbursed the medical expenses incurred by the employee on treatment of his grandfather (dependent upon him)	2,000
(9) Expenses on cancer (prescribed) treatment of his daughter at Tata Memorial Hospital, Mumbai (approved by the Chief Commissioner of Income Tax) paid by the employer is ₹ 1,00,000.	

Solution**Computation of Salary for Valuation of Accommodation**

1. Basic Salary
2. D.A. (Not as per terms of employment)
3. Entertainment allowance (Taxable allowance)
4. Bonus
5. Commission
6. Payment of insurance premium [perquisite specified in Sec. 17(2)]
7. Employer's contribution in R.P.F. (Not includible in salary)
8. Conveyance allowance (Exempted allowance)
9. Facility of sweeper [Perquisite specified in Sec. 17(2)—Not includible in salary]
10. Salary of gardener (Do)
11. Payment of electricity bills (Do)
12. Interest (Do)

II. VALUATION OF MOTOR CAR**IMPORTANT NOTES**

1. When car is owned or hired by the employer, the value of car perquisite shall be included in salary income of specified employee only.
2. When car is owned by the employee, the value of car perquisite shall be included in salary income of employee, whether specified or non-specified.
3. Per month denotes complete month according to the English calendar and a part of the month is ignored.

Valuation of use of Motor Car

(Taxable only for specified employee)

One car owned or hired by employer and provided to employee for

Fully official use
Perquisite Value Nil, if certain documents are maintained.Fully personal use
Actual expenditure on running and maintenance
+ Remuneration of chauffeur
+ Depreciation @ 10% p.a. of actual cost of car (if owned) or hire charges (if hired)More than one car provided to employee for private and official use
↓
Treat one car as mixed use and others as personal use of the employee.

Running and maintenance borne by employer

Small car (upto 1.6 litre cc) ₹ 1,800 p.m.
Large car (exceeding 1.6 litre cc) ₹ 2,400 p.m.
If chauffeur (Driver) provided add ₹ 900 p.m. in both cases.

Note : Ignore part of a month while calculating number of months, the vehicle is used.

Running and maintenance borne by employee

Small car ₹ 600 p.m.
Large car ₹ 900 p.m.
If chauffeur (Driver) provided add ₹ 900 p.m. in both cases.

Car owned by Employee
(Expenses borne by employer)Fully official use
Perquisite Value—Nil, if certain documents are maintained.Fully personal use
Perquisite = Amount reimbursed

Mixed use

Small car
Amount reimbursed
(-) ₹ 1,800 p.m.
(-) ₹ 900 p.m. for chauffeur, if any
= Perquisite Value

Large car
Amount reimbursed
(-) ₹ 2,400 p.m.
(-) ₹ 900 p.m. for chauffeur, if any
= Perquisite Value

(1) **Car owned or hired by the employer.** Car is used wholly and exclusively in the performance of his official duties. Value shall be taken as nil provided the prescribed conditions are satisfied.(2) **Car owned by employer** and it is used exclusively for the private or personal purposes of the employee or any member of his household :

- (i) Actual amount of expenditure incurred on the running and maintenance of motor car
- (ii) Remuneration, if any, paid to the chauffeur
- (iii) Depreciation @ 10% p.a. of the actual cost of the motor car/cars

Less : Amount charged from the employee

Value of Perquisite

(3) **Car is taken on lease** and it is used exclusively for the private or personal purposes of employee or any member of his household :

- (i) Amount spent on running and maintaining the car
- (ii) Remuneration, if any, paid to the chauffeur

Less : Amount charged from the employee

Value of Perquisite

(4) **Car owned or hired by employer.** Car is used partly in the performance of duties and partly for private or personal purposes of employee or any member of his household :(a) **If the entire expenses of maintenance and running of the motor-car are borne by the employer :**

- (i) Small car (Cubic capacity of engine of the car does not exceed 1.6 litre) ₹ 1,800 p.m.
- (ii) Large car (Cubic capacity of engine of the car exceeds 1.6 litre) ₹ 2,400 p.m.

If chauffeur is also provided, add ₹ 900 p.m.

(b) **If the expenses of maintenance and running for his private or personal purpose are met by the assessee (i.e., the employee) :**

- (i) Small car ₹ 600 p.m.
- (ii) Large car ₹ 900 p.m.

If chauffeur is also provided, add ₹ 900 p.m.

(5) **Employee uses more than one car for private purposes.** Where more than one motor car is owned or hired by the employer and the employee or any member of his household is allowed the use of such motor cars (otherwise than wholly and exclusively in the performance of duties), the value of perquisite shall be :

- (a) **In respect of one car :**
 - (i) Small car ₹ 1,800 p.m.
 - (ii) Large car ₹ 2,400 p.m.

If chauffeur is also provided, add ₹ 900 p.m.

(b) *In respect of other car/cars :*
Assuming the car/cars is used exclusively for private purposes and the value shall be determined as discussed in (2) if the car is owned by the employer or as discussed in (3) if the car is taken on lease by the employer.

Note : Where more than one car is provided for official and private purposes and the expenses incurred in relation to the car are more than one car is provided for official and private purposes, one car is small car and other car is large, the rules do not provide the method of valuation in such a situation. Hence, the value of cars may be determined in such manner which is beneficial to the employee.

(6) Car owned by the employee :

(A) The actual running and maintenance charges (including chauffeur's remuneration) met or reimbursed by the employer and such reimbursement is for the use of the car wholly and exclusively for official purposes. Value shall be taken as nil provided the prescribed conditions are satisfied.

(B) Where reimbursement of expenses of the car is wholly for personal purposes of the employee or any member of his household : Value shall be taken equal to amount reimbursed for personal purposes of the employee or any member of his household :

(i) *Small car.* The value of perquisite shall be the actual amount of expenditure incurred by the employer less ₹ 1,800 per month + ₹ 900 p.m. for chauffeur, if any, provided the prescribed conditions are satisfied.

(ii) *Large car.* The value of perquisite shall be the actual amount of expenditure incurred by the employer less ₹ 2,400 per month + ₹ 900 p.m. for chauffeur, if any, provided the prescribed conditions are satisfied.

(7) Automotive conveyance other than car owned by the employee :

(A) The actual running and maintenance charges are met or reimbursed by the employer and such reimbursement is for the use of the vehicle wholly and exclusively for official purposes. Value shall be taken as nil provided the prescribed conditions are satisfied.

(B) Where reimbursement of expenses of the vehicle is partly for official purposes and partly for personal purposes of the employee : The value of perquisite shall be the actual amount of expenditure incurred by the employer less ₹ 900 p.m. provided the prescribed conditions are satisfied.

Prescribed conditions :

Where it is claimed that vehicle is used wholly and exclusively in the performance of official duty or the actual expenses on running and maintenance of the vehicle, owned by the employee, for official purposes are more than prescribed amount (Car ₹ 1,800/ ₹ 2,400 p.m. as journey, destination, mileage and the amount of expenditure which may include details of journey, destination, mileage and the amount of expenditure should be maintained exclusively for the performance of official duties.

Illustration 13 (Treatment of Car Facility)
Find out the value of the perquisite of car provided that the expenditure was incurred wholly by employer in the following cases :

(i) *Large Car :* All expenses borne by the employer. The car is solely used for official purposes.

(ii) *Large Car :* All expenses borne by the employer. The car is solely used for official purposes.

(iii) *Large Car :* ₹ 2,80,000. The car is solely used for private purposes of the employee.

(iv) *Small Car :* Meant for both private and official use. All expenses borne by the employer. Chauffeur is also provided free of charge. All expenses borne by the employer.

(v) Two small cars are provided to the employee for private and official purposes. Maintenance expenses of cars are borne by the employer. Other informations in this connection are :

	I Car	II Car
Actual cost of car	₹ 3,00,000	₹ 2,80,000
Expenses of running and maintenance	₹ 60,000	₹ 50,000
(vi) Large Car : Meant for both official and private purposes. Private expenses borne by the employee.		

Solution

(i) Value of perquisite is nil as the car is solely used for official purposes.

(ii) Value of perquisite is ₹ 60,000 + 28,000 = ₹ 88,000 as the car is solely used for private purposes.

(iii) The value of perquisite will be ₹ 2,400 × 12 = ₹ 28,800.

(iv) Value of perquisite in such a case will be ₹ 1,800 p.m. + Chauffeur's salary at ₹ 900 p.m. i.e., ₹ 2,700 × 12 = ₹ 32,400.

(v) First car is taken for official and private purposes. Hence, perquisite value will be ₹ 1,800 × 12 = ₹ 21,600.

Second car is deemed to be used for private purposes only. Hence, perquisite value shall be :

Expenses of running and maintenance	₹ 50,000
Depreciation @ 10% of ₹ 2,80,000	28,000
	78,000

Value of Perquisite

(vi) If the expenses of maintenance and running of the car for private purposes are met by the employee, the value of the perquisite in the case of large car will be @ ₹ 900 p.m. i.e., ₹ 10,800.

Note : In case (i) it is assumed that the prescribed conditions are satisfied.

Illustration 14

Find out the value of the perquisite of motor-car if car is owned by the employee :

(i) Expenses relating to running and maintaining of car and chauffeur's salary paid by the employer ₹ 75,000. The expenses relate to the use of car for business purposes only and the prescribed conditions are satisfied.

(ii) A small car is used partly for business and partly for personal purposes. The employee drives the car himself. The employer has spent ₹ 70,000 during the P.Y. on running and maintaining the car. The prescribed conditions are satisfied.

Solution

(i) Value of perquisite is nil as the expenses are incurred solely for official purpose and the prescribed conditions are satisfied.

(ii) A small car owned by employee has been used partly for private purposes and partly for official purposes and the employer has incurred all the expenses and prescribed conditions are satisfied. Hence, the value of perquisite shall be :

Amount spent by employer	₹ 70,000
Less : ₹ 1,800 p.m. for official purposes	21,600
Value of Perquisite	48,400

III. FACILITY OF SWEEPER, GARDENER, WATCHMAN OR PERSONAL ATTENDANT

The value of the perquisite shall be :

Salary paid or payable to the servant

Less : Amount recovered from employee (if any)

Value of Perquisite

[Rule 3(3)]

Solution

1. Gross Salary	30,000
2. Medical expenditure directly paid by the employer to private medical practitioner	15,000
Less : Exempt upto ₹ 15,000	
3. Medical expenditure directly paid by the employer to approved hospital	15,000
4. Reimbursement of medical expenses incurred by the employee in an approved hospital	Exempt
5. Expenditure on travelling abroad	Exempt
Not exempt as his G.T.I. exceeds ₹ 2,00,000	1,50,000
[₹ 1,95,000 + 15,000 + 50,000 + 2,000]	1,00,000
6. Expenditure on stay and treatment abroad	
Less : Exempt to the extent permitted by R.B.I.	
7. Reimbursement of medical expenditure on grandfather	Gross Salary
Less : Deduction	
	Taxable Salary

Notes : 1. Since cancer is one of the prescribed diseases and the Tata Memorial Hospital, Mumbai is approved by the Chief Commissioner of Income Tax, there is no taxable perquisite although it exceeds ₹ 15,000.

2. Since grandfather is not treated as family member reimbursement of the medical expenditure incurred by him is not exempt.

Leave Travel Concession or passage money to an employee :

[Sec. 10(5)]

(i) This exemption is available to Indians as well as to foreigners.

(ii) The amount exempt under this clause shall in no case exceed the amount of expenses actually incurred for the purpose of such travel.

(iii) The value of any leave travel concession or assistance received by or due to an individual, (a) from his employer for himself and his family in connection with his proceeding on leave to any place in India is exempt; and (b) from his employer or former employer for himself and his family, in connection with his proceeding to any place in India after retirement from service or after the termination of his service, is exempt.

'Family' means : (a) the spouse and children of the individual; and (b) the parents, brothers and sisters of the individual, wholly or mainly dependent on the individual.

(iv) The exemption shall not be available for more than two surviving children of an individual after 1.10.1998. However, this rule shall not apply in the following cases :

(a) Children born before 1.10.1998.

(b) Multiple births after one child.

(v) The exemption will be available to an employee in respect of two journeys performed in a block of four calendar years, commencing from the calendar year 1986. If such a concession is not availed of by an individual during a block of four calendar years, an amount in respect of leave travel concession first availed of by the individual during first calendar year of the immediately succeeding block of four calendar years (i.e., the 5th calendar year after the block of four calendar years) shall be eligible for exemption. This concession shall not be taken into account for the number of journeys in the aforesaid immediately succeeding block of four years.

(iii) Other places

7.5% of salary for the period during which accommodation was occupied by employee

(b) Accommodation taken on lease/rent by employer

Actual lease rental or 15% of salary for the period during which accommodation was occupied by employee, whichever is less

Furnished House

(i) Value of unfurnished house

(ii) Add : 10% p.a. of cost of furniture or Hire charges (if any)

Accommodation at Concessional Rent

(i) Value of unfurnished/furnished/ accommodation

(ii) Less : Amount paid or payable by employee

Valuation of Rent-Free Accommodation (Unfurnished)

Value of Concessional Rent

(1) Government employees
Amount determined as per Government Rules

Other Employees

Accommodation owned by Employer in a city having population

Accommodation hired by Employer :
In all cases Hire charges or 15% of salary, whichever is less

Exceeding ₹ 25 lakh
↓
15% of salary

Exceeding ₹ 10 lakh but upto ₹ 25 lakh
10% of salary

Upto ₹ 10 lakh
7.5% of salary

(2) Where furnished accommodation is provided, add 10% p.a. of cost of furniture if furniture is owned by employer or Hire charges (if hired) to the value determined in (1) above.

(3) If any amount is recovered from the employee for the accommodation, such amount shall be deducted from the value determined in (1) or (2) as the case may be.

Illustration 8

A company has provided a residential accommodation to an employee. From the following information find out the value of perquisite of accommodation :

(i) Fair rental value of the house—Annual

70,000

(a) The house is situated in a city whose population is more than twenty-five lakh.

6,00,000

(b) The house is situated in a city whose population is less than ten lakh.

Solution

(a) The value of the perquisite shall be 15% of salary i.e., ₹ 90,000. The fair rental value of the house shall not be considered.

(b) The value of the perquisite shall be 7.5% of salary i.e., ₹ 45,000. The fair rental value of the house shall not be considered.

IV. FACILITY OF GAS, ELECTRICITY OR WATER

The value of the perquisite shall be :
Amount paid by employer to the agency providing gas, electricity or water
or
Where such supply is made from resources owned by the employer

Less : Amount recovered from the employee (if any)
Value of Perquisite

V. EDUCATION FACILITY

(1) Where educational institution is itself owned and maintained by the employer or free educational facilities are allowed in any other educational institution by reason of employment of that employer, the value shall be :

- (a) *Educational facility provided to children of the employee :*
(i) If the cost of such education or the value of the benefit per child does not exceed ₹ 1,000 p.m.
(ii) If the cost or value exceeds ₹ 1,000 p.m. per child

Cost of such education in a institution in or near the local
Nil

Less : Amount recovered from the employee.

Wherever the value of education facility exceeds ₹ 1,000 p.m., the value of benefit of education to the employee would be the value of perquisite in the hands of employer with any deduction of ₹ 1,000 p.m. per child.

CIT vs. Director, Delhi Public School (2011), 202 Taxman 339

- (b) *Education facility provided to other members of household*
Less : Amount recovered from the employee

Cost of education in similar institution in or near the locality

(2) Education facility provided in any other educational institution to children or other members of the employee—The value of facility shall be the expenditure incurred by the employer.

VI. TRANSPORT FACILITIES

Where an undertaking is engaged in the carriage of passengers or goods and it provides any employee or to any member of his household for private journey free of cost or at concessional fare, in any conveyance owned, leased or made available by any other arrangement for undertaking for the purpose of transport of passengers or goods, the value of the benefit amenity shall be the value at which such benefit or amenity is offered by the undertaking to public.

If any amount is paid or recovered from the employee for such benefit or amenity, it shall be deducted from the aforesaid value.
Note : In case of an employee of an Airline or the Railways, the value of transport facility shall be exempt.

These include the following :
VII. **PREScribed FRINGE BENEFITS OR AMENITIES**

- (1) **INTEREST-FREE OR CONCESSIONAL LOAN**

Where the employer or any other person on his behalf has made available interest-free concessional loan to the employee or any member of his household, the value of benefit shall be determined as under :
(A) Where the amount of loans in the aggregate during previous year does not exceed ₹ 20,000—The value shall be taken as nil.
(B) Where loans are made available for medical treatment in respect of diseases specified in Rule 3A (e.g., cancer, tuberculosis, AIDS, etc.)—The value shall be taken as nil. However, exemption shall not apply to so much of the loan as has been reimbursed to the employee under medical insurance scheme.

For example, the employee has taken a loan from his employer ₹ 1,00,000 for cancer treatment. He received ₹ 40,000 under medical insurance scheme. The benefit of interest on ₹ 60,000 (₹ 1,00,000 – 40,000) shall be tax-free and on ₹ 40,000 shall be liable to tax.

(C) *Loan for any purpose except discussed under (A) and (B).* The value shall be the sum equal to the interest computed at the rate charged per annum by the State Bank of India, as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it. The interest shall be computed on the maximum outstanding monthly balance as reduced by the interest, if any actually paid by the employee or any member of his household.

Explanation : 'Maximum outstanding monthly balance' means the aggregate outstanding balance for each loan as on the last day of each month.

Illustration 15

Ram borrowed ₹ 1,00,000 on 1.5.2015 from his employer to purchase a car. He started repayment of loan w.e.f. 1.6.2015 @ ₹ 1,000 p.m. In the following circumstances determine the taxable amount of interest for the A.Y. 2016-17 assuming that the rate of interest on car loan charged by the State Bank of India is 10% p.a. :

- (i) The employer does not charge any interest on loan;
(ii) The employer charges interest @ 5% on maximum outstanding monthly balance.

Solution

Computation of Chargeable Interest

(for the Assessment Year 2016-17)

(i) Date	Balance ₹
31-05-2015	1,00,000
30-06-2015	99,000
31-07-2015	98,000
31-08-2015	97,000
30-09-2015	96,000
31-10-2015	95,000
30-11-2015	94,000
31-12-2015	93,000
31-01-2016	92,000
28-02-2016	91,000
31-03-2016	90,000
	<u>10,45,000</u>

Interest on ₹ 10,45,000 @ 10% for one month = ₹ 8,708

- (ii) Interest as calculated in (i)

Less : Interest charged from Ram @ 5%, i.e., half of ₹ 8,708

Chargeable Interest

- (2) **HOLIDAY ENJOYMENT**

(A) The value of travelling, touring, accommodation, any other expenses paid for or borne or reimbursed by the employer for any holiday availed by the employee or any member of his household shall be the amount of expenditure incurred by the employer in this behalf. However, this rule shall not apply to 'Leave travel concession' under Sec. 10(5) and Rule 2B.

(B) Where such facility is maintained by the employer and is not available uniformly to all employees, the value of benefit shall be taken to be the value at which such facilities are offered by other agencies to the public.

It means if such facility is maintained by the employer and it is made available to all employees uniformly, the value of the benefit shall be nil.

(C) Where employee is on official tour and the expenses are incurred in respect of his household accompanying him, the amount of expenditure incurred by member of his household as amenity.

(D) Where any official tour is extended as a vacation, the value of the benefit will be the value of benefit provided by the employer.

(E) Where any official tour is extended as a vacation, the value of the benefit will be the value of benefit provided by the employer.

In all the aforesaid cases, the amount so determined shall be reduced by the amount paid or recovered from the employee for such benefit.

(3) FREE FOOD, etc.

The value of free food and non-alcoholic beverages provided by the employer to an employee shall be as under :

(A) Tea and snacks provided during working hours—Nil.

(B) Free food and non-alcoholic beverages provided during working hours in a restaurant or an off-shore installation—Nil.

(C) Free food and non-alcoholic beverages provided during working hours at the business premises or through paid vouchers which are not transferable and usable for eating joints, the value thereof shall be the amount of expenditure incurred by the employee as reduced by (i) the amount paid or recovered from the employee, and (ii) ₹ 50 per meal.

(4) GIFT

The value of any gift or voucher or token in lieu of which such gift may be received by employee or by member of his household on ceremonial occasions or otherwise, shall be the value of such gift.

Where the gifts are given to the employees on social and religious occasions like Christmas, New Year, the anniversary of the organization, etc., such gifts upto ₹ 5,000 in aggregate during previous year would be exempt, beyond which it would be taxed as perquisite. However, gifts made in cash or convertible into cash, like gift cheque etc., shall not be exempt.

(5) EXPENSES CHARGED TO A CREDIT CARD

The amount of expenses including membership fees and annual fees incurred by employee or any member of his household, which is charged to a credit card (under add-on-card) provided by the employer or otherwise, paid or reimbursed by the employer shall be the value of perquisite.

However, from such amount, the amount paid or recovered from the employee for benefit or amenity shall be reduced, and the balance shall be the value of perquisite. Where the expenses are incurred wholly and exclusively for official purposes and prescribed details and certificates are maintained, the value of perquisite shall be nil.

Where employer pays or reimburses any expenditure incurred (including the annual or periodical fee of the club) in a club by the employee or by any member of his household, the value of benefit shall be the actual amount of expenditure incurred or reimbursed by employer on that account.

From the value so determined the amount paid or recovered from the employee for benefit shall be reduced and the balance shall be the value of the benefit.

Where the employer has obtained corporate membership of the club and the facility is provided to the employee or any member of his household, the value of benefit shall be the initial fee paid to acquire such corporate membership of the club and the facility.

Exceptions. In the following cases the value of perquisite shall not include the value of benefit provided by the employer.

(1) Where such expenditure is incurred wholly and exclusively for business purposes uniformly to all employees.

(2) Where the employer provides the facility of health club, sports and similar facilities uniformly to all employees.

(7) USE OF MOVABLE ASSET

Where the employer provides any movable asset (other than assets already specified in this Rule and laptops and computers) for the use of employee or any member of his household, the value of the benefit shall be :

(i) Asset belonging to the employer—10% per annum of the actual cost of such asset. However, the value of perquisite for an asset used for more than ten years would be taken as nil.

(ii) Asset taken on rent—Rent or charges paid or payable by the employer for such asset. However, from the value so determined the amount paid or recovered from the employee for such use shall be reduced.

(8) TRANSFER OF MOVABLE ASSET

Where the employer transfers any movable asset belonging to him, directly or indirectly to the employee or any member of his household, the value of the benefit shall be determined as under :

(A) Computers and Electronic items :

Cost of Asset

Less : Depreciation @ 50% on the basis of W.D.V. method for each completed year during which the asset is put to use by employer

Less : Amount recovered from employee

Value of Perquisite

(B) Motor-Car :

Cost of Car

Less : Depreciation @ 20% on the basis of W.D.V. method for each completed year during which the asset is put to use by employer

Less : Amount recovered from employee

Value of Perquisite

(C) Other Movable Asset

Cost of Asset

Less : Depreciation @ 10% on the basis of SLM for each completed year during which the asset is put to use by employer

Less : Amount recovered from employee

Value of Perquisite

(9) ANY OTHER BENEFIT OR AMENITY

The value of any other benefit or amenity, service, right or privilege provided by the employer, shall be determined on the basis of cost to the employer under an arms' length transaction as reduced by the employee's contribution, if any.

Exception. Expenses on telephones including mobile phone actually incurred on behalf of the employee by the employer shall not be treated as taxable perquisite.

Valuation of Specified Security or Sweat Equity Shares for Section 17(2)(vi)

The taxable value of the specified security or sweat equity shares shall be the fair market value on the date on which the option is exercised by the employee as reduced by the amount actually paid by or recovered from the employee in respect of such security or shares.

'Fair market value' means the value determined in accordance with the method as may be prescribed by the Board.

Determination of fair market value of equity shares on the date of exercising option. The shares listed on a recognised stock exchange on the date of exercising option, the highest trading volumes on the date on which the employee exercises his option, the highest trading volumes on the date of the share on a date closest to the date of exercising option, the FMV shall be the price of the share on a date closest to the date of exercising option, the FMV shall be the price of the share on a date closest to the date of exercising option, the FMV shall be the price of the share on a date closest to the date of exercising option.

1. **Share listed on a recognised stock exchange on the date of exercising option.** The highest trading volumes on the date on which the employee exercises his option, the highest trading volumes on the date of the share on a date closest to the date of exercising option, the FMV shall be the price of the share on a date closest to the date of exercising option, the FMV shall be the price of the share on a date closest to the date of exercising option, the FMV shall be the price of the share on a date closest to the date of exercising option.

If on the date of exercising option, the FMV shall be the price of the share on a date closest to the date of exercising option, the FMV shall be the price of the share on a date closest to the date of exercising option, the FMV shall be the price of the share on a date closest to the date of exercising option, the FMV shall be the price of the share on a date closest to the date of exercising option, the FMV shall be the price of the share on a date closest to the date of exercising option.

2. **Unlisted shares on the date of exercising option.**

The FMV of shares will be as determined by category I merchant banker, registered with the Securities and Exchange Board of India, on the specified date. 'Specified date' means:

- the date of exercising of the option; or
- any date earlier than the date of the exercising of the option, not being a date more than 180 days earlier than the date of the exercising.

Valuation of specified security not being an equity share in the company.

The fair market value of such security, on the date on which the option is exercised by the employee, shall be such value as determined by a merchant banker on the specified date.

Illustration 16 (Computation of Gross Salary)

Sri Ram Lal is the manager of a company in Agra. He receives every month ₹ 14,000 basic pay, ₹ 500 as entertainment allowance and ₹ 3,000 as dearness allowance.

- He owns his house but the company has provided him the following amenities:
 - a gardener, a sweeper, a watchman and a domestic servant each of whom are ₹ 150; ₹ 200; ₹ 1,100 and ₹ 600 per month respectively.
 - free use of the refrigerator costing ₹ 8,400 from 1st September, 2015. The company incurred ₹ 400 on its repairs during the previous year.
- His following obligations, were paid by the company:
 - Gas, electricity and water bills amounting to ₹ 15,000.
 - Annual membership fee to Lions Club ₹ 1,000.
- The company has provided him the facility of a large car. The car is used for personal purposes also and all expenses including the driver's salary are borne by the company.

4. His son is studying in a school run by the company. The annual expenses incurred by the company per student is ₹ 5,000. Had he been sent for education to a similar school in Agra, he would have been payable during the year.

5. The company allotted him 300 shares at ₹ 100 each, whereas the fair market value of the shares on which the option is exercised by the employee was ₹ 120.

6. He proceeded on leave to Simla. He stayed there in the guest house of the company and saved ₹ 5,000 on account of accommodation.

Solution Compute his Gross Salary for the assessment year 2016-17.

Basic Pay	
Dearness Allowance	
Entertainment Allowance	
Statement of Gross Salary	
<i>(for the Assessment Year 2016-17)</i>	

Perquisites:

Car including driver [(₹ 2,400 + 900) × 12]	39,600
Gardener	1,800
Watchman	13,200
Sweeper	2,400
Domestic Servant	7,200
Refrigerator for 7 months	490
Free Education	—
Guest House	5,000
Concession in Shares (₹ 20 × 300)	6,000
Gas, electricity and water bills	15,000
Membership fee to Lion's Club	1,000
Gross Salary	₹ 3,01,690

Notes: 1. The perquisite value of the gardener, watchman, sweeper and domestic servant provided by the employer is to be calculated at actual wages paid to them.

2. Perquisite of free education is nil as the cost per child per month is less than ₹ 1,000.

3. Perquisite value of the refrigerator is taken as 10% of its cost of ₹ 8,400 for 7 months only. Repairs cost incurred by the company is not to be added here.

PROFITS IN LIEU OF SALARY

Profits in lieu of salary include the following:

- The amount of any compensation due to or received by an assessee from his employer or former employer in connection with the termination of his employment or the modification of the terms and conditions relating thereto.
- Any payment due to or received by an assessee from an employer or a former employer. Where an employer gives to his employee any sum by way of personal gift and not in appreciation of his services, it is not taxable in the hands of the employee.
- Any payment made from unrecognised provident fund or other fund will be included only to the extent of employer's contributions and interest thereon. Interest on employee's own contribution is also taxable but it will be taxed under the head 'Income from Other Sources' and not as salary income.
- Any payment received under a Keyman Insurance Policy including the amount of bonus.
- Any amount due or received (whether in lump sum or otherwise) by an assessee from any person:

- before joining any employment with that person; or
- after cessation of his employment with that person.

Exceptions. Payments made under clauses (10), (10A), (10B), (10C), (11), (12), (13), (13A) of section 10 will not be included in profits in lieu of salary. These payments are as under:

- Death-cum-retirement Gratuity. [Sec. 10(10)]
- Commuted Value of Pension. [Sec. 10(10A)]
- Compensation. [Sec. 10(10B)]
- At the time of voluntary retirement from a public sector company, or local authority or a co-operative society or a University, etc., any amount received according to Central Government Scheme. [Sec. 10(10C)]
- Payment from Statutory Provident Fund. [Sec. 10(11)]
- Payment from Recognized Provident Fund. [Sec. 10(12)]
- Payment from Approved Superannuation Fund covered by Sec. 10(13). However, any other payment from this fund shall form part of profits in lieu of salary. [Sec. 10(13A)]
- House Rent Allowance [Sec. 10(13A)]

PROVIDENT FUND

The word 'Provident' means to provide for the future, hence this fund is to provide for the future. This fund is credited by an amount deducted from the salary of the employee every month at a certain rate and the employer also makes his own contribution to this fund. These contributions are invested to earn interest, which is also credited to the employee's provident fund account. When an

employee retires from his service, he receives this amount in lump-sum along with interest on the fund. If unfortunately, the employee dies during the service, the amount of this fund is received by his wife and children or legal heirs, and it is a great help to them. Provident funds are of four kinds:

- (i) Statutory Provident Fund;
 - (ii) Recognised Provident Fund;
 - (iii) Unrecognised Provident Fund;
 - (iv) Public Provident Fund.
- (i) **Statutory Provident Fund.** It is that Provident Fund to which the Indian Provident Fund Act, 1925 applies. Generally, this Provident Fund is maintained by Government or Semi-Government offices, like local authorities, universities, other recognised educational institutions, statutory corporations and nationalized banks, etc.

(ii) **Recognised Provident Fund.** It is a fund to which the Provident Fund Act, 1952, applies. There is one more alternative also. The fund which is not established under E.P.F. Act of 1952, but is expressly recognised by the Chief Commissioner or Commissioner of Income Tax, is also a recognised Provident Fund. Generally, this fund is maintained by scheduled banks, factories and several business houses. Thus, this fund is maintained by private sector organisations.

(iii) **Unrecognised Provident Fund.** It is that provident fund which is neither statutory nor recognised. Any institution or organization can maintain this fund. It is approved by the Commissioner but not by the Commissioner of Income Tax. This is maintained in private sector organizations.

(iv) **Public Provident Fund.** The Public Provident Fund Scheme was started from 1st July, 1968. Every individual (including a salaried employee) can subscribe to this fund any amount being not less than ₹ 500 and not more than ₹ 1,50,000 in a year. One can also deposit money in instalments which cannot exceed 12 in a year. An individual can open a public provident fund account either on his own behalf or on behalf of a minor of whom he is the guardian. However, an individual can open only one account in his own name. An account under this scheme can be opened at a branch of the State Bank of India or its subsidiaries or at a branch of any of the 13 nationalized banks authorised for this purpose by the Central Government.

Any time after the end of 6th financial year from opening the account, a subscriber may withdraw as per rules. However, not more than one withdrawal is permissible during any year.

The interest is paid at the rate prescribed from time-to-time. Interest is allowed for each calendar month on the lowest balance at the credit of an account between the close of the day and the end of the month, but shall be credited to the account at the end of each year. It is totally exempt from tax. The deposits in this fund account in a financial year are entitled to the deduction under section 80C.

Full withdrawal is allowed after 15 years, but in the event of death of the subscriber, he has an option either to close his account after completing 15 years or to continue the account for a further block period of 5 years. During the 5 year block period, a subscriber shall be eligible to make partial withdrawals not exceeding one every year, but the total of withdrawals during the 5 year block period, shall not exceed 60% of the balance at his credit at the commencement of the said period.

The entire amount received from this fund (including interest) is totally exempt from income tax.

For purposes of salary we are concerned mainly with three kinds of provident fund, the provisions of which under the Income Tax Act, can well be explained in the following tables:

INCOME FROM SALARIES

(a) Amount which is included in income :

Statutory Provident Fund	Recognised Provident Fund	Unrecognised Provident Fund
When a person is a member of this provident fund his own contributions to this fund are included in his income. In this case employer's contribution and interest on provident fund are not considered at all i.e., employer's contribution and interest on provident fund is neither included in the employee's income nor it is taxable.	When a person is a member of this fund : (i) his own contribution to this fund, (ii) employer's contribution in excess of 12% of the employee's salary, and (iii) interest on provident fund in excess of 9.5% are included in employee's income i.e., employer's contribution to the extent of 12% of the salary and interest on provident fund upto the prescribed rate; is neither included in the income of the employee nor it is taxable.	When a person is a member of this fund his own contributions to this fund are included in his income but the employer's contribution and interest on provident fund is not included in his income from year to year.

(b) Maximum limit of amount qualifying for deduction under Sec. 80C :

Statutory Provident Fund	Recognised Provident Fund	Unrecognised Provident Fund
Employee's own contribution to this fund upto ₹ 1,50,000.	Employee's own contribution to this fund upto ₹ 1,50,000.	Employee's own contribution to this fund is not included in the amount qualifying for deduction.

(c) Lump-sum received from these funds at the time of retirement from service or at the time of leaving the service :

Statutory Provident Fund	Recognised Provident Fund	Unrecognised Provident Fund
It is neither included in the employee's income nor it is taxable.	It is neither included in the employee's income nor it is taxable.	(i) Employer's share and interest thereon is included in his income under the head 'Salaries' and is taxable. (ii) The amount of employee's subscription is exempt. (iii) The interest on employee's subscription is included under the head 'Income from other sources' and is taxable.

Note : Salary for qualifying amount of Contribution to Recognised Provident Fund : It includes basic salary + Dearness Pay or Dearness Allowance (if it enters into retirement benefits or it is given as per terms of employment) + Fixed percentage of commission on turnover achieved by the employee.

APPROVED SUPERANNUATION FUND [Sec. 10(13)]

The purpose of this fund is to provide for annuities to employees on their retirement at or after a specified age or on their becoming incapacitated prior to such retirement, or to their widows, children or dependents on the death of such employees. It is that fund which is approved by the Chief Commissioner or Commissioner of Income Tax.

Exemption of Amounts received from the Fund. The following payments from this fund are totally exempt from tax :

- (i) on the death of the employee; or
 - (ii) in commutation of an annuity on his retirement or on his becoming incapacitated prior to such retirement; or
 - (iii) by way of refund of contributions on the death of an employee.
- [(iv) by way of transfer to the account of the employee under a pension scheme u/s 80CCD. w.e.f. A.Y. 2017-18].

Qualifying Amount for deduction u/s 80C

An employee's contribution to this fund during the previous year, together with other sums specified u/s 80C, is included in the amount qualifying for deduction under section 80C to the extent that the aggregate of these sums does not exceed in a previous year ₹ 1,50,000.

Note : For details of Sec. 80C see chapter on "Deductions to be made in Computing Total Income".

Deductions
The income chargeable under the head 'Salaries' shall be computed after making following deductions:

(1) Entertainment Allowance [Sec. 16(ii)];

(2) Employment Tax [Sec. 16(iii)].

(1) **Entertainment Allowance.** Amount granted as entertainment allowance to an employee by his employer is included under the head 'Salaries' and then the following deduction is allowed in this connection:

- (a) In the case of a Government employee: (i) Amount received; (ii) 1/5th of basic salary or (iii) ₹ 5,000 (whichever is less).
- (b) In the case of any other employee: Nil

Note: Any entertainment expenses incurred by the employee (whether government employee or non-government employee) is not taken into consideration at all.

Illustration 17 (Entertainment Allowance regarding Govt. Employees)

Mr. R. S. Tiwari is a Government employee. During the year 2015-16 he got ₹ 20,000 p.m. salary, ₹ 4,000 p.m. as dearness allowance, car allowance ₹ 500 p.m. and rent-free house of the value of ₹ 1,000 p.m. He was also given entertainment allowance of ₹ 400 p.m. with effect from 1st July 2011 when he was promoted and that he did not spend any amount out of this for official purposes. Calculate the amount deductible u/s 16(ii).

Solution

Since Mr. Tiwari is a government employee, he will get deduction u/s 16(ii) irrespective of the fact that he did not spend any amount out of this for official purposes. The amount deductible allowable will be the least of the following:

- (i) 1/5 of basic salary of ₹ 2,40,000 = ₹ 48,000, or
(ii) ₹ 5,000, or
(iii) ₹ 4,800 being actual amount received.

The least of all the above amounts, viz., ₹ 4,800 will be allowed as deduction u/s 16(ii). Extras will be included in salary for this purpose.

(2) **Tax on Employment.** Any sum paid by the assessee on account of a tax on employment leviable by or under any law, is allowable as deduction.

Note: If the amount of employment tax has been paid by the employer, it will be added in salary income and then deduction will be allowed.

Standard deduction is not allowed w.e.f. A. Y. 2006-07.

Chart Showing Computation of Income from Salaries

1. Salary/Wages	.....
2. Advance Salary or Arrears of Salary	.....
3. Dearness Pay	.....
4. Dearness Allowance	.....
5. Bonus	.....
6. Fees	.....
7. Commission	.....
8. Allowances (Taxable part)	.....
9. Value of taxable perquisites	.....
10. Profits in lieu of or in addition to salary or wages (Amount of Compensation)	.....
11. Amount received in respect of encashment of earned leave during service	.....
12. Contribution of employer in RPF in excess of 12% of salary	.....
13. Interest on RPF in excess of 9.5% of salary	.....

On retirement of Employee-add:

14. Unrecognised Provident Fund:
- (a) Share of employer
- (b) Interest on share of employer
15. Taxable part of gratuity
16. Taxable part of encashment of earned leave
17. If retrenched—taxable part of retrenchment compensation
18. In case of voluntary retirement—taxable part of voluntary retirement compensation
19. Pension:
- (a) Taxable part of commuted pension
- (b) Pension from the date of retirement till the end of previous year

Gross Salary Income

Less:

1. Entertainment allowance—Max. ₹ 5,000
(In case of Govt. Employee)
2. Professional Tax

Taxable Salary

If total income is to be computed and there is no income other than salary, the taxable salary will also be Gross Total Income and from it deductions under sections 80C to 80U will be allowed and the balance will be the Total Income.

Illustration 18 (Conveyance Allowance and Employment Tax)

Smt. Kishan Pyari is drawing a monthly salary of ₹ 10,000 and entertainment allowance of ₹ 1,750 per month from a Ltd. Co. She is also getting conveyance allowance of ₹ 1,200 per month, bonus equal to two months' salary and commission equal to one month's pay. During the previous year she paid ₹ 2,000 as Employment Tax.

She is provided with a rent-free furnished house by the company at Jaipur. The company paying ₹ 60,000 p.a. as rent of this house and ₹ 9,000 p.a. for furniture and fittings. The electric and water charges amounting to ₹ 18,000 are also borne by the company in respect of this house.

She is also provided with lunch by the company during working hours at work place. The cost of which is ₹ 80 per meal for 300 days during the P.Y.

The company recovered ₹ 20 per meal from her.

From the above information calculate Smt. Kishan Pyari's taxable income from salary for the assessment year 2016-17.

Solution

Computation of Taxable Income from Salary (for the Assessment Year 2016-17)

Salary	1,20,000
Bonus	20,000
Commission	10,000
Entertainment Allowance	21,000
Value of rent-free house	34,650
Electric and water charges paid by the company	18,000
Lunch—(₹ 80 - 20 - 50) × 300	3,000
Gross Income from Salary	₹ 2,26,650
Less: Employment Tax	2,000
Taxable Salary	2,24,650

Notes: 1. Value of rent-free house is determined as under:

15% of salary (i.e., 15% of ₹ 1,20,000 + 20,000 + 10,000 + 21,000)

Add: Actual hire paid for furniture, etc.

2. It is assumed that conveyance allowance is used wholly for performing her duties, hence it is exempt.

₹ 25,650
9,000
₹ 34,650

INCOME FROM SALARIES (RETIREMENT)

When an employee retires from service or leaves a job and joins the other or he is receiving some special payments from the employer, e.g. :

- (1) Gratuity [Sec. 10(10)]
 - (2) Pension and Commuted Value of pension [Sec. 10(10a)]
 - (3) Earned leave salary [Sec. 10(10b)]
 - (4) Compensation on retrenchment [Sec. 10(10c)]
 - (5) Compensation on voluntary retirement [Sec. 10(10d)]
 - (6) Amount from provident fund [Sec. 10(11)]
- The aforesaid receipts are treated as income from salaries. However, these are exempted specified limits. In this connection the provisions of the Income Tax Act are as under :

Chart showing Government or Non-Government Employees for certain Exemptions

	Leave salary	Gratuity	Commuted Pension
1. Central/State Government Employees	G.E.	G.E.	G.E.
2. Local Authority Employees	N.G.E.	G.E.	G.E.
3. Statutory Corporations Employees	N.G.E.	N.G.E.	G.E.
4. Other Employees	N.G.E.	N.G.E.	N.G.E.
G.E. = Government Employee N.G.E. = Non-Government Employee.			

GRATUITY

For exemption of death-cum-retirement gratuity, employees have been classified into the categories :

- (A) *Government employees* [Sec. 10(10)(i)]. Any death-cum-retirement gratuity received by all categories of Government employees or employees of a local authority is exempt from income tax in full. Even if after retirement he takes up an appointment in a private organisation the gratuity received by him from the government will be exempt from tax.
- (B) *Non-Government employees covered by the Payment of Gratuity Act, 1972.*

Employees covered by the Payment of Gratuity Act

The Payment of Gratuity Act applies to those employees who are working in any establishment, factory, mine, oilfield, plantation, port, railway or shop to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, and whether or not such person is employed in a managerial or administrative capacity, but does not include :

- (i) Employees of the Central or State Governments.
- (ii) Employees governed by any other Act or any other rules in this respect.

The Payment of Gratuity Act applies to a concern in which 10 or more employees are employed or were employed, on any day of the preceding 12 months.

Where to a concern this Act has become applicable shall continue to be governed by this Act even the number of employees therein at any time after it has become so applicable falls below ten.

Exempted Amount. Least of the following shall be exempt :

- (i) 15 days' salary (7 days in the case of employees of a seasonal establishment) based on salary last drawn for every completed year of service and part thereof in excess of six months; or
- (ii) ₹ 10,00,000; or
- (iii) Gratuity actually received.

Meaning of Salary. It includes :

- (i) Monthly basic salary last drawn;
 - (ii) Dearness allowance (whether as per terms of employment or not).
- Computation of 15 days' salary.** It is computed by the following formula :

$$\text{Last Month Salary} \times 15$$

26

In the case of piece-rated employee, 15 days' salary would be computed on the basis of average of total salary (excluding overtime salary) received for a period of three months immediately preceding the termination of or retirement from service. For example, if a piece-rated employee retires on 20th July, 2015 (salary received from 21st April to 20th July, 2015 may be assumed to be ₹ 9,000). In this case 15 days' salary would be ₹ 1,731. i.e., ₹ 9,000 ÷ 3 × 15 divided by 26.

(C) *In the case of Non-government employees not covered by the Payment of Gratuity Act, 1972* [Sec. 10(10)(ii)]. Any gratuity received by him on his retirement or on his becoming incapacitated prior to such retirement or on termination of his employment, or any gratuity received by his widow, children or dependents on his death is exempt upto the least of the following amounts :

- (i) One-half month average salary for each year of completed service; or
- (ii) ₹ 10,00,000; or
- (iii) Actual amount of gratuity received.

In order to compute the number of completed years of service, only the complete years will be taken into account and the service for a part of the year will be ignored. For example, if the total service of an employee is for 30 years 8 months and 20 days, only 30 years will be taken into account for the purpose and the remaining 8 months and 20 days will be ignored.

Average Salary. It shall be computed on the basis of salary for ten months immediately preceding the month in which the event occurs.

Meaning of Salary. It includes :

- (i) Basic Salary;
- (ii) Dearness allowance, if it is given as per terms of employment;
- (iii) Commission based upon fixed percentage of turnover achieved by the employee.

Gratuity from more than one employer. Where gratuity is received by the employee from more than one employer in the same previous year, the aggregate amount of exemption shall not exceed the maximum absolute limit. Further, where the employee has received gratuity in any earlier year from his former employer and receives gratuity from another employer in a later year, the maximum absolute limit will be reduced by the amount of gratuity which has been exempted earlier.

This provision is applicable in both the cases (B) and (C).

Pension

Commuted Pension (Lump-sum)

$$15,600 \times 3) + 10]$$

Average Monthly Salary

In this case 30 years will be taken as the least of the following:

The amount of gratuity exempt will be:

of service ($\text{₹ } 11,490 \times 30$)

Exempted amount

PENSION AND COMMUTED PENSION

If a person after serving in India, retires and settles in a foreign country, receives pension on account of such service, such pension shall be deemed to accrue and arise in India and chargeable under the head salaries even he becomes non-resident in India.

Commutation of Pension. Sometimes the employee wants to have a lump

(i) Any payment received in commuted value for the pension shall be exempt from tax subject to the following limits :

(i) Any payment received in accordance with the following limits :

[Sec. 10(10A]

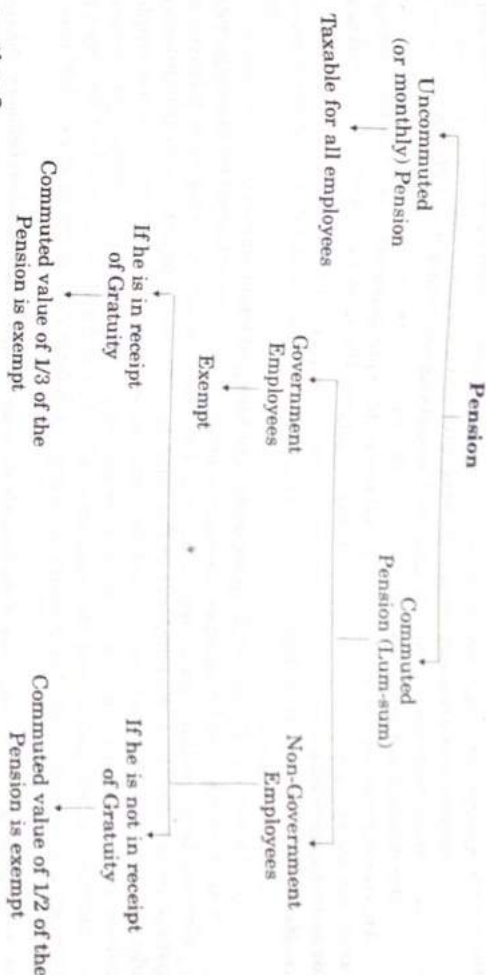
Governments employees and employees of any local authority or of any statutory corporation, or any Government employee absorbed in a public sector undertaking is fully exempt from tax.

(ii) Any payment in commutation of pension received from any other employer is exempt to the extent it does not exceed :

(b) the computed value of one-th

(iii) Any payment received by an individual in commutation of Life Insurance Corporation gratuity if he does not receive gratuity.

exemption from income tax.



Mr. Suresh is getting a pension of ₹ 12,000 per month from a company. During the previous year he got his two-third pension commuted and received ₹ 7,38,000. Compute the exempted amount, if :

(a) he also received gratuity, (b) he did not receive gratuity.

Solution

(a) When Mr. Suresh received gratuity also :

Commuted Value of 2/3 pension

Commuted Value of full pension = $7,38,000 \times 3 \div 2$

Exempted amount = Commuted Value of 1/3 pension

$$= 11,07,000 \times 1 + 3$$

(b) When Mr. Daines did not receive gratuity:

Computed Value of full pension = 7 38 000 \times 3 \div 2

Exempted amount = Commuted Value of 1/2 pension

$$= 11,07,000 \times 1 \div 2$$

EARNED LEAVE SALARY

[Sec. 10(10AA)]

(A) *Enticement during Service.* If an employee does not avail his earned leave and receives payment in respect of any period of leave not availed of by him, while he continues to remain in service, it is taxable in full.

(B) *Encashment after Retirement.* If an employee receives payment in respect of any leave availed of by him, on retirement or resignation, it will be exempt to the following extent :

(a) *Government Employees.* Any payment received by an employee of the Central Government or State Government as the cash equivalent to the earned leave at his credit at the time of his retirement whether on superannuation or otherwise is fully exempt.

(b) *Non-Government Employees.* Any payment as encashment of earned leave received at

the time of his retirement whether on superannuation or otherwise (e.g., resigned)

(6) *Minimum of 10 months' salary on the basis of the average salary drawn by the from any other employer is exempt to the extent of the least of the following amounts:*

(1) Maximum of 10 months salary on the basis of the average salary drawn by the employee during 10 months immediately preceding his retirement on superannuation.

empiricist dealing in notions immediately preceding the revolution on superannua-
tion or otherwise: or

(ii) Amount of salary not been advanced by the Central Government earned leave has not been prescribed by the Central Government.

Approved Period with the employee's year of actual service with the employer. This is the approved period.

Meaning of Salary. It includes:

- (i) Basic salary;
- (ii) Dearness allowance, if given under the provisions of the Payment of Dearness Allowance Act, 1946, or any other law for the time being in force;
- (iii) Commission based upon fixed percentage of turnover achieved by the employee;

Earned Leave Salary from more than one Employer. Where the employee receives salary from more than one employer in the same previous year, the maximum amount payable from more than one employer in the same previous year, the maximum amount of exemption under section 10(10A) will not exceed the limit so specified. Further, where such employee receives such payments in one or more previous years, the maximum amount of exemption from income tax will not exceed the limit so specified as reduced by the amount received in any earlier previous year.

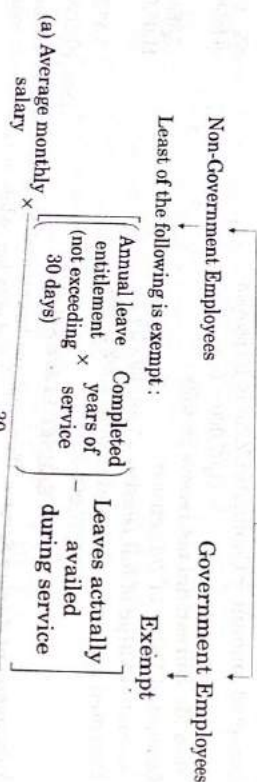
Year. Any amount paid to the legal heirs of the deceased employee in respect of earned leave standing to the credit of the employee at the time of his death is not taxable. [I.T.O. vs. *M. A. Badaney* (1987) Bombay Tax Appeal No. 100 of 1985.]

[I.T.O. vs. *M. A. Badlaney* (1987) Bombay Trib.

Leaves encashed during service

Leaves encashed at the time of retirement

Taxable for all employees



(b) 10 months' average salary
(c) ₹ 3,00,000

Average monthly salary actually received.

preceding retirement.

Salary includes → Basic salary + DA (If part of salary is on the basis of average of ten months immediately preceding the month of payment)

Illustration 7

Illustration 7

Sri Om Prakash was manager in a company. He sought premature retirement from service on 1st November, 2015 after completing 25 years of service. From 1st August, 2014 his pay scale was ₹ 18,000-900-24,300 and he was getting dearness allowance of ₹ 1,800 p.m. while

was treated as salary for the purpose of retirement benefits. He had 7 months' earned leave to his credit (on the basis of 30 days per year) which was approved, hence he was paid ₹ 1,32,300 as salary and ₹ 12,600 as dearness allowance. Compute the amount exempt regarding encashment of earned leave for the assessment year 2016-17, if he joined another company on 1st January, 2016 at ₹ 22,500 p.m.

Solution

Solution
His joining another company after his retirement from a company does not forfeit his right to exemption u/s 10(10AA). Hence, the exemption will be calculated as per normal procedure as under :

Average salary for 10 months immediately preceding the retirement.

Salary @ ₹ 18,000 p.m. for 7 months from January 2015 to July 2015
Salary @ ₹ 18,900 p.m. for 3 months from August 2015 to October 2015

Dearness Allowance for 10 months

$$\text{Average Salary} = 2,00,700 \div 10 = ₹ 20,070$$

Least of the following will be exempt:

(a) Salary for 10 months on the basis of average salary
(b) Salary for 7 months on the basis of average salary

(c) Maximum amount

Hence, ₹ 1,40,490 would be exempt u/s 10(10AA).

Illustration 8

Sri Amar Nath was employed in a company. He took voluntary retirement on 1st December, 2015 after completing 25 years of service. On 1st January, 2015 his salary was ₹ 6,000 p.m. after adding the annual increment. In this company two months' leave accrued every year. Compute the amount exempt regarding encashment of earned leave, if his other particulars were as under :

Solution

Average salary ₹ 6,000 per month

Approved period of earned leave 25 months
(on the basis of 30 days per year)

The least of the following amounts will be exempt :

	A ₹	B ₹	C ₹
(i) Salary for 10 months on the basis of average salary	60,000	60,000	60,000
(ii) Salary for the period remaining after deducting leave availed from the total approved period of earned leave (on the basis of average salary)	$(15 \times 6,000)$ = 90,000	$(25 \times 6,000)$ = 1,50,000	Nil
(iii) Maximum limit	3,00,000	3,00,000	3,00,000
(iv) Actually received amount	2,40,000	3,00,000	1,20,000

The amount exempt will be :

Case (A) ₹ 60,000; Case (B) ₹ 60,000; and Case (C) ₹ Nil.

RETRENCHMENT COMPENSATION

[Sec. 10(10B)]

Any compensation received by a workman under the Industrial Disputes Act, 1947, at the time of retrenchment is exempt from tax to the extent of the least of the following amount :

- An amount calculated in accordance with section 25F(b) of the Industrial Disputes Act, 1947; or
- Amount notified by the Central Government ₹ 5,00,000; or
- Actual amount of compensation received.

The limits given u/s 10(10B) shall not apply in cases where the compensation is received under any scheme approved by the Central Government in view of the need of providing special protection to the workmen of an undertaking.

Retrenchment includes the following :

- retrenchment on account of closure of business; or
- transfer of the services of workman to some other employer, if it amounts to break of service; or if the terms of service of the new employer are less favourable than that of the original employer.

As per the Industrial Disputes Act, 1947 the amount of compensation will be calculated at 15 days' average pay for every completed year of continuous service and any part thereof in excess of 6 months.

Average pay will be calculated as under :

- If the workman is getting monthly salary, then on the basis of the salary of last three calendar months; or
- If the workman is getting weekly wages, then on the basis of wages of last four complete weeks; or
- If the workman is getting daily wages, then on the basis of wages of last twelve full working days.

Meaning of Salary. Under the Industrial Disputes Act, for this purpose salary or wages mean all remuneration capable of being expressed in terms of money, which would be payable to a workman in respect of his employment or work done in such employment, and include :

- such allowances (including dearness allowance) as the workman is entitled to;
- the value of any house accommodation or supply of light, water, medical attendance or other amenity or services, or any concessional supply of foodgrains or other articles;
- any travel concession;

but does not include :

- any bonus;
- any contribution paid or payable by the employer to any pension fund or provident fund for the benefit of the workman;
- any gratuity payable on the termination of his service.

Illustration 11

Mr. Rakesh is employed as a clerk in a Textile Mill at Amritsar since 1st October, 2002. He is getting ₹ 12,000 p.m. as salary and ₹ 2,400 p.m. as dearness allowance since 1st January, 2012. His services were terminated on account of retrenchment of employees on 1st July, 2015 and he was paid ₹ 1,92,000 as compensation. Compute his exempted amount of compensation for the assessment year 2016-17.

Solution**Computation of Exempted Amount of Compensation u/s 10(10B)**

(for the Assessment Year 2016-17)

The least of the following is exempt :

	₹
1. Amount received	1,92,000
2. 15 days' average pay for every completed year of service or part thereof in excess of 6 months	
In this case six and a half month salary i.e., ₹ 14,400 × 13 ÷ 2	93,600
3. Maximum limit	5,00,000
Exempted amount	93,600

COMPENSATION ON VOLUNTARY RETIREMENT

received or receivable by an employee of:

- (A) Any payment received or receivable by an employee of:
 - (i) A public sector company, or
 - (ii) Any other company, or
 - (iii) A statutory authority, or
 - (iv) A local authority, or
 - (v) A co-operative society, or
 - (vi) A University, or
 - (vii) An Indian Institute of Technology, or
 - (viii) Any State Government, or
 - (ix) The Central Government, or
 - (x) An institution, having importance throughout India or in any State or States or Central Government may notify in this behalf, or
 - (xi) Any notified Institute of Management,
 - on voluntary retirement or termination of service in accordance with any scheme on voluntary retirement; or
 - (B) In case of public sector company, a scheme of voluntary separation, shall be exempt upto a specified limit.
- The amount of compensation shall be exempt least of the following:
- (i) The amount equivalent to three months' salary for each completed year of service
 - (ii) Salary at the time of retirement multiplied by the balance months of service left till the date of his retirement on superannuation;
 - (iii) Amount received;
 - (iv) Maximum statutory limit ₹ 5,00,000.
- Meaning of Salary.** It includes:
- (i) Basic salary;
 - (ii) Dearness allowance, if it is given as per terms of employment;
 - (iii) Commission based upon fixed percentage of turnover achieved by the employee.

No Exemption When Relief Allowed u/s 89

Where any tax relief has been allowed to an assessee u/s 89 in respect of any amount received receivable on his voluntary retirement or termination of service or voluntary separation, no exemption under section 10(10C) shall be allowed to him in relation to such, or any other assessment year.

Illustration 12

John is employed in a public company and is paid a sum of ₹ 6,00,000 on Voluntary Retirement from Service. The normal age of retirement in the company is 60 and John, who is 45 at the time of retirement had completed 20 years of service. His monthly salary at the time of retirement was as follows:

Basic Pay ₹ 10,000

₹ 10,000

Dearness Allowance (50 p.c. includible for pension)

₹ 6,000

H.R.A.

₹ 3,000

Conveyance Allowance

What is the amount of compensation taxable under the Act?

₹ 80

Solution**Computation of Compensation Taxable u/s 10(10C)**

Salary for this purpose ₹ 10,000 + 50% of D. A. ₹ 6,000 = ₹ 13,000

Completed years of Services = 20 years

Service left in months: 180 months

Exempted amount least of the following:

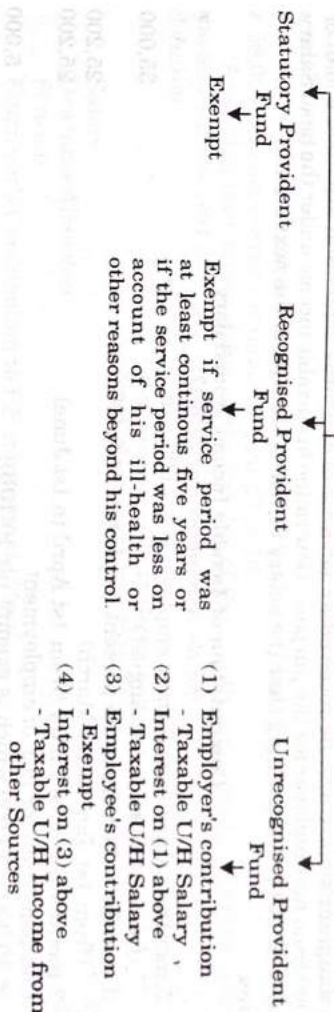
- (i) Amount received ₹ 6,00,000
- (ii) 3 months' salary for each year of service ₹ 13,000 × 20 × 3 7,80,000
- (iii) Salary of balance of months of service left before voluntary retirement ₹ 13,000 × 180 23,40,000
- (iv) Maximum exemption 5,00,000

Hence, Taxable Amount = ₹ 6,00,000 - 5,00,000 = ₹ 1,00,000.

AMOUNT RECEIVED FROM PROVIDENT FUND

At the time of retirement or leaving the job an employee receives a lump-sum amount from provident fund. The income tax provisions of exemption in respect of such amount are as under:

- (1) The amount received from statutory provident fund is fully exempt.
- (2) The amount received from recognised provident fund is fully exempt provided that (i) he has continuously served with this employer for at least 5 years, or (ii) if he has not continuously served with this employer for at least 5 years, his services have been terminated or he has left the service on account of his illness or the discontinuance of the business on account of reasons beyond his control.
- (3) Amount received from unrecognised provident fund is treated as under:
 - (i) The contribution of employer and interest on it is included under the head 'Salaries' and liable to tax.
 - (ii) The subscription of the employee is exempt.
 - (iii) The interest on the subscription of the employee is included under the head 'Income from Other Sources' and liable to tax.

Lump Sum Amount Received from Provident Fund**Illustration 13**

Mr. X is employed in a factory as an accountant on a monthly salary of ₹ 12,000 plus a dearness allowance of ₹ 1,200 p.m. He is a member of an Unrecognised Provident Fund to which he contributes 10% of his salary and his employer also contributes an equal amount. On 1st August, 2015 he resigned and joined another factory on the same date on a monthly salary of ₹ 16,000 plus a dearness allowance @ 10% of his salary. He received ₹ 40,000 (including ₹ 8,000 interest) from the unrecognised provident fund of which half the amount consisted of employer's contribution and interest thereon. In his new employment, he contributed 15% of his salary to a recognised provident fund while his employer contributed ₹ 16,160. He is also provided with an unfurnished rent-free house by the second employer in a city (population 12 lakh), the municipal valuation of which is ₹ 900 p.m. Find out his taxable salary income for the Assessment Year 2016-17, assuming salary to be due on the 1st day of the next month.

INCOME FROM HOUSE PROPERTY

BASIS OF CHARGE

Under the head 'Income from House Property' the basis of charge is the *annual value* of property.

The property :

- (i) consists of any buildings or lands appurtenant thereto,
- (ii) of which the assessee is the owner, and
- (iii) which is not used for purposes of assessee's business or profession. (Sec. 22)

The following are the important points in the above definition :

(1) **Buildings or lands appurtenant thereto.** Under the head 'Income from House Property' income is computed on buildings and land appurtenant thereto. Land which is not appurtenant to any building does not come within the scope of this section. Income from such land is taxable under the head 'Income from Other Sources'. The lands appurtenant to building include compound, play-ground, kitchen-garden, courtyard, etc. In case of non-residential building, car parking spaces, drying grounds, play grounds, connecting roads in the factory area shall be lands appurtenant to buildings.

The following are the exceptions to the general rule that income from house property is taxable under the head 'Income from House Property'.

Exceptions :

(a) **Building or staff quarters let out to employees and others.** If the assessee lets out the building or staff quarters to the employees of business whose residence there is necessity for the efficient conduct of business, the rent collected from such employees is assessable as income from business and not as income from house property. (CIT vs. Delhi Cloth & General Mills Ltd. 59 ITR 152)

(b) If a building is let out to authorities for locating bank, post office, police station, etc., income from such building will be assessable as income from business and not as income from house property, provided the dominant purpose of letting out the building is to enable the assessee to carry on his business more efficiently and smoothly. [CIT vs. National News-paper and Paper Mills Ltd. (1978) 114 ITR 388]

(c) **Composite letting of building with other assets.** Where the assessee lets on hire machinery, plant or furniture belonging to him and also buildings for a composite rent and the rent of the buildings is inseparable from the rent of the said machinery, plant or the furniture, the income from such letting is not chargeable to income tax under the head 'Income from House Property' but it is taxable under the head 'Income from Other Sources' or under the head 'Business or Profession', if such letting is his business. [Sec. 56(2)(iii)]

(d) **Paying-guest accommodation.** It is assessable as business income. Where in terms of memorandum of association, main object of assessee company was to acquire properties and earn income by letting out same, said income was brought to tax as business income and not as income from house property. [Chennai Properties & Investment Ltd. vs. CIT (2015) 231 Taxman 456 (SC)]

(2) **On its Annual Value.** The income is computed on the basis of annual value of building and land appurtenant thereto and not on its rental income. The detailed definition of annual value is given in the subsequent pages of this chapter.

(3) **The assessee should be the owner of the house property.** It is only the owner of the house property, who is liable to pay tax, under this head of income. Where the assessee is the head of a building and he derives an income from subletting or reletting, it will be taxable under head 'Income from Other Sources' and not under the head 'Income from House Property'.

The following are the owners of a house property :

(i) The person in whose name the property is registered.

(ii) In case of mortgage, it is the mortgagor and not the mortgagee.

Deemed Owners. The following are house property to his or her spouse, without adequate consideration or not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter, shall be deemed to be the owner of the house property transferred.

(b) A member of a Co-operative Society, Company or an Association of persons to whom building or its part is allotted or leased under a house building scheme of the society, company or association, shall be deemed to be the owner of that property.

(c) A person who is allowed to retain possession of any building in part performance of a contract (referred to in the Transfer of Property Act) shall be deemed to be the owner of the building.

(d) A person having lease rights in the property under a lease extending to 12 years or more in the aggregate including the term for which the lease may be extended shall be deemed to be the owner of the property.

(e) If a person takes a land on lease and constructs a house upon it, he will be deemed to be its owner.

(f) **Disputed Ownership.** If the title of ownership is disputed in a court of law, the recipient of rental income or the person who is in possession of the property as owner is treated as the owner.

(4) **It is not used for purposes of assessee's business or profession.** If the property, or a portion of it is occupied by the assessee for the purpose of his own business or profession and the portion of it is not taxable as income from house property and also nothing will be deductible expenditure on rent of this premises in computing the profits of business or profession.

Exemptions regarding Income from House Property

There are two kinds of exemptions regarding income from house property : (1) Income is not included in gross total income (*i.e.*, fully exempt), and (2) Income is included in assessee's gross total income but deduction is allowed from gross total income.

1. Fully Exempted Incomes

(1) Income from farm house (See details in chapter Agricultural Income). [Sec. 21A(c)]

(2) Annual Value of one palace of ex-Indian Ruler. [Sec. 21A(c)]

(3) Income from property owned by :

- (i) Local Authority;
- (ii) Scientific Research Association;
- (iii) Trade Union;
- (iv) Charitable Trust;
- (v) Political Party;
- (vi) University or other educational institution existing for educational purposes and not for purposes of profit;

(vii) Hospital or medical institution existing for philanthropic purposes and not for purposes of profits.

(4) Income from property used for assessee's own business or profession.

(5) Income from one self-occupied house.

(6) Income from house meant for self-residence but could not be occupied throughout the previous year on account of his service business or profession at any other place.

2. Deductible from G.T.I.

(1) Income of a co-operative society from the letting of godowns or warehouses for storage of commodities meant for sale. [Sec. 80P(2)]

(2) Income of a co-operative society from house property, provided its gross total income does not exceed ₹ 20,000 and the society is not a housing society, urban consumers' co-operative society, transport society or society manufacturing goods with the aid of power.

Other Important Points regarding Income from House Property

(1) **Income from house property situated abroad.** Income from House Property situated in a foreign country is taxable only in case of residents. If foreign property is taxed in India it will be taxable under the head 'Income from House Property' and its annual value shall be computed as if the property is situated in India.

(2) **Property owned by co-owners.** Where a property is owned by two or more persons jointly and their respective shares are definite and ascertainable, income from such property shall not be assessed on such persons as association of persons, but the share of each such person from the property shall be included in his respective total income. If any portion of the house belonging to a co-owner is occupied by him for his own residence, that portion will be treated as self-occupied house and its annual value will be Nil, i.e., it will be exempt from tax.

(3) **Composite Rent.** If a building is let out to a person along with other facilities (*e.g.*, electricity, cooler, lift, water pump, water tax, etc.) for a composite rent and if the rent of the building can be separated from the rent of such facilities, the two rents will be separated and that belonging to the building only will be taxed under the head 'House Property' and that which belongs to other facilities will be taxed under the head 'Other Sources'. If the composite rent cannot be split up it will be taxed under the head 'Other Sources'.

ANNUAL VALUE

(A) BUILDINGS LET OUT

Income from house property does not mean rental income; but it means the sum for which the building might reasonably be expected to be let from year to year. An assessee's income from house property is computed on the basis of its annual value. Hence, it is very important to understand properly the method of determining the annual value of the house property. If the annual value is not determined correctly, the taxable income from house property will be wrong.

Definition of annual value. The annual value of a house property let out shall be deemed to be :

- (a) the sum for which the property might reasonably be expected to be let from year to year; or
- (b) where the property or any part of property is let and the actual rent received or receivable by the owner is in excess of the sum referred to in (a), the amount of rent received or receivable; or
- (c) where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in (a), the amount so received or receivable.

Deduction of Municipal Taxes

From the value determined under (a) or (b) or (c) the taxes (including service taxes) levied by any local authority and paid by the owner during the previous year (irrespective of the previous year to which such taxes relate) shall be deducted in determining the annual value of the property.

Generally, the service taxes include fire tax, water tax, conservancy tax, education cess, etc.

INCOME TAX

For the purposes of clause (b) or clause (c) the amount of actual rent received or receivable shall not include, subject to such rules as may be made in this behalf, the following conditions are satisfied:

Explanation. For the purposes—
or receivable by the owner shall not include, save as may be provided in writing or otherwise, any sum payable to or receivable by the owner shall not include, if the following conditions are satisfied:
the amount of rent which the owner cannot realise.
Unrealised rent shall not form part of annual value if the following tenant has vacated, or steps have been taken to secure its realisation,
(Rule 4) : (i) the tenancy is bona fide; (ii) the defaulting tenant is not in occupation of the premises;
taken to compel him to vacate the property; (iii) the defaulting tenant is not in possession of the premises;
other proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.
Relevant portion of Form No. ITR-2 for the Assessment Year 2016-17
DETAILS OF INCOME FROM HOUSE PROPERTY

SCHEDULE HP : DETAILS OF INCOME FROM HOUSE PROPERTY

[illegible]

Estimation of Expected Rent

(a) *Where standard rent has not been fixed.* One of the following (whichever shall be the expected rent of the building):

- (i) Municipal value determined by the local authority for class B properties;
 - (ii) Fair Rent—Rent of similar properties in the same locality.
- Where standard rent has been fixed.* One of the following (whichever is less) shall be the expected rent of the building:
- (i) The value as determined under (a); or
 - (ii) The standard rent fixed under Rent Control Act of a State.
- The standard rent cannot be more than the standard rent, but it can be less than the standard rent.

(ii) The standard rent fixed under Rent Control Act or a State
[*Balbir Singh vs. MCD* (1985) 152 ITR 388 (SC)]
Note: The expected rent cannot be more than the standard rent but it can be less than the standard rent.
[*Sec. 23(1)(b)*]

of Actual Rent

Sometimes the owner takes upon himself under an agreement the obligation to provide certain facilities to the tenant, *e.g.*, lift, water pump, electricity, vehicle parking, gardener, etc. In such a case, the actual rent received/receivable minus the cost of providing such facilities will be the actual rent.

If the tenant has undertaken the obligations of the landlord, e.g. the payment of electricity bills of the portion occupied by the landlord, the amount so paid will be added in rent received/receivable to arrive at the actual rent.

following:
(a) Money paid by the tenant to the local authority regarding the building occupied by him.

- (i) Tax paid by the tenant to the local authority regarding the property.
- (ii) Repairs charges borne by the tenant.
- (iii) Notional interest on deposit taken from the tenant.

Illustration 1

Illustration 1
Mr. X is the owner of three houses, which are all let out and are not governed by the Rent Act. From the following particulars find out the gross annual value in each case :

Particulars	I	II	III
1. Municipal Value	30,000	20,000	35,000
2. Fair Rent	36,000	24,000	32,000
3. Actual (<i>De Facto</i>) Rent	32,000	28,000	30,000

Solution

Solutions			
	I	II	III
(a) Expected rent 1 or 2, whichever is greater	₹ 36,000	₹ 24,000	₹ 35,000
(b) Actual rent	32,000	28,000	30,000
Gross Annual Value (a) or (b), whichever is greater	36,000	28,000	35,000

Illustration 2

Mr. X is the owner of four houses, which are all let out and are covered by the Rent Control Act. From the following particulars find out the gross annual value in each case, giving reasons for your answer :

<i>Particulars</i>	<i>I</i>	<i>II</i>	<i>III</i>	<i>IV</i>
Municipal Value	₹ 30,000	₹ 26,000	₹ 35,000	₹ 30,000
Fair Rent	36,000	28,000	30,000	36,000
Standard Rent	30,000	35,000	36,000	40,000
Actual (<i>De facto</i>) Rent	40,000	30,000	32,000	32,000

(3) *Computation of Annual Value in case of let-out house, which does not remain vacant during any part of the previous year but there is unrealised rent.*

The gross annual value of such a house will be determined and the balance will be the gross annual value the following deductions will be allowed and the balance will be the annual value :

(a) Taxes actually paid by the owner to local authority;

(b) Unrealised rent (If conditions of Rule 4 are satisfied).

[See Form ITR-2, Schedule HP : Income from House Property item b]

Sections 23 and 24 were substituted by the Finance Act, 2001, with effect from the 1-4-2002-03 to simplify the computation of income from house property. If the deduction of unrealised rent is given in a manner other than the manner provided in item b (given above) the procedure will become cumbersome instead of simple.

Further, a rule or notification notified by the Central Board of Direct Taxes is binding on the department. Hence, computation of annual value of a building in the manner provided in the Form (Return of Income) is valid.

Illustration 6

From the following information compute the annual value of the house :

Municipal value	₹ 1,50,000
Fair rent	1,80,000
Standard rent	1,60,000
Actual rent	20,000 p.a.
Municipal tax paid by the owner 20% of M.V.	
Unrealised rent ₹ 40,000. Conditions of Rule 4 are satisfied.	

Solution

Computation of Annual Value of the House

(a) Expected rent	₹ 1,60,000	₹
(b) Actual rent	2,40,000	
Gross Annual Value (a) or (b), whichever is greater		2,40,000
Less : (i) Municipal tax (20% of ₹ 1,50,000)	30,000	
(ii) Unrealised rent	40,000	
	70,000	
	1,70,000	

(4) *Computation of Annual Value in case of let-out house, which remains vacant during part of previous year and there is unrealised rent.*

The gross annual value of such a house will be determined as discussed in (2). From the gross annual value the following deductions will be allowed and the balance will be the annual value :

(i) Taxes actually paid by the owner to the local authority;

(ii) Unrealised rent. (If conditions of Rule 4 are satisfied.)

Illustration 7

From the following information compute the annual value of the house :

Municipal value	₹ 2,00,000
Fair rent	1,80,000
Standard rent	2,50,000
Actual rent	30,000 p.a.
Building remained vacant for two months during the previous year.	
Unrealised rent ₹ 30,000. Conditions of Rule 4 are satisfied.	
Municipal tax paid by the owner ₹ 15,000 and by the tenant ₹ 15,000.	

Solution

Computation of Annual Value of the House

(a) Expected rent ₹ 2,00,000		₹
(b) Actual rent (₹ 3,60,000 - 60,000 vacancy) ₹ 3,00,000		
Gross Annual Value		3,00,000
Less : Municipal tax paid by owner	15,000	
Unrealised rent	30,000	
	45,000	
	2,55,000	

Deductions from Annual Value

The income chargeable under the head 'Income from House Property' (in case of let-out house) shall be computed after making the following deductions from its annual value :

(1) *A sum equal to 30% of annual value as standard deduction for expenses (except interest).*

Points to note :

(i) Standard deduction @ 30% of annual value shall be deducted whether any expenditure is incurred or not.

(ii) If owner of the house occupies more than one house for his residential purposes, except one house all other self occupied house/houses are deemed as let-out. In such a case standard deduction @ 30% of annual value shall be allowed.

(iii) In respect of one house which is treated as self-occupied house, standard deduction is not allowed.

Note : For self-occupied house see ahead.

(2) *Interest on loan taken in respect of house property.* Interest on loan taken for the purpose of purchasing, constructing, reconstructing or repairing the house property is allowable as a deduction on accrual basis.

Points to note :

(i) Interest on unpaid interest is not deductible.

(ii) Interest on a fresh loan raised merely to repay the original loan taken for the above purposes is allowable as a deduction under this section.

(iii) Any brokerage or commission paid for raising the loan is not deductible.

(iv) *Interest for pre-acquisition or pre-construction period.* Interest payable in respect of funds borrowed for the acquisition or construction of house property and pertaining to the period prior to the previous year in which such property has been acquired or constructed shall be deducted in five equal annual instalments commencing from the previous year in which the house was acquired or constructed. The amount of interest shall not include any amount of such interest allowed as a deduction under any other provision of the Act.

The interest for the previous years prior to the current year, which is to be deducted in five equal annual instalments, shall be deducted in addition to the interest of the current year i.e., the interest allowable shall be the interest for the current previous year + 1/5th of interest for the previous years prior to the year in which the house is constructed or purchased.

COMPUTATION OF PRE-CONSTRUCTION PERIOD

For calculating the interest on loan for pre-construction period it is compulsory to know the duration of such period. Pre-construction period starts from the date of loan taken upto the end of financial year just preceding the year in which the construction of house property has been completed or date of repayment of loan, whichever is earlier. This aspect is explained with the help of following examples :

The rent payable for a similar house is ₹ 9,000 p.m. He has paid 15% of the Municipal valuation as local taxes, 2% of valuation as Education and Health Cess.

The construction of property began in Sept. 2010 and completed in February 2013. He borrowed loan for the construction of the house during the previous year. Fire Insurance premium upto 31.3.2012 and ₹ 50,000 as interest during the previous year. Fire Insurance Premium paid ₹ 2,000 p.a.

Compute the income from house property for the assessment year 2016-17.
Solution
(for the Assessment Year 2016-17)

G.A.V. (Actual rent is more than expected rent)
Less : Municipal tax including education and health cess

Annual Value	27,198
Less : 30% of A.V.	50,000
Interest for P.Y.	40,000
1/5th of interest upto ₹ 31.3.2012	1,17,198
Loss from House Property	₹ (-) 28,802

(B) BUILDINGS SELF-OCCUPIED FOR RESIDENTIAL PURPOSES

The buildings self-occupied by the owner (an individual or HUF) for residential purposes can be divided as under :

- (1) (a) House or part of a house occupied by the owner for full previous year for the purpose of his own residence, or
(b) Unoccupied house. [Sec. 23(2)(a)]
- (2) House self-occupied for part of the previous year and let-out for part of the previous year. [Sec. 23(2)(b)]
- (3) More than one house in the occupation of the owner. [Sec. 23(2)(c)]

(1) **Self-occupied house or Unoccupied house.**

Where the property consists of a house or part of a house which :

- (a) is in the occupation of the owner for the purposes of his own residence; or
- (b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,

the annual value of such house or part of the house shall be taken to be nil.

Points to note :

1. The self-occupied house or part of it should not be let-out during the whole or any part of the previous year.
2. If a building consists of more than one floor/flat/unit and more than one floor/flat/unit are self-occupied, the annual value of all such floors/flats/units shall be taken to be nil.
3. If a building consists of more than one floor/flat/unit and a floor/flat/unit is self-occupied and other floors/flats/units are let-out, the benefit of self-occupancy shall be available in relation to the floor/flat/unit which is self-occupied. If municipal valuation/municipal tax of each floor/flat/unit is not known separately, it may be apportioned between self-occupied and let-out portions on a reasonable basis.
4. If the construction of the building is completed at any time during the previous year and thereafter it is self-occupied, it will be taken as the house is self-occupied for the whole previous year.
5. The municipal taxes paid by the owner regarding such property are not deductible from gross annual value to arrive at the net annual value.
6. In such a case the question of house remained vacant or unrealised rent does not arise.

Deduction from Annual Value. Interest :
(a) where such property has been (i) acquired, (ii) constructed, (iii) repaired, (iv) renewed or (v) reconstructed with borrowed capital, the maximum limit for deduction of interest shall be ₹ 30,000.

- (b) where such house property is (i) acquired, or (ii) constructed with capital borrowed after 31.3.1999, the deduction on account of interest shall be allowed upto ₹ 2,00,000 (w.e.f. A.Y. 2015-16). The acquisition or construction should be completed within three years (within five years, w.e.f. A.Y. 2017-18) from the end of the financial year in which capital was borrowed;
- (c) to claim the deduction for interest the assessee should furnish a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property, or conversion of whole or part of the capital borrowed which remains to be repaid as a new loan.

'New loan' means the whole or part of a loan taken by the assessee subsequent to capital borrowed for the purpose of repayment of such capital.

Chart showing Computation of Income from Self-occupied House

- (i) Gross Annual Value—Nil
- (ii) Municipal taxes paid by owner during previous year. Not deductible
- (iii) Annual Value—Nil
- (iv) Standard deduction for expenses—Nil
- (v) Interest on loan—Deductible upto ₹ 30,000 or ₹ 2,00,000 as the case may be
- (vi) Loss from self-occupied house—₹
This loss can be set-off against income from other house property or under any other head of income.

Illustration 10

Interest on loan of ₹ 3,00,000 taken on 1.4.2013 @ 10% p.a. to construct a house is ₹ 30,000 for the previous year 2015-16, when the construction of the house was completed. Interest for the preceding two years was also paid but not claimed as deduction. Compute for the assessment year 2016-17 the amount of interest deductible in computing the income from house property if the house is (i) let-out, and (ii) self-occupied.

Solution

- (i) **Let-out house :**
Interest for the P.Y. 2015-16
Interest for 2 years prior to the current previous year
(during which the construction of the house is completed)
₹ 60,000 deductible in 5 equal instalments

30,000	₹
12,000	₹
42,000	₹

(ii) **Self-occupied house :**
The deduction shall be allowed to the extent of ₹ 42,000.
Note : The loan is taken after 1.4.1999. Hence, interest is deductible upto ₹ 2,00,000.

Illustration 11

Ram took a loan of ₹ 16 lakh @ 10% p.a. on 1.7.2013 for constructing a house. The construction of the house was completed in the P.Y. 2015-16.

Compute for the A.Y. 2016-17 the amount of interest deductible in computing the income from house property if the house is (i) let out, (ii) self-occupied.

Solution

- (i) **House let-out :**
Interest for the P.Y. 2015-16
Interest from 1.7.2013 to 31.3.2015 ₹ 2,80,000
Deductible in five equal instalments

₹	₹
1,60,000	₹
56,000	₹
2,16,000	₹

- (ii) **Self-occupied :**
The deduction shall be allowed to the extent of ₹ 2,00,000 only.

Property owned by Co-owners

Where the house property is owned jointly by two or more persons and their respective shares are definite and ascertainable, they shall not be assessed as an association of persons in respect of such property but they shall be assessed individually on their shares in the income from the property. (Sec. 26)

Where the house property owned by co-owners is self-occupied by each of the co-owner, the annual value of the property for each co-owner will be nil. Each co-owner will be entitled to the deduction upto ₹ 30,000/2,00,000 on account of interest on money borrowed for the purposes of the property [u/s 24(b)].

Where the house property or part of the house property, which is owned by the co-owners, is let-out, the income from such property or part of the property will be first computed as if this property is owned by one person and thereafter the income so computed will be apportioned amongst each co-owner on the basis of their definite share.

Illustration 19

X, Y and Z are three friends owning equally a house property consisting of six identical units. One unit is self-occupied by each one of them for their residence. The remaining 3 units are let-out on a monthly rent of ₹ 6,000 per unit. The municipal value of the house property is ₹ 4,00,000 and the municipal taxes paid amount to ₹ 80,000 during the year. The other expenses were as under :

- (i) Collection charges ₹ 6,000
- (ii) Insurance premium paid 7,000
- (iii) Interest on loan taken for construction of house in 1998 1,30,000

One of the let-out units remained vacant for three months during the financial year 2015-16. Mr. Y could not occupy his unit for 8 months as he was transferred to some other city. He does not own any other house property. The other taxable income of X, Y and Z are ₹ 90,000, ₹ 1,00,000 and ₹ 1,20,000 respectively.

Compute the taxable income under the head Income from House Property and also the total income of the three friends for the assessment year 2016-17.

Solution

Computation of Taxable Income from House Property
(for the Assessment Year 2016-17)

Let-out units (50% of Full House)

Expected rent ₹ 2,00,000

Actual rent ₹ 2,16,000 - 18,000 = ₹ 1,98,000

Actual rent is less than expected rent due to vacancy. Hence, gross annual value ₹ 1,98,000
G.A.V.

Less : Municipal tax paid (50% of ₹ 80,000)

Less : Deductions :

(i) 30% of A. V.

(ii) Interest on Loan (1/2)

Annual Value

47,400
65,000

1,98,000
40,000
₹ 1,58,000

Taxable Income from Let-out Units

₹ 1,12,400
₹ 45,600

Share of each co-owner = 1/3 of ₹ 45,600 = ₹ 15,200.

Self-occupied units (50% of Full House)

Annual Value

Less : Interest on loan $65,000/3 = ₹ 21,667$
restricted to the maximum of
₹ 30,000 for each co-owner

Loss from self-occupied unit

X
₹
Nil

Y
₹
Nil

Z
₹
Nil

21,667
- 21,667

21,667
21,667

21,666
21,666

PROFITS AND GAINS OF BUSINESS OR PROFESSION

The provisions regarding income chargeable under the head 'Profits and Gains of Business or Profession' are contained in sections 28 to 44D of the Income Tax Act, 1961. Before studying these provisions it is necessary to understand the meaning of certain terms.

Business. Business means the purchase and sale or manufacture of a commodity with a view to make profit. It includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. It is not necessary that there should be a series of transactions in a business and that it should be carried on permanently. Neither repetition nor continuity of similar transactions is necessary. Profit of an isolated transaction is also taxable under this head, provided that it is a venture in the nature of business or trade. In this connection, it is important that the intention of purchase or manufacture should be to sell at a profit. [Sec. 2(13)]

Profession. Profession means the activities for earning livelihood which require intellectual skill or manual skill, e.g., the work of a lawyer, doctor, auditor, engineer and so on, are in the nature of profession. Profession includes vocation. Vocation means activities which are performed in order to earn livelihood, e.g., brokerage, insurance agency, music, dancing, etc. As the rules for the assessment of business, profession or vocation are the same, there is no importance of making any distinction between them for income tax purposes. [Sec. 2(36)]

Demerger. In relation to a company demerger means the transfer by a demerged company of its one or more undertakings to any resulting company which fulfils the prescribed conditions. [Sec. 2(19AA)]

Demerged Company. It means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company. [Sec. 2(19AAA)]

Resulting Company. It means (i) one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger; [Sec. 2(41A)]

(ii) the resulting company in consideration of such transfer of undertaking issues shares to the shareholders of the demerged company; and

(iii) includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.

PROFITS OF BUSINESS OR PROFESSION

(Sec. 28)

The following incomes are chargeable to income tax under the head 'Profits and Gains of Business or Profession':

- (1) *Revenue profits from business or profession* : The profits and gains of any business or profession which was carried on by the assessee at any time during the previous year;
- (2) *Any compensation due to or received by* :
 - (a) any person, managing the whole or substantially the whole of the affairs of an Indian Company in connection with the termination of his management or the modification of the terms and conditions relating thereto;

- (b) any person, managing the whole or substantially the whole of the affairs in connection with the termination of his office or position of any other company in connection with the termination of agency or the modification of the terms and conditions relating thereto;
 - (c) any person, holding an agency in connection with the termination of agency or the modification of the terms and conditions relating thereto;
 - (d) any person, for or in connection with the vesting in the Government, or in a corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business.
 - (e) Compensation received by person on cancellation of consultancy agreement being in force, of the management of any property or business.
- (3) *Income of trade association etc.* : Income derived by a trade, professional or similar association from specific services performed for its members;
- (4) *Receipts in connection with foreign trade* :
- (a) Profit on sale of a licence granted under the Imports Control Order, 1955;
 - (b) Cash assistance received or receivable by any person against exports under a scheme of the Government of India;
 - (c) Repayment of any customs or excise duty to any person against exports;
 - (d) Any profit on the transfer of the Duty Entitlement Pass Book Scheme, being the Remission Scheme, under the export and import policy;
 - (e) Any profit on the transfer of the Duty Free Replenishment Certificate, being the Duty Remission Scheme, under the export and import policy;
- (5) *Value of any benefit or perquisite* : The value of any benefit or perquisite which is convertible into money or not, arising from business or the exercise of a profession, where a lawyer in consideration of his services to a company gets free accommodation, the value will be assessable in the hands of the assessee as his income under the head 'Profits and Gains of Business or Profession'.
- (6) *Receipts of a partner from the firm* : Any interest, salary, bonus, commission or remuneration due to or received by a partner of a firm from the firm provided that it has been allowed as deduction in computing the taxable profits of such firm.
- (7) *Interest on securities* : Interest on securities, if the business of the assessee is to invest in securities, otherwise interest on securities shall be chargeable to income tax under the head 'Income from Other Sources'.
- (8) Any sum received under a Keyman Insurance Policy including bonus.
 - (9) Any sum, whether received or receivable in cash or kind, under an agreement for:
 - (a) not carrying out any activity in relation to any business (or profession *u.c.f.* A 2017-18); or
 - (b) not sharing any know-how, patent, copyright, trade-mark, licence, franchise or other business or commercial right of similar nature or information or technical knowledge likely to assist in the manufacture or processing of goods or provision of services.
 - (10) Any sum, whether received or receivable, in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished, destroyed, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as a deduction *u/s* 35AD.
 - (11) Income from speculative transactions.
- However, any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on business (or profession *u.c.f.* A.Y. 2017-18), which is chargeable under the head 'Capital gains' shall not be treated as income under this clause.
- For the purpose of (3) above, trade association means an association of businessmen for the protection and advancement of their common interest, *e.g.*, a Chamber of Commerce. Section 28(iii) does not apply to other social associations, *e.g.*, a sports club, or cricket club and so on.

Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business shall be called 'Speculation business' and it shall be deemed to be distinct and separate from any other business.

'Speculative transactions' means transactions in which a contract for the purchase or sale of any commodity, including stocks and shares is settled otherwise than by the actual delivery or transfer of the commodity or scrips.

IMPORTANT RULES REGARDING ASSESSMENT OF PROFITS AND GAINS OF BUSINESS OR PROFESSION

- (1) *Business or Profession carried on by the assessee*. Tax is chargeable from the person who carries on the business or profession. It is immaterial if the assessee (owner of the business) carries on the business through a manager or other servant, or any other agent duly authorized by him.
- (2) *Tax is chargeable on the aggregate income from all businesses or professions carried on by an assessee*. The profits and gains of different businesses or professions carried on by an assessee are not taxable separately, but tax is chargeable under one head on the aggregate income from all businesses or professions carried on by the assessee.
- (3) *Profits and Losses of speculation business are kept separate*. Profits and losses of speculation business carried on by an assessee are kept separate, *i.e.*, if there is a loss in a speculation business it can be set-off only against profits of speculation business.
- (4) *The business or profession is carried on by an assessee for any time during the previous year*. The assessee should have carried on the business or profession for any time during the year. The business or profession is carried on by an assessee for any time during the year. The assessee should have carried on the business or profession for any time during the year. The assessee should have carried on the business or profession for any time during the year.
- (5) *Profits on sale of assets on the winding up of a business*. Profits made in winding up of a business, *i.e.*, whether for full year or for a part of previous year only.
- (6) *No tax is payable on anticipated or notional profits*. Tax is levied on the actual profit of the business year and not on the anticipated profits. If in a business there is an expectation of the previous year and not on the anticipated profits.
- (7) *Expenses of an isolated transaction*. An isolated transaction of purchase and sale is in earning some profits in the near future no tax can be levied on such profits.
- (8) *Income of illegal business or profession*. Tax is payable on the income from illegal business or profession whether legal or illegal. The expenses incurred to earn income from illegal business which are incidental to such business are to be allowed as deduction out of the income earned from illegal business. However, penalties levied for infraction of law and expenses incurred in defence of criminal proceedings are not allowed. Loss computed under illegal business cannot be set-off against the profits of legal business.
- (9) *Expenses incurred before setting up a business*. These expenses are not admissible. In the case of a company expenses incurred before incorporation are not allowable but those incurred after incorporation but before commencement of business are allowable. However, specified preliminary expenses incurred by an Indian Company or any other resident person is allowed under section 35D.
- (10) *General commercial principles to be kept in view while determining the real profits of a business*. It is essential to keep in view the general commercial principles while determining the real profits of a business.
- (11) *Deductible Business Losses*. Business losses which are not of a capital nature and which have been sustained during the previous year and which are incidental to the business carried on by the assessee are deductible while computing income under the head 'Business or Profession'.
- (12) *Sums previously allowed as deduction are taxable if recovered during the previous year*. If an assessee receives during the previous year any sum connected with the business, which during any preceding year was allowed as a deduction (being in the nature of loss, expenditure or a liability) then while computing the taxable profits of that year, it will be taxable as a business income during the previous year in which they are recovered.

- (13) 'Dharmada' collected from customers is not a trading receipt and hence not liable to tax.
- (14) The underwriting commission earned by the assessee on the shares subscribed by the public is assessable as business income whereas the underwriting commission on shares subscribed by the underwriter himself reduces the cost of shares and is not taxable.

COMPUTATION OF PROFITS OF BUSINESS OR PROFESSION

The profits and gains of business or profession are computed in accordance with the provisions contained in sections 30 to 43D. Sections 30 to 37 contain those deductions which are expressly allowed while computing profits of business or profession. Section 40 provides the expenses which are expressly disallowed. Besides these, there are some other deductions which are allowed on the basis of general commercial principles while computing profits of business or profession. It is necessary to know those principles before studying the deductions expressly allowed while computing profits of business or profession.

The general commercial principles are as under :

- (1) Profits should be computed according to the method of accounting regularly employed by the assessee, provided that actual profit can be ascertained by this method.
- (2) Only those expenses and losses are allowed as deductions which were incurred or sustained during the relevant previous year.
- (3) These losses and expenses should be incidental to the operation of the business. For example, embezzlement by an employee during the course of business is a loss incidental to business. Similarly, loss from dacoity in a bank is also a loss incidental to the business of a bank.
- (4) Only the expenses incurred in connection with the business of the assessee are allowed as deductions.
- (5) If a business has been discontinued before the commencement of the previous year, its expenses cannot be allowed as deduction against the income of any other running business of the assessee.
- (6) There are some essential expenses, though neither expressly allowed nor disallowed, but are deductible while computing the profits of business or profession on the basis of general commercial principles provided that these are not expenses or losses of a capital nature.
- (7) Any expenditure incurred in consideration of commercial expediency is allowed as deduction.
- (8) Deduction can be made from the income of that business only for which the expenses were incurred. The expenses of one business cannot be charged against the income of any other business.

RULES FOR ADJUSTMENT OF PROFIT AND LOSS ACCOUNT PREPARED BY THE ASSESSEE

The Profit and Loss Account prepared by the assessee is not correct from the income tax point of view as (i) several such expenses are charged to it which are wholly or partly inadmissible under the Income Tax Act, (ii) some admissible expenses are omitted from it, (iii) some taxable incomes are not credited to it, and (iv) some such incomes are credited which are either not taxable under the head 'Profits and Gains of Business or Profession' or are not taxable at all. Hence, this Profit and Loss Account has got to be adjusted from the income tax point of view, so that the profit taxable under the head 'Business or Profession' is determined correctly. The following are the rules for adjustment of the Profit and Loss Account :

- (i) Those expenses or losses which are charged to the Profit and Loss Account but are not allowed under the Income Tax Act, should be added to the profit, as shown by the Profit and Loss Account prepared by the assessee. If any expense is partly disallowed, only the disallowed part of it shall be added to the profit.
- (ii) If any admissible expenses are omitted from the Profit and Loss Account, they should be deducted from the above profit.
- (iii) If some taxable incomes are omitted from the Profit and Loss Account, they should be added to the above profit.

- (iv) If some such incomes have been credited to the Profit and Loss Account which are either not taxable under the head 'Business or Profession' or are not taxable at all, they should be deducted from the above profits.

Note : If instead of profit there is loss as per the Profit and Loss Account, the above rules shall be reversed, i.e., items to be added shall be deducted and those to be deducted shall be added. If after making some adjustments the profit is converted into loss, the above rules shall be reversed for subsequent adjustments.

The above rules can well be illustrated with the help of the following statement :

Add :

- (i) Expenses or losses disallowed but charged in P. & L. A/c
- (ii) Incomes taxable as business income but not credited to the P. & L. A/c
- (iii) Expenses in excess of the allowed amount charged in P. & L. A/c
- (iv) Under-valuation of closing stock or over-valuation of opening stock

Deduct :

- (i) Expenses or losses allowed but not debited to P. & L. A/c
- (ii) Incomes not taxable as business income but credited to the P. & L. A/c
- (iii) Incomes exempt from tax but credited in P. & L. A/c
- (iv) Over-valuation of closing stock and under-valuation of opening stock

Notes :

1. For loss as per P. & L. A/c the above rules will be reversed.
2. The same rules will apply to Income and Expenditure Account.

Second Method of Computing the taxable profits or losses of business or profession

In this method a fresh profit and loss account or income and expenditure account is prepared to determine the profit or loss. The format of this method may be as under :

- (1) Add together all taxable incomes under this head which relate to the previous year concerned
- (2) (i) Deduct all admissible expenses under this head which relate to the previous year concerned
- (ii) Deduct admissible business losses

Taxable profits or losses of business or profession

Note : Second method is generally used in case of professions.

DEDUCTIONS EXPRESSLY ALLOWED

While computing profits of business or profession the following deductions are expressly allowed by sections 30 to 37 :

1. **Expenses in respect of business premises.** The following deductions are allowed for premises used for the purpose of the business or profession. (Sec. 30)

- (a) Where the premises are occupied by the assessee as a tenant :
 - (i) Rent paid for such premises.
 - (ii) If he has undertaken to bear the cost of repairs to the premises, the amount paid on account of such repairs.

Explanation. The amount paid on account of repairs shall not include any expenditure in the nature of capital expenditure.

- (iii) Any sums paid on account of land revenue, local taxes or municipal taxes.
- (iv) The amount of any premium paid in respect of insurance against risk of damage or destruction of the premises.
- (b) Where the premises are occupied by the assessee as owner :
 - (i) Repairs charges.
 - (ii) The amount of land revenue, local taxes or municipal taxes.
 - (iii) Insurance premium regarding building.

Please note :
 (i) If the business premises belongs to the assessee no deduction in respect of rent will be allowed to him.

(ii) If the assessee is a partnership firm and the business premises belongs to a partner of the firm, the rent payable to the partner will be an allowable deduction.

(iii) If the assessee is a tenant in that premises and a part of the premises is used by him as dwelling-house and the other part is used for his business, the amount of deduction in respect of expenses shall be allowed proportionately.

2. **Repairs and insurance of machinery, plant and furniture.** In respect of machinery, plant and furniture used for the purposes of the business or profession the following deductions are allowable : (Sec. 31)

(i) Amount of expenditure incurred on current repairs of machinery, plant or furniture. *Explanation.* The amount paid on account of current repairs shall not include any expenditure in the nature of capital expenditure.

(ii) The amount of any premium paid in respect of insurance against risk of damage or destruction of these assets.

3. **Depreciation and Investment Allowance.** See chapter on 'Depreciation and Investment Allowance'.

4. **Tea Development Account, Coffee Development Account and Rubber Development Account.** This deduction is allowed to assesses who are growing and manufacturing tea or coffee or rubber in India. The salient features of this section are as under : (Sec. 33AB)

(1) The assessee should deposit in a special account with the National Bank for Agriculture and Rural Development in accordance with the scheme approved by the Tea Board or the Coffee Board or the Rubber Board or deposit any amount in an account opened by the assessee (known as Deposit Account) in accordance with the deposit scheme framed by the Tea Board or the Coffee Board or the Rubber Board, as the case may be.

(2) The deposit should be made within a period of six months from the end of the previous year or before furnishing the Return of his income, whichever is earlier.

(3) In computing the taxable profits from the above business the following deduction will be allowed in respect of the above deposit :

- a sum equal to the amount so deposited; or
- 40% of the profits of such business (before making deduction under this section and before setting off brought forward business losses), whichever is less.

5. **Deduction will be allowed in respect of prospecting for, or extraction or production of petroleum or natural gas or both in India.** The main provisions of this section are as under :

(Sec. 33ABA)

(1) Deduction will be allowed if the Central Government has entered into an agreement with the assessee.

(2) The assessee has before the end of the previous year has deposited the amount :

- in a special account with the State Bank of India, for the specified purposes in a scheme approved in this behalf by the Government of India in the Ministry of Petroleum and Natural Gas; or
- in an account—Site Restoration Account (S.R.A.) for the purposes specified in a scheme framed by the Ministry aforesaid.

(3) **Quantum of deduction :**

- A sum equal to the amount or the aggregate of the amounts so deposited; or
- 20% of the profits of such business (computed under the head 'Profits and gains of business or profession') before making any deduction under this section; whichever is less.

6. **Expenditure on Scientific Research.** The following deductions shall be allowed in respect of expenditure on scientific research. (Sec. 35)

(i) **Revenue expenditure incurred by the assessee himself.** Where the assessee himself carries on scientific research in relation to his own business any revenue expenditure made by the assessee on scientific research during the previous year shall be allowed in full. [Sec. 35(1)(i)]

(ii) **Contribution made to outsiders—Sums paid for Scientific Research to an approved Research Association or a University, College or other Institution.** Where the assessee contributes any sum to an approved research association or to an approved university, college or other institution to be used for scientific research it is allowed as a deduction 175% of the amount so paid, whether it is related or unrelated to the business of the assessee. [Sec. 35(1)(ii)]

Notes : (i) W.e.f. A.Y. 2018-19, the deduction shall be allowed 150% instead of 175%.

(ii) W.e.f. A.Y. 2021-22, the deduction shall be allowed 100% instead of 150%.

(iii) **Sums paid for scientific research to a company.** 125% (100% w.e.f. A.Y. 2018-19) of sum paid to a company shall be allowed as a deduction if such company :

- is registered in India;
- its main object is scientific research and development;
- it is approved by the prescribed authority; and
- it fulfils such other conditions as may be prescribed.

(iii) **Sums paid for Social or Statistical Research.** 125% (100% w.e.f. A.Y. 2018-19) of sum paid to an approved research association or to a university, college or other institution to be used for research in social science or statistical research is allowed as a deduction, whether it is related or unrelated to the business of the assessee. [Sec. 35(1)(iii)]

(iv) **Capital Expenditure on Scientific Research incurred by the assessee himself.** The salient features regarding such expenditure are as under : [Sec. 35(1)(iv)]

- Any expenditure of a capital nature on scientific research related to the business carried on by the assessee is allowed in full for the relevant previous year.
- No deduction shall be admissible in respect of any expenditure on the acquisition of any land.
- Capital expenditure on scientific research which cannot be absorbed on account of insufficiency of profits under the business head or any other head, the unabsorbed part will be carried forward and treated in the same manner as unabsorbed depreciation.

(v) **Sums paid to a 'National Laboratory' or a recognised University or an Indian Institute of Technology for approved scientific research programme.** Sum paid by an assessee to a 'National Laboratory' or a recognised University or an Indian Institute of Technology or an approved person for carrying out scientific research programmes, which are approved by the prescribed authority, will be eligible as a deduction @ 200% of the sum so paid. [Sec. 35(2A)]

Notes : (i) W.e.f. A.Y. 2018-19, the deduction shall be allowed 150% instead of 200%.

(ii) W.e.f. A.Y. 2021-22, the deduction shall be allowed 100% instead of 150%.

'National Laboratory' means a scientific laboratory functioning at the national level under the Indian Council of Agricultural Research or the Indian Council of Medical Research or the Council of Scientific and Industrial Research and which is approved by the prescribed authority as a National Laboratory.

(vi) **Expenditure on in-house research.** A deduction of an amount equal to 200% of expenditure incurred by a company on in-house research and development facility shall be allowed. However, the deduction is not admissible if expenditure is incurred on land or building. [Sec. 35(2AB)]

Notes : (i) W.e.f. A.Y. 2018-19, the deduction shall be allowed 150% instead of 200%.

(ii) W.e.f. A.Y. 2021-22, the deduction shall be allowed 100% instead of 150%.

6A. **Capital Expenditure to obtain right to use spectrum for telecommunication services** (Sec. 35ABA)

(w.e.f. A.Y. 2017-18)

The provisions are the same as discussed in point 7.

7. **Capital Expenditure to obtain licence to operate telecommunication services.** Any capital expenditure incurred on the acquisition of any right to operate telecommunication services or either before the commencement of the business to operate telecommunication services or thereafter at any time during any previous year and for which payment has actually been made to obtain a licence will be allowed as a deduction in equal instalments over the relevant previous years. (Sec. 35ABB)

'Relevant previous years' means :

- (A) in a case where the licence fee is actually paid before the commencement of the business to operate telecommunication services, the previous years beginning with the previous year in which such business commenced;
- (B) in any other case, the previous years beginning with the previous year in which the licence fee is actually paid, and the subsequent previous years during which the licence, for which the fee is paid, shall be in force.

Illustration 1

X Ltd. is engaged in providing telecommunication services in India. For this purpose, it enters into an agreement on 1.4.2014 with the Department of Telecommunication, Government of India. As per agreement, X Ltd. is given a licence for providing telecommunication services in M.P. State for a period of 10 years from 1.4.2014. Licence fees are fixed at ₹ 18 lakh payable in two equal instalments on 10.4.2014 and 10.4.2015. Assuming that the two instalments are paid by X Ltd. on due dates, find out the admissible deduction u/s 35ABB for the previous year 2015-16. Business commenced during the P. Y. 2014-15.

Solution

Business commenced during the P. Y. 2014-15 :

- I Instalment paid during the P. Y. 2014-15 ₹ 9,00,000
- II Instalment paid during the P.Y. 2015-16 ₹ 9,00,000
- Duration of licence 10 years
- Deduction for the P. Y. 2015-16 :
- 1/10th of ₹ 9,00,000
- 1/9th of ₹ 9,00,000

Deduction allowable

₹ 90,000
1,00,000
1,90,000

8. **Admissibility of expenditure on eligible project or scheme** . 100% deduction will be allowed from business or professional income in respect of the expenditure incurred for an eligible project or scheme.

Eligible project or Scheme. It means such project or scheme which is meant for promoting social and economic welfare or uplift of the public, as may be specified by the Central Government on the recommendations of the National Committee.

National Committee. The National Committee will be constituted by the Central Government consisting of persons of eminence in public life.

Conditions to be fulfilled : (i) It should be paid to either a public sector company, or local authority or to an approved association or institution for carrying out any eligible project or scheme.

(ii) The claim for deduction should be supported by a certificate from the payee concern and attached with the Return of Income.

(iii) In case of companies, direct expenditure can also be incurred for any eligible project or scheme and in their case a certificate from the Chartered Accountant will suffice.

Note : Deduction u/s 35AC shall not be allowed u.e.f. A.Y. 2018-19

9. **Deduction in respect of expenditure on specified business**. An assessee shall be allowed a deduction in respect of the whole of any expenditure of capital nature (excluding expenditure incurred on acquisition of any land or goodwill or financial instrument) incurred wholly and exclusively for the purposes of any specified business carried on by him during the previous year in which such expenditure is incurred by him.

The deduction shall be allowed during the previous year in which he commences operations of his specified business, if :

- (a) the expenditure is incurred prior to the commencement of its operation; and (Sec. 35AD)
- (b) the amount is capitalised in the books of account of the assessee on the date of commencement of its operations.

"Specified business" means any one or more of the following business :

- (a) Setting up and operating a cold chain facility.
- "Cold chain facility" means a chain of facilities for storage or transportation of (i) agricultural and forest produce, (ii) meat and meat products, (iii) poultry, (iv) marine and dairy products, (v) products of horticulture, floriculture and apiculture, and (vi) processed food items, under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such products.
- (b) Setting up and operating a warehousing facility for storage of agricultural produce.
- (c) Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network.
- (d) **W.e.f. A.Y. 2011-12**, specified business shall also include the following business provided the business commences its operation on or after 1.4.2010 :
- (i) Business of building and operating anywhere in India, a new hotel of two star or above category;

Where the assessee owns the aforesaid hotel but transfers the operation thereof to another person, the assessee shall be deemed to be carrying on this business.

- (ii) Business of building and operating a new hospital anywhere in India, with at least one hundred beds for patients.
- (iii) Business of developing and building a housing project under a scheme for slum redevelopment or rehabilitation framed by the Central or a State Government and notified by the Board.

(e) **W.e.f. A.Y. 2012-13**, specified business shall also include the following businesses provided the business commences its operation on or after 1.4.2011 :

- (i) Developing and building a housing project under a scheme for affordable housing framed by the Central Government/a State Government and notified by the Board.
- (ii) Setting up a new plant or a newly installed capacity in an existing plant for production of fertilizer in India.

(f) **W.e.f. A.Y. 2013-14**, specified business shall also include the following businesses provided the business commences its operation on or after 1.4.2012 :

- (i) Setting up and operating an inland container depot or a container freight station.
- (ii) Business in the nature of bee-keeping and production of honey and beeswax.
- (iii) Setting up and operating a warehousing facility for storage of sugar.
- (g) **W.e.f. A.Y. 2015-16**, specified business shall also include the following businesses provided the business commences its operation on or after 1.4.2014 :

- (i) Laying and operating a slurry pipe line for the transportation of iron ore.
- (ii) Setting up and operating a semi-conductor water fabrication manufacturing unit notified by the Board.

Where the following businesses commence its operation on or after 1.4.2012, the deduction shall be allowed 150% of the capital expenditure instead of 100% :

- (i) Setting up and operating a cold chain facility.
- (ii) Setting up and operating a warehousing facility for storage of agricultural produce.
- (iii) Building and operating, anywhere in India, a hospital with at least one hundred beds for patients.
- (iv) Developing and building a housing project under a scheme for affordable housing.
- (v) Production of fertilizer in India.

Note : **W.e.f. A.Y. 2018-19**, weighted deduction shall not be allowed.

Conditions for deduction in case of specified business :

- (i) It is not set-up by splitting up, or reconstruction, of a business already in existence.
- (ii) It is not formed by the transfer to specified business of machinery or plant (exceeding 20%) previously used for any purpose.
- (iii) The specified business mentioned in (a) and (b) commences its operation on or after 1.4.2009.

INCOME TAX

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(iv) The specified business mentioned in (c) fulfils the following conditions, also:

- (a) It is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;
- (b) It has been approved by the Petroleum and Natural Gas Regulatory Board;
- (c) Such proportion of its total pipe line capacity is available for use on common carrier basis by any person other than the assessee or an associated person;
- (d) It has started or starts operating on or after the 1st day of April, 2007; and
- (e) Any other condition which may be prescribed.

Derelict of Deduction: (1) No deduction in any previous year or under this section in any other business under any other section in any previous year.

(2) Deduction shall not be allowed under section 10AA and under sections 80IA to 80RRB in respect of specified business.

Set-off and carried forward of loss. The loss of a specified business can be set-off against the income of another specified business, whether or not the latter is eligible for deduction u/s 35AD. For example loss from a new hotel or new hospital can be set-off against the profits of existing hotel or hospital which is not eligible for deduction u/s 35AD but which is a specified business. (Sec. 73A)

If there is any unabsorbed loss, it can be carried forward and set-off against income of any specified business.

10. **Payment to Rural Development Fund.** Under this section 100% deduction is allowed to an assessee who pays any sum to:

- (i) The National Fund for Rural Development (set-up and notified by the Central Government in this behalf); or
- (ii) The National Poverty Eradication Fund (set-up and notified by the Central Government in this behalf). (Sec. 35CC)

11. **Expenditure on agricultural extension project** (Sec. 35CC)

Where an assessee incurs any expenditure on agricultural extension project notified by the Board, there shall be allowed a deduction of a sum equal to 150% (100% u.e.f. A.Y. 2021-22) of such expenditure.

12. **Expenditure on any skill development project** (Sec. 35CD)

Where a company incurs any expenditure (excluding cost of any land or building) on any skill development project notified by the Board, there shall be allowed a deduction of a sum equal to 150% (100% u.e.f. A.Y. 2021-22) of such expenditure.

13. **Amortization of certain preliminary expenses.** Where an Indian Company or a non-corporate person resident in India incurs any preliminary expenditure of the nature specified below, the assessee shall be allowed a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the previous year in which the business commences or the extension work is completed or the new unit commences production or operation, as the case may be.

The following expenditure is included in preliminary expenses: (Sec. 35D)

- (a) Expenditure in connection with:
 - (i) preparation of feasibility report;
 - (ii) preparation of project report;
 - (iii) engineering services relating to the business of the assessee;
 - (iv) conducting market survey or any other survey necessary for the business of the assessee;
- (b) Legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up or conduct of the business of the assessee;
- (c) If the assessee is a company, in addition to the above expenses, the following expenditure is also included in preliminary expenses:
 - (i) legal charges for drafting the Memorandum and Articles of Association of the Company;
 - (ii) printing charges of the Memorandum and Articles of Association;

- (iii) fees paid for registering the company;
- (iv) expenses regarding issue of shares or debentures of the company, including underwriting commission, brokerage and charges for drafting, typing, printing and advertisement of the prospectus.

(d) Such other items of expenditure as may be prescribed.

Maximum Limit. The maximum amount eligible for deduction under this section shall not exceed 5% of the cost of the project, or if the assessee is an Indian Company, at the option of the company, 5% of the cost of the project or 5% of the capital employed in the business of the company.

14. **Expenditure for amalgamation or demerger of an undertaking.** Where an Indian Company incurs expenditure wholly and exclusively for the purposes of amalgamation or demerger of an undertaking, it shall be allowed a deduction of 20% of such expenditure for each of five successive previous years beginning with the year in which amalgamation or demerger takes place. (Sec. 35DD)

15. **Expenditure on voluntary retirement.** Where an assessee pays any sum to an employee in any previous year in connection with his voluntary retirement, he shall be allowed with deduction of 20% of such expenditure for each of five successive previous years beginning with the year in which the expenditure was incurred. (Sec. 35DDA)

The deduction shall not be allowed to the (i) amalgamating company; or (ii) demerged company; or (iii) a firm or proprietary concern in case of succession; or (iv) a private company or unlisted public company is succeeded by a limited liability partnership for the previous year in which amalgamation, demerger or succession takes place.

However, the deduction shall be allowed to the (i) amalgamated company; or (ii) resulting company; or (iii) the successor company or (iv) limited liability partnership in the same manner as it would have been allowed to the transferor of business.

16. **Expenditure on prospecting, etc. for development of certain minerals.** Where an Indian Company or any other person resident in India incurs, any expenditure wholly and exclusively on the prospecting of specified mineral or on the development of mines or other natural deposit of any such mineral, the assessee shall be allowed a deduction of an amount equal to 1/10th of such expenditure for each of the ten successive previous years beginning with the year of commercial production. (Sec. 35E)

17. **Other deductions.** Under Section 36, the following other deductions are permissible while computing profits of business or profession:

- (i) **Insurance Premium.** The amount of any premium paid in respect of insurance against risk of damage or destruction of stocks or stores used for the purpose of business or profession, is allowed as deduction.
- (ii) **Insurance Premium for Cattle paid by a federal milk co-operative society.** The amount of any premium paid by a federal milk co-operative society on the life of the cattle owned by a member of a primary milk co-operative society affiliated to the federal milk co-operative society, is allowed as deduction.
- (iii) **Insurance Premium for the health of employees.** The amount of any premium paid by an employer by any mode of payment other than cash for insurance on the health of his employees in accordance with a scheme framed by (A) the General Insurance Corporation of India and approved by the Central Government; (B) any other insurer and approved by the Insurance Regulatory and Development Authority is allowed as deduction.
- (iv) **Bonus or Commission.** Any bonus or commission paid to an employee for services rendered shall be deductible only if such sum could not, in any way be paid as profits or dividend.
- (v) **Interest on borrowed capital.** The amount of the interest paid in respect of capital borrowed for the purpose of the business or profession, is allowed as deduction.

Any amount of interest paid in respect of capital borrowed for acquisition of an asset (whether capitalised in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use, shall not be allowed as a deduction.

(vi) *Discount on zero coupon bond.* Pro rata amount of discount on zero coupon bond having regard to the period of life of such bond shall be allowed as a deduction.

(vii) *Contribution to Provident Fund.* Sum paid by the assessee as an employer by way of contribution towards a recognised provident fund or an approved superannuation fund is allowed as deduction.

(viii) *Approved Gratuity Fund.* Sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund is allowed as deduction.

(ix) *Employee's Contribution to Provident Fund, or Superannuation Fund etc.* Sum received by the employer from any of his employees as contribution to any provident fund or superannuation fund or any fund set-up under the Employees' State Insurance Act or any other fund for the welfare of such employees is treated as his income. If such sum is credited by the employer to the employee's account in the relevant fund on or before the due date it is allowed as a deduction.

Due date means the date, by which the employer is required to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule, order or notification or Contract of Service.

(x) *Loss regarding Animals.* In respect of animals which have been used for the purposes of business or profession (not as stock-in-trade) and have died or become permanently useless for such purpose, amount of loss equal to the difference between the actual cost to the assessee of the animals and the amount, if any, realized in respect of the carcasses of animals, will be allowed as deduction.

(xi) *Bad debts.* The amount of any debt or its part which is written-off as irrecoverable in the accounts of the assessee for the previous year shall be allowed as a deduction, subject to the following conditions:

(i) If such debt has been taken into account in computing the income of the assessee for that previous year or an earlier previous year or represents money lent in ordinary course of the business of banking or money-lending which is carried on by the assessee.

(ii) It has been written-off as irrecoverable in the accounts of the assessee for that previous year.

In respect of bad debts following further rules are to be observed:

(a) If the amount ultimately recovered on any such debt is less than the difference between the debt and the amount of bad debt allowed, the deficiency shall be deductible in the previous year in which the ultimate recovery is made.

(b) Where a deduction has been allowed in respect of a bad debt and the amount subsequently recovered on any such debt is greater than the difference between the debt and the amount so allowed, the excess shall be deemed to be 'profit and gains of business or profession', and accordingly chargeable to income tax as the income of the previous year in which it is recovered. It is immaterial whether the business or profession in respect of which the deduction has been allowed is in existence in that year or not.

[Sec. 41(1)]

(c) In the case of an assessee to which (xi) applies the deduction for bad debt shall be only of the amount in excess of provision for bad and doubtful debts account made under (xi).

(xii) *Provision for bad and doubtful debts.* The provisions regarding deduction for provision for bad and doubtful debts in respect of banks and financial institutions are given below:

Assessee	Allowable Deduction
(1) In the case of scheduled banks (excluding foreign banks) or a non-scheduled bank or a co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank).	7.5% of Total Income before making this deduction and deductions u/s 80C to 80U and 10% of aggregate average advances made by rural branches of these banks.
(2) In the case of Foreign Banks.	5% of Total Income before making this deduction and deductions u/s 80C to 80U.
(3) Public Financial Institutions, State Financial Corporation and State Industrial Investment Corporation.	—Do—
(4) Non-banking financial company	—Do— w.e.f. A.Y. 2017-18

Rural Branch. It means a branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than 10,000, according to the last census.

Note: A bank mentioned in (1) shall, at its option, be allowed a further deduction for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed by the Central Government, provided such income has been disclosed in the return of income under the head 'Profits and gains of business or profession'.

(xiii) *Special reserve created by a specified entity.* Deduction shall be allowed regarding special reserve created and maintained by a specified entity.

Quantum of Deduction:

(i) 20% of the profit derived from eligible business; or

(ii) The amount credited to specified reserve account, whichever is less. However, no deduction is allowed in this respect as soon as the Special Reserve becomes equal to twice the paid-up share capital and general reserves.

Specified entities and eligible business are:

(A) (i) A financial corporation specified in Sec. 2(72) of the Companies Act, 2013; or

(ii) A financial corporation which is a public sector company; or

(iii) A banking company; or

(iv) A co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Provides long-term finance for (a) industrial or agricultural development; (b) development of infrastructure facility in India; or (c) development of housing in India.

(B) A Housing finance company.

Provides long-term finance for the construction or purchase of houses in India for residential purposes.

(C) Any other financial corporation including a public company.

Provides long-term finance for development of infrastructure facility in India.

Explanation. 'Long-term finance' means any loan or advance which is not repayable prior to the expiry of five years.

(xiv) *Expenditure on family planning.* Any expenditure bonafide incurred by a company for the purpose of promoting family planning amongst its employees is allowed as a deduction. If such expenditure is of a capital nature it shall be allowed as a deduction in five equal annual instalments commencing from the previous year in which the expenditure is incurred.

The unabsorbed part of the capital expenditure on family planning is treated in the same manner as unabsorbed depreciation.

Note: Revenue expenses incurred by employer (other than a company) on promoting family planning amongst his employees, is deductible u/s 37(1).

On capital expenditure for promoting family planning amongst his employees he is entitled to claim depreciation u/s 32.

(xv) Any expenditure (not being capital expenditure) incurred by a corporation or body corporate shall be allowed as a deduction if:

(a) It is constituted or established by a Central, State or Provincial Act;

(b) It is notified by the Central Government;

(c) The expenditure is incurred for the objects and purposes authorised by the Act under which it was constituted or established.

(xvi) Any amount of banking transaction tax paid during the previous year shall be allowable as a deduction.

(xvii) Any sum paid by a public financial institution by way of contribution to such credit guarantee fund trust for small industries as the Central Government may notify, in connection with income tax proceedings. Expenses incurred for services rendered in connection with any proceeding, etc. before the income tax authorities will be deductible as business expenditure u/s 37(1).

(xix) Entertainment expenses, advertisement expenses [except as provided in sec. 37(2)(b) expenses on travelling for business or professional purposes and expenses on guest house are fully deductible.

(xx) Amount paid in respect of taxable securities transactions, if income from securities transactions has been computed under the head "Profits and gains of business or profession".

(xxi) Any sum paid by the employer by way of contribution towards a pension scheme (referred to in Sec. 80CCD) on account of an employee upto 10% of the salary (including dearness allowance, if the terms of employment so provide) in the previous year.

(xxii) Amount paid in respect of taxable commodities transactions, if income from commodities transactions has been computed under the head "Profits and gains of business or profession."

(xxiii) The amount of expenditure incurred by a co-operative society, engaged in the business of manufacture of sugar, for purchase of sugarcane at a price which is equal to or less than the price fixed or approved by the Government.

18. **General Deduction.** It is a residuary section. Under section 37(1), the following conditions should be fulfilled, in order that a particular item of expenditure may be deductible under this head :

(i) The expenditure should not be of the nature described in sections 30 to 36. [Sec. 37(1)]

(ii) It should be in respect of a business or profession carried on by the assessee and the profits and gains of which are to be computed and assessed.

(iii) It should not be in the nature of personal expenses of the assessee.

(iv) It should have been laid out or expended wholly and exclusively for the purpose of such business or profession.

(v) It should not be in the nature of capital expenditure.

(vi) It should relate to the previous year concerned.

Explanation 1. Any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law, shall not be allowed as a deduction. It means protection money, extortion, hafia, bribes, etc. will not be allowed as a deduction.

Explanation 2 : Any expenditure incurred by an assessee on the activities relating to corporate social responsibility (referred to in sec. 135 of the Companies Act, 2013) shall not be deemed to be an expenditure incurred for the purposes of business or profession.

The following are the few examples of admissible general deductions under section 37 :

- (1) Expenses incurred in the purchase, manufacture and sale of goods.
- (2) General expenses incurred in the day to day running of the business.
- (3) Expenses incurred in defending a case for damages for breach of contract.
- (4) Amount of value added tax paid and expenses incurred in connection with value added tax proceedings including appeals.
- (5) Compensation paid to an undesirable employee for the retrenchment of his services or to a director to get rid of his services.
- (6) Contribution made to provident fund maintained for the benefit of employees under an Act and with the previous approval of a State Government may not be allowable u/s 36(1)(v) but allowable u/s 37(1).

(7) Commission, etc., paid for securing orders for the business.

(8) Compensation paid to employees in connection with injury sustained by them or accident met by them while on duty.

(9) Royalties paid in connection with mines.

(10) Insurance Premium paid under a policy insuring its employees against injury or against liability for compensation in respect of accident to its workmen.

(11) Reasonable expenses incurred on the occasion of Dussehra, Diwali, commencement of the business, etc.

(12) Compulsory subscription or a subscription given to an association in the interest of the business.

(13) Legal expenses incurred in connection with the business or profession :

(i) in the normal course of business; or

(ii) to avoid a business liability, i.e., for alleged breach of trading contract; or

(iii) to defend the assessee's title to his assets; or

(iv) to terminate a disadvantageous trading relationship; or

(v) to resist a winding-up petition by some shareholders.

(14) Legal expenses incurred by a director of a company in defending a suit brought against him to challenge the validity of his election as a director, as it is incurred to save his income from the source.

(15) Interest on unpaid purchase price of any business assets purchased by an assessee and put to use will be allowed.

(16) Expenditure incurred to oppose nationalization or to prevent extinction of business.

(17) Under executive instructions, cost of installing new telephone. [Morgan vs. Tara & Lyle Ltd. (1954) 26 TTR 195]

(18) Normal advertisement expenditure incurred to maintain the sales not covered by section 37(2B).

(19) Penalty paid by the assessee for saving from confiscation the goods which he purchased from a third party without knowing that they had been illegally imported.

(20) Amount paid by a director of a company in liquidation for compounding misfeasance proceeding started against him by the liquidator.

(21) Welfare expenditure incurred by the assessee.

(22) Payment of excise duty.

(23) Guarantee fee paid to the Government for loan obtained for purchase of machinery.

(24) Expenditure incurred in connection with alterations made in the Memorandum or Articles of Association of a company if these alterations are warranted by the changes made in Companies Act.

(25) If an assessee stands surety for the debt of another and it is usual in this trade to guarantee debts, any payment made as a result of such guarantee may be allowed as a business loss.

(26) Professional tax levied by local authorities the payment of which is a necessary condition for the carrying on the business within the area of a local authority.

(27) Rebate granted by co-operative stores to their members on the value of the purchases made by them.

(28) The interest payable on arrear of cess is in the nature of compensation paid to the Government for delay in the payment of cess and not as penalty, hence it is deductible. Similarly, interest paid for delay in payment of municipal taxes is also allowable as deduction.

(29) Amount spent by an assessee in purchasing loom hours is deductible as a revenue expenditure.

(30) Amount paid as damages to the Government Department for delay in the execution of contracts was held to be allowable deduction, if the delay was inherent in the nature of business carried on by the assessee.

(31) Annual listing fee paid to Stock Exchange by public limited company is allowable.

(32) Interest levied for failure to pay instalment of the assets purchased on hire-purchase basis is allowable.

(33) Expenditure incurred on inauguration ceremony is allowable.

(34) Expenditure incurred on foreign tour of director for purposes of expansion of business of the managed company is allowable.

(35) Wife of chairman-cum-managing director accompanying him for fulfilling

aspects. Expenses incurred on foreign tour of wife are deductible. *[CIT vs. Appollo Tyres Ltd. (1998) 149 CTR 545 (Ben.)]*

(36) Liability to pay debenture premium is to be spread over the years between date of issue and date of redemption. *[National Engineering Industries Ltd. vs. CIT (1999) 236 ITR 577 (Cal.)]*

(37) Deposit under Tatkal Telephone Deposit Scheme.

Certain Allowable Losses

Losses which are directly incidental to the business or profession of the assessee are allowable. Following are some examples of such losses :

(1) *Robbery or Dacoity.* Loss caused by robbery or dacoity is not deductible. But, if it is incidental to business it will be allowed as a deduction and this depends upon the specific circumstances and conditions. For example, if cash is sent for disbursement at different centres by a sugar factory in rural area, it is incidental to business and is, therefore, allowed. *[Munroe Sugar Factory Ltd. vs. CIT (1955) 26 ITR 281.]* Any loss due to robbery in a bank will be allowed as the bank is under an obligation to maintain some cash outside the strong room for payments.

(2) *Embezzlement, Theft, etc.* The loss of money due to embezzlement by an employee handling the funds of the business while discharging his official duties is allowed as deduction. It is deductible when discovered. *[Tadadum G. Dourkhanth & Co. vs. CIT (1999) 239 ITR 831 (Kar.)]* When an employee goes to bank to deposit the cash or takes cash with him for disbursement and he takes away the money for his own use, even then, the loss is allowable. Theft by a cashier, who is in charge of cash is also an allowable loss. A theft committed either by an employee or by someone else by breaking open into the business premises after office hours, is also allowable.

(3) *Loss due to Non-recovery of advances.* If it is the practice in a business to give advance money to the suppliers and if the supplier neither supplies the order nor refunds the advance money, the loss sustained by the assessee is incidental to business and is, therefore, allowable.

EXPENSES EXPRESSLY DISALLOWED

(I) *Disallowance of expenditure on advertisement in any souvenir, etc. published by a political party.* Any expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet, etc., published by a political party, shall not be allowed as a deduction in computing the profits and gains of business or profession.

(II) Section 40 expressly provides that the following expenses shall not be deducted in computing the profits and gains of business or profession. *[Sec. 37(2)]*

(A) *In the case of any assessee*

(i) *Payments outside India etc.* Any interest, royalty, fees for technical services, etc. which is payable (a) outside India or (b) in India to a non-resident or a foreign company on which tax is deductible at source and such tax has not been deducted at source or after deduction has not been paid on or before the due date specified in Sec. 139(1), shall not be allowed as a deduction.

However, if in respect of any such sum tax has been deducted in any subsequent year 139(1), such sum shall be allowed as a deduction in computing the income of that year in which such tax has been paid.

(ia) *Payments to residents.* Any payment to a resident, on which tax is deductible at source and such tax has not been deducted or, after deduction has not been paid on or before the due date of filing the return of income specified in Sec. 139(1), 30% of such sum shall not be allowed as a deduction.

However, if in respect of such sum tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in Sec. 139(1) 30% of such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

(ii) *Tax on Profits and Gains.* Any sum paid on account of any tax levied on the profits and gains of any business or profession shall not be allowed as a deduction.

(iia) *Wealth tax.* Wealth tax chargeable under Wealth Tax Act shall not be allowed as a deduction.

(iib) *Amount paid to State Government.* (a) Any amount paid by way of royalty, licence fee, service fee, privilege fee, service charge, by whatever name called, which is levied exclusively on, or

(b) any amount which is appropriated, whether directly or indirectly, from a State Government undertaking by the State Government, shall not be allowed as a deduction.

(iii) *Salaries Payable outside India or to a Non-resident.* It is not allowed as a deduction, if tax has not been paid thereon nor deducted at source.

(iv) *Payment to P.F., etc.* Any payment to a provident or other funds shall not be allowed as a deduction unless it is ensured that tax shall be deducted at source from any payments made from the fund provided it is chargeable to tax.

(v) *Tax on perquisites of employee.* Any tax actually paid by an employer on the value of perquisites provided to an employee which is exempt u/s 10(10CC).

(B) In the case of any partnership firm

(i) Any payment of salary, bonus, commission or remuneration made by the firm to any partner of the firm, who is not a working partner, shall not be allowed as a deduction.

(ii) Payment of salary, etc. to working partners will be allowed as a deduction, only if it is authorised by and is in accordance with the terms of partnership deed. It is further provided that the terms of partners deed will not have retrospective effect in this respect.

(iii) Interest to partners will be allowed at the maximum rate of 12% simple interest. However, it will be allowed only if it is authorised by and is in accordance with the terms of partnership deed.

(iv) In the case of working partners payment of salary, bonus, commission or remuneration to all partners taken together will be allowed as a deduction subject to the following limit :

(i) On the first ₹ 3,00,000 of the book-profit ₹ 1,50,000 or @ 90% of the book-profit, whichever is more.

(ii) On the balance of the book-profit @ 60%

In clause (iv) above, 'Book-profit' means the net profit as shown in the profit and loss account computed in the manner laid down in the Act, as increased by the aggregate amount of remuneration paid or payable to all the partners of the firm, if such amount has been deducted while computing the net profit.

'Working partner' means a partner who is actively engaged in the business of the firm.

(C) *In the case of an Association of Persons or Body of Individuals (other than a Company or a Co-operative Society)*

In such a case any payment of interest, salary, bonus, commission or remuneration to a member of such association or body shall not be allowed as a deduction.

(Sec. 40A)

Expenses not deductible in certain circumstances

(1) **Excessive payments.** Any payment of an expenditure to a relative or to an associate of the assessee, which is excessive or unreasonable, shall be disallowed if the Assessing Officer considers it to be excessive or unreasonable. The concern shall be disallowed if the circumstances of the case. Only the excessive or unreasonable part is to be disallowed.

For this purpose, relative means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual who is the assessee. Associate means a person in which has a substantial interest in the business of the tax-payer or in which the tax-payer or any relative has a substantial interest. [Sec. 40A(2)]

(2) **Payments in cash.** Any expenditure in respect of which payment or aggregate of payments made to a person in a day is made exceeding ₹ 20,000 otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft it will be disallowed. [Sec. 40A(3)]

However, where the payment is made for plying, hiring or leasing goods carriages, the limit of disallowance shall be exceeding ₹ 35,000 instead of exceeding ₹ 20,000. [Sec. 40A(3)]

Where a deduction of expenditure is claimed in one year and the payment is made against such expenditure in any subsequent year in violation of Sec. 40A(3), such expenditure will be deemed to be profits and gains of business of the year in which the payment is made. [Sec. 40A(3A)]

Exceptions. In the following cases even if the payment in cash exceeds ₹ 20,000 or ₹ 35,000 as the case may be, it shall not be disallowed :

- (i) Payment made in rural areas or small towns where no banking facilities are available to a person who ordinarily resides there.
- (ii) Payment made to cultivator, grower or producer for purchase of agricultural or forest produce, or the produce of animal husbandry (including hides and skins) or dairy or poultry farming, or fish or fish products or products of horticulture or agriculture or products of cottage industries which are run without the aid of power.
- (iii) Payment made to Banks or Life Insurance Corporation, etc.
- (iv) Payment to employee or to the member of his family in respect of gratuity, retirement benefit, compensation, etc. where the aggregate of such sums does not exceed ₹ 50,000.
- (v) Payment is made to Government and such payment is required to be made in legal tender.
- (vi) Payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee.
- (vii) Payments which is required to be made on a date on which the banks are closed.
- (viii) Payment is made by any mode through a bank. [Rule 61D]
- (3) **Provision of gratuity.** Mere provision made for the payment of gratuity to the employees on retirement or on termination of services will not be allowed as a deduction in computing taxable profits of the business or profession.

Exception. Provision made for gratuities due during the current previous year or provision made for making contribution towards an approved gratuity fund will be allowed. [Sec. 40A(7)]

However, the payment should be made on or before the due date of furnishing the return of income of the relevant previous year. [Sec. 43B]

(4) No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up of, or as contribution to, any unapproved fund. However, where such sum is so paid for the purpose of recognised provident fund or statutory provident fund or an approved superannuation fund or approved gratuity fund or towards pension scheme on account of an employee is allowed as deduction. [Sec. 40A(9)]

(5) **Other Expenses.** In addition to the above expenses, which are expressly disallowed under sections 40 and 40A the following expenses, losses and allowances are also not allowable as deduction in computing the profits and gains of business or profession :

- (i) Drawings or personal expenses of proprietor or partners.
- (ii) Any provision or transfer to reserve except transfer to reserves as provided in the Act.
- (iii) Amounts paid as charity or presents.
- (iv) Past losses charged to Profit & Loss Account.
- (v) Any expenditure not incurred wholly and exclusively for the purposes of the business or profession.
- (vi) Expenditure incurred to buy off competition.
- (vii) Penalties paid by the assessee for infringement of law.
- (viii) Payments made by an assessee in the nature of sharing the profits to the sole selling agents under an agreement are not deductible. [CIT vs. Panpat Wodden and General Mills Co. Ltd. (1976) 103 ITR 66 (SC)]

- (ix) Litigation expenses for registration of shares.
- (x) Contribution to a political party.
- (xi) Insurance premia paid by a firm on life insurance policies of its partners.
- (xii) Expenditure on shifting of registered office.
- (xiii) Fees paid for increase of authorised capital.
- (xiv) Expenses incurred for issuing shares.
- (xv) Payments made for acquisition of goodwill.
- (xvi) Expenditure incurred in violation of another statute. [CIT vs. India Cement Ltd. (2000) 241 ITR 62 (Mad.)]
- (xvii) Gifts made on the occasion of marriages in the families of friends and others with whom assessee has business dealings cannot qualify as business expenditure even on grounds of commercial expediency. [CIT vs. Jeevandas Ladje & Sons (1999) 157 CTR 562 (Mad.)]

DEDUCTIONS ALLOWABLE ONLY ON ACTUAL PAYMENT (Sec. 43B)

The following deductions are allowable only on actual payment :

- (a) Any sum payable by the assessee by way of tax, duty, cess or fee.
- (b) Any sum payable by him as an employer by way of contribution to any provident fund, superannuation fund or gratuity fund or any other fund for the welfare of employees.
- (c) Any sum payable to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profit or dividends if it had not been paid as bonus or commission.
- (d) Any sum payable by the assessee as interest on any loan or borrowing from any Public Financial Institution or a State Financial Corporation or a State Industrial Investment Corporation.
- (e) Any sum payable by the assessee as interest to a scheduled bank on any loan or advance from a scheduled bank.
- (f) Any sum payable by the assessee in lieu of earned leave.
- (g) Any sum payable by the assessee to the Indian Railways for the use of railway assets. w.e.f. A.Y. 2017-18]

If actual payment is made either during the relevant previous year or on or before the due date for furnishing the return of income u/s 139(1), the deduction will be allowed in the relevant previous year.

If the amount is paid after the due date of furnishing the return, the deduction will be allowed in the year of payment.

If any sum payable by the assessee as interest under (d) or (e) is converted into a loan or borrowing, it shall not be deemed as actual payment.

The following profits are also chargeable to tax under the head 'Profits and gains of business or profession' :

PROFITS CHARGEABLE TO TAX

- (1) **Recovery of any loss or expenditure allowed as deduction in an earlier year** [Sec. 41(1)]
- (a) If any sum allowed as deduction as a loss or expenditure in an earlier year, is recovered in a subsequent year, the amount so recovered shall be treated as deemed profit and shall be chargeable to income tax in the year of recovery.

(b) If any loss or expenditure has been allowed as deduction in an earlier year and the amount in respect of such loss or expenditure, the amount shall be deemed to be profits chargeable to tax in the hands of the successor.

(2) **Profit on Sale of Assets on which depreciation is claimed on Straight Line Method** [Sec. 41(2)]

Where any building, machinery, plant or furniture which is (i) owned by the assessee, in respect of which depreciation has been claimed on Straight Line Method, and (ii) which has been used in business is sold, discarded, demolished or destroyed and the moneys payable in respect of such asset together with the amount of scrap value exceeds the written-down value, the excess of the difference between the actual cost and the written-down value shall be taxable as deemed profit. The deemed profit is assessable even if the business to which it relates has been closed down.

U/s 41(2) money refers only to cash and not money's worth.

Where an asset is reinstated by Insurance Company, benefit derived from reinstatement is not covered by Sec. 41(2).

[CIT vs. Kachari & Sons Ltd. (1999) 237 ITR 24 (SC)]

(3) **Sale of asset used for scientific research** [Sec. 41(3)]

If a capital asset used for scientific research is sold without having been used for other purposes, and the sale proceeds together with the deductions allowed u/s 35 exceed the amount of capital expenditure incurred on it, such surplus or the amount of deductions allowed whichever is less, is chargeable to tax as business income of the previous year in which the sale took place. If the deduction allowed is less than the aforesaid surplus, the excess of surplus over the deduction allowed is chargeable to tax as capital gains.

(4) **Bad Debts Recovered** [Sec. 41(4)]

If a bad debt allowed as deduction in an earlier year is recovered in a subsequent year, it is taxable as deemed business profit in the year of recovery, even if the business or profession, to which the recovery relates, is closed before the year of recovery.

(5) **Recovery after discontinuance of business or profession** [Secs. 176(3A) and 41(5)]

If any business or profession is discontinued in any year, and any sum is received afterwards, it will be deemed to be income of the recipient and charged to tax in the year of receipt, provided that if it had been received before the discontinuance of the business or profession it would have been chargeable to tax.

(6) **Withdrawal from Special Reserve** [Sec. 41(4A)]

Where any amount is withdrawn from the special reserve created and maintained by a specified entity [under section 36(1)(viii)] it shall be deemed to be the chargeable profits of the previous year in which such amount is withdrawn from the Reserve Account. Where the amount is withdrawn from the Reserve Accounts in the previous year in which the business is no longer in existence, it will be chargeable to tax as if the business is in existence in that previous year.

Set-off of losses against profits chargeable to tax [Sec. 41(5)]

Any loss of business or profession of the year in which it ceased to exist and which could not be set-off against any other income of that year, shall be set-off against the aforesaid profit under section 41. However, such a loss from speculation business cannot be so set-off.

Maintenance of Accounts [Sec. 44A]

For the purpose of provisions relating to maintenance of accounts, the business or profession has been classified into the following three categories :

(1) Specified Professions, (2) Non-specified profession or business, (3) Business under sections 44AD and 44AE.

- (1) **Specified Professions.** The following professions are specified professions :
- Legal;
 - Medical;
 - Accountancy;
 - Technical Consultancy;

- (c) Engineering;
(d) Architectural;

- (e) Interior Decoration;
(f) Such other profession, as may be notified by the Central Board of Direct Taxes.

The Board has notified the following professions for the purposes of this section :

- (i) The profession of film artists; and
(ii) The profession of information technology.

Such persons are required to maintain prescribed books of account if their gross receipts in the profession exceeds ₹ 1,50,000 in any one of the three years immediately preceding the previous year, or where the profession has been newly set-up in the previous year, his gross receipts in the profession for that year are likely to exceed the said amount.

[Notification No. 11319 dated 6.4.2006]

Prescribed books :

- Cash Book;
 - Journal (if accounts are maintained on the basis of mercantile system);
 - A ledger;
 - Carbon copies of bills issued exceeding ₹ 25;
 - Original bills; and
 - Receipts regarding expenses exceeding ₹ 50.
- (2) **Non-Specified Profession or Business :** (i) Whose income from such profession or business exceeds ₹ 1,20,000, or

(ii) Total sales, turnover or gross receipts exceed ₹ 10,00,000 in any one of the three years immediately preceding the previous year, or

(iii) In the case of newly set-up profession or business income/total sales/turnover/gross receipts are likely to exceed the aforesaid amounts.

They are required to compute their total income. No books are prescribed for them.

(3) **Businesses under sections 44AD and 44AE.** Where the assessee claims that the profits and gains of eligible business (Sec. 44AD) or plying, hiring or leasing goods carriage (Sec. 44AE) are lower than the deemed profits under these sections, he has to maintain the books of account of such business.

Compulsory Audit of Accounts [Sec. 44AB]

(1) **Turnover/gross receipts exceed prescribed limit.** It is obligatory for a person carrying on business to get his accounts audited upto specified date, if the total sales, turnover or gross receipts in business for the previous year exceed one crore rupees.

A person carrying on profession has also to get his accounts audited upto specified date if his gross receipts in profession for the previous year exceed ₹ 25 lakh (₹ 50 lakh w.e.f. A.Y. 2017-18).

Such persons are required to obtain upto specified date a report of the audit in the prescribed form and submit it alongwith the return of income.

"Specified date" means the due date of furnishing the return of income specified in Sec. 139(1).

For details see chapter on "Procedure for Assessment".

(2) **Businesses under sections 44AD and 44AE.** Where the assessee claims that the profits and gains of eligible business (Sec. 44AD) or plying, hiring or leasing goods carriage (Sec. 44AE) are lower than the deemed profits under these sections, he has to get his accounts audited and furnish by specified date a report of the audit in the prescribed form.

(3) **Assessee claims deduction under sections 33AB, 33ABA, 35AD, 35D or 35E.** Where the assessee claims deduction under 'tea development account', 'site restoration fund', 'specified business', 'Preliminary expenses or Expenditure on prospecting, etc.', for certain minerals, he has to get his accounts audited and furnish by specified date a report of the audit in the prescribed form.

Where such person is required by or under any other law to get his accounts audited, he need not get them audited again, but he should get the audit done before the specified date and get its report as well as another report in the form prescribed under this section.

VALUATION OF STOCK-IN-HAND

There are no provisions in the Income Tax Act regarding the valuation of stock-in-hand in a business. Hence, it is valued according to the general principles of accounting. Generally, the valuation of stock is done as under :

- (i) on the basis of cost; or
- (ii) on the basis of market price; or
- (iii) on the basis of cost or market price, but once a method is adopted, it cannot be changed.

The assessee is free to adopt any method, but once a method is adopted, it cannot be changed by the assessee at his own sweet will, but only with the previous approval of the Assessing Officer. Sec. 145A provides that the value of the inventory on the first and the last day of the previous year shall be determined according to the method of accounting regularly employed by the assessee. It shall also include the amount of any tax, duty, cess or fees paid or liability incurred for the same under any law in force.

Where an assessee converts his capital assets into stock-in-trade and starts dealing in them the value of such stock will be the market value as on the date of their conversion into stock-in-trade and not original cost.

However, such conversion shall be a transfer u/s 2(47) and liable to tax under the head 'Capital gains'.

Bank valuing stock-in-trade (investments) at cost in balance sheet in accordance with Banking Regulation Act and valuing same investments at cost or market price, whichever is less, for income tax purposes. The method is valid and cannot be rejected.

(United Commercial Bank vs. CIT (1999) 240 ITR 355 (SC))

DEDUCTIONS EXPRESSLY ALLOWED : AT A GLANCE

1. Expenses in respect of buildings—rent, repairs, land revenue, local taxes, insurance premium.
2. Expenses in respect of plant, machinery, furniture—Repairs and insurance premium.
3. (a) *Depreciation on Tangible Assets* : Tangible assets are buildings, plant and machinery and furniture.
(b) *Depreciation on Intangible Assets* : Intangible assets are know-how, patents, copyrights, trademarks, licences, franchises and commercial rights.
4. Deduction regarding deposit in Tea Development Account, Coffee Development Account or Rubber Development Account—Deduction shall be allowed on the amount deposited or 40% of the profits of such business, whichever is less.
5. Deduction regarding deposit in special account for prospecting for, or extraction of, production of petroleum or natural gas—Deduction shall be allowed on the amount deposited or 20% of the profits of such business, whichever is less.
6. Expenditure on Scientific Research :
(i) Revenue expenditure and capital expenditure.
(ii) Sum paid for scientific research—Deduction 175% of sum paid.
(iii) Sum paid for social or statistical research—Deduction 125% of sum paid.
(iv) Expenditure on in-house research and development—Deduction 200% of the expenditure.
7. Deduction regarding capital expenditure to obtain licence to operate telecommunication services.
8. Expenditure on eligible project or scheme.
9. Expenditure on specified business.
10. Payment to Rural Development Fund, National Poverty Eradication Fund.

11. Expenditure on agricultural extension project incurred by an assessee—Deduction 150% of expenditure.
12. Expenditure on any skill development project incurred by a company—Deduction 150% of expenditure.
13. Deduction to an Indian company or resident in India regarding preliminary expenses—Deductible in five previous years upto a specified limit.
14. Deduction to an Indian company regarding expenditure for amalgamation or demerger of an undertaking—Deductible in five equal instalments annually.
15. Expenditure on voluntary retirement during any previous year—Deductible in five instalments annually.
16. Deduction to an Indian company or resident in India regarding expenditure on prospecting of minerals etc.—Deductible in ten instalments annually.
17. Other deductions :
(i) Insurance premium regarding stocks and stores.
(ii) Insurance premium for the health of employees.
(iii) Bonus or commission to employees.
(iv) Interest on borrowed capital.
(v) Discount on zero coupon bond.
(vi) Contribution to recognised provident fund, approved superannuation fund, approved gratuity fund.
(vii) Loss regarding animals used for business or profession.
(viii) Bad debts.
(ix) Deduction to banks and financial institutions regarding provision for bad and doubtful debts upto a specified limit.
(x) Reserve created by specified entity deductible 20% of profits or amount credited to special reserve account, whichever is less.
(xi) Expenditure on family planning by a company to promote family planning amongst its employees :
(a) Capital expenditure—deductible in five equal instalments annually.
(b) Revenue expenditure.
(xii) Expenses in connection with income tax proceedings.
(xiii) Entertainment expenses.
(xiv) Banking Transaction Tax paid.
(xv) Amount paid in respect of taxable securities transactions or commodities transactions.
(xvi) Contribution towards pension scheme on account of an employee.
18. General deduction—provided :
(i) it is not personal expense of the assessee;
(ii) it is not in the nature of capital expenditure;
(iii) it is expended wholly and exclusively for the purpose of business or profession during previous year.

DEDUCTIONS EXPRESSLY DISALLOWED : AT A GLANCE

- (A) For all assesses :
1. Expenditure on advertisement in any souvenir, etc. published by a political party.
2. Payment out of India or in India to a non-resident or a foreign company—On which tax is deductible at source but tax has not been deducted or after deduction has not been paid.
3. Any payment to residents on which tax is deductible at source but tax has not been deducted or after deduction has not been paid only 30% of such payment shall be disallowed.
4. Income Tax.

'Revocable transfer' for this purpose means :

- (i) a transfer containing any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor; or
- (ii) a transfer which in any way, gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets.

It may be noted that even if an insignificant part of the income out of the transferred asset ensures to the benefit of the transferor, the whole of the income shall be included in the income of the transferor. (Sec. 63)

(3) **Income of spouse.** The following incomes of the spouse of an individual shall be included in the total income of the individual :

(a) Income of the spouse by way of salary, commission, fees or any other form of remuneration from a concern in which such individual has a *substantial interest*. [Sec. 64(1)(ii)]

Exception. If the payment of the above type of remuneration are purely due to the technical or professional qualification of the spouse, the remuneration paid to the spouse shall not be clubbed with the income of the individual. [Sec. 64(1)(ii) Provision]

Substantial interest. (i) *In Case of Company.* An individual is deemed to have substantial interest, if he along with his relatives beneficially owns equity shares carrying at least 20% voting power in the company at any time during the previous year.

(ii) *In any other case.* If the concern is not a company, he along with his relatives is entitled to at least 20% of the profits of the concern at any time during the previous year.

The word 'spouse' means husband or wife.

The income referred to in sub-clause (a) above, shall be included in the total income of that spouse who has the greater income [exclusive of income under clause (a)].

(b) If an asset (excluding house property) is transferred by an individual to his or her spouse, directly or indirectly, neither for adequate consideration nor in connection with an agreement to live apart, the income from such asset to the spouse, will be included in the income of the transferor. [Sec. 64(1)(vi)]

If the consideration is inadequate proportionate income shall be included in the income of the transferor. As regards the question of an agreement to live apart, the separation may be judicial or voluntary.

Note : The income from house property transferred to spouse shall be computed under the head 'Income from house property' in the hands of transferor and not in the hands of the transferee.

(4) **Income of daughter-in-law.** If an individual transfers assets after 31st May, 1973, without adequate consideration, to his daughter-in-law (Son's wife), any income arising from such assets, will be included in the total income of the transferor. [Sec. 64(1)(vii)]

(5) **Transfer of assets to other persons or association of persons for the benefit of spouse.** If an individual transfers assets, without adequate consideration, to some other person or association of persons for the immediate or deferred benefit of his or her spouse, any income arising from such assets to that person or association will be included in the total income of the transferor to the extent it is for the benefit of the spouse. For instance suppose the income from the transferred assets is ₹ 10,000 and half of this is reserved for the benefit of the spouse of the transferor, then, ₹ 5,000 shall be included in the income of the transferor. [Sec. 64(1)(viii)]

(6) **Income from assets transferred to a person or association of persons for the benefit of his son's wife.** Any income arising, to any person or association of persons from assets transferred to it by an individual, after 31.5.1973, except for adequate consideration, shall, to the extent to which the income from such assets is for the immediate or deferred benefit of his son's wife, be included in the total income of such individual or the transferor. [Sec. 64(1)(viii)]

(7) **Income from Business.** If the individual transfers any asset directly or indirectly to the spouse or son's wife and such assets are invested by the transferee :

(i) in any business, but not as capital contribution as a partner in a firm or being admitted to the benefits of partnership in a firm, the amount calculated as under will be included in the income of transferor :

Value of the assets transferred by transferor on the 1st day of P.Y. × The profit share of transferee from business Total investment on the 1st day of P.Y. by transferee

(ii) in the nature of capital contribution as a partner in a firm, the interest received or receivable from the firm on such capital contribution will be included in the income of transferor. [Explanation 3 to Sec. 64(1)]

Example : Mr. A transfers ₹ 10,00,000 to Mrs. A and she started a business with this amount. She incurred a loss of ₹ 3,00,000 during previous year 2015-16. The loss of ₹ 3,00,000 shall be deducted from the income of Mr. A.

(8) **Income of a Minor Child.** The income of a minor child (including minor married daughter) shall be included in the income of his or her parent. However, the income of a physically or mentally handicapped minor child shall not be included in the income of either of his parents. In such a case the total income of such minor child shall be computed separately.

The following are the provisions for the inclusion of income of the minor child in the income of a parent :

(i) where the marriage of his parents subsists, in the income of that parent whose total income is greater;

(ii) where the marriage of his parents does not subsist, in the income of the parent who maintains the minor child in the previous year.

Exceptions. The following incomes of minor child shall not be included in the income of the parent :

(i) income from manual work done by the minor; [Sec. 64(1A)]

(ii) income from activity involving application of his skill, talent or specialised knowledge and experience.

Minor Child. A Minor child includes a step-child and an adopted child. When the income of a minor child is included in the income of a parent, the parent concerned is entitled to exemption on the income so included or ₹ 1,500 per minor child, whichever is less u/s 10(32).

Example : X, a minor, earns a taxable income of ₹ 50,000 from interest. His father Y had two independent businesses of cloth and iron from which his taxable incomes are ₹ 60,000 and ₹ 2,40,000 respectively. His mother has no income. The marriage of his parents subsists. In this case X's income of ₹ 50,000 less ₹ 1,500 [exempt u/s 10(32)] shall be clubbed with the income of his father, i.e., ₹ 3,00,000 and the total income of father shall be ₹ 3,48,500.

(9) **Transfer of separate individual property or self-acquired property to Hindu undivided family of which he is a member or conversion of property.** If, after 31-12-1969, an individual transfers for inadequate consideration or converts his self-acquired property into the property of the Hindu undivided family of which he is a member, then the income from such property shall be deemed to be the income of the individual and not of the H.U.F. It will be included in the total income of the individual. [Sec. 64(2)(a) and (b)]

Where such converted property is subsequently partitioned, the income from the converted property received by the spouse of the individual will be includible in the income of the individual who has converted the property, even after partition. [Sec. 64(2)(c)]

(10) **Benami transactions.** When a person enters into a transaction in the name of a person other than the real person in order to avoid tax, it is called a *benami* transaction, and the person

'Reversible transfer' for this purpose means:

- (i) a transfer containing any provision for the re-transfer directly or indirectly of the whole or any part of the income or assets to the transferor; or
- (ii) a transfer which in any way gives the transferor a right to re-assume power directly or indirectly over the whole or any part of the income or assets.

(Sec. 62)

It may be noted that even if an insignificant part of the income out of the transferred asset ensures to the benefit of the transferor, the whole of the income shall be included in the income of the transferor.

(3) **Income of spouse.** The following incomes of the spouse of an individual shall be included in the total income of the individual:

(a) Income of the spouse by way of salary, commission, fees or any other form of remuneration from a concern in which such individual has a *substantial interest*. [Sec. 64(1)(ii)]

Exception. If the payment of the above type of remuneration are purely due to the technical or professional qualification of the spouse, the remuneration paid to the spouse shall not be clubbed with the income of the individual. [Sec. 64(1)(i) Provided]

Substantial interest. (i) *In Case of Company.* An individual is deemed to have substantial interest, if he along with his relatives beneficially owns equity shares carrying at least 20% voting power in the company at any time during the previous year.

(ii) *In any other case.* If the concern is not a company, he along with his relatives is entitled to at least 20% of the profits of the concern at any time during the previous year.

The word 'spouse' means husband or wife.

The income referred to in sub-clause (a) above, shall be included in the total income of the spouse who has the greater income [exclusive of income under clause (a)].

(b) If an asset (excluding house property) is transferred by an individual to his or her spouse, directly or indirectly, neither for adequate consideration nor in connection with an agreement to live apart, the income from such asset to the spouse, will be included in the income of the transferor.

[Sec. 64(1)(v)]

If the consideration is inadequate proportionate income shall be included in the income of the transferor. As regards the question of an agreement to live apart, the separation may be judicial or voluntary.

Note: The income from house property transferred to spouse shall be computed under the head 'Income from house property' in the hands of transferor and not in the hands of the transferee.

(4) **Income of daughter-in-law.** If an individual transfers assets after 31st May, 1973, without adequate consideration, to his daughter-in-law (Son's wife), any income arising from such assets, will be included in the total income of the transferor.

[Sec. 64(1)(vi)]

(5) **Transfer of assets to other persons or association of persons for the benefit of spouse.** If an individual transfers assets, without adequate consideration, to some other person or association of persons for the immediate or deferred benefit of his or her spouse, any income arising from such assets to that person or association will be included in the total income of the transferor to the extent it is for the benefit of the spouse. For instance suppose the income from the transferred assets is ₹ 10,000 and half of this is reserved for the benefit of the spouse of the transferor, then, ₹ 5,000 shall be included in the income of the transferor.

[Sec. 64(1)(vii)]

(6) **Income from assets transferred to a person or association of persons for the benefit of his son's wife.** Any income arising, to any person or association of persons from assets transferred to it by an individual, after 31.5.1973, except for adequate consideration, shall, to the extent to which the income from such assets is for the immediate or deferred benefit of the son's wife, be included in the total income of such individual or the transferor. [Sec. 64(1)(viii)]

in whose name the transaction is effected is called *benamidar*. If, in the opinion of the Assessing Officer, a transfer is *benami*, he will treat the income of that transaction as the income of the real person and tax shall be levied on him for that transaction. No tax shall be levied on the *benamidar* for a *benami* transaction.

Treatment of Loss

The income of specified persons is liable to be included in the total income of the individual in certain circumstances specified u/s 64. Where there is a loss to a specified person in specified circumstances, the individual will be entitled to set-off such loss. It means 'income' will also include a 'loss'.

Example 1. For previous year 2015-16 minor son of A incurred a loss of ₹ 50,000 under the head 'Income from House Property'. The loss shall be deducted from the income of Mr. A or Mrs. A, whosoever has higher income.

Example 2. A transfers his self-acquired property to his HUF. Annual income from the property is ₹ 80,000. It shall be assessable in hands of A and not in the hands of HUF.

Suppose HUF consisting of A, Mrs. A, minor son X and major son Y, partitions the property aforesaid. Hence, A, Mrs. A, X, Y get ₹ 20,000 each from the partitioned property. Income out of converted property will be taxable as under :

Particulars	A	Mrs. A	Minor Son X	Major Son Y
Share out of converted property	₹ 20,000	₹ 20,000	₹ 20,000	₹ 20,000
Share of Mrs. A [clubbed with husband u/s 64(2)]	20,000	(20,000)		
Share of minor son clubbed u/s 64(1A)	20,000		(20,000)	
Less : Exemption u/s 10(32)	(1,500)			
Taxable Income	58,500	—	—	20,000

Income from Accretion of Property Transferred

Income arising to the transferee from the property transferred is taxable in the hands of the transferor. Income arising to the transferee from the accretion of such property or from accumulated income of such property is, however, not includible in the total income of the transferor, but it will be taxed in the hands of the transferee.

Recovery of Tax

The tax on the income of the other person which has been included in the income of the assessee can either be recovered from the assessee or from the other person. However, the liability of the other person is limited to the portion of the tax levied on the assessee which is attributable (on the basis of average rate of tax) to the income so included. The liability of other person arises after the service of the notice of demand by the Assessing Officer in this behalf.

Where the transferred asset is held jointly by two or more persons they shall be jointly and severally liable to pay such tax.

Illustration 1

Who is liable to pay tax on the following incomes :

- Mr. Ram transferred a property worth ₹ 2 lakh to his son's wife on 10th June, 2006. The income accrued to her from the property is ₹ 20,000 during the previous year 2015-16.
- Mr. Ram, a member of Hindu undivided family, transferred his personal property worth ₹ 1,00,000 to the H.U.F. on 10th July, 2012, without consideration. The income accrued to the family from the property ₹ 20,000 during the previous year 2015-16.

Solution

(a) Mr. Ram transferred the property to his son's wife after 31.5.1973 without adequate consideration. Hence, the income from such property (₹ 20,000) is liable to be taxed in the hands of Mr. Ram and not in the hands of son's wife.

(b) Mr. Ram transferred the individual property without consideration to the H.U.F. after 31.12.1969, hence the whole income (₹ 20,000) from such property is liable to be taxed in his hands and not in the hands of the H.U.F.

Illustration 2

From the following information compute the income of Mr. Shyam and Mrs. Shyam for the assessment year 2016-17 :

Incomes of Mr. Shyam :

- From business
- Interest on debentures (gross)
- Incomes of Mrs. Shyam :
- Salary income (computed)
- Interest on debentures (gross) transferred by Mr. Shyam without consideration
- Interest on loan from a firm

Solution

Computation of Income of Mr. Shyam
(for the Assessment Year 2016-17)

1. Business income	₹	₹
2. Interest on debentures	20,000	3,90,000
Interest on debentures gifted to wife	10,000	30,000
Total Income		<u>4,20,000</u>

Computation of Income of Mrs. Shyam
(for the Assessment Year 2016-17)

1. Salary income	2,50,000
2. Interest on loan	4,000
Total Income	<u>2,54,000</u>

Illustration 3

Mr. Singh is a trader. Particulars of his income and those of the members of his family are given below. These incomes relate to the previous year ended 31st March, 2016 :

- Income from business—Mr. Singh's
 - Salary derived from an education institution by Mrs. Singh. She is the Principal of the institution
 - Interest on company deposits derived by Master Deep Singh (minor son). These deposits were made in the name of Deep Singh by his father's father about 6 years ago
 - Receipts from sale of paintings and drawings made by Minor Dipali Singh (minor daughter of Mr. and Mrs. Singh and a noted child artiste)
 - Income by way of lottery earnings by Master Dipindar Singh (minor son of Mr. Singh)
- Discuss whether the above will form part of the assessable income of any individual and also compute the assessable income of Mr. Singh.

(3) Up to 15 March of the F.Y. If less than 100%		@ 1% p.m. for one month	100% of advance tax less amount paid upto 15 March
Company assessee			
(1) Up to 15 June of the F.Y. If less than 12%	@ 1% p.m. for 3 months	15% of advance tax less amount paid upto 15 June	
(2) Up to 15 Sept. of the F.Y. If less than 36%	— do —	45% of advance tax less amount paid upto 15 Sept.	
(3) Up to 15 Dec. of the F.Y. If less than 75%	— do —	75% of advance tax less amount paid upto 15 Dec.	
(4) Up to 15 March of the F.Y. If less than 100%	@ 1% p.m. for one month	100% of advance tax less amount paid upto 15 March	

Exception. No interest will be levied in respect of any shortfall in the payment of advance tax due on the returned income, if:

the shortfall is on account of under-estimate or failure to estimate the amount of capital gains or the income from lottery, crossword puzzles, races including horse races, card games, gambling or betting etc. and the assessee has paid the amount of tax payable in respect of such instalment is due, by 31st March of the financial year.

Explanation. "Tax due on the returned income" shall mean the tax chargeable on the total income declared in the return of income after deducting the following amounts:

- Any tax deducted at source;
- Any tax collected at source.

Note: W.e.f. 1.6.2016 (Financial year 2016-17, Assessment year 2017-18) the provisions relating to interest for default of advance tax (u/s 234C) shall be as under:

(1) The provisions given in the Table under the head "Company assessee" shall apply to all category of assessee.

(2) The provisions given below the Table shall also apply to income under the head "Profits and gains of business or profession" in cases where the income accrues or arises under the said head for the first time.

Rates of Tax for payment of Advance Tax during the Financial year 2016-17 for the Assessment Year 2017-18:

1. In the case of an individual or HUF or AOP or BOI:

(a) Individual—Senior citizen (resident in India, who is of the age of 60 years or more but less than 80 years during the previous year):

On ₹ 3,00,000	Nil
Next ₹ 2,00,000	@ 10%
Next on ₹ 5,00,000	@ 20%
Next—Balance	@ 30%

(b) Individual—Super Senior citizen (resident in India, who is of the age of 80 years or more during the previous year):

On ₹ 5,00,000	Nil
Next ₹ 5,00,000	@ 20%
Next—Balance	@ 30%
Other individuals, HUF, AOP or BOI:	
On ₹ 2,50,000	Nil
Next on ₹ 2,50,000	@ 10%
Next on ₹ 5,00,000	@ 20%
Next—Balance	@ 30%

On ₹ 2,50,000	Nil
Next on ₹ 2,50,000	@ 10%
Next on ₹ 5,00,000	@ 20%
Next—Balance	@ 30%

Surcharge. Surcharge @ 15% if total income exceeds one crore rupees.

Marginal relief: Where total income exceeds ₹ one crore the total amount payable as income tax and surcharge on such income shall not exceed the total amount payable as income tax on a total income of ₹ one crore by more than the amount of income that exceeds ₹ one crore.

Education cess and Secondary and Higher education cess. On the amount of income tax education cess and SHEC @ 3% shall be charged.

In case of an individual resident in India, whose total income does not exceed five lakh rupees, shall be entitled to a deduction from the amount of income tax payable upto ₹ 5,000.

2. In the case of a co-operative society:

Upto the T. I. of ₹ 10,000

On the excess of T. I. over ₹ 10,000 upto ₹ 20,000

On the excess of T. I. over ₹ 20,000

Surcharge: If T. I. exceeds ₹ one lakh

Marginal relief as discussed in 1.

Education cess & SHEC

In the case of every firm:

Income Tax

Surcharge: If T. I. exceeds ₹ one lakh

Marginal relief as discussed in 1.

Education cess & SHEC

Domestic company:

Income Tax:

(a) Where the total turnover or the gross receipt in the P.Y. 2014-15 does not exceed ₹ five crore

(b) Other than that referred to in (a)

(c) Company paying tax u/s 115BA (For details regarding companies, who may pay tax u/s 115BA, see chapter 'Assessment of Companies')

Surcharge: (i) If total income exceeds ₹ one crore but does not exceed ₹ ten crore

(ii) If total income exceeds ₹ ten crore

Marginal relief: (i) Where total income exceeds ₹ one crore, the total amount payable as income-tax and surcharge on such income shall not exceed the total amount payable as income-tax on a total income of ₹ one crore by more than the amount of income that exceeds ₹ one crore.

(ii) Where total income exceeds ₹ ten crore, the total amount payable as income tax and surcharge on such income shall not exceed the total amount payable as income tax and surcharge on a total income of ₹ ten crore by more than the amount of income that exceeds ₹ ten crore.

Education cess & SHEC

Education cess & SHEC

Illustration 1

Shri Bose has estimated the following incomes for the financial year 2016-17:

Income from House Property (Taxable)

Income from Profession (Taxable)

Dividend from X & Co.

Determine the amount of instalments payable as advance tax.

Solution

Computation of Total Income
(for the Financial Year 2016-17)

Income from House Property	₹ 75,000
Income from Profession	6,45,000
	10,000
	₹ 81,45,000

DEEMED INCOMES AND CLUBBING OF INCOMES (Aggregation of Incomes)

To find out the total income of an assessee the following incomes are aggregated:

1. Incomes of the assessee (already discussed).
2. Deemed incomes.
3. Income of other persons includible in the income of the assessee. This is known as clubbing of incomes.
4. Share of a member in the association of persons or body of individuals.

DEEMED INCOMES

In certain cases some amounts are deemed as income in the hands of the assessee, though they are actually not in the nature of income. The object of deeming the amount as income is to check tax evasion.

The following are the deemed incomes:

1. Cash credits.
2. Unexplained investments.
3. Unexplained money, etc.
4. Amount of investments, etc. not fully disclosed in books of account.
5. Unexplained expenditure, etc.
6. Amount borrowed or repaid on hundi.

(1) **Cash Credit.** If any sum is found credited in the books of an assessee maintained for the previous year and the assessee offers no explanation about its nature and source or the explanation offered by him is not satisfactory, the sum so credited may be charged to income tax as the income of the assessee for the previous year.

The following shall also be treated as deemed income under Section 68:

Where a closely held company credits any sum in its books as share application money, share capital, securities premium reserve, etc., it shall be deemed unexplained unless:

- (i) the resident person in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and
- (ii) such explanation in the opinion of A.O. is satisfactory.

However, this provision shall not apply if the amount is recorded in the name of a venture capital fund or a venture capital company.

(2) **Unrecorded and Unexplained Investments.** If in the relevant previous year the assessee has made investments which are not recorded in the books of account, and the assessee offers no explanation about the nature and source of money invested or the explanation offered by

him is not satisfactory, the value of the investments may be deemed to be the income of the assessee for such previous year.

(3) **Unrecorded and Unexplained Money etc.** If in any financial year the assessee is found to be the owner of any unrecorded money, bullion, jewellery or valuable articles, and offers no explanation about the nature and source of acquisition of these items, or the explanation offered by him is not satisfactory, the money and the value of the bullion, jewellery or other valuable articles may be deemed to be the income of the assessee for such financial year. (Sec. 69A)

(4) **Amount of investments not fully disclosed in books of accounts.** If in any financial year the assessee has made investment or is found to be the owner of any bullion, jewellery or other valuable articles and the Assessing Officer finds that the actual sum spent on these items is more than what is recorded in the books of account and the assessee either offers no explanation about such excess amount or the explanation offered by him is not satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year. (Sec. 69B)

(5) **Unexplained Expenditure.** If in any financial year an assessee has incurred any expenditure and the assessee is unable to explain properly the source of such expenditure or part thereof, the amount of such unsatisfactorily explained expenditure will be treated as the income of the assessee for the financial year in which the expenditure is incurred. (Sec. 69C)

(6) **Hundi borrowals and Repayments.** Borrowals on hundies and repayments thereof must be made by Account Payee cheques otherwise the amount so borrowed or repaid will be treated as the income of the person borrowing or repaying the amount for the previous year in which such borrowal or repayment is made. The amount repaid shall include the amount of interest on the amount borrowed.

If any amount borrowed on hundi has been deemed to be the income of the borrower, he shall not be liable to be assessed again in respect of such amount on repayment of such amount. (Sec. 69D)

Taxation of Deemed Incomes:

On deemed incomes (under sections 68, 69, 69A, 69B, 69C or 69D) tax shall be charged @ 30% (plus surcharge and cess as applicable).

Further, no deduction in respect of any expenditure or allowance (or set-off of any loss—*u.e.f.* A.Y. 2017-18) shall be allowed to the assessee in computing deemed income under the aforesaid sections.

CLUBBING OF INCOMES

There is growing tendency on the part of the tax-payers either not to disclose certain assets or investments in the records maintained by them or to disclose it at a figure lower than its cost. Further, they dispose off their property or income in such a way that tax liability may be avoided or reduced. An assessee therefore, attempts to shift his income to others so that he may keep his tax liability to the minimum. For this purpose he arranges to shift an income legally, which in fact belongs to him, to some other person. To counteract such practices, special provisions relating to clubbing of incomes have been made in sections 60 to 65. As per these sections, income of other persons shall be included in the assessee's total income. Such inclusion of income of other person in the income of the assessee is called 'Clubbing of Income'.

Income of Other Persons included in the Assessee's Total Income:

(1) **Transfer of income without transfer of assets.** If a person transfers to another person his income from an asset without transferring the ownership of the asset, the income from such asset shall be deemed to be the income of the transferor and shall be included in his total income. (Sec. 60)

(2) **Revocable transfer of assets.** Income arising to any person as a result of revocable transfer of assets shall be deemed to be the income of the transferor and shall be included in his total income. (Sec. 61)

ADVANCE PAYMENT OF TAX

Advance payment of tax or 'Pay As You Earn' Scheme

'Pay as you earn' scheme means that assessee has to pay tax simultaneously along with the earning of his income. This tax is paid on the current year's income in the same year. In fact, it is paid as advance and it is called 'Advance payment of tax'.

Liability for payment of advance tax

Advance tax shall be payable during any financial year in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year, and it shall be called '*Current Income*'. (Sec. 207)

However, an individual resident in India shall not be liable to pay advance tax, if he fulfils the following conditions :

- (i) He does not have any income chargeable under the head : Profits and gains of business or profession.
- (ii) He is of the age of sixty years or more at any time during the previous year.

Condition of liability to pay advance tax

(Sec. 208)

Advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of advance tax, is ₹ 10,000 or more.

Computation of Advance Tax

(Sec. 209)

The amount of advance tax payable by an assessee in the financial year shall be computed as follows :

I. (1) *Computation by the Assessee*. Where advance tax is payable, the assessee himself shall compute the advance tax payable on his estimated current income at the rates in force in the financial year and deposit the same whether or not he has been earlier assessed to tax or not.

(2) *Computation by Assessing Officer*. Where, a person has already been assessed by way of regular assessment and who has not paid any advance tax, the Assessing Officer will take the total income of the latest assessed previous year or the total income returned by the assessee for any subsequent previous year, whichever is higher. On such income, income tax will be calculated at the rates in force in the F.Y.

(3) The income tax calculated under para (1) or (2) above, as the case may be, shall, in each case, be reduced by the amount of tax deductible or collectible at source during the financial year from any income which has been taken into account in computing the current income or total income. The balance will be the amount of advance tax payable.

However, the deduction, for tax deductible at source or tax collectible at source, shall not be allowed if the tax deductor or tax collector has failed to deduct or collect the tax at source.

II. *Net Agricultural Income to be taken into account*
Where, in the case of any class of assessee, net agricultural income has to be taken into account for computing advance tax, such income will be added to the aforesaid income and the tax shall be computed in the manner discussed in the chapter 'Agricultural Income'.

Payment of advance tax by the assessee of his own accord or in pursuance of order of Assessing Officer

(1) Every person who is liable to pay advance tax (whether or not he has been previously assessed by way of regular assessment) shall, of his own accord, pay, on or before each of the due dates specified below, the appropriate percentage specified therein, of the advance tax on his current income.

(2) A person who pays any instalment or instalments of advance tax under sub-section (1) may increase or reduce the amount of advance tax payable in the remaining instalment or instalments to accord with his estimate of his current income and the advance tax payable thereon.

(3) In the case of a person who had already been assessed to income tax in respect of the total income of any previous year and the Assessing Officer is of the opinion that such person is liable to pay advance tax, he may, at any time during the financial year but not later than the last day of February, require such person to pay advance tax calculated in the manner laid down in section 209, and to issue to such person a notice of demand specifying the instalment or instalments in which such tax is to be paid.

(4) If, after the making of any order by the Assessing Officer under (3) and at any time before 1st March, a return is furnished by the assessee for any later year or any assessment of the assessee is made at a higher figure in respect of a previous year later than that referred to in (3), the Assessing Officer may make an amended order accordingly.

(5) A person who is served with an order of the Assessing Officer under (3) or (4) may, if in his estimation the advance tax payable on his current income would be less than the amount of the advance tax specified in the order, send an intimation to the Assessing Officer to that effect and pay such tax as accords with his estimate.

(6) A person who is served with an order of the Assessing Officer under (3) or (4) shall, if in his estimation the advance tax payable on his current income would exceed the amount of advance tax specified in the order or exceeds the amount of advance tax as intimated by him under (5) above, pay on or before the due date of the last instalment, the whole of such higher amount of advance tax as accords with his estimate.

Payment of advance tax in case of capital gains or winnings from lotteries, crossword puzzle, card game, race etc.

Generally, it is not possible to estimate such income in advance. Hence, if any such income arises after the due date of any instalment(s), the amount of tax payable on capital gains or lottery etc. (after deduction of tax at source) should be paid in remaining instalment(s) of advance tax.

Where no instalment is due (such income arises after 15th March during the financial year) the tax should be paid by 31st March. If the amount of tax payable is so paid, no interest will be leviable u/s 234C.

Instalments of advance tax and due dates

(Sec. 211)

Advance tax on the current income shall be payable by all assessee except mentioned in (B), who are liable to pay the same as per the following table during the financial year 2016-17:

(A)

Due Date of Instalment	Amount Payable
(1) On or before 15th June	Not less than 15% of advance tax.
(2) On or before 15th September	Not less than 45% of advance tax. It means 45% of advance tax, less the amount paid in earlier instalment.
(3) On or before 15th December	Not less than 75% of advance tax. It means 75% of advance tax less amount paid in earlier instalments.
(4) On or before 15th March	100% of advance tax as reduced by the amounts paid in earlier instalments.

ADVANCE PAYMENT OF TAX

(B) An eligible assessee in respect of eligible business (Sec. 44AD) shall pay the whole amount of advance tax on or before 15th March of the relevant previous year.

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Due Date of Instalment

On or before the 15th Dec.	Amount Payable
On or before the 15th March	Not less than 30% of such advance tax.
On or before the 15th Sept.	Not less than 60% of such advance tax.
On or before the 15th Dec.	The whole amount of such advance tax, as reduced by the amount, if any, paid in the earlier instalment or instalments.

Any payment of advance tax made on or before 31st March shall also be treated as advance tax paid during the financial year.

Credit for advance tax

Any sum paid by the assessee as advance tax shall be treated as a payment of tax and credit therefor shall be given to the assessee in the regular assessment.

Interest for default in payment of advance tax

(Sec. 234B)

(1) If an assessee who is liable to pay advance tax (u/s 208) has failed to pay such tax, or where the advance tax paid (u/s 210) is less than 90% of the assessed tax, he shall be liable to pay simple interest @ 1% for every month or part of a month. The interest shall be charged from 1st April next following such financial year to the date of determination of income u/s 143(1) or the regular assessment on an amount equal to the assessed tax or on the amount by which the advance tax paid as aforesaid falls short of the assessed tax, as the case may be.

Explanation. "Assessed tax" shall mean the tax on the total income determined on the basis of return (u/s 143(1)) and where a regular assessment is made, the tax on the total income determined under regular assessment after deducting the following amounts:

- any tax deducted at source; or
- tax collected at source.

(2) Where, before the date of determination of income (u/s 143(1)) or completion of regular assessment, tax is paid by the assessee on self-assessment (u/s 140A) the interest shall be computed as under:

(a) Interest shall be charged according to the foregoing provisions from 1st April till the date on which the tax is so paid, and reduced by the interest, if any, paid along with the self-assessment tax.

(b) Thereafter, interest shall be calculated on the amount by which the tax so paid (Self-assessment) together with the advance tax paid falls short of the assessed tax.

(3) Where as a result of an order of re-assessment (u/s 147), the amount of tax has been increased the interest shall be charged for the period falling between the date of regular assessment and the date of the re-assessment. The interest shall be charged on the amount which the tax on the total income determined on the basis of re-assessment exceeds the tax the total income determined on the basis of regular assessment.

(4) The amount of interest shall automatically be revised where the amount of tax is varied as a result of revision, appeal, rectification of mistake or settlement.

(Sec. 23)

Interest for deferment of advance tax

If an assessee is liable to pay advance tax, he has to pay it upto the prescribed date instalments. If he pays advance tax less than the prescribed percentage, he shall be liable to pay interest as under upto Assessment Year 2016-17:

Due date and instalment	Rate of interest and period	Amount on which interest payable
Assessee other than company		
(1) Upto 15 Sept. of the F.Y. if less than 30%	@ 1% p.m. for 3 months	30% of advance tax less amount paid upto 15 Sept.
(2) Upto 15 Dec. of the F.Y. if less than 60%	— do —	60% of advance tax less amount paid upto 15 Dec.

However, tax shall not be deducted in the following cases :

- (i) The amount is exempt u/s 10(10D) of the Act.
- (ii) The payment or aggregate amount of such payments to the payee during the financial year is less than ₹ one lakh.

(11) Deduction of tax at source from payment to Non-resident Sportsman or Sports Association or an entertainer (Sec. 194E)

The person who is responsible for paying any of the following incomes to a non-resident sportsman who is not a citizen of India or to a non-resident sports association or institution, or sportsman who is not a citizen of India shall, at the time of credit of such income to the account of the payee or at the time of payment thereof, whichever is earlier, deduct income tax thereon at the rate of 20% plus surcharge, if any, and education cess & SHEC @ 3%.

(a) If he is a sportsman (including an athlete), any income received or receivable by him by way of :

- (i) participation in India in any game; or
- (ii) advertisement, or
- (iii) contribution of articles relating to any game or sport in India in newspapers, magazines or journals; or
- (b) If it is a sports association or institution, amount guaranteed to be paid or payable to it in relation to any game or sport played in India.

(12) Deduction of tax at source out of payment in respect of deposits under National Savings Scheme, etc. (Sec. 194EE)

The person responsible for paying any amount deposited in National Savings Scheme, 1987 (under section 80CCA) shall deduct tax thereon @ 20% (10% w.e.f. 1.6.2016). However, no such deduction shall be made where the amount of payment or the aggregate amount of payments in financial year is less than ₹ 2,500 or the payment is made to the heirs of the assessee.

(13) Payments on account of repurchase of units by Mutual Fund or Unit Trust of India (Sec. 194F)

When any amount invested in any Equity Linked Savings Scheme (under section 80CCB before 1.4.1992) is returned by way of repurchase of such units or termination of the plan, the Mutual Fund or Unit Trust shall at the time of payment deduct income tax @ 20% on the principal amount invested and returned.

(14) Deduction of tax at source on commission, etc. on the sale of lottery tickets (Sec. 194G)

The person who is responsible for paying, any commission, remuneration or prize exceeding ₹ 1,000 (₹ 15,000 w.e.f. 1.6.2016) to a person who is stocking, distributing, purchasing or selling lottery tickets shall deduct tax at source thereon @ 10% (5% w.e.f. 1.6.2016). The tax shall be deducted at the time of credit of such income in the books of account or at the time of payment, whichever is earlier.

(15) Deduction of tax at source from payment of commission or brokerage (Sec. 194H)

An individual or HUF, who is required to get his accounts audited u/s 44AB or any other person, who is responsible for paying to a resident, any income by way of commission (excluding insurance commission) or brokerage shall at the time of credit of such income in the books of account or at the time of payment thereof, whichever is earlier, deduct income tax @ 10% (5% w.e.f. 1.6.2016) provided the amount of such income or aggregate of the amount of such income credited or paid or likely to be credited or paid during the financial year exceeds ₹ 5,000 (₹ 15,000 w.e.f. 1.6.2016).

(16) Deduction of tax at source from payments in respect of rent (Sec. 194I)

An individual or HUF, who is required to get his accounts audited u/s 44AB or any other person, who is responsible for paying to a resident any rent shall deduct income tax at the following rates :

- (a) For use of any machinery or plant or equipment 2%
- (b) For use of any other asset 10%

The tax shall be deducted at the time of credit of such income in the books of account or at the time of payment, whichever is earlier, if the aggregate of such income in a financial year exceeds ₹ 1,80,000.

Explanation. Rent means any payment by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any :

- (a) land; or (b) building (including factory building); or (c) land appurtenant to building (including factory building); or (d) machinery; or (e) plant; or (f) equipment; or (g) furniture; or fittings, whether or not any or all of the above are owned by the payee.
- (b) For TDS the amount of rent shall not include service tax. (Circular No. 4/2008, Dated 28.4.2008)

(17) Payment on transfer of immovable property (Sec. 194IA)

Any person (transferor) responsible for paying to a resident (transferor other than a person referred to in section 194LA) any sum by way of consideration for transfer of any immovable property (any land (other than agricultural land) or any building or part of a building) shall deduct one percent of such sum as income-tax.

The tax shall be deducted at the time of payment of such sum in cash or by issue of cheque or draft or any other mode, whichever is earlier.

However, tax shall not be deducted where the consideration for the transfer of an immovable property is less than fifty lakh rupees.

Note : The transferee is not required to obtain Tax Deduction Account Number u/s 203A.

(18) Deduction of tax at source from fees for professional or technical services etc. (Sec. 194AJ)

An individual or HUF, who is required to get his accounts audited u/s 44AB or any other person, who is responsible for paying to a resident any sum by way of (a) fees for professional services; or (b) fees for technical services; or (c) royalty; or (d) compensation received in restraint of trade [Sec. 28(va)] shall, at the time of credit of such income in the books of account or at the time of payment thereof, whichever is earlier, deduct income tax at source @ 10% of such sum as income tax. Tax will be deducted at source if the amount exceeds ₹ 30,000 in a financial year. On any sum paid or payable to a director of a company by way of any remuneration or fees or commission, by whatever name called (other than those on which tax is deductible u/s 192) tax shall be deducted at source @ 10%.

(19) Payment of compensation on acquisition of immovable property (Sec. 194LA)

Any person responsible for paying to a resident any sum, being in the nature of compensation or enhanced compensation or the consideration or the enhanced consideration on account of compulsory acquisition under any law, of any immovable property shall, at the time of payment of such sum in cash or by issue of a cheque or draft or any other mode, whichever is earlier, deduct an amount equal to 10% of such sum as income-tax.

However, tax shall not be deducted at source where :

- (i) the immovable property is agricultural land (situated in urban or non-urban area), and
- (ii) where the amount of such payment or aggregate amount of such payments during the financial year does not exceed ₹ two lakh (₹ two lakh fifty thousand, w.e.f. 1.6.2016).

Explanation. Immovable property means any land (other than agricultural land) or any building or part of a building. (Sec. 194LBA)

(20) Income from units of a Business Trust

Tax shall be deducted at source @ 10% in case of resident unit holders of business trust on that portion of distributed income of the trust which is taxable in the hands of unit holders. (Sec. 194LBB)

(21) Income from units of Investment Fund

Tax shall be deducted at source @ 10% in case of resident unit holders of investment fund on the amount which is not exempt u/s 10(23FBB).

(22) *Income from investment in Securitisation Trust*

(Sec. 194LBC)

Tax shall be deducted at the following rates in case of resident :

- (i) Payee is an individual or a HUF 25%;
- (ii) Payee is any other person 30%.

Other Important Points regarding Deduction of Tax at Source(1) *Payment to the Government or Reserve Bank etc.*

(Sec. 196)

No tax will be deducted at source if the payment is made to :

- (i) the Government; or
- (ii) the Reserve Bank of India; or
- (iii) any Statutory Corporation whose income is exempt from income-tax; or
- (iv) a Mutual Fund specified in Sec. 10(23D).

(2) *Tax deduction at lower rate.* In the case of any income of any person under sections 192, 193, 194, 194A, 194C, 194D, 194H, 194I, 194J, 194LA, 194LBB or 194LBC, on an application being made by an assessee, the Assessing Officer, may, if satisfied, issue a certificate that either his income is not taxable or taxable at a lower rate. In such a case the person making the payment shall either not deduct tax at all or deduct it at the lower rate stated in the certificate.

(3) *No deduction of tax at source in certain cases*

(Sec. 197)

Tax shall not be deducted at source in certain cases if prescribed conditions are satisfied.

(4) *Tax deducted is income.* The tax deducted at source is deemed to be the income of the person from whose income the tax has been deducted at source.

(Sec. 198)

(5) *Credit for tax deducted.* The tax deducted at source and paid to the Central Government is deemed to have been paid on behalf of the person from whose income the deduction was made and he is given credit for it in his regular assessment.

(Sec. 199)

(6) *Duty of tax deductor.* It is the duty of the person responsible for deducting tax at source that he must pay it to the Government within the prescribed time, and deliver a statement within the prescribed time to the Director General of Income-tax (Systems) or the person authorised by him.

Such person may also deliver to the prescribed authority a correction statement for rectification of any mistake in the statement delivered under this section.

(Sec. 200)

(7) *Consequences of failure to deduct or pay :*

(Sec. 201)

(i) Where the person responsible for deduction of tax at source does not deduct it (the whole or any part) or after deducting fails to pay it to the government he becomes an assessee in default.

The tax deductor at source shall not be deemed an assessee in default, if

- (a) the recipient of sum is a resident and he
 - (i) has furnished his return of income u/s 139;
 - (ii) has included such sum in his total income; and
 - (iii) has paid the tax due on the income declared in the return of income.
- (b) The tax deductor furnishes a certificate to this effect in the prescribed form from C. A.

(ii) If the person fails to deduct the tax or fails to pay within the prescribed time, he shall be liable to pay simple interest :

- (a) @ 1% for every month or part of a month from the date on which such tax was deductible to the date on which tax deducted; and
- (b) @ 1.5% for every month or part of a month from the date on which such tax was deducted to the date on which such tax is actually paid.

Where the tax deductor is not deemed to be an assessee in default, the interest shall be payable from the date on which such tax was deductible to the date on which the recipient of income has furnished his return of income.

The interest shall be paid before furnishing statement as provided in sec. 200.

DEDUCTION OF TAX AT SOURCE

(iii) The amount of tax not paid and interest shall be a charge upon all assets of responsible person.

(iv) If a person fails to pay to the credit of the Central Government, the tax deducted at source by him, he shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months, but which may extend to 7 years and with fine (u/s 276B).

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(v) A person shall not be deemed to be an assessee in default for failure to deduct the whole or any part of tax from a person, resident in India, at any time after the expiry of seven years from the end of the financial year in which payment is made or credit is given.

(8) *Issue of certificate.* The person deducting the tax at source has to issue a certificate of deduction to the assessee stating the amount of tax deducted at source in the prescribed Form No. 16 in case of salaries and Form No. 16A in all other cases.

(9) *Tax deduction and collection account number*

(Sec. 203)

Every person, deducting tax or collecting tax at source, who has not been allotted a tax deduction account number or a tax collection account number, shall apply in duplicate in Form No. 49B within one month from the end of the month in which the tax was deducted or collected to the A.O. for the allotment of a "tax deduction and collection account number".

Where a "tax deduction and collection account number" has been allotted to a person, he shall quote such number in the prescribed documents.

(10) *Bar against direct demand from assessee*

(Sec. 205)

Where tax has been deducted at source, the assessee shall not be liable to pay tax himself to the extent it has been deducted even the deductor has failed to pay it to the Government.

Due Date of Issue of the TDS Certificate

- (1) Form No. 16-Annual, upto 31st May.
- (2) Form No. 16A-Quarterly, within 15 days from the due date of furnishing the statement of tax deducted at source under Rule 31A.

Duplicate Certificate

Where TDS certificate is lost, the tax deductor may issue a duplicate certificate in Form No. 16/16A certifying it as duplicate.

Time limit for depositing the sum deducted at Source

Time limit for depositing the sum deducted at source from various categories of payments are as under :

1. Where the tax deduction is made by or on behalf of the Government :
 - (i) Where the tax is paid without the production of an income-tax challan—on the same day.
 - (ii) Where tax is paid accompanied by an income-tax challan—within seven days from the end of the month in which the tax is deducted.
2. Other deductors:
 - (i) Where the income or amount is credited or paid in the month of March—upto 30th April.
 - (ii) In any other case—within seven days from the end of the month in which the tax is deducted.

Exceptions : The Assessing Officer may with the approval of the Joint Commissioner allow the payment of TDS in the following cases quarterly :

Salaries, Interest other than interest on securities, insurance commission, commission or brokerage (u/s 192, 194A, 194D, 194H)—July 7, October 7, January 7 and April 30.

(Sec. 206A)

Furnishing of return in respect of payment of interest to residents without deduction of tax

Persons responsible to furnish returns :

- (a) A banking company including a bank and banking institution.
- (b) Co-operative society engaged in carrying on the business of banking.

- (B) On winnings from lotteries, crossword puzzles, card games or other game of any sort
- (C) On winnings from horse races
- (D) On short-term capital gains u/s 111A
- (E) On long-term capital gains not being LTCG referred to in Sec. 10(38), Sec. 10(39) and Sec. 10(38)
- (F) On certain income from royalty and fees for technical services
- (G) On the whole of other income
- (H) Where the income or aggregate of such income paid or likely to be paid exceeds ₹ one crore :
- (i) Individual, HUF, AOP, BOI or artificial juridical person, being a non-resident
- (ii) Co-operative society or firm, being a non-resident
- Education cess & SHEC :** On the amount of income tax and surcharge, @ 3% shall be deducted.
- II. In the case of a company :**
- (a) Where the company is a domestic company :
- (i) On interest other than interest on securities
- (ii) On winnings from lotteries, crossword puzzles, card games or other game of any sort
- (iii) On winnings from horse races
- (iv) On any other income
- Surcharge :** Surcharge is not deductible at source.
- Education cess & SHEC :** Education cess is not deductible at source.
- (b) Where the company is not a domestic company :
- (i) On winnings from lotteries, crossword puzzles, card games or other game of any sort
- (ii) On winnings from horse races
- (iii) On short-term capital gains u/s 111A
- (iv) On long-term capital gains not being LTCG referred to in Sec. 10(38), Sec. 10(39) and Sec. 10(38)
- (v) On income by way of interest payable by Government or an Indian concern on monies borrowed in foreign currency (excluding interest referred to in Sec. 194LB or Sec. 194LC)
- (vi) On certain income from royalty and fees for technical services
- (vii) On any other income
- Surcharge :** In case of a non-domestic company surcharge shall be deducted where the aggregate of such incomes paid or likely to be paid and subject to deduction
- (i) exceeds one crore rupees but does not exceed ten crore rupees @ 2%.
- (ii) exceeds ten crore rupees @ 5%.
- Education cess & SHEC :** On the amount of income tax and surcharge, @ 3% shall be deducted.
- (2) Payment from Recognised Provident Fund to Employee** (Sec. 192A)
1. If the amount of Recognised Provident Fund at the time of payment is liable to tax, tax shall be deducted at source @ 10%.
2. If the employee fails to submit his PAN to the employer, the tax shall be deducted at the maximum marginal rate i.e. 30%.
3. If such amount is less than ₹ 30,000 (₹ 50,000 w.e.f. 1.6.2016), no tax will be deducted at source.
- (3) Interest on Securities** (Sec. 193)
1. The person responsible for paying income by way of 'Interest on Securities' to a resident or domestic company shall, at the time of payment thereof or at the time of credit of such interest in the books of account, whichever is earlier, deduct income tax thereon at the rates in force.
2. **Rate of tax :** 10%.
3. Tax shall not be deducted at source from any interest payable on :
- (a) National Savings Certificates; or
- (b) National Development Bonds; or
- (c) Debentures issued by a co-operative society or any other institution or authority or public sector company and which are notified by the Central Government; or

- (d) Any security of the Central or State Government, or
- However, tax shall be deducted at source on interest on 8% Savings (Taxable) Bonds, 2003, if the interest payable exceeds ₹ 10,000 during the financial year.
- (e) Any interest payable to a resident individual or a Hindu undivided family on debentures issued by a widely-held company if :
- (i) the interest is paid by the company if :
- (ii) the amount of such interest or as the case may be, the aggregate of the amounts of such interest paid, or likely to be paid, during the financial year by the company to such individual or HUF does not exceed ₹ 5,000.
- (f) Any interest payable under the Life Insurance Corporation of India or to any of the four or to any other insurer in respect of any securities owned by it or in which it has full beneficial interest.
- (g) Any interest payable on any security issued by a company where such security is in dematerialised form and listed on a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder.
- (4) Dividends** (Sec. 194)
- Who will deduct tax at source.** The principal officer of a domestic company
- On which income deduction is to be made.** On dividends u/s 2(22)(e).
- Payment made to whom or on whose behalf.** A shareholder who is resident in India or domestic company.
- Rate of TDS on dividends falling u/s 2(22)(e).** 10%.
- However, no tax shall be deducted at source in the following cases :
1. A shareholder, being an individual, of a company in which the public are substantially interested, if :
- (a) the dividend is paid by such company by an account payee cheque, and
- (b) the amount of such dividend or the aggregate of the amounts of such dividend distributed or paid or likely to be distributed or paid during the financial year by the company to the shareholder does not exceed ₹ 2,500.
2. If the dividend is credited or paid to the following, provided the assessee owns the shares or it has full beneficial interest in the shares :
- (i) The Life Insurance Corporation of India.
- (ii) The General Insurance Corporation of India or any of the four companies formed under General Insurance Business (Nationalisation) Act, 1972.
- (iii) Any other insurer.
3. Dividend referred to in Sec. 2(22)(a), (b), (c) or (d). Such dividend is exempt u/s 10(34).
- Note :** Any payment by a closely-held company by way of advance or loan to a shareholder (being a person who is the beneficial owner of shares) having at least 10% of the voting power or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest is treated as dividend.
- (5) Interest other than interest on securities** (Sec. 194A)
- (a) **Who will deduct the tax at source.** (i) An individual or HUF, who is required to get his accounts audited u/s 44AB.
- Note :** If the total sales, turnover or gross receipts in business exceed ₹ one crore and in case of profession gross receipts exceed ₹ 50 lakh, the audit of accounts is compulsory.
- (ii) A company, firm, co-operative society, co-operative bank, local authority, AOP or BOI, etc.
- (b) **Payment made to whom.** A resident of India or domestic company.
- (c) **Rate of tax :** 10%.
- (d) **No Deduction of Tax from the following Interest Income :**
- (i) Where the income or the aggregate of such income credited in the books of account or paid during the financial year does not exceed :
- (A) ₹ 10,000, where the payer is a banking company, including any bank or banking institution
- (B) ₹ 10,000, where the payer is a co-operative society engaged in carrying on the business of banking.

(C) ₹ 10,000, on any deposit with post office under any scheme framed and notified by the Central Government.

Under (C) the Senior Citizens Savings Scheme, 2004 has been notified by the Central Government.

(D) ₹ 5,000 in any other case.

(ii) Where such income is credited or paid to (a) any bank, (b) any co-operative society engaged in carrying on the Business of Banking, (c) any Financial Corporation, (d) Life Insurance Corporation of India, (e) Unit Trust of India, (f) any Company, or (g) Co-operative Society carrying on the business of insurance and such other institution as may be notified in this behalf by the Central Government.

(iii) Interest credited or paid by a Co-operative Society (other than a Cooperative Bank) to a member thereof or to any other Co-operative Society.

(iv) Interest in respect of deposits made under any scheme framed by the Central Government.

(v) Interest on Savings Bank Account.

(vi) Interest paid by the Central Government under the various Direct Tax Laws.

(vii) Interest which is wholly exempt, such as interest on deposits in Post Office Savings Bank.

(viii) Interest credited or paid by a firm to its partners.

(ix) Interest credited on the compensation amount awarded by the Motor Accidents Claims Tribunal.

(x) Interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of interest or the aggregate of the amounts of such interest paid during the financial year does not exceed ₹ 50,000.

(xi) Income paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company or a scheduled bank in relation to a zero coupon bond issued on or after 1.6.2005 by it.

(xii) Interest income payable by special purpose vehicle to a business trust.

(6) **Winning from lottery or crossword puzzles etc.**

(Sec. 194B)

The person responsible for paying any income to any resident or domestic company by way of winnings from any lottery or crossword puzzles or card game and other game of any sort of an amount, exceeding ₹ 10,000 shall at the time of payment, deduct income tax thereon at the rates in force.

The deduction of tax at source from winnings from lotteries and crossword puzzles during the financial year 2016-17 for the A.Y. 2017-18 would be done @ 30%.

Important points :

(i) When the prize is given partly in cash and partly in kind income tax will be deducted with reference to the aggregate amount of the cash prize and the value of the prize in kind. If the part in cash is not sufficient to meet the liability of deduction of tax in respect of the whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

(ii) When the prize is given in instalments, the tax will be deducted only at the time of actual payment of each instalment.

(iii) Income tax is not deductible from the income by way of bonus or commission paid to lottery agent or sellers of lottery tickets on the sale made by them under this section.

(7) **Winning from horse race**

(Sec. 194BB)

Tax will be deducted at source by bookmakers and race clubs from winnings from horse races where the payment exceeds ₹ 5,000 (₹ 10,000 *w.e.f.* 1.6.2016). The prescribed rate for deducting tax at source during the financial year 2016-17 for the assessment year 2017-18 is 30% in case of resident or domestic company.

(8) **Payment to contractors**

Income tax will be deductible at source from payments made by the following to any resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor, and

(Sec. 194C)

(i) the Central Government or any State Government; or

(ii) any local authority; or

(iii) any statutory corporation; or

(iv) any company; or

(v) any co-operative society; or

(vi) any statutory authority engaged in providing housing accommodation or engaged in planning, development or improvement of cities, towns and villages, or for both; or

(vii) any registered society; or

(viii) any trust; or

(ix) any University established under an Act or declared to be University by the University Grants Commission; or

(x) any Government of a foreign state or a foreign enterprise or association or body established outside India; or

(xi) any firm; or

(xii) any association of persons or body of individuals (whether incorporated or not), who is required to get his accounts audited u/s 44AB; or

(xiii) an individual or HUF, who is required to get his accounts audited u/s 44AB.

However, an individual or HUF shall not deduct tax at source where such sum is credited or paid to the contractor exclusively for personal purposes of such individual or any member of HUF.

When T.D.S. : Tax shall be deducted at source if the sum exceeds ₹ 30,000.

Further, where the aggregate of the amounts paid or credited during the financial year exceeds ₹ 75,000 (₹ 1,00,000 *w.e.f.* 1.6.2016), tax will be deducted at source.

Rate of T.D.S.

Where the payment is being made or credit is being given to

(i) an individual or HUF @ 1%;

(ii) any other person @ 2%.

Exception. Tax shall not be deducted at source if the following conditions are satisfied :

(i) The payment is made or credit is given during the course of business of plying, hiring or leasing goods carriages, where such contractor owns ten or less goods carriages at any time during the previous year.

(ii) The contractor furnishes his PAN to the tax deductor.

(Sec. 194D)

Explanation. "Contract" includes sub-contract.

(9) **Insurance commission**
Any person responsible for paying to a resident or domestic company any income by way of insurance commission (procuring insurance business including its renewal, etc.) will be required to deduct income tax from such income at the following rate :

(i) In case of company @ 10%;

(ii) In other case @ 5%.

The tax shall be deducted at the time of credit of such income to the account of payee or at the time of payment thereof, whichever is earlier.

No T.D.S. : Tax shall not be deducted at source if such income does not exceed ₹ 20,000

(Sec. 194DA)

₹ 15,000 *w.e.f.* 1.6.2016 in the financial year

(Sec. 194DA)

(10) **Payment under a life insurance policy to a resident**

Any person responsible for paying to a resident any sum under a life insurance policy (including bonus) shall deduct tax thereon at the rate of two percent (2% *w.e.f.* 1.6.2016).

If the amount of tax determined as per the above method is lesser than that determined on the basis of salary (after deducting loss from house property) alone, then the tax will be deducted on source on the basis of salary alone.

(v) *Exemption regarding house rent allowance :*

- If the amount of H.R.A. does not exceed ₹ 3,000 p.m., the employer may grant exemption regarding rent paid on a statement of the employee. He will not insist to submit the rent receipt for exemption.
- If the amount of H.R.A. exceeds ₹ 3,000 p.m. the employer will grant the exemption regarding rent paid after receiving the rent receipt from the employee.
- If the annual rent exceeds ₹ 1,00,000 p.a. the employee shall report the PAN of the landlord to the employer.
- Payment of salary in foreign currency.* For the purposes of TDS on salary payable in foreign currency, the value in rupees of such salary shall be calculated at the prescribed rate of exchange.

(vi) *Provisions relating to tax paid by employer on perquisites provided to an employee :*

- The employer may pay at his option, tax on the whole or part of the income in the nature of perquisite [which is not provided for by way of monetary payment u/s 17(2)] provided to an employee. [Sec. 192(1A)]
- For the purpose of paying tax by the employer, tax shall be determined at the average of income-tax on the income chargeable under the head "Salaries" including the income in the nature of perquisites. [Sec. 192(1B)]
- The tax so paid by employer, shall not be included in the income of employee. [Sec. 192(1C)]

(4) The tax so paid by employer shall not be allowed as a deduction in computing his income under the head "Profits and Gains of Business or Profession". [Sec. 40(a)(v)]

(5) Any sum paid by the employer (u/s 192(1A)) to the Central Government shall be treated as the tax paid on behalf of the employee and credit shall be given to the employee for the amount so paid on production of a certificate furnished u/s 203. [Sec. 199(2)]

(6) The employer shall within the prescribed time furnish to the employee (in respect of whose income the tax has been paid by employer) a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and other prescribed particulars. [Sec. 203(2)]

(viii) *Relief u/s 89 by the employer.* In respect of salary payments of employees of Government or Company, Co-operative Society, Local Authority, University, Association or Body of Individuals, deduction of tax at source shall be made after allowing relief under section 89 regarding receipt of salary in arrears or in advance.

(ix) *Adjustment regarding deduction of tax.* If the person responsible for paying any income to his employee which is chargeable under the head "Salaries" feels during the course of a year, that the original estimate of income of an employee's salary is not correct he may determine the total tax payable on the basis of corrected estimate and adjust the monthly amount of deduction of tax at source accordingly in the remaining months of the financial year.

(x) *Deposit of tax.* The person responsible for paying the salary is required to deposit the tax deducted at source as under :

- Where the tax deduction is made by or on behalf of the Government :
 - Tax is paid without production of an income tax challan—on the same day.
 - Tax is paid accompanied by an income tax challan—within seven days from the end of the month in which deduction is made or tax is payable u/s 192 (1A) by the employer on the value of perquisites.
- Other deductors :
 - Where the amount is paid or credited in the month of March—upto 30th April.
 - In any other case—within seven days from the end of the month in which deduction is made or tax is payable u/s 192 (1A) by the employer on the value of perquisites.

(xi) *Filing of Quarterly Statement.* The employer should file quarterly statement (in Form Q) regarding tax deducted at source from salary on computer media for the periods ending on 30th June, 30th September, 31st December and 31st March in each financial year.

These statements are required to be filed upto 15th July, 15th October, 15th January in respect of the first three quarters and 15th May for the last quarter of the financial year. The quarterly statement shall be filed to the Director General of the financial year.

The person authorised by him after quoting Tax Deduction Account Number of the tax deductor and the Permanent Account Number of the employees whose tax has been deducted. (xii) *Furnishing Statement.* A person responsible for paying any income chargeable under the head "Salaries" shall furnish to the employee a statement giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof in the prescribed form.

Statement showing particulars of perquisites, other fringe benefits or amenities and profits in lieu of salary with value thereof shall be issued in Form No. 12BA provided the amount of salary paid or payable to the employee is more than ₹ 1,50,000. The statement shall accompany the return of income of the employee.

The employer shall also issue a certificate for tax deducted at source from "Salaries" in Form No. 16.

Form No. 16 shall be issued by 31st May of the financial year immediately following the financial year in which income was paid and tax deducted.

Furnishing of evidence of claims by employee for deduction of tax u/s 192 (w.e.f. 1.6.2016)

(Rule 28C)

The employee shall furnish the evidence or particulars in Form No. 12BB to his employer to claim exemption or deduction from his salary income regarding the following :

- House rent paid during the previous year exceeding ₹ one lakh.
- Leave travel concession or assistance.
- Deduction of interest under the head "Income from House Property".
- Deductions under sections 80C to 80U.

Illustration 1

An employee 'C' would receive the following during the financial year 2016-17 :

Salary @ ₹ 60,000 p.m. and bonus ₹ 85,000.

His annual contribution to Recognised Provident Fund is ₹ 62,000 and he has paid Life Insurance Premium of ₹ 12,000. He has participated in the Unit-Linked Insurance Plan, 1971 and pays ₹ 1,000 towards that.

Compute his total income from salary liable to deduction of tax at source and the amount of tax to be deducted.

Solution

Computation of Tax Deductible at Source from Salary

(for the Assessment Year 2017-18)

Salary @ ₹ 60,000 p.m. and bonus ₹ 85,000	₹	8,05,000
Savings u/s 80C :		
Contribution to R.P.F.	62,000	
Life Insurance Premium	12,000	
Unit-Linked Insurance Plan Premium	1,000	
Salary Income Liable to Tax Deduction at Source		7,30,000
Tax on ₹ 7,30,000 :		
Tax on ₹ 2,50,000		Nil
Tax on ₹ 2,50,000 @ 10%		25,000
Tax on ₹ 2,30,000 @ 20%		46,000
		71,000

Add : Surcharge

Add : Education cess & SHEC @ 3%

Hence, monthly tax to be deducted at source ₹ 6,094.

Illustration 2

Mr. D is an employee of a Company at Udaipur (population exceeding 25 lakh). He would receive the following during the financial year 2016-17 :

Salary	
Dearness Allowance	9,60,000
Bonus	2,40,000
Children education allowance ₹ 150 p.m. for one child.	80,000
Rent-free house—F.R.V. ₹ 1,50,000.	
His annual contribution to Provident Fund is ₹ 96,000.	
He has paid Life Insurance Premium of ₹ 12,000.	
Donation to Prime Minister's National Relief Fund ₹ 10,000.	

Compute his income from salary liable to deduction of tax at source and the amount of tax to be deducted.

Solution

Computation of Tax Deductible at Source from Salary

(for the Assessment Year 2017-18)

Salary Income	₹
Dearness Allowance	9,60,000
Bonus	2,40,000
Children education allowance excess over ₹ 100 p.m.	80,000
Rent-free house 15% of Salary (₹ 9,60,000 + 80,000 + 600)	1,56,090
Income from Salary	14,36,690

Less : Saving u/s 80C :

Contribution to P.F.	96,000
Life Insurance Premium	12,000
	1,08,000

Ded. allowed Max. ₹ 1,50,000

Deduction u/s 80G :

100% of the donations of ₹ 10,000 made to

P.M.'s National Relief Fund

Salary Income Liable to Deduction of Tax at Source

Income tax on ₹ 13,18,690 :

Tax on ₹ 5,00,000	25,000
Tax on ₹ 5,00,000 @ 20%	1,00,000
Tax on ₹ 3,18,690 @ 30%	95,697
	2,20,697

Add : Surcharge

Add : Education cess & SHEC @ 3%

Tax to be Deducted at Source

Hence, monthly tax to be deducted at source ₹ 18,936.

Illustration 3

X's income under the head 'Salary' is computed at ₹ 6,67,000. The contribution in Recognised Provident Fund and Public Provident Fund is ₹ 50,000. He has paid Life Insurance Premium of ₹ 15,000 on a policy of ₹ 1,20,000 taken after 1.4.2012 and purchased shares of eligible issue of capital ₹ 5,000. Compute the amount of tax to be deducted at source during the financial year 2016-17. He has informed to the employer that there is loss under the head 'Income from House Property' on account of interest payment in relation to self-occupied house ₹ 30,000.

COMPUTATION OF TAX AT SOURCE

(for the Assessment Year Y. 2017-18)

Salary income

581

Less : Loss from House Property

Less : Savings u/s 80C :

(1) Contribution to R.P.F. & P.P.F.	6,67,000
(2) LIP 10% of sum assured	30,000
(3) Eligible issue of Capital	6,37,000

Tax on ₹ 5,70,000	50,000
Add : Surcharge	12,000
	5,000

Add : Education cess & SHEC @ 3%

Monthly deduction from salary

Tax to be Deducted from Salary

Rates for Deduction of Tax at Source during the F.Y. 2016-17

Under Sections 193, 194, 194A, 194B, 194BB, 194D and 195

1. In the case of a person other than a company :

(a) Where the person is resident in India :

(i) Interest other than interest on securities

(ii) On interest payable on :

- (A) any debentures or securities for money issued by or on behalf of any local authority or a corporation established by a Central or State Act
- (B) any debentures issued by a Company, where such debentures are listed in a recognised Stock Exchange in India.
- (C) any security of the Central or State Government

(iii) On insurance commission

(iv) On winnings from lotteries, crossword puzzles, card games or other game of any sort

(v) On winnings from horse races

(vi) On any other income

Surcharge. Surcharge is not deductible at source

Education cess & SHEC. Not deductible at source

(b) Where the person is not resident in India :

- (A) In the case of non-resident Indian :
- (i) On investment income and long-term capital gains other than those u/s 115E (not being LTCG referred to in Sec. 10(33), Sec. 10(35) and Sec. 10(38))
- (B) On long-term capital gains arising from the transfer of a foreign exchange asset (Sec. 115E)
- (C) On short-term capital gains u/s 111A
- (D) On income by way of interest payable by Government or an Indian Concern on monies borrowed or debt incurred by Govt. or the Indian concern in foreign currency (excluding interest referred to in Sec. 194LB or Sec. 194LC)
- (E) On winnings from lotteries, crossword puzzles, card games or other game of any sort
- (F) On winnings from horse races
- (G) On certain income from royalty and fees for technical services
- (H) On the whole of other income

- (ii) In the case of any other person :
- (A) On income by way of interest payable by Government or an Indian Concern on monies borrowed or debt incurred by Govt. or the Indian concern in foreign currency (excluding interest referred to in Sec. 194LB or Sec. 194LC)

Rate of Income Tax

20%

30%

30%

30%

10%

10%

10%

10%

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DEDUCTION OF TAX AT SOURCE

The Government collects Income Tax as under :

- (1) Deduction of Tax at Source;
- (2) Collection of Tax at Source;
- (3) Advance Payment of Tax;
- (4) Payment of Tax on Self-assessment; and
- (5) Notice of Demand.

In the chapter the provisions relating to deduction of tax at source have been discussed.

Meaning of tax deduction at source

The tax deduction at source means that the person responsible for making payment of certain incomes to the income earners deduct income tax at the prescribed rates on such incomes before payment is made to them. The amount so deducted at source shall be deposited by the deductor in the Government Treasury within the prescribed time limit. The tax so deducted is called deduction of tax at source.

Payments subject to deduction of tax at source

The following types of income are subject to deduction of tax at source :

1. Salaries (Sec. 192)
2. Payment of recognised provident fund (Sec. 192A)
3. Interest on securities (Sec. 193)
4. Dividends (Sec. 194)
5. Interest other than interest on securities (Sec. 194A)
6. Winnings from lotteries or crossword puzzles (Sec. 194B)
7. Winnings from horse races (Sec. 194BB)
8. Payments to resident contractors (Sec. 194C)
9. Payment of insurance commission (Sec. 194D)
10. Payment under a life insurance policy (Sec. 194DA)
11. Payment to non-resident sportsman or Sports Association (Sec. 194E)
12. Payment of N.S.S. (Sec. 194EE)
13. Payment on account of re-purchase of units by Mutual Fund or Unit Trust of India (Sec. 194F)
14. Payment of commission etc. on sale of lottery tickets (Sec. 194G)
15. Payment of commission or brokerage (Sec. 194H)
16. Payment in respect of rent (Sec. 194-I)
17. Payment on transfer of certain immovable property other than agricultural land (Sec. 194-IA)
18. Payment of fees for professional or technical services (Sec. 194J)
19. Payment of compensation on acquisition of immovable property (Sec. 194LA)
20. Income from units of a business trust (Sec. 194LBA)
21. Income from units of Investment Fund (Sec. 194LBB)
22. Income from investment in Securitisation Trust (Sec. 194LBC)

The tax is also deducted at source on the following payments. But these payments are made to non-residents or to foreign institutional investors. Hence, the TDS provisions relating to these payments have not been discussed in this chapter :

1. Interest payable to non-residents and foreign companies by an Infrastructure Debt Fund. (Sec. 194LB)
 2. Payment of interest to a non-resident or a foreign company (Sec. 194LC)
 3. Interest on certain bonds and Government Securities (Sec. 194LD)
 4. Other sums payable to non-residents and non-Indian companies (Sec. 195)
 5. Payment to an Off-shore Fund (Sec. 196B)
 6. Payment of interest or dividends on Foreign Currency Bonds or Shares of Indian Company (Sec. 196C)
 7. Payment of interest or dividends to Foreign Institutional Investors (Sec. 196D)
- The provisions of the Act regarding deduction of tax at source on different items are as under :

(1) **Salaries** (Sec. 192)

- (A) Compute the income from salary as discussed under the head 'Income from Salaries'.
- (B) From such salary income allow the following deductions if prescribed conditions are satisfied :

- (1) Deduction u/s 80C in respect of life insurance premium, provident funds etc. not exceeding ₹ 1,50,000.
- (2) Deduction u/s 80CCC not exceeding ₹ 1,50,000.
- (3) Deduction u/s 80CCD in respect of contribution to pension scheme of Central Government.

Note : The aggregate amount of deductions under section 80C, section 80CCC and section 80CCD shall not exceed ₹ 1,50,000 (Sec. 80CCE). However the amount contributed by the employer in pension scheme (u/s 80CCD) shall not be included in ₹ 1,50,000 limit.

- (4) Deduction u/s 80CCG in respect of investment in Rajiv Gandhi Equity Savings Scheme not exceeding ₹ 25,000.
- (5) Deduction u/s 80D in respect of medical insurance premium upto a maximum of ₹ 25,000 for self, spouse and dependant children and upto ₹ 25,000 for parent(s). Where the premia is paid in relation to a senior citizen, the limit of deduction shall be ₹ 30,000 instead of ₹ 25,000.
- (6) Deductions u/s 80DD ₹ 75,000/1,25,000.
- (7) Deduction u/s 80DDB ₹ 40,000 or actual expenditure, whichever is less.
- (8) For a senior citizen, the deduction shall be allowed of a sum of ₹ 60,000 or actual expenditure, whichever is less.
- (9) For super senior citizen, the deduction shall be allowed of a sum of ₹ 80,000 or actual expenditure, whichever is less.
- (10) Deduction u/s 80E amount of interest paid.
- (11) Deduction u/s 80EE in respect of interest on loan taken for acquisition of residential house upto ₹ 50,000.
- (12) Deduction u/s 80G in respect of those donations regarding which there is no maximum limit of qualifying amount.
- (13) Deduction u/s 80GGA in respect of house rent paid by him for his own residence.
- (14) Deduction u/s 80TTA in respect of interest on deposits in Savings A/c upto ₹ 10,000.
- (15) Deduction u/s 80U of ₹ 75,000/1,25,000 from the income of a resident individual who is a disabled person.
- (16) Deduction u/s 80U of ₹ 75,000/1,25,000 from the income of a resident individual who is a disabled person.
- (17) **Rates of Tax.** The following rates of income tax for deduction of tax at source from salaries and computing advance tax during the F.Y. 2016-17 (for the A.Y. 2017-18) shall be applied :
- (a) Individual—Senior citizen (resident in India, who is of the age of 60 years or more but less than 80 years during the previous year) :

On ₹ 3,00,000	Nil
Next on ₹ 2,00,000	@ 10%
Next on ₹ 5,00,000	@ 20%
Next—Balance	@ 30%
(b) Individual Super Senior citizen (resident in India, who is of the age of 80 years or more during the previous years) :	
On ₹ 5,00,000	Nil
Next on ₹ 5,00,000	@ 20%
Next—Balance	@ 30%

(c) Other individuals :

On ₹ 2,50,000	Nil
Next on ₹ 2,50,000	@ 10%
Next on ₹ 5,00,000	@ 20%
Next—Balance	@ 30%

Surcharge. Surcharge 15% if such income exceeds ₹ one crore.

Marginal relief. See Chapter 1.

Education cess. On the amount of income-tax and Surcharge, if any education cess @ 2% and Secondary and Higher Education cess @ 1% shall be deducted.

Employee should furnish his PAN to the employer otherwise tax shall be deducted at a higher rate u/s 206AA.

In case of an individual resident in India, whose total income does not exceed five lakh rupees, shall be entitled to a deduction from the amount of income tax payable upto ₹ 5,000. (Section 87A)

(D) **Rules for deduction of tax at source from salaries :**

(i) **Who will deduct the tax.** The person responsible for paying any income to his employee which is chargeable under the head 'Salaries' shall, at the time of payment deduct income tax therefrom at the rates in force for the financial year in which the payment is made.

(ii) **When tax will be deducted.** The aforesaid tax can be deducted at source only when the employee's estimated income from salary for that year exceeds the minimum taxable limit.

(iii) **Salary from more than one employer.** Where, during the financial year, an assessee is employed simultaneously under more than one employer, or where he has held successively employment under more than one employer, he may furnish to any of his employers, as per his own choice, the details of the income under the head 'Salaries' due or received by him from the other employer or employers and the tax deducted at source therefrom, and thereupon the employer of his choice, shall calculate tax to be deducted at source on the aggregate income under the head salaries and thereafter, after deducting tax already deducted at source by other employers, the balance of amount of tax shall be deducted at source by this employer.

(iv) **T.D.S. after considering income under other heads.** If an assessee who receives any income chargeable under the head 'Salaries' has also income chargeable under any other head of income for the same financial year, he may furnish to his employer the particulars of such other income and of any tax deducted thereon under any provision of this Act. Thereupon, the employer shall take such other income and the tax, if any, deducted thereon also into account for the purposes of making deduction of tax at source on income from salary.

The employee may furnish a statement of the loss under the head 'Income from house property' to the employer. The employer shall take into account such loss for the purposes of computing the tax deductible from salaries. The employer cannot deduct any loss from salary income except loss under the head 'Income from House Property' for determining the amount of tax deductible at source.

(6) **Accumulated:** If a company:

amalgamation. If a company is not a specified bank, it must be an industrial company.

(i) owning an interest in, or being a director of, a company or companies engaged in similar business to the banking company or companies with a special relationship with the banking company or companies, or

(iii) one or more public securities issued by the amalgamating company shall be held by the transferee company.

(iv) the unabsorbed depreciation of the amalgamating company shall be carried over to the transferee company.

(v) the business of the amalgamated company will be entitled to carry forward its losses and the unabsorbed depreciation of the amalgamated company.

Conditions for set-off: Company fulfils the following conditions: the amalgamation was effected in circumstances in which the accumulated loss occurred prior to the set-off of the loss and unabsorbed depreciation.

(1) The amalgamating company in business in which the amalgamated company has been in business for one or more years

- (1) The amalgam is engaged in the business of the taxpayer.
- (a) It has been engaged in the business of the taxpayer at least three-fourth of the time during the five years prior to the date of amalgamation.
- (b) Its depreciation remains unabsorbed, for three or more of the five years prior to the date of amalgamation.

(b) It has held continuity of ownership in the following conditions:

- (2) The amalgamated company fulfils the following book-value of fixed assets:
 - (a) The amalgamated company holds at least 75% of book value of fixed assets, of the amalgamating company acquired as a result of amalgamation, for five years from the date of amalgamation.

(b) The amalgamated company continues the business of the company as of the date of amalgamation.

(b) The amalgamated company shall be deemed to have acquired the assets of the constituent companies at the time of amalgamation, and shall be deemed to have incurred the liabilities of the constituent companies at the time of amalgamation.

unabsorbed depreciation (transferred company) carried forward and set-off in the hands of the transferee company. The transferee company can carry-forward and set-off such loss for the balance period for which the transferee company is not allowed to carry-forward and set-off such loss if there is no demerger.

(8) *Accumulated non-speculative business losses and unabsorbed depreciation in cases of Succession.* Where a firm is succeeded by a company/a proprietary concern is succeeded by a company, which fulfils the prescribed conditions, the accumulated loss and unabsorbed depreciation of predecessor firm/proprietary concern shall be deemed to be the loss and unabsorbed depreciation of the successor company for the previous year in which business reorganisation was effected. The provisions of the Act relating to set-off and carry-forward loss and unabsorbed depreciation shall apply accordingly.

The above provisions shall also apply in a case where a private company is converted into a limited liability partnership.

Note: For carry-forward and set-off of unabsorbed depreciation see chapter on 'Depreciation'.

(9) *Accumulated non-speculative business losses and unabsorbed depreciation of such banking institution under a scheme sanctioned and brought into force by the Central Government, the accumulated non-speculative business loss and the unabsorbed depreciation of such banking company shall be deemed to be the loss or unabsorbed depreciation of such banking institution for the previous year in which the scheme of amalgamation was brought into force.* (Sec. 72A)

(Sec. 72AA

Notes : (1) Definition of amalgamation given in Sec. 2(1B) shall not apply in this case.

(2) Conditions given in Sec. 72A shall not apply in this case.

(10) *Carry-forward and set-off of accumulated non-speculative business losses and unabsorbed depreciation in case of business reorganisation of co-operative bank.* For the purposes of this section business reorganisation includes :
(Sec. 72AB)

- (i) Amalgamation of a co-operative bank with another co-operative bank
- (ii) Demerger of a co-operative bank with another co-operative bank.

SEI-OFT AND CARRY FORWARD OF LOSSES

(1) The set-off shall be allowed to the successor company in respect of the unabsorbed depreciation of the predecessor company for the period commencing from the beginning of the previous year and ending on the day immediately preceding the day of the amalgamation and the period thereafter.

(2) The period commencing the date of business reorganisation, and ending with the date immediately preceding the date of such business reorganisation and, for the purposes of the provisions of this section, the period commencing from the date of such business reorganisation and for the purposes of the provisions of this section shall be deemed to be two different previous years for the purposes of the provisions of this section.

Forward Losses of certain Assessess

(1) *Losses of firm.* The share of loss from a firm cannot be set-off against provisions discussed in the preceding paragraph. However, the firm can carry-forward and set-off its losses as per provisions discussed in the preceding paragraph.

(2) *Losses of a firm in the case of change in its constitution.*—Where, in the case of a firm, the firm cannot carry-forward the share of loss of the retiring partner, the constitution of a firm, the firm cannot carry-forward the share of loss of the retiring partner. [Sec. 78(1)]

(3) **Losses of closely-held companies.** In the case of a loss incurred by a partnership, trust, or other entity, the loss shall be treated as a loss incurred by the partners, trustees, or other persons who, at the end of the taxable year in which the loss was incurred, owned at least 51% of the voting power of the entity, if such persons, when the loss was incurred, were treated as persons who owned or controlled the entity. (Sec. 79)

Exceptions. (a) Where a change in the said voting power takes place in a previous year due to the exercise of an option or on account of transfer by way of gift to any relative of the shareholder.

to the death of a shareholder making such gift.

(b) Where a change in the shareholding of an Indian company or demerger of a foreign company shareholder in an Indian company or amalgamation or demerger of a foreign company shareholder in an Indian company, takes place as a result of amalgamation or demerged foreign company, subject to the condition that 51% of the shareholders of the amalgamated or resulting foreign company continue to remain the shareholders of the amalgamated or resulting foreign company, the company is not entitled to carry-forward and set-off losses incurred in the previous year in computing the taxable income of the company for the year in which the amalgamation or demerger takes place.

If there is a change in size, unabsorbed capital expenditures are treated as losses; but unabsorbed depreciation, unabsorbed capital expenditures and losses are deductible.

[*CIT vs. Kalyani Enterprises (P) Ltd.* (1986) 157 ITR 658 (Ker.)]

Filing of return of Loss. Unless the assessee files the return of loss specified under section 139(1) and gets the loss determined by the Assessing Officer he is not entitled to carry-forward and set-off the loss. However, this condition does not apply in case of "Income from House Property". (Sec. 80)

Carry-forward of Unabsorbed Capital expenditure on Scientific Research and Family Planning. Capital expenditure on scientific research and family planning which cannot be absorbed in the assessment year because of insufficiency of profits can be carried forward like unabsorbed depreciation.

Order of Set-off

If an assessee is entitled to claim depreciation, the sequence of allowing deduction will be as under:

(i) Current depreciation;

(iii) Carried forward business losses;

- (iv) Unabsorbed depreciation;

(v) Unabsorbed capital expenses on scientific research

Carry-Forward and Set-off of Losses : At A Glance

	Loss	Set-off
1.	Loss from house property	In following eight years, income from house property.
2.	Loss from business or profession	In following eight years, income from business or profession.
3.	Loss from speculation	In following four years, income from speculation.
3A.	Loss from specified business	Income from specified business. No time limit is prescribed for carry-forward and set-off.
4.	Short-term capital loss	In following eight years : (a) Short-term capital gain (b) Long-term capital gain
5.	Long-term capital loss	In following eight years, long-term capital gain.
6.	Loss from activity of owning and maintaining race horses	In following four years, income from owning and maintaining race horses.

Illustration 1

Mr. B. Rathu submits the following information relevant for the A.Y. 2016-17:

	Income ₹	Loss ₹
Taxable Income from Salary	2,42,000	—
Taxable Income from House Property :		
House A	15,000	—
House B	—	17,000
House C	—	21,000
Taxable Profit from Business :		
Business A	8,000	—
Business B	—	10,000
Business C (Speculative)	11,000	—
Business D (Speculative)	—	23,000
Taxable Capital Gains :		
Short-term Capital Gains	6,000	—
Short-term Capital Loss	—	28,000
Long-term Capital Gains	—	—
Taxable Income from Other Sources :		
Income from Card Games	12,500	—
Loss from Card Games	13,000	—
Loss on Maintenance of Race Horses	—	7,000
Interest on Securities	—	6,000
Determine the gross total income of Mr. Rathu for the A.Y. 2016-17.	4,000	—

Solution

Computation of Gross Total Income
(for the Assessment Year 2016-17)

	₹	
1. Taxable Income from Salary	2,42,000	
2. Income from House Property :		
House A	15,000	
House B	(-) 17,000	
House C	(-) 21,000	(-) 23,000
3. Profit from Business :		
Business A	8,000	
Business B	(-) 10,000	(-) 2,000
4. Profit from Speculative Business:		
Business C	11,000	
Business D	(-) 23,000	
	(-) 12,000	

SET-OFF AND CARRY FORWARD OF LOSSES

SET-OFF OF LOSSES

Set-off of losses means setting-off losses against income of the same year. The provisions regarding set-off of losses are as under :

(1) **Set-off under the same head.** If the net result for any assessment year in respect of any source falling under any head of income is a loss, the assessee shall be entitled to have the amount of such loss set-off against the income from any other source under the same head. This is also called inter-source adjustment. (Sec. 70)

However, the following are the exceptions to the above general rule :

- (a) Loss from speculation business cannot be set-off against income from other business or profession. This loss can be set-off only against the income from another speculation business.
 - (b) Loss of specified business (See Sec. 35AD Profits and Gains of Business or Profession) cannot be set-off against income from other business. This loss can be set-off only against income from other specified business.
 - (c) Long-term capital loss cannot be set-off against short-term capital gain. This loss can be set-off only against long-term capital gain.
 - (d) Loss from the activity of owning and maintaining race horses shall be set-off against income from owning and maintaining race horses only and not against any other income under the head other sources.
 - (e) Losses of lottery, crossword puzzles, gambling, card games or betting etc. can not be set-off against such income or any other income. Further, no loss under any head can be set-off against such incomes.
 - (f) Loss from an exempted source of income cannot be set-off against any taxable income.
- (2) **Set-off against income under other heads.** If after setting-off a loss under the same head of income there still remains some loss, the remaining loss shall be set-off against his income under any other head. (Sec. 71)

However, the following losses cannot be set-off against income under other heads :

- (a) Speculation losses; (aa) Loss from specified business; (b) Loss from activity of owning and maintaining race horse; (c) Loss under the head 'Capital Gains'; (d) Loss under the head 'Business or Profession' cannot be set-off against income under the head 'Salaries'; (e) Any loss is not allowed to be set-off against winning from races, lotteries, etc.
- (3) **Loss from Business or Profession.** Any loss from business (other than speculation business) or profession can be set-off against any other income falling under the same head (including speculation income) as well as under any other head of income except Salaries.

Unabsorbed depreciation is not treated as a loss from business or profession. In case of unabsorbed depreciation the provisions of Sec. 32(2) are applicable. Hence, unabsorbed depreciation can be set-off against income under the head 'Salaries'.

(4) **Speculation Loss.** Losses in respect of speculation business can be set-off only against profits and gains, if any, of another speculation business or profession and losses under the head 'House property'. Losses of non-speculation business or profession are not set-off against the profits and gains from Other Sources¹ can, however, be set-off against the profits of a speculation business.

(4A) **Loss of specified business.** Any loss of a specified business can be set-off against profits and gains of any other specified business only.

(5) **Losses from the activity of owning and maintaining race horses.** Losses from the activity of owning and maintaining race horses in any assessment year shall be set-off only against income from owning and maintaining race horses, and not against any other income. [Sec. 73A(1)]

(6) **Capital Losses :** (a) *Short-term.* Such losses can be set-off against any other short-term capital gains or long-term capital gains only. [Sec. 74A(3)]

(b) *Long-term.* The long-term capital loss can be set-off against long-term capital gains only. [Sec. 74A(3)]

(7) **Losses of lottery, crossword puzzles, gambling, card games or betting, etc.** These losses cannot be set-off against any income.

(8) **Loss of Association of Persons or Body of Individuals or Firm.** The loss of A.O.P. or B.O.I. or a Firm, which could not be set-off intra headwise and inter headwise as per the provisions explained earlier, cannot be apportioned among the members/partners and the members/partners are not entitled to set-off their share of loss from their personal incomes.

Set-off of Losses : At A Glance

Loss	Set-off
1. Loss from house property	(a) Income from any other house property (b) Any other head of income
2. Loss from business or profession	(a) Income from any other business or profession (b) Any other head of income except salaries
3. Loss from speculation	Income from any other specified business
3A. Loss from specified business	(a) Short-term capital gains (b) Long-term capital gains
4. Short-term capital loss	Long-term capital gain
5. Long-term capital loss	Income from activity of owning and maintaining race horses
6. Loss from activity of owning and maintaining race horses	Cannot be set-off against any income.
7. Loss of lottery, crossword puzzles, gambling, card games or betting, etc.	

Note : No loss can be set-off against winnings from races, lotteries, etc.

CARRY-FORWARD AND SET-OFF OF LOSSES

If it is not possible to set-off the losses during the same assessment year in which they occurred, so much of the loss as has not been so set-off out of the following losses can be carried forward for being set-off against his income in the succeeding years provided the losses have been determined in pursuance of a return filed by the assessee within the time allowed in 139(1) and it is the same assessee who sustained the loss :

- (1) Loss under the head 'Income from House Property'.
- (2) Loss of non-speculation business or profession.
- (3) Loss of speculation business.
- (3A) Loss of specified business.
- (4) Short-term capital loss or Long-term capital loss.
- (5) Loss from activity of owning and maintaining race horses.

Any loss other than mentioned above cannot be carried forward and set-off in succeeding year. Property shall be carried forward and set-off in subsequent assessment years upto a maximum of eight assessment years against income from house property. [Sec. 71B]

(2) **Carry-forward and set-off of non-speculation business losses.** If for any assessment year the net result under the head 'Profits and Gains of Business or Profession' is a loss to the assessee (not being a loss of speculation business), so much of the loss as has not been so set-off shall be carried forward to the following assessment year and it shall be set-off against the income under the head 'Profits and Gains of Business or Profession'. If the loss cannot be wholly set-off in the following year, it shall be carried forward for a maximum period of eight assessment years immediately succeeding the assessment year for which the loss was first computed. [Sec. 72(1)]

If the business or profession has been discontinued loss can be carried forward and set-off against profits and gains of business or profession. [Sec. 72(1)]

Other important points regarding carry-forward of business losses :

(i) **Losses of discontinued business of an industrial undertaking after re-establishment or revival.** If on account of natural calamities, like flood, cyclone, earthquake, riot, fire or enemy action etc., the business of the industrial undertaking is discontinued, but revived within 3 years thereafter, the unabsorbed losses of the undertaking shall be carried forward and set-off against the profit of the revived business or any other business up to a maximum period of 8 years as reckoned from the year in which the business is re-started.

(ii) **Treatment of losses after succession takes place by inheritance.** The loss incurred by the father in the course of carrying on his business can be carried forward and set-off by his son, if he succeeds to the business of his father on account of his death.

(3) **Losses of speculation business.** If for any assessment year any loss computed in respect of speculation business has not been wholly set-off in the same assessment year against profits and gains of any other speculation business, so much of the loss as is not so set-off shall be carried forward to the following assessment year and it shall be set-off against the profits and gains, if any, of any speculation business carried on by him. If the loss cannot be wholly set-off in the following year, it shall be carried forward for a maximum period of four assessment years immediately succeeding the assessment year for which the loss was first computed. [Sec. 73(2)(4)]

(3A) **Carry-forward and set-off of loss of specified business.** The brought forward loss of specified business shall be set-off against the profits and gains, if any, of any specified business carried on by the assessee. The loss can be carried forward and set-off till it is fully set-off. [Sec. 73A(2)]

(4) **Carry-forward and set-off of Capital Losses :** (a) *Short-term Capital Loss.* Short-term capital loss which cannot be wholly set-off in the same assessment year, against income under the head capital gains shall be carried forward to the following assessment year and shall be set-off against income, under the head capital gains. If the entire amount of carried forward capital loss cannot be set-off in the following assessment year, the amount remaining unabsorbed shall be carried forward to be set-off against capital gains in subsequent years up to a maximum of eight assessment years immediately succeeding the assessment year for which the loss was first computed. [Secs. 74(1) and (2)]

(b) *Long-term Capital Loss.* The long-term capital loss which cannot be wholly set-off in the same assessment year against long-term capital gain shall be carried forward to the following assessment year to be set-off against long-term capital gain, if any. This loss can be carried forward for a maximum period of eight assessment years immediately succeeding the assessment year for which the loss was first computed.

(5) **Loss from owning and maintaining race horses.** Owners of race horses are allowed to carry-forward and set-off the loss incurred by them on maintenance of race horses against their income from the same source (i.e., income from activity of owning and maintaining race horses in subsequent year). This loss can be carried forward for four assessment years following the assessment year when loss was computed. [Sec. 74A(3)(b)]

(xiii) Special Deposit Scheme, 1981.

[Notification No. G.S.R. 607(E) dated 9.6.1989 ITR 11g]

(xiv) Public Account in P.O. (Up to ₹ 5,000)

(xv) Gold Deposit Bonds, 1999.

(xvi) Bonds issued by local authority and specified by the Central Government.

(B) *For Individuals and H.U.F.* : Interest on 7% Capital Investment Bonds.

(C) Interest on notified bonds or debentures of public sector companies.

(D) Interest on securities held by the Welfare Commissioner of Bhopal Gas Victims, in the Reserve Bank.

(ii) **Less-Tax Government Securities.** Such securities are issued either by the Central Government or a State Government. These are taxable securities, but no tax is deducted at source on such securities. Hence, the interest on such securities will not be grossed up.

[Sec. 193 item (iv)]

Exception. Tax shall be deducted at source on interest on Savings (Taxable) Bonds, 2003, if the interest payable exceeds ₹ 10,000 during the financial year.

(iii) **Tax-free Non-Government Securities.** These are issued by a local authority or statutory corporation or a company, in the form of debentures or bonds. Really speaking their interest is not tax-free, because tax due on this interest is payable by the company, or local authority or corporation concerned. These are called tax-free, because the assessee has not to pay tax on it from his own pocket. The tax paid by the company on this interest is deemed to have been paid on behalf of the assessee, hence the amount of tax paid on any interest due to an assessee is added up in his interest income, i.e., the interest due to an assessee is grossed up and then this grossed up amount is included in his income. The amount of tax paid by the company on this interest is deducted from the total tax payable by the assessee. For example, if a company has issued 10% Tax-free Debentures, the debentureholder will receive the entire amount of interest calculated at 10% but the amount to be included in the income of the debentureholder will be the amount actually received by him as interest plus income tax thereon paid by the company.

(iv) **Less-Tax Non-Government Securities.** These may be called "Taxable Securities". In the case of these securities, income tax is deducted at source on the amount of interest calculated at the percentage stated on the securities and balance of the amount of interest left after deduction of the aforesaid income tax is paid to the security-holder.

If the rate percent of interest is given it is not grossed up as it is already the gross amount of interest, and income tax is to be deducted therefrom.

If in the case of these securities, the net amount of interest received is given, it has got to be grossed up.

In any case, it is the gross amount of interest that is included in the income of an assessee.

The following are the rules for grossing up interest on securities :

(1) If the rate of interest is given, only the interest on tax-free commercial securities is grossed up and interest on all other securities is not grossed up.

(2) Interest on tax-free commercial securities is always grossed up whether its rate per cent is given or the amount received is given.

(3) Interest on less-tax securities is grossed up when the amount received is given.

BOND WASHING TRANSACTIONS

It is a device to avoid tax by high income group of assesses by transferring securities to low-income class of assesses on the eve of the due date of interest. Generally, interest on securities is payable half-yearly or yearly and these dates are fixed. As the whole amount of interest is regarded as the income of the person who happens to be the owner at the time when the interest becomes due, some tactful persons sell their securities a few days before the due date of interest, to some of their friends or relatives, and buy them back a few days after the expiry of the due date of interest. Thus, they do not remain the owner of the securities on the due date of interest and they are not required to pay tax on this income from interest on securities. They sell their securities to such persons whose total income including the income from interest on securities either does not exceed the minimum taxable limit or if it exceeds that

limit it is lesser than that of the seller so that either no tax will be payable on the interest or it will be payable at the lower rate. Thus, the seller escapes tax completely, and buyer also does not pay tax on it as his income is below the minimum taxable limit, and if the buyer's income exceeds the minimum taxable limit, he will pay tax at lower rate of tax, which is, in fact, secretly paid by the seller on behalf of the buyer. Thus, by this device, the Income Tax Department suffers loss of revenue. In order to prevent this device of avoiding tax, it has been provided that the Assessing Officer can include such an income from interest on securities in the total income of the person who is actually the owner of the securities and who wants to escape tax by adopting this device.

Exceptions. The Assessing Officer shall not apply the above rule in the following cases :

- (1) If the assessee proves to the satisfaction of the Assessing Officer that there has been no avoidance of income tax; or
- (2) If the assessee proves that the avoidance of income tax is exceptional and not systematic, and there was no avoidance of income tax in any of the three preceding years.

In connection with such transactions the Assessing Officer has the power to enforce the assessee to furnish the required information.

Rates for Deduction of tax at source during the Financial Year 2015-16

in relation to Assessment Year 2016-17

	Rate of Income Tax
I. In the case of a person other than a company and who is the resident in India	
(i) Interest other than interest on securities	10%
(ii) On interest payable on :	
(A) any debentures or securities for money issued by or on behalf of any local authority or a corporation established by a Central or State Act	10%
(B) any debentures issued by a Company, where such debentures are listed in a recognised Stock Exchange in India	10%
(C) security of the Central or a State Government	10%
(iii) On insurance commission	10%
(iv) Interest on any other security including debentures of a company not listed in a recognised Stock Exchange in India	10%
(v) On winnings from lotteries, crossword puzzles, card games or other games of any sort	30%
(vi) On winnings from horse races	30%
(vii) On any other income	10%
(viii) On any other income	30%
Surcharge : No surcharge will be deducted.	
Education cess & SHEC : No education cess & SHEC will be deducted.	
II. In the case of a domestic company :	
(i) On interest other than interest on securities	10%
(ii) On winnings from lotteries, crossword puzzles, card games or other games of any sort	30%
(iii) On winnings from horse races	30%
(iv) On any other income	10%
Surcharge and SHEC : No surcharge will be deducted.	
Education cess & SHEC : No education cess & SHEC will be deducted.	

The following formula may be used to find out the gross amount in different circumstances (for the assessment year 2016-17) :

(1) In the case of an individual

Where the person is resident in India :

(i) Interest received on Tax-free Government Securities—Exempt.

(ii) Interest received on Less-Tax Central or State Govt. Securities—Not to be grossed up.

(iia) Interest received on Savings (Taxable) Bonds, if interest exceeds ₹ 10,000

Interest received $\times 100 \div 90$

(iii) Interest received on Debentures of a Local authority or a Corporation or Debentures of a company listed in a recognised Stock Exchange in India
Interest received $\times 100 \div 90$

(iv) Interest received on other debentures and other securities :
Interest received $\times 100 \div 90$

(v) On income from winnings from lotteries and crossword puzzles :
Winning received $\times 100 \div 70$

(2) In the case of company :

Where the company is a domestic company :

(i) On interest on securities :

Interest received $\times 100 \div 90$

(ii) On interest other than interest on securities :

Interest received $\times 100 \div 90$

(iii) On income from winnings from lotteries and crossword puzzles :
Winning received $\times 100 \div 70$

Deductions allowable under the head 'Income from Other Sources'

(Sec. 57)

The income chargeable under the head 'Income from Other Sources' shall be computed after making the following deductions :

(1) In the case of interest on securities/dividend any reasonable sum paid by way of commission or remuneration to a bank or any other person for the purpose of realising such income on behalf of the assessee is deductible.

(2) Interest on loan taken for the purpose of investment in securities/shares will be deductible if it is actually used for the aforesaid purpose.

If dividend is exempt, aforesaid deductions will not be allowed.

(3) If employees' contribution to provident fund, etc., are treated as the income of the assessee (employer) and it is included in his income from other sources, a deduction of the sum, credited by the employer to the employee's account in the relevant fund on or before the *due date*, will be allowed under this head.

(4) In the case of income from letting of machinery, plant or furniture with or without buildings, which is chargeable to tax under the head 'Income from Other Sources' the deductions in respect of the following shall be allowed in the same manner as they are allowed under the head 'Profits and Gains of Business or Profession' :

(i) Expenditure incurred regarding current repairs of machinery, plant, furniture or building;
(ii) Insurance premium paid regarding building, machinery, plant or furniture against risk of damage or destruction of the assets.

(iii) Depreciation on building, machinery, plant or furniture.

(5) In the case of income in the nature of family pension received by the widows or heirs of deceased employee, a deduction of a sum equal to 33 $\frac{1}{3}$ % of such income or ₹ 15,000, whichever is less, will be allowed.

(6) In case of sub-letting of a house the rent, repairs charges, etc. regarding sub-let portion are deductible.

(7) Any other expenditure (not being a capital expenditure or personal expenditure of the assessee) incurred wholly and exclusively for the purpose of earning such income.

(8) From interest received on compensation or enhanced compensation, fifty percent of such income shall be deducted and no other deduction shall be allowed in this respect.

Amounts not deductible

The following amounts shall not be deductible in computing income under the head 'Other Sources' :

(Sec. 58)

(1) Any personal expenses of the assessee.

(2) Any interest chargeable under this Act, which is payable outside India and has been paid without deduction of tax at source or without paying tax thereon.

(3) Any sum paid on account of Wealth tax.

(4) Cash payments exceeding ₹ 20,000/₹ 35,000. Sec. 40A(3) provides for the disallowance of 100% expenditure in respect of which payment is made in a sum exceeding ₹ 20,000/₹ 35,000 otherwise than by an account payee cheque on a bank or by an account payee bank draft.

(5) Expenses or losses in connection with income from lottery, crossword puzzles, races including horse races, card games, gambling or betting of any nature, shall not be deductible in computing the said income. However, this prohibition will not apply in respect of the income of an assessee, being the owner of horses maintained by him for running in horse races, from the activity of owning and maintaining such horses.

(6) Expenses incurred in relation to exempted income, is not deductible.

Illustration 2

From the following particulars of the income of Sri Ram Gopal compute his taxable income under the head 'Income from Other Sources' for the year ended 31st March, 2016 :

(1) He owns in Burma an agricultural land which gave him an income of ₹ 25,000 during the year; also owns a plot of land in Agra which has been let out for storing non-agricultural goods at ₹ 1,000 p.m. He also has another plot of land on which village markets are held. This land fetched him an income of ₹ 2,500 during the year.

(2) During the previous year, he gave Management Consultancy Service to a number of entrepreneurs. This gave him an income of ₹ 75,000.

(3) He has a quarry in Jaipur. He has let it out to Mr. A on a royalty of 25 paise per ton of stone raised. In all 10,000 ton of stone was raised during the previous year. He incurred an expenditure of ₹ 400 in connection with the earning of royalty, which has been admitted by the Assessing Officer.

(4) Amount received as an advance for transfer of a capital asset, forfeited ₹ 50,000 due to failure of the contract.

Solution Computation of Taxable Income from Other Sources

(for the Assessment Year 2016-17)

1. Income from agricultural land in Burma	₹	25,000
2. Income from non-agricultural land		12,000
3. Income from land used for Market		2,500
4. Management Consultant's Remuneration	₹	75,000
5. Income from Royalty	2,500	
Less : Expenses allowed	400	
6. Amount forfeited		50,000
		₹ 1,66,600

Taxable Income from Other Sources

Note : In transferring capital asset, any advance received and forfeited on or after 1.4.2014 shall be deemed to be the income of the assessee and chargeable under the head 'Income from Other Sources' (Sec. 56).

Illustration 3

Shri Hari Gopal is a member of parliament from Agra. During the previous year 2015-16 he had the following incomes :

- As a member of parliament he received a salary of ₹ 4,000 p.m. and daily allowance of ₹ 20,000 for attending various sessions.
- He held the following investments :
(a) A 10% fixed deposit of ₹ 10,000 is held by him in a Bank. Interest is credited annually.
(b) He received dividend of ₹ 500 from a co-operative society.
- He won ₹ 8,000 in crossword puzzles.
- On 1st September, 2015 he purchased a plot of land for constructing his house. On account of shortage of funds, he could not get this house constructed and hence let out the plot at ₹ 150 per month from 1st November, 2015.
- He has let machinery and furniture and also building to Mr. Krishna Gopal at a monthly rent of ₹ 5,000. He spent ₹ 1,500 on the repair of machinery, furniture and

(10) Interest received on compensation or on enhanced compensation shall be deemed to be the income of the previous year in which it is received.

(11) Where a closely held company issues shares to a resident person for a consideration exceeding the face value of such shares, the deemed income shall be consideration received on market value of the shares.

However, this provision shall not apply where the consideration for issue of shares is received (i) by a venture capital undertaking from a venture capital company or a venture capital fund; or (ii) by a company from a class or classes of persons as may be notified by the Central Government.

Explanation. Fair market value of the shares shall be the value :

- (i) as determined in accordance with prescribed method; or
- (ii) as determined on the basis of assets, including intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, on the date of issue of shares, whichever is higher.
- (12) Any sum of money received as an advance in the course of negotiations for transfer of a capital asset and such negotiation fails, the amount so forfeited.

Besides the above, there are some other incomes which are also chargeable under the head 'Income from Other Sources'. For example :

- (1) All interest e.g., interest on securities, interest on bank deposits, interest on loan interest received on delayed refund of income tax, etc.
- (2) Income of a tenant from sub-letting the whole or a part of the house property.
- (3) Remuneration received by a teacher or a lawyer for doing examination work.
- (4) Income of Royalty.
- (5) Director's fees.
- (6) Rent of land not appurtenant to any building.
- (7) Agricultural Income from land situated outside India.
- (8) Income from markets, ferries and fisheries, etc.
- (9) Income from leasehold property.
- (10) Remuneration received for writing articles in Journals.
- (11) Income from undisclosed sources :
 - (i) Cash credits which are unexplained. (Sec. 68)
 - (ii) Unexplained Investments. (Sec. 69)
 - (iii) Unexplained Money. (Sec. 69A)
 - (iv) Unexplained Expenditure. (Sec. 69C)
 - (v) Amount borrowed or repaid on Hundi otherwise than through an account payee cheque drawn on a bank.
- (12) Interest received by an employee on his own contributions to an unrecognized provident fund
- (13) Salary of a Member of Parliament, Member of Legislative Assembly or Council.
- (14) Insurance Commission not chargeable under the head 'business or profession'.
- (15) Rent of trademark.
- (16) Director's Commission for giving guarantee to bank.
- (17) Director's Commission for underwriting shares of a new company.
- (18) Gratuity received by a director who is not an employee of the company.
- (19) Family pension received by the widow and heirs of deceased employees. However, the following family pensions are exempt :
 - (i) Pension received by the widow of an employee of the U.N.O.
 - (ii) Family pension received by any member of the family of gallantry awardee.

'Family' means :

- (a) the spouse and children of the individual; and
- (b) the parents, brothers and sisters of the individual, wholly or mainly dependent on the individual.

[Sec. 10(18)]

(iii) Family pension received by the widow or children or nominated person of a member of the armed forces (including para-military forces) of the union, where the death of such member occurred in the course of operational duties shall be exempt provided the prescribed conditions are satisfied. [Sec. 10(19)]

(20) Amount withdrawn from deposit in National Savings Scheme, 1987 on which deduction u/s 80CCA has been allowed including interest thereon.

(21) Receipts by Cricketers selected to play for India :

- (a) *Test Matches in India.* Amount actually received by the player from the Cricket Control Board is taxable after allowing a deduction of an amount equal to 75% of such receipt in respect of reasonable expenses incurred to earn such income.
- (b) *Other Matches in India.* Generally, the entire receipts by the player (from the Board) will be deemed to have been spent for earning such income and hence not taxable.
- (c) *Matches outside India.* A player will be allowed a deduction of 50% of the amount received for playing in foreign countries and the balance will be taxable.
- (22) Tips received by a waiter or taxi-driver, not being given by his employer.

Illustration 1

Compute the taxable amount under the head 'Income from other Sources' in the following cases :

Movable Property	Fair Market Value	Purchase Price	Difference
(1)	(2)	(3)	(2 - 3)
Case I :			
Gift of diamond ring	₹ 40,000	—	40,000
Gift of art work	10,000	—	10,000
Total	50,000	—	50,000
Case II :			
Diamond ring for lesser consideration	1,50,000	1,12,000	38,000
Art work for lesser consideration	50,000	39,000	11,000
Total	2,00,000	1,51,000	49,000

Solution

Under Case I : Aggregate fair market value of gifts received during the previous year is upto ₹ 50,000, hence nothing is taxable.

Under Case II : Though aggregate fair market value (₹ 2,00,000) exceeds ₹ 50,000, the difference between aggregate fair market value and aggregate consideration (₹ 1,51,000) = ₹ 49,000 does not exceed ₹ 50,000. Hence nothing is taxable under the head 'Income from other Sources'.

SOME OTHER IMPORTANT POINTS RELATING TO INCOME FROM OTHER SOURCES

1. Dividends

Meaning. In ordinary language dividend means the sum received by a shareholder of a company on the distribution of its profits.

Dividends—Income of which year

(1) **Normal Dividend.** Any dividend declared by a company at its annual general meeting shall be deemed to be the income of the previous year in which it is so declared. [Sec. 8(a)]

(2) **Interim Dividend.** An interim dividend is one which is declared by a company at any time prior to its annual general meeting for the year. Any interim dividend shall be deemed to be the income of the previous year in which the amount of such dividend is unconditionally made available by the company to the member who is entitled to it. [Sec. 8(b)]

Taxation of Dividends (Assessment Year 2016-17)

(a) *Dividends (including deemed dividends) distributed by a domestic company.* Such dividend is exempt. [Sec. 10(34)]

(b) *Dividends from a Co-operative Society.* The amount received as dividends from the Co-operative Society shall be included in the income. However, the Society is not empowered to deduct tax at source. Hence, the question of grossing up of dividends does not arise.

(c) *Dividends from a Foreign Company.* The dividend received from a foreign company is to be included in the income.

(d) *Tax payable by a Domestic Company (A.Y. 2016-17)* [Sec. 115-O]
A domestic company is liable to pay tax on gross dividend declared or distributed or paid at the following rates:

- (i) Income tax @ 15%;
 - (ii) Surcharge @ 12%;
 - (iii) Education cess and SHEC on the amount of income tax and surcharge @ 3%.
- Total @ 17.304%

(e) *Tax payable by a shareholder.* If the following conditions are satisfied the shareholder will be liable to pay tax on the amount of deemed dividend:

- (i) The company is such in which the public are not substantially interested. In other words, the company is a closely-held company.
 - (ii) The shareholder has at least 10% of the voting power in the company.
 - (iii) The shareholder takes a loan during the previous year from such company.
 - (iv) The amount of loan or accumulated profits of the company, whichever is less, is treated as deemed dividend.
 - (v) On such deemed dividend, the company is not liable to pay dividend distribution tax u/s 115-O.
 - (vi) The amount of such deemed dividend shall be included in the income of shareholder under the head 'Income from Other Sources'.
- From such income the shareholder can claim the following expenses:
- (i) Dividend collection charges, if any.
 - (ii) Interest on loan taken, to purchase the shares of the aforesaid company, for the relevant previous year.

2. Income from units of Specified Company or a Mutual Fund

- (a) Such income is exempt in the hands of unit-holders.
- (b) The income distributor is liable to pay tax at the specified rates.

3. Winnings from lotteries, crossword puzzles, card games and other games, gambling or betting and Winnings from races including horse races

The winnings from lottery, crossword puzzles, card games, gambling or betting or nature and winnings from races (without deducting any expense or allowance) shall be included in income. These incomes are of a casual nature and are taxable under the head 'Other sources'. If winning for lottery, crossword puzzle, card game or other game, gambling or betting does not exceed ₹ 10,000 or winning from race does not exceed ₹ 5,000 no tax shall be deducted at source. Thus, the amount received shall be included in the income.

If such winning exceeds the above mentioned limits the tax shall be deducted @ 30%. The gross amount (amount received plus the tax deducted) shall be included in income.

4. Interest on Securities

- The income from interest on securities is chargeable to tax as under:
- (i) It is taxable under the head 'Business or Profession' if securities are held as stock-in-trade;
 - (ii) It is taxable under the head 'Other Sources' if securities are held as investments.

The term 'security' means a document acknowledging the debt taken by the government or some other authority from the general public. It is held by an investor or creditor as guarantee of his right to receive payment.

Basis of Charge

Interest on securities does not accrue from day to day but becomes due on certain fixed dates only, which are mentioned on the securities.

Interest on securities is chargeable to tax on the basis of accounting method (cash or mercantile) followed by the assessee.

Where no method of accounting is regularly employed by the assessee, the income from interest on securities shall be chargeable to tax as the income of the previous year in which it becomes due though it may be received later.

Where the assessee adopts cash system of accounting the interest will be taxed on receipt basis, i.e. if an interest has not been received in that year, it will not be taxed in the previous year when it has become due only.

Cum-interest or Ex-interest Transaction

When securities are bought or sold between the two interest dates, the transaction is either cum-interest or ex-interest. Whatever be the nature of the transaction, the interest on securities is regarded as wholly the income of the person who happens to be the owner at the time when the interest becomes due.

Commission on Purchase and Sale of Securities

Commission or other expenses incurred in respect of purchase or sale of securities are not deducted from 'Interest on Securities'. Such expenses payable at the time of purchase of the securities are included in the cost of securities while such expenses payable on the sale of securities are deducted from the selling price of securities.

Profit and Loss on Sale of Securities

If the purchase and sale of securities is not the business of the assessee and he holds the securities as an investment to earn interest thereon the profit on sale of securities is a capital gain and is taxable under the head 'Capital Gains'.

If the purchase and sale of securities is the business of the assessee, then the profit on sale of securities is taxable under the head 'Profits and Gains of Business or Profession'. For the purpose of determining profit or loss on sale of securities expenses incurred in connection with the sale of securities are allowed as deductible expenses.

Kinds of Securities

Securities are of four types:

- (i) **Tax-free Government Securities.** These securities are those, the interest on which is fully exempt from tax under section 10(15). Interest on such securities is neither included in total income nor it is taxed.

Interest on the following securities, bonds, deposits, etc. is fully exempt from tax:

(A) *For all Assessee:*

- (i) 12-Year National Savings Annuity Certificates.
- (ii) National Defence Gold Bonds, 1980.
- (iii) Special Bearer Bonds, 1991.
- (iv) Treasury Savings Deposit Certificates (10 Years).
- (v) Post Office Cash Certificates (5 Years).
- (vi) National Plan Certificates (10 Years).
- (vii) National Plan Savings Certificates (12 Years).
- (viii) P.O. National Savings Certificates (12 Years/7 Years).
- (ix) P.O. Savings Bank Account:
 - (a) Individual account—Maximum exemption limit ₹ 3,500.
 - (b) Joint account—Maximum exemption limit ₹ 7,000.
- (x) P.O. Cumulative Time Deposit Account (15 years).
- (xi) Fixed Deposit Scheme governed by the Government Savings Certificates (Fixed Deposit) Rules, 1968.
- (xii) Fixed Deposit Scheme governed by the Post Office (Fixed Deposit) Rules, 1968.

- (2) If the assessee sells or otherwise transfers the shares or the company sells or otherwise transfers the new plant or machinery within five years from the date of acquisition, the exempted capital gains shall be deemed to be the capital gains of the previous year in which the shares or new plant or machinery is transferred or sold.
 - (3) If there is gain on transfer of shares to the assessee, it shall be chargeable to tax in his hands.
 - (4) If there is gain of transfer of plant or machinery to the company, the company shall be liable to pay tax on it.
- Eligible Company.** It means a company which fulfils the following conditions:
- (i) It is a company incorporated in India during the period from 1st April of the previous year relevant to the assessment year in which capital gain arises to the due date of furnishing the return of income u/s 139(1).
 - (ii) It is engaged in the business or manufacture of an article or thing.
 - (iii) It is a company in which the assessee has more than 50% share capital or more than 50% voting rights after the subscription in shares by him.
 - (iv) It is a company which qualifies to be a small or medium enterprise.

Note: W.e.f. A.Y. 2017-18, Capital gains arising on transfer of a residential property before 1-4-2019, shall also be exempt if not consideration is invested in subscription of shares of a company which qualifies to be an eligible start-up subject to other specified conditions u/s 54GB. (For details regarding eligible start-up see sec. 80IAC.)

Extension of time for acquiring new asset or depositing or investing amount of capital gain

Where the transfer of original asset [residential house and land appurtenant thereto (Sec. 54), agricultural land (Sec. 54B), land and building of an industrial undertaking (Sec. 54D), any long-term capital asset (Sec. 54EC) and long-term capital asset other than residential house (Sec. 54F)] is by way of compulsory acquisition under any law and the amount of compensation awarded for such acquisition is not received by the assessee on the date of transfer, the period of acquiring the new asset or the period for depositing or investing the amount shall be extended in relation to the amount of compensation as is not received on the date of transfer. The extended period shall be reckoned from the date of receipt of the compensation. (Sec. 54H)

Exemption of unutilised deposit under the Capital Gains Account Scheme, 1988 in the hands of the legal heirs of the assessee

If an individual dies before the expiry of the stipulated period under sections 54, 54B, 54D, 54F, 54G and there remains unutilised amount deposited in the Capital Gains Account Scheme, 1988, such amount is neither taxable in the hands of the deceased nor in the hands of the legal heirs. The legal heirs do not receive it as income but they receive it as a part of the estate devolving upon them.

(Circular No. 743 dated 6.5.1989)

Tax on Short-term capital gains on transfer of equity shares in a company or units of an equity oriented fund or units of a business trust (A.Y. 2016-17)

(Sec. 111A)

Where the total income of an assessee includes the short-term capital gains arising from the transfer of equity shares in a company or units of an equity oriented fund or unit of a business trust, on such short-term capital gains tax will be charged @ 15% + Surcharge, if any + Education cess and SHEC @ 3% on the amount of income tax and surcharge if the following conditions are satisfied:

- (i) The equity shares in a company or units of an equity oriented fund or unit of a business trust are short-term capital asset.
- (ii) Such transaction is chargeable to Securities Transaction Tax.

In respect of income other than aforesaid short-term capital gains, income tax shall be charged as per the normal provisions of the Act, assuming the other income only to be the total income.

Other Provisions

- (i) Where the total income (excluding aforesaid short-term capital gains) of a resident individual and resident H.U.F. is less than the maximum amount which is not chargeable to income tax then from the total income (including aforesaid short-term

capital gains) the maximum amount which is not chargeable to income tax shall be deducted and on the balance tax shall be charged at the aforesaid rate.

No deduction under sections 80C to 80U will be allowed in respect of aforesaid short-term capital gains.

Exemption limit:

1. For senior citizen (resident in India, who is of the age of 60 years or more but less than 80 years during previous year)—₹ 3,00,000.
2. Super senior citizen (resident in India, who is of the age of 80 years or more during the previous year)—₹ 5,00,000
3. Other individuals and HUF—₹ 2,50,000.

(Sec. 112)

Tax on Long-term Capital Gains (A.Y. 2016-17)

(Sec. 112)

The tax on long-term capital gains is to be charged at the following rates:

- (1) In case of an individual or a Hindu undivided family who are resident in India—@ 20%.

Where the total income (excluding long-term capital gains) of a resident individual and resident H.U.F. is less than the maximum amount which is not chargeable to income tax, then from the total income (including long-term capital gains) the maximum amount which is not chargeable to income tax shall be deducted and on the balance tax shall be charged @ 20%.

(2) In case of other assesses @ 20%.

Tax on LTCG on transfer of listed securities (excluding units) or zero coupon bonds shall be charged:

- (i) @ 10% of LTCG computed without indexing the cost of acquisition; or
 - (ii) @ 20% of LTCG computed after indexing the cost of acquisition, whichever is less.
- It should be noted that debentures are never indexed.
- Surcharge on income-tax:**
- (i) In case of Individual, HUF, AOP or BOI Firm A, society or local authority @ 12% if total income exceeds one crore rupees.
 - (ii) In case of domestic company
 - (a) @ 7%, if total income exceeds one crore rupees but does not exceed ten crore rupees.
 - (b) @ 12% if total income exceeds ten crore rupees.

Education cess and SHEC. On the amount of income tax and surcharge, education cess and SHEC shall be levied @ 3%.

Listed securities. It means a security which is listed in a recognised stock exchange in India.

"Securities" include:

- (i) shares, scrips, stocks, bonds, debentures, debenture-stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;
- (ii) Government securities;
- (iii) such other instruments as may be declared by the Central Government to be securities; and
- (iv) rights or interest in securities.

In respect of income other than long-term capital gains, in all the above cases, income tax shall be charged as per the normal provisions of the Act, assuming the other income only to be the total income.

No deduction under sections 80C to 80U will be allowed in respect of long-term capital gains.

Note: Provisions of Sec. 112 relating to non-residents and foreign companies have not been given.

Illustration 22

D purchased Jewellery worth ₹ 60,000 during the year 1984-85.

During the year 1990-91, he further purchased jewellery worth ₹ 70,000.

All the jewellery was sold by him on 15.05.2015. The Jewellery purchased in 1984-85 was sold for ₹ 6,00,000 and that purchased in 1990-91 was sold for ₹ 6,10,000.

INCOME FROM OTHER SOURCES

This is the last and residuary head of income. Any income which is taxable under the head 'Income from Other Sources' and does not find place under any of the first four heads of income (i.e., Salaries, House Property, Business and Capital Gains) will be assessable under this residuary head 'Income from Other Sources'.

The following incomes shall be chargeable to income tax under the head 'Income from Other Sources':

- (1) Dividends. [Sec. 56(2)]
- (2) Income from winnings from lotteries, crossword puzzles, races including horse races, and games and other games of any sort or from gambling or betting of any form or nature whatsoever.
- (3) Any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set-up under Employees' State Insurance Act, 1948.
- (4) Income by way of interest on securities.
- (5) Income from machinery, plant or furniture let on hire if the income is not chargeable to income tax under the head 'Profits and Gains of Business or Profession'.
- (6) Income from letting on hire machinery, plant or furniture and also buildings, and the letting of the buildings is inseparable from the letting of the said machinery, plant or furniture if it is not chargeable to income tax under the head 'Profits and Gains of Business or Profession'.
- (7) Income received under a Keyman insurance policy including bonus on such policy, and such income is not chargeable to income tax under the head 'Profits and Gains of Business or Profession' or under the head 'Salaries'.
- (8) An individual or HUF receives, in any previous year from any person or persons:

Asset	Amount to be included in income
(a) Any sum of money, without consideration, the aggregate value of which exceeds ₹ 50,000	The whole of the aggregate value of such sum.
(b) Any immovable property:	
(i) without consideration, the stamp duty value of which exceeds ₹ 50,000;	The stamp duty value of such property.
(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding ₹ 50,000.	The stamp duty value (on the date of agreement) of such property as exceeds such consideration.
(c) Any property other than immovable property:	
(i) without consideration, the aggregate fair market value of which exceeds ₹ 50,000;	The whole of the aggregate fair market value of such property.
(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding ₹ 50,000.	The aggregate fair market value of such property as exceeds such consideration.

But the above provisions shall not apply to any sum of money or any property received:

- (a) from a relative; or
- (b) under a will or by way of inheritance; or
- (c) on the occasion of the marriage of the individual; or
- (d) in contemplation of death of the payer; or

(e) from any local authority; or
(f) from any trust or institution registered u/s 12AA; or
(g) from any fund or foundation registered u/s 12AA; or
or other medical institution or university or other educational institution or hospital

Explanation. (A) Property means the following capital asset of the assessee, namely:

- (a) immovable property being land or building or both;
- (b) shares and securities;
- (c) jewellery;
- (d) archaeological collections;
- (e) drawings;
- (f) paintings;
- (g) sculptures;
- (h) any work of art; or
- (i) Bullion.

(B) **Relative.** means:

- (a) In case of an individual:
 - (i) spouse of the individual;
 - (ii) brother or sister of the individual;
 - (iii) brother or sister of the spouse of the individual;
 - (iv) any lineal descendant or descendant of the spouse of the individual;
 - (v) any lineal ascendant or descendant of the individual;
 - (vi) spouse of the person referred to in (ii) to (vi).
- (b) In case of HUF, any member of the family.

Suppose Mr. Ramesh is recipient of gift (sum of money), the gift received from the following relatives shall be exempt:

- (i) Wife of Ramesh;
- (ii) Brother or sister of Ramesh;
- (iii) Brother or sister of wife of Ramesh;
- (iv) (a) Brother or sister of father of Ramesh;
(b) Brother or sister of mother of Ramesh;
- (v) (a) Great grand father, grand father and father of Ramesh;
(b) Son, grand son and great grand son of Ramesh;
- (vi) Great grand father, grand father and father of wife of Ramesh;
- (vii) (a) Brother's wife or sister's husband of Ramesh;
(b) Brother's wife or sister's husband of wife of Ramesh;
(c) Brother's wife or sister's husband of father of Ramesh;
(d) Brother's wife or sister's husband of mother of Ramesh;
(e) Great grand mother, grand mother and mother of Ramesh;
(f) Great grand mother, grand mother and mother of wife of Ramesh;
(g) Great grand mother, grand mother and mother of son of wife of Ramesh.
- (9) Where a firm or a company (not being a company in which public are substantially interested) receives from any person or persons any property, being shares of a company (not being a company in which the public are substantially interested)
- (i) without consideration, the aggregate fair market value of which exceeds ₹ 50,000, the whole of the aggregate fair market value of such property;
- (ii) for a consideration which is less than the aggregate fair market value of such property as by an amount exceeding ₹ 50,000, the aggregate fair market value of such property as exceeds such consideration.

However, this provision shall not apply to such property received, where the transfer is not regarded as transfer u/s 47 in the cases of amalgamation, demerger or business reorganisation.

together with exempted capital gain of the old asset shall be treated as short-term capital gain and chargeable to tax as the income of the previous year in which the new asset is transferred.

Tax on unutilised amount. If the amount deposited in Capital Gains Account Scheme is not utilised wholly or partly for all or any of the three purposes mentioned in (d) above within the period specified (three years from the date of transfer) then the amount not so utilised shall be charged as capital gain income of the previous year in which the period of three years shall be date of the transfer of the original asset expires. The assessee shall be entitled to withdraw such amount in accordance with the scheme.

Illustration 21

Mr. A owns an industrial undertaking, which is situated in the urban area of Agra. Mr. A shifted this industrial undertaking to a rural area near Agra. For shifting purposes he had to sell the following assets of the undertaking :

	Plant & Machinery	Land & Building	Furniture
Acquired in	2006	2008	2009
Net Sale Consideration	₹ 20,00,000	₹ 30,00,000	₹ 80,000
Date of Sale	15.9.2015	25.10.2015	22.11.2015
Cost of acquisition w/s 50(2)	₹ 8,80,000	₹ 10,40,000	₹ 35,000
Cost of assets purchased	₹ 10,00,000	₹ 18,50,000	₹ 1,00,000
Date of purchase	31.12.2015	15.1.2016	28.2.2016

If the industrial undertaking is shifted to rural area on 15.3.2016, calculate the capital gains chargeable to tax for the assessment year 2016-17.

Solution

Computation of Capital Gains (for the Assessment Year 2016-17)

	Plant and Machinery	Land and Building	Furniture
Net Sale Consideration	₹ 20,00,000	₹ 30,00,000	₹ 80,000
Less : Cost of acquisition	8,80,000	10,40,000	35,000
	11,20,000	19,60,000	45,000

Amount qualifying for exemption w/s 54G
(₹ 11,20,000 P. & M. + ₹ 19,60,000 L. & B.)

Less : Amount invested in P. & M. and L. & B. within stipulated period (10,00,000 + 18,50,000) exempt w/s 54G

Short-term Capital Gain Chargeable w/s 50(2)
on P. & M. and L. & B.

Add : Short-term Capital Gain chargeable w/s 50(2) on Furniture
(Furniture being not exempt w/s 54G)

Taxable Short-term Capital Gains

(7) Exemption of capital gains on shifting of industrial undertaking from urban area to any Special Economic Zone. Capital gains on shifting of industrial undertaking from urban area to any Special Economic Zone are exempt if the following conditions are satisfied : (Sec. 54GA)

(a) The assessee transfers a long-term or short-term capital asset in the nature of plant, machinery, building or land or any right in building or land. It means exemption is not available on capital gains on transfer of other assets, e.g., furniture.

(b) Such asset should have been used for the purposes of the business of industrial undertaking situated in urban area.

(c) The asset should have been transferred in connection with the shifting of the undertaking to any Special Economic Zone, whether developed in any urban area or any other area.

(d) The amount of capital gains should be utilised within a period of one year before or three years after the date of transfer for the following purposes :

- purchase machinery or plant, acquire land or building or construction of building for the purposes of his business in the Special Economic Zone;
- incurs expenses on shifting the original asset and transferring the establishment of the undertaking to the Special Economic Zone; and
- incurs expenses on such other purposes as may be specified in a scheme framed by the Central Government.

The capital gain shall be exempt to the extent such gain has been utilised for the aforesaid purposes.

(e) Where the amount of capital gain is not appropriated or utilised by the assessee for the purposes aforesaid before the due date for furnishing the return w/s 139(1) it shall be deposited by him on or before the due date of furnishing the return of income in Capital Gains Account Scheme, 1988, and utilised in accordance with the scheme. The amount already utilised for the purposes aforesaid together with the amount so deposited shall be deemed to be the amount utilised for the new asset.

Computation of capital gains on sale of new asset. Where the new asset is transferred within three years of its being purchased, acquired, constructed or transferred, the capital gains shall be computed as under :

(a) Where capital gains are equal or more than the cost of new asset. The cost of the new asset shall be taken as nil and the net consideration shall be the amount of capital gains.

(b) Where capital gains are less than the cost of the new asset. The cost of the new asset shall be the cost as reduced by the amount of capital gains. Accordingly the capital gains shall be the net consideration less cost of the new asset (cost less capital gains on original asset).

Tax on unutilised amount. If the amount deposited is not utilised fully or partly for purposes specified in (i) to (iii) within the period of three years from the date of transfer then the amount not so utilised shall be treated as the capital gain of the previous year in which the period of three years from the date of transfer of original asset expires and the assessee shall be entitled to withdraw the amount in accordance with the aforesaid scheme.

(8) Exemption of long-term capital gains on transfer of residential property. (Sec. 54GB) Who is entitled to exemption. An individual or a Hindu undivided family.

Asset transferred. A long-term capital asset being a residential property (a house or a plot of land), which should be transferred before 1-4-2017.

Conditions for exemption :

- The assessee utilises the net consideration for subscription in equity shares of an eligible company before the due date of furnishing the return of income w/s 139(1). If he invests less than the net consideration in equity shares, the proportionate capital gains shall be exempt.
- The company utilises the money within one year from the date of subscription in equity shares by the assessee for purchase of new plant and machinery.
- If the company does not utilise the consideration, received from issue of shares to the assessee, for purchase of new plant or machinery before the due date of furnishing the return of income by the assessee, the consideration not so utilised shall be deposited in specified bank or institution in notified scheme.
- The proof of deposit in point (3) shall be enclosed with the return of income of the assessee.

Withdrawal of exemption :

- If the amount deposited in specified bank etc. is not utilised within the period mentioned in (2) by the company the proportionate capital gains shall be chargeable to tax of the assessee of the previous year in which the period of one year from the date of the subscription in equity shares by the assessee expires.

EXEMPTED CAPITAL GAINS : AT A GLANCE

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1 Section	2 Asset Transferred	3 Who Entitled	4 Use or Holding Period	5 Investment of	6 New Asset	7 Exemption	8 Prescribed Period for Investment	9 Treatment of Unutilised Amount	10 Sales of New Asset
54	Residential House	Individual or HUF	Exceeding 36 months	Capital Gains	One Residential House in India	Capital Gains Invested	Within one year before or two years after transfer in case of purchase or 3 years after transfer in case of construction.	Deposit in Capital Gains A/c Scheme before due date of furnishing the Return of Income.	If sold within 3 years from the date of purchase/construction, capital gains claimed as exempt assessable to tax together with additional capital gains in the year of transfer of new asset as STCG.
54B	Agricultural Land	Individual or HUF	Used by him or his parent or HUF for 24 months	Capital Gains	Agricultural Land	Capital Gains Invested	Within two years after transfer	—Do—	—Do—
54D	L & B for industrial undertaking	Any Assessee	Used for 24 months	Capital Gains	L & B for industrial undertaking	Capital Gains Invested	Within 3 years after Transfer	—Do—	—Do—
54EC	L.T.C.A.	—Do—	L.T.C.A.	Capital Gain	Bonds of NHA of India or Rural Electrification Corporation Ltd.	The amount of capital gain invested Maximum exemption ₹ 50 lakh	Within 6 months of transfer of original asset	—	If sold within 3 years, exempted capital gain will be deemed to be income from LTCG of the assessee in the year of transfer of the new asset.

INCOME TAX

54F	Any asset other than residential house	Individual or HUF	Should be L.T.C.A.	Net Consideration	One Residential House in India	Proportionate Net Consideration Invested	Same as for sec. 54	—Do—	Same as for Sections 54, 54B, 54D except that under section 54F it will be taxed as LTCG.
54G	P & M or L & B used for industrial undertaking in Urban Area	Any Assessee	May be L.T.C.A. or S.T.C.A.	Capital Gains	P & M or L & B for industrial undertaking in non-urban area or meeting expenses of shifting	Capital Gains Invested	Within one year before or within 3 years after transfer.	—Do—	Same as for sections 54, 54B and 54D.
54GA	—Do—	—Do—	—Do—	—Do—	P & M or L & B for industrial undertaking in Special Economic Zone or meeting expenses of shifting	—Do—	—Do—	—Do—	—Do—
54GB	Residential Property	Individual or HUF	L.T.C.A.	Net Consideration	Equity Shares	Proportionate Net consideration invested	Before due date of furnishing the return of income	Deposit in Specified Bank etc.	If equity-Shares sold within 5 years from the date of acquisition the exempted capital gains shall be assessable to tax in the P.Y. in which shares are transferred or sold.

CAPITAL GAINS

Note : Under all the above sections, amount deposited in Capital Gains Account Scheme, if not utilised within the prescribed time, it will be taxed in the previous year in which the prescribed period expires.
Additional condition for Sec. 54F. The assessee should not own more than one residential house on the date of transfer of original asset and should not purchase or construct within prescribed time any residential house other than the one which is the new asset.

year in which the period of three years expires. Further, the tax-payer will be entitled to withdraw such amount in accordance with the scheme.

Effect of Capital Gains Account Scheme. The effect of the new scheme for deposits is that if the assessee cannot utilise the capital gain for acquisition of new land and buildings for purposes of shifting and re-establishing the business of industrial undertaking on or before the due date for furnishing the return of income he may deposit it under this scheme on or before the due date for furnishing the return of income in order to avail this exemption. After such deposit he must utilise the deposit for acquiring new land and buildings within 3 years from the date of transfer of the original land and buildings.

Illustration 17

X Co. Ltd. has an industrial undertaking in U.P. A building, which was constructed in July 2008 and used for purposes of the industrial undertaking since very beginning is compulsorily acquired by the U.P. Government on July 10, 2015 for ₹ 8,00,000. The W.D.V. of the building on 1.4.2015 was ₹ 4,50,000. The company constructed another building for the purpose of shifting the department which was functioning in the building acquired by the government on 28th May, 2016 at a cost of ₹ 4,00,000.

Find out the capital gains chargeable to tax for the assessment year 2016-17.

Solution

Computation of Capital Gains (for the Assessment Year 2016-17)

Compensation received from the U.P. Government	₹ 8,00,000
Less : W.D.V. of building	4,50,000
Short-term Capital Gains	3,50,000
Less : Cost of another building constructed on 28th May, 2016 for the purpose of the industrial undertaking exempt u/s 54D	4,00,000
Capital Gains	<u>Nil</u>

(4) **Capital gain arising from transfer of a long-term capital asset invested in long-term specified asset.** Where an assessee transfers a long-term capital asset (original asset) and invests the capital gain in the long-term specified assets (new asset), the assessee shall be entitled to exemption as per the following conditions :

1. The new asset should be purchased within six months from the date of transfer of original asset. (Sec. 54EC)
2. If the cost of the new asset is not less than the amount of capital gain, the whole capital gain shall be exempt. If it is less the amount invested shall be exempt.
3. Where the new asset is transferred or converted into money within three years from the date of acquisition, the exempted amount of capital gain shall be chargeable to tax as long-term capital gain of the previous year in which the new asset is transferred.
4. Where the assessee has claimed exemption in respect of new asset under this section on such cost he will not be entitled to deduction u/s 80C.

Maximum investment in specified asset. The investment made in the long-term specified asset by an assessee during the financial year in which the original asset is transferred and in the subsequent financial year shall not exceed ₹ fifty lakh.

Explanation 1. "Long-term specified asset" means any bond redeemable after three years and issued on or after 1.4.2007 by (i) the National Highway Authority of India, or (ii) the Rural Electrification Corporation Limited.

Explanation 2. Where the assessee takes any loan or advance on the security of the long-term specified asset, he shall be deemed to have converted (otherwise than by transfer) such specified asset into money on the date on which such loan or advance is taken.

Illustration 18

Mr. A provides the following data regarding his transaction for the sale of his residential house for assessment year 2016-17. Compute the amount of capital gains to be included in the total income for the assessment year 2016-17 :

House purchased in 1981-82
Sold in November 2015
Purchased another residential house in Sept. 2015
Invested in bonds of NHA of India u/s 54EC in Jan. 2016
The cost inflation index in 1981-82 was 100 and for 2015-16 it was 1081.

Solution

Computation of Capital Gains to be included in the Total Income (for the Assessment Year 2016-17)

Sale proceeds in November 2015	40,00,000
Less : Indexed cost of acquisition (2,50,000 × 1081 ÷ 100)	27,02,500
Capital Gains	12,97,500
Less : Exemption u/s 54 being the cost of the new house purchased within one year prior to the transfer of this house	6,00,000
Less : Exemption u/s 54EC	6,97,500
Capital Gains	<u>₹ 1,97,500</u>

(4A) **Capital gain arising from transfer of a long-term capital asset invested in units of a specified fund** (w.e.f. A.Y. 2017-18)

Provisions of this section are the same as discussed in Sec. 54EC except the asset in which LTCG should be invested.

Asset for investment : A unit or units, issued before 1-4-2019, of such fund as may be notified by the Central Government in this behalf.

(5) **Exemption from tax on long-term capital gains on investment of the consideration in residential house.** Long-term capital gains are exempt under this section if the following conditions are satisfied :

- (i) The assessee is either an individual or a Hindu Undivided Family.
- (ii) The assessee has transferred a long-term capital asset which is not a residential house.
- (iii) The assessee does not own more than one residential house on the date of transfer of original assets other than as mentioned in (iv) below.
- (iv) The tax-payer purchases within a year before or within two years after the date on which the transfer took place or constructs within a period of 3 years after the date of transfer one residential house in India. Construction means completion.
- (v) The income from newly acquired residential house is chargeable under the head 'Income from House Property'.

Quantum of exemption :

- (a) If the cost of the new house that has been purchased or constructed is not less than the net consideration (selling price less expenses) in respect of the capital asset transferred (i.e., the original asset) the entire capital gain arising from the transfer will be exempt from tax.
- (b) If the cost of new house is less than the net consideration in respect of the asset transferred, the exemption from long-term capital gain will be granted proportionately on the basis of investment of net consideration either for purchase or construction of the residential house.
- (c) If the amount of net consideration is not utilised for the purpose of purchase or construction of one residential house as aforesaid, and the net consideration or part of it is deposited by the assessee in Capital Gains Account Scheme on or before the due date for furnishing the return of income he will be entitled to exemption as discussed above.

Withdrawal of exemption and tax on sale of new asset. The exemption shall be withdrawn in the following circumstances:

- (i) Where the assessee purchases or constructs any other residential house (other than the new asset mentioned in (iv) above) within the aforesaid period of two years/three years, the exemption under this provision, if allowed, shall stand forfeited and shall be deemed to be the long-term capital gain of the previous year in which such residential house is purchased or constructed.
- (ii) If a tax-payer transfers the newly acquired residential house (i.e., new asset) within three years of its purchase or construction, then the amount of capital gains exempted on the transfer of the original asset shall be deemed to be the long-term capital gains of the year in which the new asset is transferred.

However, any additional capital gain will be treated as short-term capital gains.

Tax on unutilised amount. If the amount deposited is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in condition (iv) above, then, the amount not so utilised shall be treated as the capital gain of the previous year in which the period of three years from the date of transfer of original asset expires and the assessee shall be entitled to withdraw the amount in accordance with the aforesaid scheme.

Illustration 19

Mr. A sells Jewellery on June 15, 2015, for ₹ 10,10,000 (cost of the jewellery to Mr. A on May 25, 1987, was ₹ 90,000) and brokerage paid on sale of it is ₹ 10,000. On December 15, 2015 he purchased a residential house for ₹ 5,00,000. On June 15, 2015, he owns one residential house. The cost inflation index for 1987-88 was 150 and for 2015-16 it was 1081. Find out the Capital Gain chargeable to tax for the assessment year 2016-17.

(a) Assuming that Mr. A sells the new residential house before December 15, 2018, what will be the taxable capital gain and for which year?

(b) Assuming that Mr. A purchases any other residential house before June 15, 2017 or constructs any other residential house before June 15, 2018, what will be the taxable capital gains and for which year?

Solution

Computation of Taxable Capital Gains

(for the Assessment Year 2016-17)

Sale proceeds of Jewellery	10,10,000	₹
Less : Brokerage on sale	10,000	
Net Sale Consideration	10,00,000	
Less : Indexed cost of acquisition $(90,000 \times 1081 \div 150)$	6,48,600	
Long-term Capital Gains	3,51,400	
Less : Exemption u/s 54F $\left(\frac{5,00,000 \times 3,51,400}{10,00,000} \right)$	1,75,700	
Taxable Capital Gains	1,75,700	

(a) If Mr. A sells the new house before December 15, 2018, then ₹ 1,75,700 being the exemption granted u/s 54F will be treated as Long-term Capital Gain for the year in which the house is sold.

(b) If Mr. A purchases any other residential house before June 15, 2017 or constructs any other residential house before June 15, 2018, then ₹ 1,75,700 exemption u/s 54F will be deemed to be Long-term Capital Gain for the year in which another house is purchased or constructed.

Illustration 20

On 1-8-1977 Mr. Bhandari purchased a plot for ₹ 40,000. The fair market value of the plot on 1-4-1981 was ₹ 80,000. On 3-8-2015 Mr. Bhandari sold the plot for ₹ 15,00,000 and paid brokerage etc. @ 2% on sales consideration. Out of the sale consideration he invested ₹ 7,35,000 in the construction of a residential house which was completed before 30-6-2016.

Compute the taxable amount of capital gains of Mr. Bhandari for the A.Y. 2016-17 assuming that he does not own any other residential house.

Solution

Computation of Taxable Capital Gains

(for the Assessment Year 2016-17)

Sale proceeds	15,00,000	₹
Less : Brokerage @ 2% on Sales	30,000	
Net Sale Proceeds	14,70,000	
Less : Indexed Cost of acquisition of plot $(80,000 \times 1081 \div 100)$	8,64,800	
Long-term Capital Gains	6,05,200	
Less : Exemption u/s 54F :		
Capital Gain \times Cost of new house $= \frac{6,05,200 \times 7,35,000}{14,70,000}$	3,02,600	
Net Sales Consideration	₹ 3,02,600	
Taxable Capital Gains		

(6) **Exemption of capital gains on transfer of assets in cases of shifting of industrial undertaking from urban area.** Capital gains on shifting of industrial undertaking from urban area to non-urban area are exempt if the following conditions are satisfied:

(a) The assessee transfers, a long-term or short-term capital asset in the nature of plant, machinery, building or land. It means exemption is not available on capital gains on transfer of other assets, e.g., furniture.

(b) Such asset should have been used for the purposes of the business of industrial undertaking situated in urban area.

(c) The asset should have been transferred in connection with the shifting of the undertaking to a non-urban area.

(d) The amount of capital gains should be utilised by the assessee within a period of one year before or three years after the date of transfer for the following purposes:

(i) purchasing new machinery or plant and/or acquiring land or building or constructing building for the purposes of his business in the area to which the undertaking is shifted;

(ii) shifting the original asset and transfer of the establishment of the undertaking to such area; and

(iii) incurring expenses on such other purposes as may be specified in a scheme framed by the Central Government.

(e) The newly acquired machinery or plant or land or building must be held by the assessee for three years from the date of their acquisition.

Quantum of exemption. If the aforesaid conditions are satisfied the treatment of capital gain will be as under:

(i) The capital gain arising from such transfer shall be exempt to the extent such gain has been utilised for the aforesaid purposes. It means that if the amount of the capital gain is greater than the cost and expenses incurred in relation to all or any of the purposes mentioned in (i) to (iii) of clause (d) above, the excess of the capital gain is such cost and expenses shall be taxable capital gain. If the amount of the capital gain is equal to, or less than the cost and expenses mentioned in (i) to (iii) of clause (d) above, the entire capital gain will be exempt from tax.

(ii) Where the amount of capital gain is not appropriated or utilised by the assessee towards the cost and expenses incurred in relation to all or any of the purposes mentioned above within one year before the date of transfer of the original capital asset or which is not utilised by the assessee for all or any of the purposes mentioned above before the due date of furnishing the return of income u/s 139(1), it is deposited by him on or before the due date of furnishing the return of income u/s 139(1), in the Capital Gains Account Scheme, 1988, he will be entitled to exemption.

Withdrawal of exemption and tax on sale of new asset. Where the new asset is transferred within three years of its being purchased, acquired, constructed or transferred, the exemption given earlier will be withdrawn and the capital gain arising from the transfer of the new asset

(4) Transfer of Capital Asset to a Firm, AOP or BOI

[Sec. 45(3)]

Where a partner or a member of association of persons or body of individuals transfers any asset by way of capital contribution or otherwise to the firm/association, the gains arising to partner/member shall be chargeable to tax as his income of the previous year in which such transfer takes place.

The amount recorded in the books of firm/association as the value of the asset shall be deemed to be the full value of consideration received or accrued.

Illustration 11

X, Y and Z formed a partnership firm in 2015-16 to carry on a business. X contributes a building as his capital. He purchased this building in May 1984 for ₹ 2,00,000. The fair market value of the building on the date of contribution was ₹ 20,00,000. However, the firm credited his capital account by ₹ 19,00,000. Compute the amount of capital gains. The cost inflation index for relevant years were : 1984-85—125; 2015-16—1081.

Solution**Computation of Capital Gains**

(for the Assessment Year 2016-17)

Amount Credited to the capital account
Less : Indexed Cost $(2,00,000 \times 1081 \div 125)$

Long-term Capital Gains

₹ 19,00,000
17,29,600
₹ 1,70,400

(5) Transfer by a Firm, AOP or BOI

[Sec. 45(4)]

Where a firm or association of persons or body of individuals transfers a capital asset on its dissolution or otherwise to a partner/member the gains arising to firm/association shall be chargeable to tax as its income of the previous year in which such transfer takes place. The fair market value of the asset on the date of such transfer shall be deemed to be the full value of consideration received or accrued.

Illustration 12

A firm is dissolved. Its investments (short-term) costing ₹ 60,000 are taken over by Mr. A, a partner at an agreed price of ₹ 80,000 whereas the fair market value of the investment is ₹ 1,10,000. Compute the amount of capital gains.

Solution**Computation of Capital Gains**

(for the Assessment Year 2016-17)

Fair market value of the asset
Less : Cost

₹ 1,10,000
60,000
₹ 50,000

(6) Compulsory Acquisition of an Asset and Enhanced Compensation

[Sec. 45(5)]

Where an asset is compulsorily acquired under any law the capital gains in such a case shall be dealt with as under :

(a) Capital gains computed at the time of acquisition shall be chargeable to tax of the previous year in which such compensation or part thereof, or such consideration or part thereof, was first received.

(b) The amount of compensation enhanced or further enhanced by any authority or Court, it shall be deemed to be the capital gains of the previous year in which such amount is received by the assessee.

Where compensation is received in pursuance of an interim order of any authority or court, it shall be deemed to be income chargeable of the previous year in which the final order of authority or court is made.

(c) Where in the assessment for any year, the capital gain arising on transfer of capital asset, has been computed under (a) or (b) and subsequently such compensation or consideration is reduced in an appeal, such assessed capital gain of that year shall be recomputed by taking the reduced compensation or consideration.

Explanation : In relation to (b)

(i) The cost of acquisition and the cost of improvement shall be taken to be nil.

(ii) Where the assessee expires or for any other reason the enhanced/further enhanced compensation is received by any other person, the other person shall be liable to pay tax on such amount under the head capital gains.

(7) Transfer of Units

[Sec. 45(6)]

The difference between the re-purchase price of the units referred to in section 80CCB(2) and the capital value of such units shall be deemed to be the capital gains arising to the assessee in the previous year in which such re-purchase takes place or the plan under which the units were purchased is terminated. The capital value of such units means the amount invested by the assessee in the units.

(8) **Computation of Capital Gains on purchase by Company of its own shares or other specified securities**

[Sec. 46A]

Where a company purchases its own shares from a shareholder or other specified securities from its holder, then the capital gains shall be chargeable to tax in the hands of transferor. The capital gains shall be computed as provided in sec. 48 in the year in which such shares or specified securities are purchased by the company.

(9) **Computation of Capital Gains in case of Slump Sale**

[Sec. 50B]

Any gains arising from the slump sale effected in the previous year shall be chargeable as long-term capital gains of the previous year in which the transfer took place. However, gains on slump sale of capital asset being one or more undertakings owned and held by the assessee for not more than 36 months immediately preceding the date of its transfer shall be deemed to be short-term capital gains.

The 'net worth' of an undertaking or division transferred by way of slump sale shall be deemed to be the cost of acquisition and improvement for purposes of sections 48 and 49. It is to be noted that indexed cost of acquisition of long-term capital asset shall not be considered in slump sale.

The assessee shall furnish in the prescribed form along with the return of income, a report of Chartered Accountant, indicating the computation of net worth of the undertaking or division and certifying that the net worth has been correctly arrived at in accordance with the provisions of this section.

'Slump Sale'. It means transfer of one or more undertakings as a result of the sale for a lump-sum consideration without values being assigned to the individual assets and liabilities in such sales.

[Sec. 2(42C)]

Explanation 1. 'Net worth' shall be the aggregate value of total assets of the undertaking or division as reduced by its liabilities as appearing in books of account. However, any change in the value of the assets on account of revaluation of assets shall be ignored for computing the net worth.

Explanation 2. For computing net worth, the aggregate value of total assets shall be :

- in the case of depreciable assets, the W.D.V. of the block of assets determined u/s 43(6) item (d) (See 'Depreciation' W.D.V.);
- in the case of capital asset in respect of which the whole of the expenditure has been allowed as a deduction u/s 35AD—Nil; and
- in the case of other assets, the book value of such assets.

Capital Gains Exempt from Tax

Any profits or gains arising from the transfer of the following assets are exempt from tax, i.e., they will not be included in the income of the assessee for tax purposes :

- Capital gains arising on the transfer of property used for residence.** Any capital gain arising on the transfer of a house or land appurtenant thereto is exempt subject to the following conditions :
 - The building is owned by an individual or Hindu Undivided Family.
 - Such property was being used as residential house.
 - The income of such house property is chargeable under the head 'Income from House Property'.

[Sec. 54]

Solution

Computation of Capital Gains
(for the Assessment Year 2016-17)

Selling price of residential house	15,00,000
Less : Brokerage @ 2%	30,000
Net consideration	14,70,000
Less : Indexed cost of the house (₹ 1,00,000 × 1081 ÷ 100)	10,81,000
Capital Gains	3,89,000

Less : Cost of the new flat purchased :

Cost	1,40,000
Registration charges	6,000
Brokerage	2,800
Taxable Capital Gains	1,48,800
	<u>2,40,200</u>

If the cost of the new flat is ₹ 4,00,000, taxable capital gains nil, as the cost of the new flat is more than capital gains.

(2) **Capital gain arising from the transfer of agricultural land.** Any capital gain arising on the transfer of agricultural land situated in an urban area is exempt subject to the following conditions : (Sec. 54B)

- The agricultural land is owned by an individual or a HUF.
- The agricultural land was, in the two years immediately preceding the date of transfer, being used either by the assessee or his parent or a H.U.F. (as owner or otherwise) for agricultural purposes.
- The assessee has purchased within a period of two years from the date of transfer (and not before sale) any other land for agricultural purposes.

Quantum of exemption :

- The capital gain arising from the transfer of such agricultural land is exempt to the extent of the cost of the new agricultural land purchased.
- If the amount of capital gain is not utilised by the assessee for acquisition of new agricultural land before due date for furnishing the return of income, it is deposited by him on or before the due date of furnishing the return of income in an account opened under the Capital Gains Account Scheme, 1988, he will be entitled for exemption.

Withdrawal of exemption and tax on sale of new land. If this new land is transferred within 3 years of its purchase the exemption given earlier will be withdrawn. The capital gain arising from the transfer of the new land together with exempted capital gain of the old land shall be treated as short-term capital gain and chargeable to tax as the income of the previous year in which the new land is transferred.

Tax on unutilised amount. If the amount deposited is not fully utilised for acquiring the new agricultural land within two years, the amount not so utilised shall be treated as the capital gain of the previous year in which the period of two years from the date of transfer of the original agricultural land expires. Further, the tax-payer will be entitled to withdraw such amount in accordance with the scheme.

Effect of Capital Gains Account Scheme. The effect of the new scheme for deposits is that if the assessee cannot utilise the capital gain for acquisition of new agricultural land on or before the due date for furnishing the return of income he may deposit it under this scheme upto the due date for furnishing the return of income in order to avail this exemption. After such deposit he must utilise the deposit for acquiring new agricultural land within 2 years from the date of transfer of the old agricultural land.

Capital gains on transfer of agricultural land situated in urban area shall be exempt if the following conditions are satisfied :

- The owner of the agricultural land is an individual or a HUF.
- It was, in the two years immediately preceding the date of transfer, being used by the HUF or individual or his parents.
- The transfer of land is by way of compulsory acquisition under any law, or a transfer the consideration for which is determined by the Central Government or the R.B.I.

Illustration 16

Agricultural land situated in Agra purchased in 1984-85 for ₹ 50,000 sold for ₹ 8,00,000 on 1.5.2015. The assessee purchased another piece of agricultural land on 1.8.2015 for ₹ 2,70,000. Find out the capital gain chargeable to tax for the assessment year 2016-17. The cost inflation index in 1984-85 was 125 and in 2015-16 it was 1081.

Solution

Computation of Capital Gain Chargeable to Tax
(for the Assessment Year 2016-17)

Consideration received	8,00,000
Less : Index cost of acquisition (50,000 × 1081 ÷ 125)	4,32,400
	<u>3,67,600</u>

Less : Cost of new agricultural land purchased during the P.Y.
Capital Gain Chargeable to Tax

2,70,000

97,600

(3) **Capital gain on compulsory acquisition of lands or buildings.** Any capital gain arising on the transfer by way of compulsory acquisition under any law, of land or building is exempt subject to the following conditions :

- The land or building should be used by the assessee for the purpose of an industrial undertaking.
- The assessee has used this land or building for the purposes of the business of industrial undertaking for at least two years immediately preceding the date on which the transfer took place.
- The assessee has within a period of three years after such transfer purchased any other land or building or constructed any other building for the purpose of shifting or re-establishing the industrial undertaking or setting up another industrial undertaking in that building.

Quantum of exemption :

- If the amount of capital gain is less than or equal to the cost of new land or building, the entire amount of capital gain will be exempt from tax. If the amount of capital gain exceeds the cost of acquisition or construction, only the excess shall be chargeable to tax.
- If the amount of the capital gain is not utilised by the assessee for the purchase or construction of the new land and buildings before the due date of furnishing the return of income, it is deposited by him on or before the due date of furnishing the return of income in an account opened under the Capital Gains Account Scheme, 1988, he will be entitled for exemption.

Withdrawal of exemption and tax on sale of new asset. If the new asset (land or building) is transferred within a period of three years of its purchase the exemption given earlier will be withdrawn. The old exempted gains and new capital gains (if any) arising on the transfer of the asset shall be treated as short-term capital gain and chargeable to tax as the income of the previous year in which the new asset is transferred.

Tax on unutilised amount. If the amount deposited is not fully utilised for the purchase or construction of new land and buildings for the purposes of shifting or re-establishing the business of industrial undertaking within a period of three years after the transfer of the previous land and buildings, the amount not so utilised shall be treated as the capital gain of the previous

Solution**Computation of Taxable Capital Gains**
(for the Assessment Year 2016-17)

Sales Proceeds of Land ₹ 15,00,000
Less : Expenses incurred @ 2% of Sales 30,000
Net Sales 14,70,000

Less : Indexed Cost of acquisition
FMV on 1.4.1981 (1,00,000 × 1081 + 100)

Taxable Capital Gains

₹ 10,81,000

Note : Actual cost in 1978 is ₹ 50,000 and fair market value on 1.4.1981 is ₹ 1,00,000, which is more than actual cost. Hence, fair market value on 1.4.1981 has been considered for the purpose of indexing the cost.

(7) **Cost of acquisition of an asset acquired by the previous owner before 1st April, 1981**, **any mode u/s 49(1)**. If the capital asset (other than asset on which depreciation has been allowed) became the property of the assessee by any of the modes specified in section 49(1) and the capital asset became the property of the previous owner before 1st April, 1981, the cost of acquisition of the asset may, at the option of the assessee, be taken to be any one of the following :

- (i) the cost of acquisition of the asset to the previous owner; or
- (ii) the fair market value of the asset on 1st April, 1981.

[Sec. 55(2)(b)(i)]

Illustration 7

X purchased a residential house for ₹ 1,50,000 in 1978-79. The fair market value on 1.4.1981 was ₹ 2,00,000. He gifted the house to Y in 1984-85. The fair market value of the house on the date of gift was ₹ 4,20,000. Z filed a suit on Y claiming the title to the gifted property. Y paid ₹ 50,000 to Z for compromising the suit. Y sold the house on 10th December, 2015 for ₹ 23,00,000. Determine the chargeable capital gains in the case of X and Y. The cost inflation indices in, 1981-82, 1984-85 and 2015-16 were 100, 125 and 1081 respectively.

Solution

X has transferred the property to Y as a gift. The transaction is not regarded as a transfer. Hence, there is no chargeable capital gain, in the hands of X.

Y has sold the property; the capital gains would be computed as under :

Sale consideration

₹ 23,00,000

Less : Indexed cost of acquisition to X on 1.4.1981

(2,00,000 × 1081 + 100)

Chargeable Capital Gains

₹ 1,38,000

- Notes : 1. Mr. Y has received the house as a gift, hence the fair market value on the date of gift has no relevance for the computation of capital gains. The cost of acquisition of the donor is taken as the cost to the donee.
2. The amount paid to Z for compromising the suit cannot be treated as the cost of acquisition of the asset. It is cost of improvement thereto. The payment is made for the improvement of the title to the asset, which is not deductible to arrive at the capital gains. [CIT vs. Indira (1979) 119 ITR 837 (Mad)]

3. While computing capital gains arising on transfer of a capital asset acquired by assessee under gift or will, indexed cost of acquisition has to be computed with reference to year in which previous owner first held asset and not year in which assessee became owner of asset. [CIT vs. Manjula J. Shah (2012) 204 Taxman 691 (Bom)]

Please note, the Commissioner (Appeals) as well as the Tribunal allowed the assessee's claim.

(8) **Cost of acquisition of shares in an amalgamated Company**. If an assessee is given shares of the amalgamated company which is an Indian Company in lieu of his shares in the amalgamating company, the cost of acquisition of such shares shall be his cost of shares in the amalgamating company. [Sec. 49(2)]

(9) **Cost of Shares in Resulting Company**. The cost of acquisition of shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger. [Sec. 49(2)(c)]

Explanation. 'Net worth' means the aggregate of the paid up share capital and general reserves as appearing in the books of account of the demerged company immediately before demerger.

(10) **Cost of Shares in Demerged Company**. The cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as arrived at under (9). [Sec. 49(2)(d)]

(11) The cost of equity share or shares allotted to a shareholder of a recognised stock exchange in India under a scheme for corporatisation or demutualisation approved by the SEBI shall be the cost of acquisition of his original membership of the exchange. [Sec. 55(2)(ab)]

(12) **Cost of stock options to employees**. Where capital gain arises from the transfer of specified security or sweat equity shares, the cost of acquisition of it shall be the fair market value which has been taken into account while computing the value of perquisite u/s 17(2). [Sec. 49(2)(AA)]

(12A) **Cost of acquisition of capital asset being rights of a partner in the Limited Liability Partnership**. Where a private company or unlisted public company is converted into a limited liability partnership, the cost of acquisition of above mentioned capital asset to the partner shall be deemed to be the cost of acquisition of shares in the company immediately before its conversion. [Sec. 49(2)(AAA)]

(12B) **Cost of acquisition of capital asset being a unit of a business trust**. [Sec. 49(2)(AC)] Where the aforesaid asset became the property of the assessee in consideration of a transfer of share of a special purpose vehicle, the cost of acquisition of the unit shall be deemed to be cost of share.

(13) **Cost of acquisition in case of advance money received as a result of previous negotiation for transfer with someone else**. (Section 51) where any capital asset was on any previous occasion the subject of negotiation for its transfer, any advance or other money received and retained by the assessee in respect of such negotiation shall be deducted from the cost for which the asset was acquired or the written-down value, or the fair market value, as the case may be, in computing the cost of acquisition.

However, where such advance is received and forfeited on or after 1.4.2014 it shall be deemed to be the income of the assessee and chargeable under the head 'Income from Other Sources'. It shall not be deducted from the cost etc. of the asset. [Sec. 49(2)(AE)]

(14) **Cost of shares in case of business reorganisation of a co-operative bank**. The cost of shares shall be as discussed in points (8), (9) and (10) [Secs. 49(2), 49(2C) and 49(2D)]. [Sec. 49(2)(AF)]

(15) **Property received without consideration or for inadequate consideration** : [Sec. 49(4)]

- (i) The cost of acquisition of immovable property shall be the stamp duty value or value determined u/s 50C.
- (ii) The cost of acquisition of property other than immovable property shall be the fair market value determined for income tax purposes u/s 56. (See chapter 'Income from Other Sources').

(16) **Cost of an asset declared and assessed under the Income Declaration Scheme, 2016** (w.e.f. A.Y. 2017-18) [Sec. 49(5)]

The cost of acquisition of the aforesaid asset shall be deemed to be the fair market value of the asset which has been taken into account for the purposes of the said scheme.)

Cost of Improvement

The cost of improvement means capital expenditure incurred in making additions and alterations in a capital asset.

Cost of any improvement : [Sec. 49(2)(AG)]

- (i) in relation to a capital asset being goodwill of a business (or profession w.e.f. A.Y. 2017-18), or a right to manufacture, produce or process any article or thing, right to carry on any business shall be taken to be nil; and

- (ii) in relation to any other capital asset :
 (a) such expenditure incurred prior to 1st April, 1981 shall not be considered as cost of improvement and will be ignored.
 (b) the capital cost incurred on additions and alterations on or after 1st April, 1981 shall be treated as cost of improvement and shall be deducted in computing capital gains.

Selling Expenses

Expenditure incurred wholly and exclusively in connection with transfer of a capital asset is allowed while computing the capital gains. Such expenses may include advertisement expenses, commission to the broker, registration fee borne by the assessee etc.

If vacant possession is to be given as part of agreement of sale, the payment of consideration to tenants for vacating the property is deductible as selling expenses.

Net consideration. Full value of consideration less selling expenses = Net Consideration.

Illustration 8

Mr. A purchased a house in Delhi in 1980 for ₹ 1,00,000 and added two rooms and a verandah in the house at a cost of ₹ 30,000 in 1980. He made improvements in the house and added two bathrooms at a cost of ₹ 50,000 in May 1994.

Mr. A sells the house on 1st July, 2015 for ₹ 25,00,000. Find out the capital gain or loss if the fair market value of the house on 1st April, 1981 was ₹ 2,00,000. The cost inflation index in 1981-82, 1994-95 and 2015-16 were 100, 259 and 1081 respectively.

Solution

Computation of Capital Gain or Loss

(for the Assessment Year 2016-17)

Sale Proceeds		25,00,000
Indexed cost of acquisition (2,00,000 × 1081 ÷ 100)	21,62,000	
Indexed cost of improvement (50,000 × 1081 ÷ 259)	2,08,687	
		<u>23,70,687</u>
Capital Gains		<u>1,29,313</u>

Illustration 9

X purchases a house property for ₹ 36,000 on 10th May, 1964. He gets the first floor of the house constructed in 1968-69 by spending ₹ 80,000. He dies on 12th September, 1984. The property is transferred to Mrs. X by his Will. Mrs. X spends ₹ 40,000 during 1985-86 for renewals/reconstruction of the property. Mrs. X sells the house property for ₹ 18,00,000 on 15th March, 2016 (brokerage paid by Mrs. X is ₹ 18,000). The fair market value of the house on 1st April, 1981, is ₹ 1,20,000. Find out the amount of capital gains chargeable to tax for the assessment year 2016-17.

The cost inflation index for 1981-82—100, 1985-86—133 and 2015-16—1081.

Solution

Computation of Capital Gains

(for the Assessment Year 2016-17)

Sale consideration	₹	
Less : Expenditure on transfer		
Indexed cost of acquisition	18,000	
1,20,000 × 1081 ÷ 100		
Indexed cost of improvement	12,97,200	
40,000 × 1081 ÷ 133		
Capital Gains	₹	<u>3,25,113</u>
		<u>16,40,313</u>
		<u>1,59,687</u>

COMPUTATION OF CAPITAL GAINS IN SPECIAL CASES

(i) Capital Gains in case of damage or destruction of Capital Asset

[Sec. 45(1A)]

Where any person receives at any time during the previous year any money or other asset under any insurance from an insurer on account of damage to or destruction of, any capital asset, as a result of :

- flood, typhoon, hurricane, cyclone, earthquake, or other convulsion of nature; or
- riot or civil disturbance; or
- accidental fire or explosion; or
- action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),

then, any profits or gains arising from receipt of such money or other asset shall be chargeable to tax under the head "Capital Gains". The income shall be deemed to be the income of the previous year in which such money or other asset is received. For computing capital gains, the value of any money or the fair market value of asset received on the date of receipt shall be deemed to be the full value of consideration received or accruing as a result of the transfer of damaged asset.

(2) Transfer by way of Conversion of Capital Assets into Stock-in-trade

[Sec. 45(2)]

The profits or gains arising from the transfer by way of conversion by the owner of a capital asset into stock-in-trade of a business carried on by him, shall be charged to tax under the head 'Capital Gains' in the year in which such stock is sold or otherwise transferred by him. For the purpose of computing the Capital gain in such cases the fair market value of the capital asset on the date on which it was converted into stock-in-trade shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. However, the excess of actual sale consideration over the fair market value on the date of conversion is deemed to be business profit.

Illustration 10

Siddharth converts his plot of land purchased in the year 1981-82 for ₹ 40,000 into stock-in-trade on 31st March, 2015. The fair market value on 31st March, 2015 is ₹ 4,50,000. The stock-in-trade is sold for ₹ 4,90,000 in the month of May 2015. Find out the taxable income, if any, and if so under which 'head of income' and for which 'assessment year'? The cost inflation index in 1981-82 was 100 and in 2014-15 it was 1024.

Solution

Computation of Taxable Income

1. Business Income (4,90,000 - 4,50,000)		₹	40,000
2. Long-term Capital gain :			
Fair market value of land on 31-3-2015	4,50,000		
Less : Indexed cost of acquisition (40,000 × 1024 ÷ 100)	4,09,600		
Taxable Income	₹		<u>80,400</u>

The income will be assessed in the Assessment Year 2016-17.

Notes : 1. Under section 45(2), the fair market value of the asset converted into stock on the date of conversion shall be deemed to be the full value of the consideration and the excess of this consideration over the indexed cost of acquisition of the asset shall be capital gain and taxable under the head 'Capital Gains'.

2. The excess of actual sale consideration over the fair market value on the date of conversion is deemed to be business profit. Hence, here this excess is ₹ (4,90,000 - 4,50,000) = ₹ 40,000.

(3) Transfer of Securities held with Depository

[Sec. 45(2A)]

Where any person has had at any time during the previous year any beneficial interest in securities, then, any profits or gains arising from transfer made by the Depository or participant of such beneficial interest in respect of securities shall be chargeable to tax as the income of the beneficial owner of the previous year in which transfer took place and not of the Depository who is deemed to be the registered owner of Securities.

Less : Amount received from the insurance company
Amount received from the sale of scrap
Loss deemed to be short-term capital loss
u/s 50(2) for the Assessment Year 2016-17

2,00,000
10,000

2,10,000

Note : Section 50(2) provides that where any block of assets ceases to exist for the reason that all the assets in the block are transferred during the previous year, the income received by such transfer shall be deemed to be short-term capital gain. Naturally the loss incurred in such a case shall be deemed to be short-term capital loss. It is assumed in this case, that this plant was the only asset in this block of assets, and hence the loss has been deemed to be short-term capital loss u/s 50(2).

Illustration 3

The W.D.V. of a Block of Assets consisting of factory building at the beginning of the financial year 2015-16 (P.Y.) is ₹ 10,00,000 and the assessee acquires a godown in May 2015 for ₹ 2,00,000 and then sells all the assets in the block in December 2015 for ₹ 9,00,000. Calculate the capital gain or loss for the Assessment Year 2016-17 under section 50(2).

Solution

Computation of Capital Gain or Loss (for the Assessment Year 2016-17)

W.D.V. at the beginning of the P.Y. 2015-16	10,00,000
Add : Cost of godown acquired during the P.Y. 2015-16	2,00,000
Actual Cost of acquisition	12,00,000
Less : Sale Proceeds of all the assets of that block sold during the year	9,00,000
Loss Deemed to be short-term capital loss u/s 50(2) for the A.Y. 2016-17	₹ 3,00,000

(d) **Computation of Capital Gains in case of depreciable assets on which depreciation has been claimed on the basis of Straight Line Method :**

Where an aforesaid asset is sold, the capital gains shall be computed keeping in view the provisions of section 48 (Computation of capital gains) and section 49 (Cost of acquisition).

The cost of acquisition of such asset shall be the W.D.V. as adjusted. It means the W.D.V. plus balancing charge or W.D.V. less terminal depreciation allowed in the year of transfer shall be taken as the cost of acquisition of the asset.

Full value of Consideration : (i) Full value of consideration means the price at which an asset is sold.

(ii) In the case of exchange, the fair market value of the property granted in exchange on the date of exchange will be the full value of consideration.

(iii) **Full value of Consideration of shares etc. received under ESOP in case of gift etc.** Where shares, debentures or warrants received under Employees' Stock Option Plan or Scheme are transferred under a gift or an irrevocable trust, the market value on the date of transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer for computation of capital gains.

(iv) **Determination of full value of consideration of land or building or both.** (Sec. 50C)

Where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a State Government ("stamp valuation authority") for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purposes of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer.

Where (a) the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the stamp valuation authority exceeds the fair market value of the property as on the date of transfer;

(b) the value so adopted or assessed or assessable by the stamp valuation authority has not been disputed in any appeal or revision or no reference has been made before any other authority, court or the High Court,

the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer.

Where the value ascertained by Valuation Officer : (i) is less than the value adopted for stamp duty purposes, the A.O. may take such fair market value to be the full value of consideration; (ii) exceeds the value adopted or assessed or assessable by the stamp valuation authority, the value so adopted or assessed or assessable by the stamp valuation authority shall be taken as the full value of the consideration received or accruing as a result of the transfer.

Explanation. Expression "assessable" means the price which the stamp valuation authority would have adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

Determination of full value of consideration where it is not ascertainable (Sec. 50D)

Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined, then, for computing chargeable capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration received or accruing as a result of such transfer.

COST OF ACQUISITION

Cost of acquisition of an asset is the value for which it is acquired by the assessee. It means that whatever cost is incurred for getting an asset plus all expenses incurred to acquire it is the cost of acquisition. Interest paid on money borrowed for the purchase of a capital asset would constitute part of the cost of acquisition, provided such interest has not been deducted under any other provision.

In the following cases the cost of acquisition is taken as a notional figure :

(1) **Cost to the Previous owner deemed to be the cost of acquisition.** If the asset is acquired by an assessee in the following circumstances the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it. It will be increased by the cost of any improvement of the assets incurred by the previous owner or the assessee. [Sec. 49(1)]

Circumstances when cost of previous owner is taken :

- on any distribution of asset on the total or partial partition of a Hindu undivided family; or
- under gift or Will; or
- by succession, inheritance or devolution; or
- on any distribution of assets on the liquidation of a company; or
- under a transfer to a revocable or an irrevocable trust; or
- on transfer by a parent company to its Indian subsidiary company which is wholly owned by the parent company; or
- on the transfer by a subsidiary company to its Indian holding company which owns the whole of the share capital of the subsidiary company; or
- on the transfer of capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company; or
- on transfer of shares of an Indian company by amalgamated foreign company to the amalgamated foreign company; or
- on the transfer of capital asset in a scheme of amalgamation of a banking company with a banking institution sanctioned and brought into force by the Central Government; or
- when any of the members of a H.U.F. converts his self-acquired property into H.U.F. property (The cost of the property to the H.U.F. will be taken as the cost of the property to the individual converting the property); or
- on transfer of capital asset by the predecessor co-operative bank to the successor co-operative bank in a business reorganisation; or
- on transfer of shares in the predecessor co-operative bank in lieu of shares allotted in the successor co-operative bank in a business reorganisation; or

- (n) on transfer of capital asset by a private company or unlisted public company at the time of conversion into a limited liability partnership; or
- (o) on transfer of capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company; or
- (p) on succession of a sole proprietary concern by a company.

The previous owner of the asset means the last previous owner who acquired the asset by any means *other than* those stated from (a) to (p) above.

(2) **Cost of Share or Security** : (i) Where share or security was acquired before 1st April 1981, the cost of acquisition will be taken the actual cost or fair market value on 1st April, 1981, whichever is beneficial to the assessee.

(ii) If it is acquired after 31st March, 1981, the actual cost will be the cost of acquisition.

(3) **Cost of Bonus Shares**. The cost of bonus shares or security which is received by the assessee without any payment on the basis of his holding any financial asset will be as under:

(i) Where bonus share or security was received prior to 1st April, 1981, the fair market value on 1st April, 1981;

(ii) In any other case—Nil.

Example 1. The assessee purchased 1,000 equity shares in 1976 for ₹ 15,000 and the company issued 500 bonus shares to him in 1979. If the fair market value of shares (1,500) on 1.4.1981 was ₹ 30,000 he may opt ₹ 20 per share as the cost of acquisition of original shares and bonus shares. If the fair market value of shares (1,500) on 1.4.1981 was ₹ 12,000 he may opt ₹ 15 per share as the cost of acquisition of original shares and ₹ 8 per share of bonus shares.

Example 2. The assessee purchased 1,000 shares in 1975 for ₹ 20,000. The F.M.V. of the shares on 1.4.1981 was ₹ 30,000. 250 bonus shares are issued to him in 1987-88. The cost of original shares will be ₹ 30,000 and of bonus shares—Nil.

(4) **Cost of acquisition of Goodwill, etc.** The cost of acquisition in relation to (a) goodwill of business (or profession *u.e.f.* A.Y. 2017-18), a trademark or brand name associated with a business; (b) a right to manufacture, produce or process any article or thing, right to carry on any business; (c) tenancy rights; (d) stage carriage permits; or (e) loom hours shall be determined as under :

(i) If the asset is purchased from a previous owner—the amount of purchase price;

(ii) In any other case—Nil. However this will not cover the cases specified in section 49(1). [Sec. 55(2)(a)]

(iii) *Case covered under section 49(1).* Cost to the previous owner. [Sec. 55(2)(a)]

(5) **Cost of acquisition of Right Issue.** In the case where an assessee by holding a share or any other security becomes entitled to subscribe additional shares or security (known as financial asset) on the basis of right issue, the cost of acquisition shall be :

(i) On the basis of entitlement if the assessee subscribed to right issue—Amount actually paid to acquire it.

(ii) If the assessee renounced the right in favour of any other person—Nil.

(iii) If the assessee has purchased the right to subscribe for the additional shares/security (financial asset)—Purchase price paid to purchase the right *plus* the amount paid to the company for acquiring the rights shares/security. [Sec. 55(2)(a)]

Example (i)

Mr. X holds 1,000 ₹ 10, units of a Mutual Fund. The M.F. has announced rights issue of 20% of original units held by a person @ ₹ 13 per unit. X exercises his right for his entire holding. Find out his cost of acquisition of rights units.

Solution

Mr. X is entitled to 200 units of rights issue on his holding of 1,000 units.

Hence, cost of acquisition of 200 units @ ₹ 13 per unit = ₹ 2,600.

Example (ii)
Mr. X purchased from Mr. Y the 'rights' to subscribe for 200 rights units of a Mutual Fund @ ₹ 2 per unit and paid ₹ 13 per unit to the M.F. Find out the cost of acquisition of 200 rights units.

Solution

Amount paid to Mr. Y to purchase the right for subscribing 200 rights units @ ₹ 2 per unit ₹ 400
Amount paid to the M.F. for 200 units @ ₹ 13 per unit 2,600
Cost of acquisition of 200 Rights Units 3,000

Illustration 4

Mr. Rām, an investor, held 1,000 equity shares in a company. The company offered him 500 new equity shares as rights shares at a concessional price on 10th Oct., 2015. He renounced his rights for ₹ 75,000 on 20th Oct., 2015. The market value of the equity shares before the issue of rights shares was ₹ 400 per share and after such issue it came down to ₹ 350 per share. Compute the amount of capital gains, if any, on the renoucement of his rights.

Solution

Computation of Capital Gains
(for the Assessment Year 2016-17)

Amount received on the renoucement of rights ₹ 75,000
Less : Cost of acquisition of rights Nil

Short-term Capital Gains ₹ 75,000

Note : The capital gain is a short-term capital gain because it has arisen on account of transfer of right to subscribe the new issues. Such right was held by him for less than 12 months before transfer.

Illustration 5

Mr. Kishore purchases 500 Equity Shares of ₹ 10 each for ₹ 40 per share in 1987-88 and incurs an expenditure of ₹ 400 on brokerage. In May 1991 he receives 100 bonus shares. In September 2015 he gets 100 rights shares for ₹ 20 each. He sold 100 bonus shares in November 2015 at ₹ 90 per share and 100 rights shares @ ₹ 30 per share in December 2015. Find out the total capital gains for the assessment year 2016-17. The cost inflation index for 1991-92 is 199 and for 2015-16 it is 1081.

Solution

Computation of Capital Gains
(for the Assessment Year 2016-17)

Sale Proceeds of 100 Bonus Shares 9,000
Less : Cost of 100 Bonus Shares Nil
Long-term Capital Gains 9,000

Sale Proceeds of 100 Rights Shares @ ₹ 30 each 3,000
Less : Cost of 100 Rights Shares @ ₹ 20 each 2,000
Short-term Capital Gains 1,000

Total Capital Gain = ₹ 9,000 + 1,000 = ₹ 10,000

(6) **Cost of acquisition of a Capital asset acquired before 1.4.1981.** Where the capital asset became the property of the assessee before 1st April, 1981, the cost of acquisition of the asset may, at the option of the assessee, be taken to be any one of the following :

(i) the cost of the asset to the assessee; or [Sec. 55(2)(b)(i)]
(ii) the fair market value of the asset on 1st April, 1981.

Illustration 6

Mr. Krishna purchased a piece of Land on 4-1-1978 for ₹ 50,000. This Land was sold by him on 2-9-2015 for ₹ 15,00,000. The market value of Land as on 1-4-1981 was ₹ 1,00,000. Expenses on sale were 2% of transfer price. Compute the Capital Gain (taxable) for the assessment year 2016-17. Assume Cost Inflation Index for 2015-16 to be 1081.

- (xi) Any transfer of foreign currency bonds or Global Depository Receipts (specified in section 115AC) held by a non-resident to another non-resident, where the transfer is made outside India.
- (xii) Any transfer of land (under a scheme prepared and sanctioned u/s 18 of the Sick Industrial Companies (Special Provisions) Act, 1985) by a Sick Industrial Company which is running by its Workers' Co-operative. The exemption will be allowed if the land is transferred during the period commencing from the previous year in which the company becomes a Sick Industrial Company and ending with the previous year in which the entire net worth of the company becomes equal to or exceeds the accumulated losses.
- (xiii) Where a firm is succeeded by a Company in the business carried on by it as a result of which the firm sells or otherwise transfers any capital asset or intangible asset to the company. It will not be regarded as transfer provided the prescribed conditions are satisfied.
- (xiv) Where any capital asset is transferred to a company in the course of corporatisation or demutualisation of a recognised stock exchange in India as a result of which an AO or BOI is succeeded by such company, it shall not be regarded as transfer provided the corporatisation or demutualisation of the exchange is carried out in accordance with a scheme approved by the SEBI.
- Note :* Demutualisation is a process that changes a mutual or co-operative association into a public company converting the interest of members into shareholdings.
- (xv) Any transfer of a capital asset being a membership right held by a member of a recognised stock exchange in India for acquisition of shares and trading or clearing rights acquired by such member in that exchange in accordance with a scheme of demutualisation or corporatisation which is approved by the SEBI, it shall not be regarded as transfer.
- (xvi) Where a sole proprietary concern is succeeded by a company in the business carried on by him as a result of which the concern sells or otherwise transfers any capital asset or any intangible asset to the company, it will not be regarded as transfer provided the prescribed conditions are satisfied.
- (xvii) Any transfer in a scheme for lending of any securities under an agreement or arrangement which the assessee has entered into with the borrower of such securities. The transfer should be as per the guidelines issued by the Securities and Exchange Board of India or the Reserve Bank of India.
- (xviii) Any transfer of capital asset in a demerger by the demerged company to the resulting company, if the resulting company is an Indian company.
- (xix) Any transfer of shares held in an Indian company in a demerger, by the demerged foreign company to the resulting foreign company, if :
(a) the shareholders holding not less than 75% in value of shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; and
(b) such transfer does not attract tax on capital gains in the country, in which the demerged foreign company is incorporated.
- (xx) Any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company if the transfer or issue is made in consideration of demerger of the undertaking.
- (xxi) Any transfer of a capital asset by the predecessor co-operative bank to the successor co-operative bank in a business reorganisation.
- (xxii) Any transfer of a capital asset being shares held by the shareholder in the predecessor co-operative bank in lieu of shares allotted to him in the successor co-operative bank in a business reorganisation.
- (xxiii) Any transfer by way of conversion of bonds purchased in foreign currency into shares or debentures of any company.
- (xxiv) Any transfer of a capital asset in a transaction of reverse mortgage under a scheme notified by the Central Government.

- (xxv) Where a private company or unlisted public company is converted into a limited liability partnership and as a result of which the company transfers its capital asset or intangible asset to the partnership or shareholder transferee shares held in such company, it will not be regarded as transfer provided the prescribed conditions are satisfied.
- (xxvi) Any transfer of Government Security carrying a periodic payment of interest, made outside India through an intermediary dealing in settlement of securities by a non-resident to another non-resident.
- (xxvii) Any transfer of share of a special purpose vehicle to a business trust in exchange of units allotted by that trust to the transferee.
- The following shall also not be regarded as transfer u/s 47, w.e.f. A.Y. 2017-18 :
(1) Any transfer of Sovereign Gold Bond issued by the Reserve Bank of India, by way of redemption by an individual.
(2) Any transfer by a unit holder of a capital asset, being a unit or units held by him in the consolidating plan of a mutual fund scheme, made in consideration of the allotment to him of a capital asset, being a unit or units in the consolidated plan of that scheme of the mutual fund.
- (c) Computation of Capital Gains**
- The income chargeable under the head 'Capital Gains' shall be computed as under : (Sec. 48)
- (a) **Computation of short-term capital gains.** Deduct from the full value of the consideration received or accruing as a result of the transfer of the capital asset the following amounts :
(i) the cost of acquisition of the capital asset;
(ii) the cost of any improvement thereto; and
(iii) expenditure incurred wholly and exclusively in connection with such transfer.
This may be explained in the form of equation as under :
$$\text{Capital Gain} = \text{Full value of consideration} - (\text{Cost of acquisition} + \text{Cost of improvement} + \text{Selling expenses}).$$
- However, the amount paid as securities transaction tax shall not be allowed as a deduction.
- Set-off of short-term capital loss.** If there is short-term capital loss on transfer of a short-term capital asset, such loss can be set-off against any other short-term capital gain or long-term capital gain.
- (b) **Computation of long-term capital gains.** Deduct from the full value of consideration :
(i) indexed cost of acquisition of the asset;
(ii) indexed cost of any improvement of the asset; and
(iii) expenditure incurred in connection with transfer of the asset.
However, the amount paid as securities transaction tax shall not be allowed as a deduction.
- Exception.** The provisions relating to indexed cost of acquisition and indexed cost of improvement will not apply to the long-term capital gains arising from the transfer of long-term capital asset being bonds or debentures. However, the benefit of indexation will be available on (i) indexed bonds issued by the Government [(ii) Sovereign Gold Bond—w.e.f. A.Y. 2017-18].
- Set-off of long-term capital loss.** If there is long-term capital loss on transfer of a long-term capital asset, such loss can be set-off only against any other long-term capital gain.
- Explanation :**
(1) Indexed cost of acquisition shall be computed as under :
$$\text{Cost} \times \text{Cost inflation index for the year in which the asset is sold} \\ \text{Cost inflation index for the first year in which the asset was held} \\ \text{or cost inflation index on 1.4.1981, whichever is later}$$

(2) Indexed cost of improvement shall be computed as under :
$$\text{Cost of improvement} \times \text{Cost inflation index for the} \\ \text{year in which the asset is sold}$$

$$\text{Cost inflation index for the year in which the} \\ \text{improvement to asset took place}$$

(3) 'Cost inflation index' in relation to P. Y. means the index as the Central Government may, having regard to 75% of the average rise in the consumer price index (urban) for the immediate preceding P. Y., notify in this behalf.

The Government have notified the following 'Cost Inflation Index':

Sl. No.	Financial Year	Cost Inflation Index	Sl. No.	Financial Year	Cost Inflation Index
1.	1981-82	100	19.	1999-2000	389
2.	1982-83	109	20.	2000-01	406
3.	1983-84	116	21.	2001-02	426
4.	1984-85	125	22.	2002-03	447
5.	1985-86	133	23.	2003-04	463
6.	1986-87	140	24.	2004-05	480
7.	1987-88	150	25.	2005-06	497
8.	1988-89	161	26.	2006-07	519
9.	1989-90	172	27.	2007-08	551
10.	1990-91	182	28.	2008-09	582
11.	1991-92	199	29.	2009-10	632
12.	1992-93	223	30.	2010-11	711
13.	1993-94	244	31.	2011-12	755
14.	1994-95	259	32.	2012-13	852
15.	1995-96	281	33.	2013-14	939
16.	1996-97	305	34.	2014-15	1024
17.	1997-98	331	35.	2015-16	1081
18.	1998-99	351			

(c) **Computation of Capital gains in Case of depreciable assets on which depreciation is allowed on the basis of written-down method:**

(1) The capital gains on depreciable assets shall be computed as under:

(Sec. 3)

(i) Find out the written-down value on the first day of the previous year of all the depreciable assets on which the depreciation is allowed at the same rate. All such assets are known as 'block of assets'.

(ii) If any new asset of the same block is purchased during the previous year, the cost of such asset should be included in (i).

(iii) If any asset is sold out of such block during the previous year, the net consideration should be deducted from the balance under (ii).

(iv) On the balance under (iii) compute the depreciation at the prescribed rate and deduct it from the balance under (iii).

(v) The balance under (iv) shall be the written-down value of the 'block of assets' for the next year.

(2) If the net consideration of an asset out of the block is less than the balance under (i) there would be no capital gain. If the net consideration of an asset is more than the balance under (i) (the value of all assets in the block), the excess shall be deemed to be short-term capital gain. If all the assets of the block are sold in the previous year and the net consideration is less than the balance under (i), the loss shall be deemed to be short-term capital loss.

Consideration for transfer of asset

Less: (i) Expenses in connection with transfer

(ii) W.D.V. on 1st April

(iii) Cost of new asset purchased during the year

S.T.C.G.

Consideration for transfer of all assets

Less: (i) Expenses in connection with transfer

(ii) W.D.V. on 1st April

(iii) Cost of new asset purchased during the year

Balance

If balance is positive S.T.C.G.
If balance is negative S.T.C.L.

Illustration 1

Depreciable assets on 1-4-2013 on which the depreciation is available at the same rate of 25%.

Asset (1)	273
Asset (2)	
Asset (3)	

Compute capital loss or capital gain if:

(i) in 2014-15 asset (1) is sold for ₹ 1,20,000 and a new asset (4) is purchased for ₹ 2,50,000.

(ii) in 2015-16 assets (2), (3) and (4) are sold for ₹ 5,00,000 and spent ₹ 5,000 on such sale.

(iii) in 2015-16 assets (2), (3) and (4) are sold for ₹ 4,00,000 and spent ₹ 5,000 on such sale.

Solution

(i) W.D.V. of assets (1), (2) and (3) on 1-4-2013

Less: Depreciation @ 25%

W.D.V. on 1-4-2014 of block of assets

Add: Cost of Asset (4) purchased during 2014-15

Less: Assets (1) sold during 2014-15

W.D.V. for the P.Y. 2014-15

Less: Depreciation for the P.Y. 2014-15 @ 25%

(No Capital loss or gain in the P.Y. 2014-15)

(ii) W.D.V. for the 2015-16

If assets (2), (3) and (4) are sold during 2015-16

for ₹ 5,00,000 and spent ₹ 5,000 on such sale

Less: Selling expenses

Short-term capital gains for the A.Y. 2016-17

(iii) If assets (2), (3) and (4) are sold for ₹ 4,35,000 and spent ₹ 5,000 on such sale:

Short-term capital loss (4,00,000 - (4,35,000 + 5,000))

Illustration 2

Rohit installed a new plant for ₹ 20,00,000 on August 31, 2012. He received a grant from the Central Government exclusively for buying the new plant amounting to ₹ 5,00,000. In September 2015, the plant was destroyed by fire. The assessee realised ₹ 2,00,000 from the insurance company and ₹ 10,000 from scrap sale.

Calculate the depreciation upto the A.Y. 2015-16 and profit/loss for this plant for the assessment year 2016-17 allowing the rate of depreciation at 25%.

Solution

Calculation of Depreciation

(for the Assessment Year 2016-17)

Cost of Plant on 31.8.2012

Less: Grant received from the Government

Depreciation @ 25% for the A.Y. 2013-14

Written-down value on 1.4.2013

Less: Depreciation @ 25% for the A.Y. 2014-15

Written-down value on 1.4.2014

Less: Depreciation @ 25% for the A.Y. 2015-16

Written-down value on 1.4.2015

Net Cost

Balance

CAPITAL GAINS

'Capital Gains' is the fourth head of income.

[Sec. 45(1)]

Basis of Charge

The basis of charge is the profits or gains arising from the transfer of a capital asset in the previous year. It is taxable under the head 'Capital Gains'.

Thus, the essential elements of capital gains are :

- (A) Capital Asset,
- (B) Transfer of Capital Asset,
- (C) Computation of Capital Gain.

[Sec. 2(14)]

(A) Capital Asset

Capital asset means : (a) Property of any kind held by an assessee, whether connected with his business, profession or not. (b) Any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the Securities and Exchange Board of India Act, 1992.

Capital asset may be movable or immovable, tangible or intangible, fixed or floating.

Capital asset includes land, building, plant, machinery, investments, goodwill, leasehold rights, jewellery, shares, a manufacturing licence, etc.

Property includes any right in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.

Exception. The term capital asset does not include the following :

- (i) **Commercial goods.** Any stock-in-trade [other than the securities mentioned in (b)], consumable stores or raw materials held for the purposes of his business or profession.
- (ii) **Movable assets for personal use.** Movable assets (including wearing clothes and furniture) held for personal use by the assessee or any member of his family dependent on him. Thus, a car or any other vehicle, refrigerator, television or V.C.R. or other electrical appliances are included in this.

Exceptions. The following assets will not be treated as personal effect and liable to tax :

- (a) archaeological collections, (b) drawings, (c) paintings, (d) sculptures, (e) any work of art, (f) jewellery for personal use.

Jewellery includes :

- (A) Ornaments made of gold, silver, platinum or any other precious metal, whether or not worked or sewn into any wearing apparel.
- (B) Precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

- (iii) **Agricultural land.** Agricultural land in India, provided it is not situated :

- (a) within the limits of any municipality or a cantonment board, having a population of 10,000 or more; or
 - (b) within the area measured aerielly specified below,
- (1) Not being more than two Kilometres from the local limits and which has population of more than ten thousand but not exceeding one lakh; or

- (2) Not being more than six kilometres from the local limits and which has population of more than one lakh but not exceeding ten lakhs; or
- (3) Not being more than eight kilometres from the local limits and which has population of more than ten lakhs.
- (iv) Gold Bonds, 6½% Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Bonds, 1980 issued by the Central Government.
- (v) Special Bearer Bonds, 1991.
- (vi) Gold Deposit Bonds. Gold Deposit Bonds issued under the Gold Deposit Scheme, 1991 or deposit certificate issued under the Gold Monetisation Scheme, 2015 notified by the Central Government.

Self-generated Assets

Some self-generated assets are treated as capital assets :

- (1) Self-generated goodwill of a business. However, self-generated goodwill of a profession is not treated as capital asset.
- (2) Self-generated tenancy rights, stage carriage permits and loom hours.
- (3) Right to manufacture, produce or process any article or thing.

Kinds of Capital Assets

Capital assets are divided into two categories :

- (i) Short-term Capital Asset, and (ii) Long-term Capital Asset.
- Short-term Capital Asset.** [Sec. 2(42A)] Short-term Capital Asset means a capital asset held by an assessee for not more than 36 months immediately preceding the date of its transfer.

Capital gains arising from the transfer of short-term capital asset is called Short-term Capital Gain.

Exceptions. (1) In the case of a financial asset being (a) a security (other than a unit) listed on a recognised stock exchange in India, or (b) a unit of the Unit Trust of India, or (c) a unit of an equity oriented fund, or (d) zero coupon bond, short-term capital asset will mean a security or unit or zero coupon bond held by the assessee for not more than 12 months instead of 36 months as in case of other assets.

In the case of a financial asset, as aforesaid, which is allotted without any payment (like bonus shares) on the basis of holding of any other financial asset, the period of its holding shall be reckoned from the date of the allotment of such financial asset.

[(1A) If unlisted share (not listed in a recognised stock exchange in India) of a company is held by the assessee for not more than twenty-four months, immediately preceding the date of its transfer, it will be treated as STCA, *u.e.f.* A. Y. 2017-18.]

(2) Assets used for business or profession, on which depreciation is allowed on the basis of WDV, are treated always as short-term capital assets.

Long-term Capital Asset. [Sec. 2(29A)] Long-term Capital Asset means a capital asset (other than a listed security or unit of U.T.I. or unit of equity oriented fund or zero coupon bond) held by an assessee for more than 36 months immediately preceding the date of transfer.

Capital gain arising from the transfer of long-term capital asset is called Long-term Capital Gain.

In the case of listed securities or units of U.T.I. or units of equity oriented fund or zero coupon bond held by the assessee, long-term capital asset will mean such assets held by the assessee for more than 12 months.

(B) Transfer of Capital Asset

- Transfer in relation to a capital asset includes :
- the sale, exchange or relinquishment of the asset; or
 - the extinguishment of any rights therein; or
 - its compulsory acquisition under any law; or
 - where the asset is converted by the owner into stock-in-trade of a business carried on by him; or

- the maturity or redemption of a zero coupon bond; or
- conversion of a business into a limited company; or
- any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract of the nature referred to in the Transfer of Property Act, 1982; or
- any transaction (whether by way of becoming a member of, or acquiring shares in, a co-operative society, a company, etc.) which has the effect of transferring the enjoyment of any immovable property.

Certain transactions not regarded as transfer. The following transactions are not regarded as transfer for the purpose of capital gains tax :

- Any distribution of capital assets on the total or partial partition of a Hindu undivided family.
- Any transfer of a capital asset under a gift or Will or an irrevocable trust.
Exception. If shares or debentures or warrants, allotted by a company directly or indirectly to its employees under the Employees' Stock Option Plan or Scheme of the company are transferred under a gift or irrevocable trust, it will be deemed to be a transfer.
- Any transfer of a capital asset by a company to its subsidiary company, if :
(a) the parent company holds the whole of the share capital of the subsidiary company; and
(b) the subsidiary company is an Indian Company.
- Any transfer of a capital asset by a subsidiary company to the holding company, if :
(a) the whole of the share capital of the subsidiary company is held by the holding company; and
(b) the holding company is an Indian company.
- Any transfer of a capital asset as per clause (iii) or (iv) above shall be treated as transfer if the transfer is made as Stock-in-trade.
- Any transfer, in a scheme of an amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company.
- Any transfer, in a scheme of amalgamation of a banking company with a banking institution sanctioned and brought into force by the Central Government, of a capital asset by the banking company to the banking institution.
- Any transfer of shares of an Indian company by a foreign company to another foreign company in pursuance of a scheme of amalgamation between the two foreign companies, if :
(a) at least 25% of the shareholders of the amalgamating company continue to remain shareholders of the amalgamated foreign company; and
(b) such transfer does not attract tax on capital gains in the country in which the amalgamating company is incorporated.
- Any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company, if :
(a) the transfer is made in consideration of the allotment to him of any share or shares in the amalgamated company except where the shareholder himself is the amalgamated company; and
(b) the amalgamated company is an Indian company.
- Any transfer of a capital asset, being any work of art, archaeological, scientific or art collection, book, manuscript, drawing, photograph or print, to the Government or a University or the National Museum, National Art Gallery, National Archives or any such other public museum or institution as may be notified by the Central Government in Official Gazette to be of national importance or to be of renown throughout any State or States, (*e.g.*, Indira Gandhi National Centre for Arts).
- Any transfer by way of conversion of debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company.

Expenses incurred to get Royalty	₹ 20,000	30,000	3,00,000
Amount related to	India	India	USA
Amount Received in Convertible	—	—	5,00,000
Foreign Exchange till 30.09.2015			

Solution

Computation of Deduction u/s 80QBB
(for the Assessment Year 2016-17)

	A	B	C
	₹	₹	₹
(a) Amount received in convertible foreign exchange	—	—	5,00,000
(b) Lumpsum consideration	—	—	9,00,000
(c) Royalty not exceeding 15%	90,000	3,75,000	—
(d) Lowest (a), (b) or (c)	90,000	3,75,000	5,00,000
(e) Expenditure incurred	20,000	30,000	3,00,000
(f) Amount deductible u/s 80QBB [(d) – (e) but subject to maximum of ₹ 3,00,000]	70,000	3,00,000	2,00,000

(XII) Deduction in respect of Royalty on Patents

Who is entitled to deduction. An individual, who is :

- resident in India;
- a patentee;
- in receipt of income by way of royalty in respect of a patent registered after 31.3.2000 under the Patents Act, 1970.

Quantum of deduction. Whole of such income or three lakh rupees, whichever is less.

Where a compulsory licence is granted in respect of any patent under the Patents Act, 1970 the income from royalty for deduction shall not exceed the amount of royalty under the terms and conditions of a licence settled by the Controller under the Patents Act.

If income is earned outside India, so much of the income shall be taken into account for the purpose of deduction as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within six months from the end of the previous year or within the period extended by the competent authority.

Conditions for deduction : (i) The assessee must furnish a certificate in the prescribed form duly signed by the prescribed authority, along with the return of income.

(ii) If income is earned outside India, the assessee must furnish a certificate in the prescribed form, from the prescribed authority/authorities, alongwith the return of income.

(XIII) Deduction in respect of Interest on Savings Account

(Sec. 80TTA)

Who is entitled to deduction. An individual or a Hindu undivided family.

Deduction shall be allowed in respect of interest on deposits in savings account with :

- a Bank,
- a co-operative society engaged in carrying on the business of banking, or
- Post office.

Quantum of deduction. Whole of such income or ₹ 10,000 in aggregate, whichever is less.

Where the savings account is held by or on behalf of a firm, AOP or BOI, no deduction shall be allowed in respect of such income to any partner of the firm or any member of the AOP or BOI.

(XIV) Deductions in the case of a person with Disability

(Sec. 80U)

Who is entitled to deduction. An individual resident in India, and who is certified by the medical authority to be a person with disability.

Quantum of deduction : (i) Disability ₹ 75,000;

(ii) Severe disability ₹ 1,25,000.

COMPUTATION OF TOTAL INCOME OF INDIVIDUALS

Under the Income Tax Act the assesses are of the following types :

- (1) Individual,
- (2) Hindu undivided family,
- (3) Firm,
- (4) Association of persons or Body of individuals,
- (5) Company,
- (6) Local authority, and
- (7) Artificial juridical person.

A study of the provisions of the Income Tax Act regarding the assessment of the assesses has been done in this and the following chapters.

INDIVIDUALS

An individual means a woman, man, minor child or any human being. An individual has to pay income tax on his total income at a graded scale of tax rates ruling during the concerned assessment year. In addition to his own income under different heads, an individual may also get a share of income from his membership in the following institutions and some incomes of others are also to be included in his total income.

(1) As a member of Hindu Undivided Family

Share of income received by an individual as a member of a Hindu undivided family out of the income of the family is neither taxable nor it is included in his total income, whether or not the family has paid tax on its income; but if a member of the family makes some personal earnings of his own, they are taxable in the hands of that member as an individual.

But, under section 64(2), where an individual converts his separate individual property into the property of the Hindu undivided family, of which he is a member, then the income derived from such converted property is to be included in the individual's total income and not in the family's total income.

(2) As a member of an Association of Persons or Body of Individuals

The income received by its members from the Association of Persons or Body of Individuals shall be dealt with as under :

- (a) Where the Association of Persons or Body of Individuals is taxed at the maximum marginal rate or any higher rate, the share of member shall not be included in his total income at all.
- (b) Where no income tax is chargeable on the total income of the Association or Body, the share of a member in that shall be chargeable to tax as part of his total income.
- (c) Where tax has been paid by the Association or Body at normal rates, income tax shall not be payable in respect of such share although it shall form part of total income of the member. It means on such share income tax rebate shall be allowed at an average rate of tax.

- (3) As a member (shareholder) of a Company
The dividend [discussed w/s 2(22) (a) to (d)] received as a shareholder from a domestic company is exempt.

The dividend loan from a closely-held company discussed w/s 2(22)(e) is included in his income of others is included in the total income of an individual in his **Total Income or Clubbing of Income**. The income of others is included in the total income of an individual in the following circumstances :

- (a) Where a person transfers his income from an asset to another person without transferring the asset itself, such income shall be included in the total income of the transferor.
- (b) Where there is a revocable transfer of assets the income from such assets shall be included in the total income of the transferor.
- (c) Under certain circumstances the income of the spouse of an individual is included in his (individual's) total income.
- (d) The income of a minor child is included in the total income of his or her parent either mother or father, as the case may be.
- (e) Income from assets transferred to other persons is included in the total income of the transferor if such a transfer results directly or indirectly, in a benefit to the spouse of the transferor.

Note : The detailed description of the aforesaid items (a) to (e) is given in Eleventh Chapter on 'Clubbing of Income, Deemed Income, etc.'.

Procedure for Computing Total Income

- (1) First of all ascertain the various incomes which are to be included in total income on the basis of residence.
- (2) These incomes will be computed according to the various sections of the Act under the heads salaries, income from house property, profits and gains of business or profession, capital gains and income from other sources.
- (3) Then the effect will be given to the unabsorbed losses and allowances brought forward from earlier years.
- (4) From the gross total income (2 minus 3) deductions allowed under sections 80C to 80U will be deducted.
- (5) The balance (under 4) will be the total income. This will be rounded off as under :

Rounding off of Total Income. The amount of total income computed in accordance with the provision of the Act shall be rounded off to the nearest multiple of ten rupees. (Sec. 288A)

Chart Showing Computation of Total Income of an Individual

Income as computed under the following heads after set-off of losses :

1. Income from Salaries	.....
2. Income from House Property	.....
3. Profits and Gains of Business or Profession	.....
4. Capital Gains :	.....
(a) Long-term capital gains	.....
(b) Short-term capital gains	.....
5. Income from other Sources :	.....
(a) Casual incomes (e.g., Lottery, card game, horse race, betting, etc.)	.....
(b) Other incomes	.....
Gross Total Income	.....
Less : Deductions under sections 80C to 80U	.....
Total Income	.....
Rounded off ₹ .....	.....

Note : Deductions under sections 80C to 80U are not available against short-term capital gains specified in section 111A and long-term capital gains.

(X) Deduction in respect of income of co-operative societies

The following deductions are to be made from the income of a co-operative society under section 80P :

(Sec. 80P)

(a) In the case of a co-operative society engaged in the following business the whole of the amount of profits and gains of business attributable to any one or more of such activities shall be deducted from the gross total income :

- (i) carrying the business of banking or providing credit facilities to its members;
- (ii) a cottage industry; or
- (iii) the marketing of agricultural produce grown by its members (Eggs constitute agricultural produce); or
- (iv) the purchase of agricultural implements, seeds, live-stock or other articles intended for agriculture, for the purpose of supplying them to its members; or
- (v) the processing, without the aid of power, of the agricultural produce of its members; or
- (vi) the collective disposal of the labour of its members; or
- (vii) fishing or allied activities, i.e., catching, curing, processing, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members.

(b) In the case of primary co-operative society engaged in supplying milk, oil-seeds, fruits, vegetables raised by its members to :

- (i) a federal co-operative society engaged in supplying above-mentioned products; or
- (ii) the Government or a local authority; or
- (iii) a Government company or a Statutory Corporation engaged in supplying the above-mentioned products to the public;

the whole of the amount of profits and gains of such business shall be deducted from the gross total income.

(c) In the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently or in addition to all or any of the activities specified) profits and gains attributable to such activities to the extent of ₹ 50,000 shall be deducted from the gross total income. However, in the case of consumer's co-operative society, this deduction shall be ₹ 1,00,000 in respect of the profits and gains from the other activities.

(d) The whole of the income by way of interest or dividends derived by a co-operative society from its investments with any other co-operative society shall be deducted from the gross total income.

(e) The whole of the income derived by the society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, shall be deducted from the gross total income.

(f) In the case of co-operative society, which is not a housing society or an urban consumer's society; or a society carrying on transport business or a society engaged in the performance of any manufacturing operation with the aid of power, where the gross total income does not exceed ₹ 20,000, the amount of any income by way of interest on securities or any income from house property shall be deducted from the gross total income.

A co-operative bank shall not be entitled to deduction under this section. However, a primary agricultural credit society or a primary co-operative agricultural and rural development bank shall be entitled to deduction under this section.

(XI) Deduction in respect of Royalty Income of Authors

(Sec. 80QBB)

Who is entitled to deduction. An individual, who is :

- (a) resident in India.
- (b) an author (including a joint author) of books being a work of literary, artistic or scientific nature.

Computation of Profit for deduction. Where the income (before allowing expenses attributable to such income) by way of royalty on books or the copyright fee (not a lump sum consideration in the

of all rights of the assessee in the book exceeds fifteen percent of the value of such books sold during the previous year such excess shall be ignored.

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Quantum of deduction. Whole of such income (royalty maximum @ 15% of the value of such books sold less expenses attributable to such income) or three lakh rupees, whichever is less.

Where the assessee receives lump sum consideration for the assignment or grant of any of his interests in the copy right of a book, the quantum of deduction shall be the whole of such income (after deducting expenses) or three lakh rupees, whichever is less.

If the income is earned outside India, so much of the income shall be taken into account for the purpose of deduction as is brought into India by, or on behalf of, the assessee in convertible foreign exchange within six months from the end of the previous year or within the period extended by the competent authority.

Conditions for deduction : (i) The assessee must furnish a certificate in the prescribed form duly verified by the person responsible for making such payment to the assessee, along with the return of income.

(ii) If the income is earned outside India, the assessee must furnish a certificate, in the prescribed form from the prescribed authority, along with the return of income.

Explanations : (a) 'Books' shall not include brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets, text books for schools, tracts and other publications of similar nature, by whatever name called.

(b) 'Lump-sum' in regard to royalties or copyright fees, includes an advance payment on account of such royalties or copyright fees which is not returnable.

Literary work. Literary work includes tables and compilations. [Copyright Act, 1957, Sec. 2(O)]

The expression 'literary work' covers work which is expressed in print or writing, irrespective of the question whether the quality or style is high.

[University of London Press Ltd. vs. University Tutorial Press Ltd. (1916) 2 Ch. 601]

Illustration 14

From the following informations compute total income of an author :

1. Royalty on a book for college students @ 20% ₹ 1,00,000.
2. Expenses incurred to earn the royalty ₹ 10,000.
3. Other income ₹ 5,00,000.

Solution

Computation of Total Income
(for the Assessment Year 2016-17)

Royalty Income (₹ 1,00,000 – 10,000)	90,000
Other income	5,00,000
	5,90,000
Gross Total Income	65,000
Less : Deduction u/s 80QBB regarding royalty	5,25,000
Total Income	₹ 40,000

Note : Deduction u/s 80QBB has been computed as under :

Royalty @ 15%	75,000
Royalty excess over 15%, ignored for deduction	75,000
Less : Expenses	10,000
	65,000

Deduction ₹ 65,000 or ₹ 3,00,000 (maximum), whichever is less.

Illustration 15

Calculate the amount deductible u/s 80QBB from the following :

Name of Assessee	A	B	C
	₹ 1,20,000	4,00,000	9,00,000
Royalty received	@ 20% on book price	@ 15% on book price	Lump-sum

(VIII) Deduction in respect of employment of new workmen

(Sec. 80JJAA)

Who is entitled to deduction. An assessee engaged in the manufacture of goods in a factory, *Quantum of deduction.* 30% of additional wages paid to the new regular workmen employed by the assessee in such factory in the previous year for 3 A. Ys. including the A. Y. relevant to the previous year in which such employment is provided.

Conditions for deduction : (i) The factory should not be acquired by the assessee by way of transfer from any other person or as a result of any business re-organisation.

(ii) The assessee furnishes along with the return of income the audit report giving the prescribed particulars.

Meaning of Additional Wages :

(1) *New factory.* 'Additional wages' means the wages paid to the new regular workmen in excess of 50 workmen employed during the previous year.

(2) *Existing factory.* The additional wages shall be nil if the increase in number of regular workmen employed during the year is less than 10% of existing number of workmen employed in the factory as on the last day of preceding year.

Meaning of 'Regular workman' does not include :

- a casual workman; or
- a workman employed through contract labour; or
- any other workman employed for a period of less than 300 days during the previous year.

Sec. 80JJAA shall be as under *w.e.f.* A.Y. 2017-18 :

Illustration 13

X commenced operations of manufacture of goods in a factory on 1.4.2015. He employed 100 new workmen during the previous year as under :

- 10 casual workmen;
- 10 through contract labour;
- 70 regular workmen on 1.4.2015;
- 10 regular workmen on 1.8.2015.

Compute deduction available to X *u/s* 80JJAA for the A.Y. 2016-17 if wages of each workman is ₹ 7,500 p.m.

Solution

Computation of Deduction *u/s* 80JJAA
(for the Assessment Year 2016-17)

Total workmen	No. of Workmen
Less : (a) Casual workmen	10
(b) Contract labour	10
(c) Employed for less than 300 days during P.Y. (under 4)	10
Total number of new regular workmen	70
Number of new regular workmen in excess of 50 (70 - 50)	20
Additional wages = ₹ 7,500 × 12 × 20 = ₹ 18,00,000	
Deduction <i>u/s</i> 80JJAA 30% of ₹ 18,00,000 = ₹ 5,40,000	

Deduction in respect of employment of new employees (*w.e.f.* A.Y. 2017-18) (Sec. 80JJA)

Who is eligible for deduction. Who derives profits and gains from business and is required to get his accounts audited *u/s* 44AB.

Quantum and period of deduction. 30% of additional employee cost incurred in the course of business in the previous year, for three assessment years relevant to previous year in which such employment is provided.

Conditions for deduction : (1) The business is not formed by splitting up or the reconstruction of an existing business.

(2) The business is not acquired by way of transfer from any other person or as a result of any business reorganisation.

(3) The assessee furnishes along with the return of income the audit report giving the prescribed particulars.

(4) Emoluments should be paid by an account payee cheque or account payee draft or by use of electronic clearing system through a bank account.

Additional employee cost :

(a) *New business.* First year of new business emoluments paid or payable to employees employed during that previous year.

(b) *Existing business.* If there is no increase in the number of employees from the total number of employees employed as on the last day of the preceding year—Nil.

Additional employee. It means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include :

- an employee whose total emoluments are more than ₹ twenty-five thousand per month; or
 - an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified under Employees Provident Fund Act, 1952; or
 - an employee employed for a period of less than two hundred and forty days during the previous year; or
 - an employee who does not participate in the recognised provident fund.
- Emoluments.* It means any sum paid or payable to an employee in lieu of his employment by whatever name called, but does not include :
- any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee, and
 - any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

(IX) Deduction in respect of certain incomes of Offshore Banking Units or International Financial Services Centre (Sec. 80LA)

Where (i) a scheduled bank or any bank incorporated by or under the laws of a country outside India having an offshore banking unit in a special economic zone; or

- unit of an International Financial Services Centre, derives income :
- from an offshore banking unit in a special economic zone; or
- from the business referred to in Sec. 6(1) of the Banking Regulation Act, 1949, with an undertaking located in a special economic zone or any other undertaking which develops, develops and operates or develops, operates and maintains a special economic zone; or
- from any unit of the International Financial Services Centre from its business for which it has been approved for setting up such a centre in a Special Economic Zone.

It shall be allowed deduction from its gross total income.

Quantum of deduction : (a) 100% of such income for five consecutive assessment years beginning with the assessment year relevant to previous year in which permission *u/s* 23(1)(a) of the Banking Regulation Act, 1949 or permission or registration under the Securities and Exchange Board of India Act, 1992 or any other relevant law was obtained.

(b) Thereafter, 50% of such income for five consecutive assessment years.

Conditions for deduction. The assessee must furnish alongwith the return of income :

- A report of the Chartered Accountant in the prescribed form certifying that the deduction has been correctly claimed in accordance with the provisions of this section.
- A copy of the permission obtained *u/s* 23(1)(a) of the Banking Regulation Act, 1949.

Quantum of deduction : (1) In case (a) (i) and (ii) and (b) (i) and (ii) 100% of such profits for initial ten assessment years.

- (2) In case of (a) (iii) and (b) (iii) :
(i) Five initial assessment years—100% of such profits
(ii) Next five assessment years :

(a) In case of Companies—30% of such profits

(b) In case of other assesses—25% of such profits.
No deduction shall be allowed under sections 80C to 80U in relation to the profits and gains of the undertaking or enterprise specified above.

Conditions for deduction. The deduction shall be allowed if the following conditions are satisfied :

- (i) It is not formed by the splitting up, or the reconstruction, of a business already in existence.
(ii) It is not formed by the transfer to a new business of machinery or plant (exceeding 20%) previously used for any purpose.

Audit of accounts. The accounts of the assessee must be audited by a C.A. and the assessee must furnish alongwith the return of income the report of such audit in the prescribed form.

North-Eastern States

States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura.

'Substantial expansion' means increase in the investment in the plant and machinery by at least 50% of the book value of plant and machinery (before taking depreciation in any year, as on the first day of previous year in which the substantial expansion is undertaken).

(V) Deduction in respect of profits and gains from business of hotels in specified area

(Sec. 80-ID)

Who is entitled to deduction. An undertaking engaged in the business of hotel (two-star, three-star or four-star category) located in the specified district having a World Heritage Site, if such hotel is constructed and has started or starts functioning between 1.4.2008 and 31.3.2013.

Quantum of deduction and period for deduction. 100% of the profits and gains derived from such business for five consecutive assessment years.

Conditions for deduction. The deduction u/s 80-ID will be allowed if the following conditions are satisfied :

- (i) It is not formed by the splitting up or the reconstruction of a business already in existence.
(ii) It is not formed by the transfer of a building previously used as a hotel.
(iii) It is not formed by the transfer of machinery or plant (exceeding 20%) previously used for any purpose.
(iv) The assessee furnishes alongwith the return of income, the audit report in the prescribed form certifying that the deduction has been correctly claimed.

Some other deductions not allowed. In computing the total income of the assessee, the deductions u/s 10AA or u/s 80C to 80U shall not be allowed in relation to the profits and gains of the undertaking.

Other provisions. The provisions relating to the following aspects are the same as discussed u/s 80-IA :

1. Computation of income for deduction.
2. Withdrawal of deduction.

Explanation. 'Convention Centre' means a building of a prescribed area comprising of convention halls to be used for the purposes of holding conferences and seminars, being of such size and number and having such other facilities and amenities as may be prescribed.

(VI) Deduction in respect of profits and gains in respect of certain undertakings in North-Eastern States (Sec. 80IE)

The deduction shall be allowed to an undertaking which has, during the period beginning on the 1st day of April, 2007 and ending before the 1st day of April, 2017, begun or begins, in any of the North-Eastern States :

- (i) to manufacture or produce any eligible article or thing;
(ii) to undertake substantial expansion to manufacture or produce any eligible article or thing; to carry on any eligible business.

Quantum and period for deduction. 100% of the profits derived from such business for ten consecutive assessment years commencing with the initial assessment years.

Conditions for deduction. The deduction shall be allowed if the following conditions are satisfied :

- (i) It is not formed by the splitting up, or the reconstruction, of a business already in existence.
(ii) It is not formed by the transfer to a new business of machinery or plant (exceeding 20%) previously used for any purpose.

Some other deductions not allowed. In computing the total income of the assessee, the deduction u/s 10AA or u/s 80C to 80U shall not be allowed in relation to the profits and gains of the undertaking.

Other provisions. The provisions relating to the following aspects are the same as discussed u/s 80-IA :

(1) Computation of profits for deduction.

(2) Audit of accounts.

(3) Withdrawal of deduction.

'North-Eastern States'. State of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura.

'Substantial expansion' means increase in the investment in the plant and machinery by at least 25% of the book value of plant and machinery (before taking depreciation in any year), as on the first day of previous year in which the substantial expansion is undertaken.

'Eligible business' means the business of :

- (a) hotel (not below two star category);
(b) adventure and leisure sports including ropeways;
(c) providing medical and health services in the nature of nursing home with a minimum capacity of twenty-five beds;
(d) running an old-age home;
(e) operating vocational training institute for hotel management, catering and food craft entrepreneurship development, nursing and para-medical, civil aviation related training, fashion designing and industrial training;
(f) running information technology related training centre;
(g) manufacturing of information technology hardware; and
(h) bio-technology.

(VII) Deduction in respect of profits from business of collecting and processing of bio-degradable waste (Sec. 80JJA)

Where the gross total income of an assessee includes any profits derived from the business of collecting and processing or treating of bio-degradable waste for generating power or producing bio-fertilizers, bio-pesticides or other biological agents or producing bio-gas or making pellets or briquettes for fuel or organic manure, he is entitled to a deduction in computing total income.

Quantum of deduction. 100% of such income for a period of five assessment years beginning with the assessment year relevant to the previous year in which the business commences.

will be computed as if the transfer of goods or services had taken place at the market value on the date of the transfer. The Assessing Officer has been empowered to compute such profits on gains on a reasonable basis, if the computation of profits on the aforesaid basis presents any exceptional difficulty.

The Assessing Officer shall determine the reasonable profits that could be attributed to the eligible business, if in his opinion, owing to the close connection between the assessee carrying on the eligible business and any other person, an arrangement has been so made that it produces to the assessee more than the ordinary profits which might be expected to arise in the business.

Audit of Accounts. The accounts of the assessee must be audited by a Chartered Accountant and the assessee must furnish along with the return of income the report of such audit in the prescribed form.

Note: The deduction under this section shall not be allowed to Special Economic Zones notified after 31.3.2005.

(II) Deduction in respect of profits and gains by an undertaking or enterprise engaged in development of Special Economic Zone

Who is entitled to deduction. A Developer who derives profits and gains from any business of developing a Special Economic Zone, notified after 31.3.2005 under the Special Economic Zones Act, 2005.

Quantum of deduction and period for deduction. 100% of the profits and gains derived from such business for ten consecutive assessment years.

However, at the option of the assessee, the deduction can be claimed for any ten consecutive assessment years out of fifteen years beginning from the year in which a Special Economic Zone has been notified by the Central Government.

Where the Developer has claimed deduction u/s 80IA, he shall be entitled to deduction only for the unexpired period of ten consecutive assessment years.

Where a Developer develops a Special Economic Zone after 31.3.2005 and transfers the operation and maintenance of it to another Developer, the deduction shall be allowed to the transferee Developer for the remaining period of ten consecutive assessment years.

Audit of Accounts. The accounts of the assessee must be audited by a C.A. and the assessee must furnish along with the return of income the report of such audit in the prescribed form.

Note: No deduction shall be allowed if a developer begins the development of Special Economic Zone on or after 1.4.2017.

(IIA) Deduction in respect of profits and gains from specified business (w.e.f. A.Y. 2017-18)

A deduction will be allowed from gross total income to an assessee, being an eligible start-up, in respect of profits and gains derived from eligible business.

"Eligible business" means a business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property.

"Eligible start-up" means a company or a limited liability partnership engaged in eligible business which fulfils the following conditions:

- it is incorporated on or after the 1st day of April, 2016 but before the 1st day of April 2019.
- the total turnover of its business does not exceed ₹ twenty-five crore in any of the previous years beginning on or after the 1st day of April, 2016 and ending on the 31st day of March 2021; and
- it holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government.

Quantum of deduction and period of deduction. 100% of the profits and gains derived from such business for three consecutive assessment years.

However, at the option of the assessee, the deduction can be claimed for any three consecutive assessment years out of five years beginning from the year in which the eligible start-up is incorporated.

Conditions for deduction. The deduction shall be allowed if the following conditions are satisfied:

- It is not formed by the splitting up, or the reconstruction, of a business already in existence.
- It is not formed by the transfer to a new business of machinery or plant (exceeding 20%) previously used for any purpose.

(III) Deduction in respect of profits and gains other than infrastructure development undertakings (Sec. 80-IB)

TAX HOLIDAYS U/S 80IB ARE AS UNDER

	Owner-ship	Location	Date of Commencement	Period	Quantum
1. Scientific and industrial research and development	Company registered in India	Any where in India	Approved after 31.3.2000 but before 1.4.2007	10 Initial A.Ys.	100% of profits
2. Commercial production of mineral oil	Any Assessee	Any part of India	After 31.3.1997 but before 1.4.2017	7 Initial A.Ys.	100% of profits
3. Refining of mineral oil	Any Assessee	Any part of India	After 30.9.1998 but before 1.4.2012	—Do—	—Do—
4. Commercial production of natural gas under NELP VIII etc.	Any Assessee	—	After 31.3.2009 but before 1.4.2017	—Do—	—Do—
5. Housing Project	Any Assessee	Any part of India	Approved after 30.9.1998 but before 31.3.2008	—	100% of profits
6. Integrated business of handling, storage and transportation of food-grains	Any Assessee	Any where in India	After 31.3.2001	(i) 5 Initial A.Ys. (ii) Next 5 A.Ys.	(i) 100% of profits (ii) 30% for companies and 25% for others.
7. Processing, preservation and packaging of fruits or vegetables	—Do—	—Do—	w.e.f. A.Y. 2005-06	—Do—	—Do—
8. Processing preservation and packaging of meat, meat products or poultry or marine or dairy products.	—Do—	—Do—	After 31.3.2009	—Do—	—Do—
9. Hospital	Any Assessee	In India except excluded area	1.4.2008 to 31.3.2013	5 Initial A.Ys.	100% of profits

Note: Deduction regarding commercial production of mineral oil shall not be allowed in respect of blocks licensed under a contract awarded after 31.3.2011 under the New Exploration Licensing Policy announced by the Government of India (Vide Resolution No. O-190182295-ONG. DO. VI, dated 10.2.1999) or in pursuance of any law for the time being in force or by the Central Government or a State Government in any other manner.

Other Conditions to be fulfilled for Deduction:

- In case of companies engaged in scientific and industrial research and development:
- The company is registered in India.
- It has been approved for the purpose by the prescribed authority after 31.3.2000 but before 1.4.2007.

(B) *Housing Project*. Deduction shall be allowed to an undertaking engaged in developing and building housing projects approved before 31.3.2008 by a local authority provided the following conditions are satisfied:

- (i) The size of the plot of land is a minimum of one acre.
- (ii) The residential unit has a built up area not exceeding one thousand square feet in Delhi or Mumbai or within 25 km from the municipal limits of these cities and one thousand five hundred square feet at any other place.
- (iii) The undertaking commences development and construction of the housing project on or after 1.10.1998.
- (iv) Where a housing project has been approved by the local authority before 1.4.2004, the construction should be completed before 1.4.2008.
- (v) Where a housing project is approved by the local authority after 31.3.2004 but before 1.4.2005, the construction should be completed within four years from the end of the financial year in which the project is approved by the local authority.
- (va) Where a housing project has been approved by the local authority after 31.3.2005, the construction should be completed within five years from the end of the financial year in which the housing project is approved by the local authority.
- (vi) The built up area of the shops and other commercial establishment included in the housing project shall not exceed 3% of the aggregate built-up area of the housing project or 5,000 sq. ft., whichever is higher.
- (vii) Not more than one residential unit in the housing project is allotted to a person not being an individual.
- (viii) Where a residential unit is allotted to an individual, no other residential unit in such housing project is allotted to any of the following persons:
 - (a) the individual or the spouse or minor child of that individual,
 - (b) the HUF in which such individual is the Karta,
 - (c) any person representing such individual, the spouse or minor child of such individual or the HUF in which such individual is the Karta.

Relaxation of condition. The conditions relating to plot size (minimum area of one acre) and completion of construction shall not apply to a housing project carried out in accordance with a scheme framed by the Central Government or a State Government for reconstruction with a redevelopment of existing buildings in areas declared to be slum areas and notified by the Board in this behalf.

(C) *Hospital located anywhere in India other than excluded area.* Where an undertaking derives profits from the business of operating and maintaining a hospital located anywhere in India other than the excluded area [specified in Sec. 80IB (11C)], shall be eligible for a deduction of 100% of such profits and gains.

The deduction shall be available for five assessment years, beginning from the initial assessment year in which the undertaking begins to provide medical services, on fulfilment of the following conditions:

- (i) Such hospital is constructed between 1.4.2008 and 31.3.2013 in accordance with the local regulation in force.
- (ii) The hospital has at least 100 beds for patients.
- (iii) The assessee files an audit report in the prescribed form along with the return certifying that the deduction has been correctly claimed.

Audit of accounts. The accounts of the assessee must be audited by a C.A. and the assessee must furnish alongwith the return of income the report of the such audit in the prescribed form.

(IIIA) *Deduction in respect of profits and gains from housing projects (w.e.f. A.Y. 2017-18)*

Quantum of deduction. 100% of the profits and gains derived from such business. (Sec. 80BA)

Conditions for deduction:

- (1) The project is approved by the competent authority (authority empowered by the Central Government) after 1.6.2016 but before 1.4.2019.

(2) The project is completed within a period of three years from the date of approval. *Date of approval.* Where the approval of the project is obtained more than once, the date of approval shall be the date on which the building plan of such housing project was first approved. *Date of completion.* The date on which a certificate of completion of project as a whole is obtained in writing from the competent authority.

(3) The built-up area of the shops and other commercial establishments in the housing project does not exceed 3% of the aggregate built-up area.

(4) *Size of the plot:* (a) In cities of Chennai, Delhi, Kolkata or Mumbai or within the distance measured aerially, twenty-five kilometre from the municipal limits of these cities—Minimum one thousand square metre.

(b) In any other place—Minimum two thousand square metre.

The project is the only housing project on the aforesaid plot.

(5) *Size of the residential unit.* (a) In case of (4)(a) maximum thirty square metre.

(b) In case of (4)(b) maximum sixty square metre.

(6) *Allotment of a residential unit to an individual.* No other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual.

(7) *Utilization of the plot:* (a) In case (4)(a) minimum 90% of the floor area ratio permissible.

(b) In case (4)(b) minimum 80% of the floor area ratio permissible.

“Floor area ratio” means the quotient obtained by dividing the total covered area of plinth area on all the floors by the area of the plot of land.

(8) *Maintenance of accounts.* The assessee shall maintain separate books of account in respect of the housing project.

Profits liable to tax. If the housing project is not completed within the period mentioned in (2), the total amount of deduction allowed in one or more previous years, shall be chargeable under the head “Profits and gains of business or profession” of the previous year in which the period for completion expires.

(IV) *Deduction in respect of profits and gains from undertaking or enterprise in Special Category States* (Sec. 80IC)

A deduction will be allowed from gross total income to an assessee in respect of profits and gains derived from business specified below:

The undertaking or enterprise:

(a) has begun or begins to manufacture or produce any article or thing (not being any article or thing specified in the Thirteenth Schedule), or which manufactures or produces any article or thing (not being any article or thing specified in the Thirteenth Schedule) and undertakes substantial expansion in any Export Processing Zone or Integrated Infrastructure Development Centre or Industrial Growth Centre or Industrial Estate or Industrial Park or Software Technology Park or Industrial Area or Theme Park as notified by the Board, during the period:

- (i) in the State of Sikkim—after 22.12.2002 but before 1.4.2007;
- (ii) in the North-Eastern States—after 23.12.1997 but before 1.4.2007;
- (iii) in the State of Himachal Pradesh or the State of Uttarakhand—after 6.1.2003 but before 1.4.2012.

(b) has begun or begins to manufacture or produce any article or thing or commences any operation specified in the Fourteenth Schedule, or which manufactures or produces any article or thing or commences any operation specified in the Fourteenth Schedule and undertakes substantial expansion during the period:

- (i) in the State of Sikkim—after 22.12.2002 but before 1.4.2007;
- (ii) in the North-Eastern States—after 23.12.1997 but before 1.4.2007;
- (iii) in the State of Himachal Pradesh or the State of Uttarakhand—after 6.1.2003 but before 1.4.2012.

(XII) Deduction in respect of Contributions given by an Indian Company to Political Parties

In computing the total income of an Indian company, any sum contributed by it in the previous year to any political party or an electoral trust shall be allowed as a deduction. (Sec. 80GCG)

Explanation. The word 'Contribute' has the meaning assigned to it u/s 182 of the Companies Act, 2013.

(XIII) Deduction in respect of Contributions given by any person to Political Parties

In computing the total income of an assessee (except local authority and artificial juridical person wholly or partly funded by the Government), any amount contributed by him in the previous year to any political party or an electoral trust shall be allowed as a deduction. (Sec. 80GCG)

Explanation. 'Political Party' means a political party registered u/s 29A of the Representation of the People Act, 1951.

DEDUCTIONS IN RESPECT OF CERTAIN INCOMES

The deduction provided under any section hereafter in this chapter with reference to any income will be allowed in respect of the net amount of income of that nature included in the gross total income of any assessee. (Sec. 80AB)

Where any deduction is admissible under section 80-1A or 80-1AB or 80-1B or 80-1C or 80-1D or 80-1E, no such deduction shall be allowed to the assessee unless he furnishes a return of his income for the relevant assessment year on or before the due date specified in Sec. 139(1).

(I) Deduction in respect of profits and gains from undertakings or enterprise engaged in infrastructure development

A deduction will be allowed from gross total income to an assessee in respect of profits and gains derived from any business of:

(i) *Infrastructure facility.* The enterprise is carrying on the business of (i) developing, (ii) developing and operating, or (iii) developing, operating and maintaining any infrastructure facility which fulfils the following conditions:

- It is owned by a company or consortium of companies registered in India or by an authority or board or a corporation or any other body established or constituted under any Central or State Act;
- It enters into an agreement with the Central or State Government or a local authority or any other statutory body for development, maintenance and operation of a new infrastructure facility;
- It starts operating and maintaining the infrastructure facility on or after 1st April, 1995.

Where an infrastructure facility is transferred after 31.3.1999 by an enterprise which has developed it to another enterprise for operating and maintaining it on its behalf, in accordance with the agreement with person mentioned in (b), the transferee will get the benefit of deduction for the unexpired period.

'Infrastructure facility' means:

- a road including toll road, bridge, rail system;
- a highway project including housing or other activities being an integral part of the highway project;
- a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system; and
- a port, airport, inland water ways or inland port for navigation channel in the sea.

Note: No deduction shall be allowed to any enterprise which starts the development or operation and maintenance of the infrastructure facility on or after 1.4.2017.

(2) Industrial park. Any undertaking which develops, develops and operates or maintains and operates an industrial park after 31.3.1997 but before 1.4.2011 or Special Economic Zone (notified by the Central Government) after 31.3.1997 but before 1.4.2006.

Where an undertaking develops industrial park after 31.3.1999 or a Special Economic Zone after 31.3.2001 and transfers the operation and maintenance of it to another undertaking, the transferee will get the benefit of deduction for the unexpired period.

(3) *Generation and distribution of power.* An industrial undertaking which:

- is set-up in any part of India for generation or generation and distribution of power if it begins to generate power after 31.3.1993 but before 1.4.2017;
- starts transmission or distribution by laying a network of new transmission or distribution lines after 31.3.1999 but before 1.4.2017;
- undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines after 31.3.2004 but before 1.4.2017.

(4) *Reconstruction or Revival of a Power Generating Plant.* Income of an undertaking owned by an Indian company is deductible if:

- The Indian company is setup for reconstruction or revival of a power generating plant.
- The Indian company is formed before 30.11.2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant.
- Such Indian company is notified by the Central Government before 31.12.2005.
- The undertaking begins to generate or transmit or distribute power before 31.3.2011.

Quantum and period of deduction. 100% of such profits for ten consecutive assessment years.

Option to claim deduction. The assessee, at his option, can claim deduction in any ten consecutive assessment years out of fifteen years beginning from the year in which it begins operations.

If the assessee is engaged in infrastructure facility mentioned in (a), (b) or (c) he can claim deduction in any ten consecutive assessment years out of twenty years instead of out of fifteen years.

Conditions for deduction. The deduction under (3) shall be allowed if the following conditions are satisfied:

- It is not formed by the splitting up, or the reconstruction, of a business already in existence;
- It is not formed by the transfer to a new business of machinery or plant (exceeding 20%) previously used for any purpose.

However, the aforesaid conditions will not apply in case of transfer of plant or machinery previously used by a State Electricity Board.

Computation of Income for Deduction. For the purpose of computing the deduction at the specified percentage for the assessment year immediately succeeding the initial assessment year and any subsequent assessment year, the profits and gains will be computed as if such business were the only source of income of the assessee in all the assessment years for which the deduction at the specified percentage under this section is available.

It means if the loss or any allowance (e.g., depreciation allowance) of such business is set-off against any other income in an earlier assessment year to find out the income of the current year for deduction under this section the loss so set-off shall be deducted from the current year's income and on the balance so arrived the deduction shall be computed.

Where the goods or services held for the purposes of eligible business are transferred to any other business carried on by the assessee or where any goods or services held for the purposes of any other business carried on by the assessee are transferred to the eligible business and, in either case, the consideration for such transfer does not correspond to the market value of such goods or services as on the date of transfer, then the profits and gains of the eligible business

DEDUCTIONS REGARDING CERTAIN PAYMENTS : AT A GLANCE

Section	Persons entitled to deduction	Quantum of deduction	Payment regarding	Conditions for deduction
80C	(a) Individual (b) H.U.F.	upto ₹ 1,50,000	LIP, PF, PPF, etc.	—
80CCC	Individual	upto ₹ 1,50,000	Pension	Annuity plan of LIC or other insurer.
80CCD	Individual	Amount paid by employee or 10% of salary, whichever is less. Amount contributed by employer or 10% of salary, whichever is less.	Pension Scheme	Appointed on or after 1.1.2004, by the Govt.
80CCG	Individual	50% of amount invested or ₹ 25,000, whichever is less	Investment in equity shares or units of equity oriented fund	G. T. I. does not exceed twelve lakh rupees.
80D	(a) Individual (b) H.U.F.	Amount paid or ₹ 25,000, whichever is less + Parents upto ₹ 25,000 Senior citizen upto ₹ 30,000.	Insurance premia on the health of (a) (i) Self, spouse, dependent children of assessee, (ii) Parent(s) (b) Any member of H.U.F.	(a) Paid by any mode of payment other than cash. (b) Scheme framed by GIC of India and approved by Central Govt./other insurer and approved by IRDA.
80DD	(a) Individual (b) H.U.F.	Disability ₹ 75,000; Severe disability ₹ 1,25,000.	Medical treatment, nursing, training, rehabilitation of dependents. Receiving annuity or lump-sum amount for the benefit of dependent on death of individual or member of H.U.F. in whose name subscription to the scheme has been made. (a) Dependent on an individual (b) Member of H.U.F.	(a) Assessee resident in India, (b) Dependent on assessee for support and maintenance. (c) Scheme framed by LIC or other insurer or Administrator or Specified Company and approved by CBDT. (d) Dependent has not claimed deduction u/s 80U.
80DDB	(a) Individual (b) H.U.F.	(i) Amount paid or ₹ 40,000, whichever is less (ii) Senior citizen upto ₹ 60,000 (iii) Very senior citizen upto ₹ 80,000 Less : Amount received from insurer/employer	Medical treatment of specified disease or ailment of (a) Self or dependent (b) Member of H.U.F.	(a) Assessee resident in India. (b) Furnish certificate in prescribed form. (c) Dependent on assessee for support and maintenance.
80E	Individual	Amount paid	Payment of interest to financial institution or approved charitable institution.	(a) Loan taken for higher education of self and relative. (b) Deduction for a maximum period of 8 year. Payment to be done in the form of money only.
80G	All assesseees	100% of Qualified Specified Donations of national importance. 50% of other Qualified Donations.	Payment as charitable donation to approved funds or institutions.	—
80GG	Individuals	25% of Total Income or ₹ 2,000 p.m., whichever is less.	Payment as house rent in excess of 10% of Total Income.	—
80GGA	All assesseees	100% of amount paid.	Payment to Scientific Research Assn., or to a University or College etc. for scientific or social or statistical research or Rural Dev. Programme, etc.	—
80GGB	Indian Company	Whole amount.	Contribution to political party. etc.	—
80GGC	Assesseees except local authority/person funded by Govt.	Whole amount.	Contribution to political party. etc.	—
				Paid by any mode of payment other than cash —Do—

However, the deduction shall be reduced by the amount received, if any, under an insurance from an insurer or reimbursed by the employer for the medical treatment of person mentioned in this section.

Conditions for deduction : (i) The assessee has actually paid the amount for the medical treatment for himself or any dependant or in case of H.U.F. any member of the family; (ii) The assessee shall obtain the prescription for medical treatment from a neurologist, an oncologist, a urologist, a haematologist, an immunologist as the case may be.

Explanation. 'Dependant' means :

- (i) in the case of an individual, the spouse, children, parents, brothers and sisters of the individual or any of them;
- (ii) in the case of HUF, a member of the HUF, dependant wholly or mainly on such individual/HUF for his support and maintenance.

(Rule 110D)

Specified diseases

Neurological diseases, cancer, AIDS, chronic renal failure, Hemophilia, Thalasassaemia.

(Sec. 80E)

(VIII) Deduction in respect of Interest on loan taken for higher education

An individual is entitled to a deduction of amount paid by him in the previous year by way of interest on loan taken by him from any financial institution or an approved charitable institution for the purpose of pursuing his higher education or for the purpose of higher education of his relative.

The deduction will be allowed for the previous year in which the assessee starts paying the interest and seven succeeding previous years or until the interest is fully paid (whichever is earlier) by the assessee.

The deduction will be allowed if the amount is paid out of his income chargeable to tax.

Meaning of Higher Education. It means any course of study pursued after passing the Senior Secondary Education or its equivalent from any school, board or university recognised by the Central Government or State Government or local authority or by any other authority authorised by the Central Government or State Government or local authority to do so.

Relative. Relative in relation to an individual means the spouse and children of the individual or the student for whom the individual is the legal guardian.

(VIII A) Deduction in respect of interest on loan taken for residential house property (wef. A.Y. 2017-18)

(Sec. 80EE)

Who is entitled to deduction. An individual :

Deduction regarding : Interest on loan taken for residential house property.

Quantum of deduction : Up to ₹ fifty thousand.

Conditions for deduction :

- (1) The loan has been sanctioned by the financial institution between 1.4.2016 and 31.3.2017.
- (2) The amount of loan sanctioned for acquisition of the residential house property does not exceed ₹ thirty-five lakh.
- (3) The value of the house property does not exceed ₹ fifty lakh.
- (4) The assessee does not own any residential house property on the date of sanction of the loan.

Where a deduction under this section is allowed for such interest, deduction shall not be allowed in respect of such interest under any other provisions of the Act for the same or any other assessment year.

(IX) Deduction in respect of donations to certain funds, charitable institution, etc. (Sec. 80G)

This section allows deduction in respect of amounts given as charitable donations and it is allowed to all types of assessee.

Where amount of donation exceeds ten thousand rupees, it should be paid by any mode other than cash.

The donations can be classified as under :

- (1) No limit donations, i.e., the whole amount qualify for deduction. Such donations can further be classified as :
 - (i) deduction allowed @ 100% of qualifying amount; and
 - (ii) deduction allowed @ 50% of qualifying amount.
 - (2) With limit donations, i.e., the qualifying amount for deduction shall not exceed 10% of gross total income after deducting the following :
 - (a) Short-term capital gains;
 - (b) Long-term capital gains;
 - (c) Deductions under sections 80C to 80U except u/s 80G.
 Such donations can further be classified as :
 - (i) deduction allowed @ 100% of qualifying amount;
 - (ii) deduction allowed @ 50% of qualifying amount.
- (A) No limit donations where deduction is allowed @ 100% are as under :
- (1) the National Defence Fund set-up by the Central Government; or
 - (2) the Prime Minister's National Relief Fund; or
 - (3) the Prime Minister's Armenia Earthquake Relief Fund; or
 - (4) the Africa (Public Contributions—India) Fund; or
 - (5) the National Foundation for Communal Harmony; or
 - (6) a University or Educational Institution of national eminence as may be approved by the prescribed authority in this behalf; or
 - (7) the Maharashtra Chief Minister's Relief Fund or Chief Minister's Earthquake Relief Fund, Maharashtra; or
 - (8) *Zila Saksharta Samitis* constituted under the Chairmanship of Collector of District for the purpose of improvement of primary education and for literary and post-literary efforts in villages and towns with population not exceeding one lakh according to the latest census; or
 - (9) the National Blood Transfusion Council or any State Blood Transfusion Council; or
 - (10) any Fund set-up by State Govt. to provide medical relief to the poor; or
 - (11) the Central Welfare Fund of the Army and Air Force and the Indian Naval Benevolent Fund established for the welfare of the past and present members of such forces or their dependants; or
 - (12) the Andhra Pradesh Chief Minister's Cyclone Relief Fund; or
 - (13) the National Illness Assistance Fund; or
 - (14) the Chief Minister's Relief Fund or the Lt. Governor's Relief Fund; or
 - (15) National Sports Fund to be set-up by the Central Govt.; or
 - (16) National Cultural Fund set-up by the Central Govt.; or
 - (17) The fund for Technology Development and Application set-up by the Central Government; or
 - (18) Any fund set-up by the State Government of Gujarat exclusively for providing relief to the victims of earthquake in Gujarat; or
 - (19) The National Trust for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities.
 - (20) National Children's Fund
 - (21) Swachh Bharat Kosh set up by the Central Government.
 - (22) Sum donated by a resident assessee to the Clean Ganga Fund set up by the Central Government.
- However, under (21) or (22) the payment should not be made from Corporate Social Responsibility Fund.
- (B) National Fund for Control of Drug Abuse.
- (23) No limit donations where deduction is allowed @ 50% are as under :
- (1) Jawahar Lal Nehru Memorial Fund;
 - (2) Prime Minister's Drought Relief Fund;

- (3) Indira Gandhi Memorial Trust;
- (4) Rajiv Gandhi Foundation.
- (C) With limit donations where deduction is allowed @ 100% of qualifying amount :
- (1) The Government or to any such local authority, institution or association as may be approved in this behalf by the Central Government to be utilized for the purpose of promoting family planning.
 - (2) Sums paid by a company to the Indian Olympic Association or any other association or institution established in India and as notified by the Central Government for :
 - (i) development of infrastructure for sports and games in India; or
 - (ii) for sponsorship of sports and games in India.
 - (D) *With limit donations.* Where deduction is allowed @ 50% of qualifying amount :
 - (i) The Government or any local authority to be utilized for any charitable purpose other than the purpose of promoting family planning; or
 - (ii) Any other fund or any institution which is established in India for a charitable purpose, if it fulfils the following conditions :
 - (a) its income is not included in total income under sections 11 and 12 of the Income Tax Act, or it is Regimental Fund established by armed forces of the Union for the welfare of the past and present members of the force or their dependants;
 - (b) under the rules governing the institution or fund no part of the income or assets of the institution or fund can be used for non-charitable purpose;
 - (c) the institution or fund is not expressed to be for the benefit of any particular religious community or caste;
 - (d) the institution or fund maintains regular accounts of its receipt and expenditure;
 - (e) the institution or fund is a public charitable trust or is registered under the Societies Registration Act, 1860 or under section 25 of the Companies Act, 1956, or is a University established by law, or is any other educational institution recognized by the Government or by a University established by law, or it is an institution established in India for the control and supervision of the games of cricket, hockey, football, tennis or any other game approved by the Central Government, or is an institution financed wholly or in part by the Government or a local authority; and
 - (f) the fund or institution is approved by the Commissioner.
 - (iii) Any authority constituted in India by or under any law enacted either for the purpose of the dealing with and satisfying the need for housing accommodation or for the purpose of planning development or improvement of cities, towns and villages or for both; or
 - (iv) Any corporation established by the Central Govt. or any State Govt. for promoting the interests of the members of a minority community; or
 - (v) The sums paid by the assessee in the previous year as donations for the renovation or repair of any temple, mosque, gurdwara, church or any other place which is notified by the Central Government in the Official Gazette to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States.
- Conditions for allowing deduction under this section :*
- (i) Not in kind. No deduction will be allowed under section 80G unless the donation is of a sum of money. It should not be given in kind.
 - (ii) Donation should not be given for the benefit of any particular religion, class, creed, community, etc. Donation given for the benefit of scheduled castes, scheduled tribes, backward class or women or children are not for any particular religious community or caste.
 - (iii) Where an institution or fund incurs expenditure of a religious nature, not exceeding 5% of its total income during any previous year, such institution or fund shall be eligible for deduction under this section.

- (iv) An association or institution having as its object the control, supervision, regulation or encouragement in India of such games or sports as the Central Government may specify by notification, shall be deemed to be an institution established in India for a charitable purpose.

Step by step procedure of calculating deduction u/s 80G :

- (1) Add up all approved donations u/s 80G.
- (2) Find out the maximum limit of qualifying amount by calculating 10% of G.T.I. less (i) deductions u/s 80C to 80U except u/s 80G; (ii) LTCG; (iii) STCG u/s 111A. The qualifying amount for with limit donations will be restricted to the limit determined as per (2) above.
- (3) Add to the amount determined under (3), the total of all donations which qualify without limit.
- (4) The aggregate amount as per (4) above is the total qualifying amount.
- (5) From the figure arrived at in (5) above, pick out those donations which are 100% deductible and total them up.
- (6) Deduct the total of (6) from the total of (5) and find out the difference.
- (7) On the figure obtained in (7), find out 50% of it.
- (8) Add the amount as per (6) and as per (8), the resultant figure is the amount of deduction allowable under section 80G.

Illustration 9

Mr. Vivek's G.T.I. for the P.Y. 2015-16 was ₹ 5,00,000. He made the following donations by cheques :

- (a) Maharashtra Chief Minister's Earthquake Relief Fund—₹ 10,000.
- (b) National Foundations for Communal Harmony—₹ 15,000.
- (c) ₹ 10,000 to an Educational Institution of National Eminence.
- (d) ₹ 5,000 to National Children's Fund.
- (e) To Municipal Corporation for promotion of family planning—₹ 40,000.
- (f) To Minority Community Corporation (Notified)—₹ 25,000.

Compute his taxable income for the assessment year 2016-17.

Solution

Computation of Taxable Income

(for the Assessment Year 2016-17)

Gross Total Income		₹	₹
Less : Deduction u/s 80G :			
(1) No limit donation, deduction allowed 100% :			
(a) M C M E R F	10,000		
(b) N F for C H	15,000		
(c) E I of N E	10,000		
(d) N C F—₹ 5,000	5,000		
(2) With limit donation ₹ 40,000 + 25,000			
Qualifying amount 10% of G.T.I ₹ 50,000			
(a) Deduction @ 100% for family planning ₹ 40,000	40,000		85,000
(b) Deduction @ 50% for Minority Community ₹ 10,000	5,000		
			<u>4,15,000</u>
			Taxable Income

Illustration 10

Shri Ram Prasad, whose gross total income is ₹ 48 lakh, makes the following donations by cheques except donation mentioned in (xii) during the previous year 2015-16 :

- (i) ₹ 50,000 to Rajiv Gandhi Foundation.
- (ii) ₹ 1 lakh to Prime Minister's Drought Relief Fund.
- (iii) ₹ 25,000 to National Foundation for Communal Harmony.
- (iv) ₹ 25,000 to Prime Minister's National Relief Fund.
- (v) ₹ 25,000 to Prime Minister's Armenia Earthquake Relief Fund.
- (vi) ₹ 25,000 to Swachh Bharat Kosh.

2. **Item eligible for deduction.** Amount deposited during previous year in the pension scheme notified by the Central Government.

3. **Quantum of deduction :** (i) Amount deposited by the employee or 10% of his salary, whichever is less.

(ii) In case of other individual, upto ten percent of his gross total income in the previous year.

[Whether or not any deduction is allowed under 3(i) or 3(ii) amount upto ₹ 50,000 can be deposited in pension scheme and it will also be eligible for deduction [Sec. 80CCD(1B)]

If an individual deposits money in the Atal Pension Yojana during the P.Y., he shall get deduction u/s 80CCD(1) or u/s 80CCD(1B), as the case may be.

[Notification No. SO 529/E, Dated 19.2.2016]

(iii) Amount contributed by the Central Government/other employer or 10% of salary, whichever is less. [Sec. 80CCD(2)]

4. Where any amount has been allowed as a deduction under this section, no deduction with reference to such amount shall be allowed u/s 80C.

5. **Tax liability.** Where any amount (in respect of which a deduction has been allowed) together with the amount accrued thereon, is received by the assessee or his nominee (whole or part) or pension is received in the previous year, it shall be chargeable to tax as the income of that previous year.

Exceptions : (1) Where the assessee withdraws the money, in the previous year from the pension scheme and uses it in purchasing an annuity plan in the same previous year, it shall not be liable to tax.

(2) Any amount received by the nominee, on the death of the assessee, on account of closure or his opting out of the pension scheme referred to in Sec. 80CCD(1) or Sec. 80CCD(1B) shall not be liable to tax—*u.e.f.* A.Y. 2017-18.]

Explanation. 'Salary' includes dearness allowance if the terms of employment so provide, but excludes all other allowances and perquisites.

(IV) **Aggregate amount of deductions** (Sec. 80CCE)

The aggregate amount of deductions under section 80C, section 80CCC and section 80CCD(1) shall not exceed ₹ 1,50,000.

The deduction of upto ₹ 50,000 u/s 80CCD(1B) is in addition to the overall limit of ₹ 1,50,000 provided u/s 80CCE.

The amount contributed by the employer in pension scheme (u/s 80CCD) (2)] shall not be included in ₹ 1,50,000 limit.

Illustration 6

During financial year 2015-16 Ram deposited the money as under :

1. Public Provident Fund 90,000

2. Pension scheme of the Central Government @ 15% of his salary. 1,50,000

A matching contribution was made by the employer.

Solution

Computation of Deduction available from Gross Total Income

(for the Assessment Year 2016-17)

1. PPF u/s 80C 90,000

2. Pension scheme u/s 80CCD : 1,00,000

u/s 80CCD (1) 10% of salary 1,90,000

Restricted to ₹ 1,50,000 u/s 80CCE

Additional deduction :

u/s 80CCD (1B) upto ₹ 50,000

Employer's contribution upto 10% of salary

Deductible Amount

(Sec. 80CCG)

(IVA) **Deduction in respect of investment in listed equity shares etc.** (Sec. 80CCG)

Where a resident individual acquires listed equity shares (in accordance with a notified scheme) or listed units of an equity oriented fund he shall be entitled to deduction of 50% of the amount invested in such equity shares or units during the previous year or ₹ 25,000, whichever is less.

Conditions for deduction :

(i) The gross total income of the assessee does not exceed twelve lakh rupees.

(ii) The assessee is a new retail investor, as may be specified in the scheme.

(iii) The investment is made in such listed equity shares, or listed units, as may be specified in the scheme.

(iv) The investment is locked-in for a period of three years from the date of acquisition of shares or units.

(v) The assessee can invest and get deduction for three consecutive assessment years, beginning with the assessment year relevant to the previous year in which the listed equity shares or listed units of equity oriented fund were first acquired.

(vi) Any other condition as may be prescribed.

If the assessee fails to comply with any condition in any previous year, the deduction allowed shall be deemed to be the income of the assessee of such previous year and liable to tax. (Sec. 80D)

(V) Deduction in respect of Medical Insurance Premium

Who is entitled to deduction : (i) An individual;

(ii) A Hindu undivided family.

Deduction regarding Medical Insurance Premium.

Quantum of deduction :

1. **Individual :**

(a) For self and family (spouse and dependent children)

(b) For parents—additional deduction

If in (a) or (b) there is senior citizen or very senior citizen

If in (a) any member is very senior citizen and the amount

is paid on account of medical expenditure and no amount

has been paid as health insurance premium for him/her

upto ₹ 25,000

upto ₹ 25,000

upto ₹ 30,000

upto ₹ 30,000

upto ₹ 30,000

upto ₹ 30,000

upto ₹ 30,000

upto ₹ 30,000

upto ₹ 30,000

upto ₹ 30,000

upto ₹ 30,000

upto ₹ 30,000

upto ₹ 30,000

upto ₹ 30,000

For example, an individual pays (through any mode other than cash) medical insurance premium as under :

- (i) For self, wife and dependant children ₹ 22,000.
- (ii) For parent(s) ₹ 27,000.

The deduction shall be allowed ₹ 22,000 + 25,000 = ₹ 47,000.

If a parent is senior citizen the deduction shall be allowed ₹ 22,000 + 27,000 = ₹ 49,000.

Conditions for deduction : (i) The scheme for insurance must be framed by the General Insurance Corporation of India and approved by the Central Government or any other insurer and approved by the Insurance Regulatory and Development Authority.

- (ii) The amount should have been paid out of his income chargeable to tax.
- (iii) The amount should have been paid by any mode of payment other than cash.

Deduction in respect of preventive health check-up u/s 80D. The provisions in this connection are as under :

1. The expenditure on preventive health check-up (for self, spouse, dependent children and parents) shall not exceed in the aggregate ₹ 5,000.
2. The payment can be made by any mode of payment including cash.
3. The eligible deduction shall be allowed within the overall limits prescribed (₹ 25,000/₹ 30,000)

Illustration 7

From the following information compute the deduction available u/s 80D regarding payment of medical insurance premium by cheque :

1. MIP for self and spouse ₹ 23,000
2. MIP for father aged 70 years 2,000
3. Paid for preventive health check up : 24,000
 - (a) Self and spouse 2,000
 - (b) Father 6,000

Solution

Computation of Deduction regarding MIP

1. Self & spouse	₹	23,000	₹
Preventive health check up		2,000	
		<u>25,000</u>	
Maximum deduction allowable ₹ 25,000			
2. Father (aged 70 years)		24,000	25,000
Preventive health check up			
(₹ 6,000 – 2,000) allowed deduction under 1			
or maximum ₹ 5,000 under 1 and 2 (5,000 – 2,000)		3,000	27,000
Maximum deduction allowable ₹ 30,000			
Total Deduction			<u>52,000</u>

(VI) Deduction in respect of maintenance including Medical Treatment of a Dependant who is a person with Disability (Sec. 80DD)

Who is entitled to it : Resident individual and Hindu undivided family.

Items eligible for deduction : (i) Expenditure incurred on medical treatment (including nursing, training and rehabilitation of a disabled dependant; or

(ii) An amount paid or deposited under any scheme framed by the L.I.C. of India or any other insurer or the Administrator or specified company and approved by the Board.

Quantum of Deduction : (a) For disability ₹ 75,000;

(b) For severe disability ₹ 1,25,000.

Conditions : (i) The scheme provides for payment of annuity or lump-sum amount for the benefit of a disabled dependant after the death of individual or member of H.U.F., in whose name the deposit has been made.

- (ii) The assessee nominates the disabled dependant or any other person or a trust to receive payment on behalf or for the benefit of disabled dependant.
- (iii) The assessee claiming deduction shall furnish a copy of certificate issued by the medical authority in the prescribed form along with the return of income in respect of the assessment year for which the deduction is claimed.
- (iv) Where the condition of disability requires reassessment of its extent after a period stipulated in the certificate, a new certificate shall be obtained from the medical authority in the prescribed form and a copy thereof should be furnished along with the return of income. If the assessee fails to do so, no deduction shall be allowed under this section.

Disabled dependant dies before the death of the Assessee : In such a case the amount deposited shall be deemed to be the income of the assessee of the previous year in which the amount is received.

Explanation. 'Dependant' means :

- (i) in the case of an individual, the spouse, children, parents, brothers and sisters of the individual or any of them;
 - (ii) in the case of HUF, a member of the HUF.
- Dependant wholly or mainly on such individual/HUF for his support and maintenance, and who has not claimed any deduction u/s 80U in computing his income for the assessment year relating to the previous year.

Illustration 8

Following are the particulars of income of Shri Amarnath for the previous year 2015-16 : ₹

- (i) Income from Salary (Gross) 4,60,000
- (ii) Rental Income from House Property 36,000
- (iii) Profits of Business 2,20,000

During the previous year he paid by cheque ₹ 27,000 as premium on the insurance of the health of himself and wife. During the year the assessee claimed ₹ 1,500 for the illness of his wife, which were duly received from the insurance company. The unmarried disabled sister of Shri Amarnath is dependant wholly on him. Shri Amarnath spent ₹ 19,000 on her treatment and training during the previous year.

Compute the total income of Shri Amarnath for the assessment year 2016-17.

Solution

Computation of Total Income (for the Assessment Year 2016-17)			
1. Income from Salary	₹	4,60,000	₹
Less : Deduction		Nil	
2. Income from House Property (A.Y.)		36,000	4,60,000
Less : 30% of A.Y.		10,800	
3. Profits of Business		2,20,000	
		<u>2,20,000</u>	
Gross Total Income		25,000	7,05,200
Less : Deductions : u/s 80D (Max. deduction ₹ 25,000)			
		<u>25,000</u>	
Total Income			<u>₹ 6,05,200</u>

(VII) Deduction in respect of Medical Treatment, etc.

It provides for a deduction to a resident individual or a resident Hindu Undivided Family for expenditure actually paid on the medical treatment of individual himself or a dependant or any member of Hindu Undivided Family in respect of *disorders or ailments which may be specified in the Rules*.

Quantum of deduction : (i) Amount paid or ₹ 40,000, whichever is less.

(ii) Where the payment is in relation to a senior citizen of the age of 60 years or more, the deduction shall be allowed amount paid or ₹ 60,000, whichever is less.

(iii) Where the payment is in relation to a very senior citizen of the age of 80 years or more, the deduction shall be allowed amount paid or ₹ 80,000, whichever is less.

If such certificates are purchased on or after 1.4.2012 but before 1.4.2013, the interest shall accrue as under on an investment of ₹ 100 :

Year	1	2	3	4	5	6	7	8	9	10
Interest	9.10	9.93	10.83	11.81	12.89	14.06	15.34	16.74	18.26	19.92

If such certificates are purchased on or after 1.4.2013, the interest shall accrue as under on an investment of ₹ 100 :

Year	1	2	3	4	5	6	7	8	9	10
Interest	8.99	9.80	10.68	11.64	12.69	13.83	15.08	16.43	17.91	19.52

Note : In case NSC IX Issue purchased on or after 1.12.2011, 10th year interest is not re-invested, hence, interest in 10th year will not be eligible for deduction.

(b) In case of Hindu Undivided Family

Deduction shall be allowed in respect of the following sums paid in the previous year by the family :

- (1) Premium paid for insurance on the life of any member of the family.
 - (i) The qualifying amount of any premium or other payment made on an insurance policy issued before 1.4.2012 shall not exceed 20% of the actual capital sum assured.
 - (ii) The qualifying amount of life insurance premium on an insurance policy issued on or after 1.4.2012 shall not exceed 10% of the actual capital sum assured.
 - (iii) The qualifying amount of life insurance premium on an insurance policy issued on or after 1.4.2013 shall not exceed 15% of the actual capital sum assured if it is on the life of a person who is (a) a person with disability or a person with severe disability; or (b) suffering from disease or ailment specified in S.O.D.D.B.
- (2) Contribution given to Public Provident Fund in the name of any member of the family.
- (3) Subscription to the notified securities of the Central Government or a notified deposit scheme.
- (4) Contribution for participation in the Unit Linked Insurance Plan, 1971 of the Unit Trust of India.
- (5) Contribution for participation in notified Unit Linked Insurance Plan of the LIC Mutual Fund.
- (6) Sum paid to effect or to keep in force a contract for such annuity plan of LIC of India or any other insurer as the Central Government may notify.
- (7) Sum paid as subscription to any unit of Mutual Fund or from the Administrator or specified company under any plan formulated in accordance with such scheme as the Central Government may notify.
- (8) Sum paid to notified deposit scheme or pension fund set-up by the National Housing Bank.
- (9) Subscription to notified deposit scheme of :
 - (a) a public sector company which is engaged in providing long-term finance for construction or purchase of houses for residential purposes; or
 - (b) any statutory authority formed for satisfying the need of housing accommodation or for planning and development of cities, towns or villages or for both.
- (10) Payment of instalment under self-financing scheme or instalment for repayment of loan taken from prescribed authorities/institutions for purposes of purchase or construction of a residential house.
- (11) Subscription to eligible issue of capital by a public company registered in India or a public financial institution.
- (12) Subscription to any unit of Mutual Fund [Specified in Sec. 10(23D)] provided the fund utilises the amount of subscription to subscribe the eligible issue of capital of any company.
- (13) The term deposit for a fixed period of not less than five years with a scheduled bank in accordance with a scheme framed and notified by the Central Government.
- (14) Subscription to such bonds issued by the National Bank for Agriculture and Rural Development, as the Central Government may notify.

(15) Deposit in Five Year Post Office Time Deposit Account.

Notes : (1) HUF cannot open a new PPF A/c after 12.5.2005. Further, extension of existing accounts shall not be allowed.

(2) HUF cannot invest in NSC VIII Issue or NSC IX Issue.

Illustration 1

From the following particulars in respect of Mr. Adarsh an author of books, find out the deduction allowable to him w/s 80C for the A.Y. 2016-17 :

- (i) Life Insurance Premium (on his own life) Policy taken in 2011
- (ii) Sum assured on the above policy
- (iii) Contribution to unrecognised provident fund
- (iv) Contribution to public provident fund
- (v) Subscription to National Savings Certificates (VIII issue)
- (vi) Accrued interest for one year completed N.S.C. (VIII issue)
- (vii) Life insurance premium (on his mother's life policy)
- (viii) Repayment of Bank Loan borrowed for construction of the house

Solution

Computation of amount entitled to Deduction w/s 80C

(for the Assessment Year 2016-17)

- | | |
|---|------------|
| (i) Life Insurance Premium (on his own life) | ₹ 22,000 |
| (Premium does not exceed 20% of sum assured) | |
| (ii) Contribution to Public Provident Fund | 95,000 |
| (iii) Subscription to N.S.C. VIII Issue | 18,000 |
| (iv) Accrued Interest on N.S.C. VIII Issue deemed to be re-invested | 8,000 |
| (v) Life Insurance Premium on his mother's life policy | Nil |
| (vi) Repayment of Bank Loan taken for the construction of the house | 21,000 |
| Amount entitled to Deduction | ₹ 1,64,000 |

Maximum limit of qualifying amount under section 80C is ₹ 1,50,000.

Note : Contribution to Unrecognised Provident Fund does not qualify for deduction w/s 80C.

Illustration 2

From the following information compute the amount entitled to deduction under section

80C in the assessment of Mr. X for the assessment year 2016-17 :

1. Life insurance policy of ₹ 80,000 on own life taken in 2013, premium paid ₹ 9,000.
2. Life insurance policy of ₹ 15,000 on married daughter's life, premium paid ₹ 1,000.
3. Life insurance policy of ₹ 40,000 on wife's life taken on 1.5.2012, premium paid ₹ 5,000.
4. Contribution to Recognised Provident Fund ₹ 15,000.
5. Contribution to Public Provident Fund ₹ 74,000.
6. Group insurance premium paid ₹ 1,200.
7. National Savings Certificates VIII Issue purchased ₹ 20,000.
8. Accrued interest on National Savings Certificates VIII Issue ₹ 1,730.
9. Loan instalment repaid to L.I.C. of India ₹ 25,000. The loan was taken in 2006 to purchase a D.D.A. Flat for own residential purposes.
10. Tuition Fees paid of his son ₹ 15,000.

Solution

Computation of amount entitled to Deduction w/s 80C

(for the Assessment Year 2016-17)

- | | |
|---|---------|
| 1. Life Insurance Premium on own life | ₹ 8,000 |
| (Max. qualifying amount 10% of sum assured) | |
| 2. Life Insurance Premium on married daughter's life (It qualifies for deduction) | 1,000 |
| 3. Life Insurance Premium on wife's life | 4,000 |
| (Max. qualifying amount 10% of sum assured) | |

4. Contribution to R.P.F.
5. Contribution to P.P.F.
6. Group Insurance Premium
7. Purchase of N.S.C. VIII Issue
8. Interest accrued on N.S.C. VIII Issue deemed to be re-invested
9. Repayment of loan instalment to L.I.C.
10. Tuition fees

Amount entitled to Deduction
restricted to ₹ 1,50,000.

15,000
74,000
1,200
20,000
1,750
25,000
15,000
₹ 1,64,950

Illustration 3

Qualifying amount for deduction u/s 80C restricted to ₹ 1,50,000.

From the following information compute the amount entitled to deduction u/s 80C of Income Tax Act for the assessment year 2016-17:

- (1) Premium paid ₹ 5,000 on life policy of his own life.
- (2) Premium paid ₹ 16,000 on life policy of his major son's life.
- (3) Premium paid ₹ 1,000 on life policy of his married daughter.
- (4) Contribution to RPF ₹ 5,000.
- (5) Contribution to PPF ₹ 4,000.
- (6) Investments in NSC VIII issue ₹ 10,000.
- (7) Deposits in Home Loan Account ₹ 8,000.
- (8) Contribution to ULIP ₹ 5,000.
- (9) Life insurance policy of ₹ 1,00,000 taken in 2015 on wife's life, premium paid ₹ 8,000 out of Agricultural Income.

Solution

Amount entitled to Deduction u/s 80C
(for the Assessment Year 2016-17)

- (1) LIP on own life 5,000
- (2) LIP on major son's life (Qualify for deduction) 16,000
- (3) LIP on married daughter's life (Qualify for deduction) 1,000
- (4) Contribution to RPF 5,000
- (5) Contribution to PPF 4,000
- (6) Investments in NSC VIII Issue 10,000
- (7) Deposits in Home Loan Account 8,000
- (8) Contribution to ULIP 5,000
- (9) LIP on wife's life (Qualify for deduction) 8,000

Amount entitled to Deduction 62,000

Note: Now the condition, that the payment should be out of taxable income, has been removed. However, the qualifying amount shall not exceed the total income or ₹ 1,50,000, whichever is less.

Illustration 4

Calculate the qualifying amount under section 80C for the assessment year 2016-17 from the information given below:

- (a) Life insurance premium paid ₹ 20,000 on his own policy.
- (b) His own contribution to R.P.F. ₹ 5,000 and employer's contribution to R.P.F. ₹ 4,000.
- (c) Repayment of loan taken for construction of residential house ₹ 80,000 out of which ₹ 30,000 is interest.
- (d) Purchased NSC IX Issue of ₹ 10,000.
- (e) Contribution to Family Benefit Fund ₹ 1,000.
- (f) Accrued interest on NSC (VIII Issue) amounted to ₹ 1,000.
- (g) Life insurance premium paid by him on his brother's life policy was ₹ 5,000.

Solution

Computation of Qualifying Amount for Deduction u/s 80C
(for the Assessment Year 2016-17)

- (a) LIP on own life 20,000
- (b) Contribution to R.P.F. 5,000
- (c) Repayment of loan taken for construction of residential house ₹ 50,000

₹ 75,000

- (d) N.S.C. purchased 10,000
- (e) Contribution to Family Benefit Fund (Does not qualify for deduction) —
- (f) Accrued interest on N.S.C. 1,000
- (g) LIP on brother's life policy (Does not qualify for deduction) —

Qualifying Amount 86,000

Illustration 5
Suresh having age of 68 years furnishes the following information for the assessment year 2016-17:

- (a) Payment of life insurance premium on own life—Policy taken in 2011 18,000
- (b) Policy value ₹ 2,00,000
- (c) Payment of life insurance premium on the life of the wife 5,000
- (d) Paid out of agricultural income 12,000
- (e) Own contribution to unrecognised provident fund 30,000
- (f) Contribution to Public Provident Fund 4,000
- (g) Accrued interest on N.S.C. (VIII Issue) including 6th year interest of ₹ 1,500 20,000
- (h) Deposit in Sukanya Samridhi A/c
- (i) Compute qualifying amount u/s 80C.

Solution
Computation of Qualifying Amount u/s 80C
(for the Assessment Year 2016-17)

- (a) Life insurance premium—Own life 18,000
- (b) Premium does not exceed 20% of sum assured, hence fully qualifies for deduction 5,000
- (c) Life insurance premium—Wife 30,000
- (d) Contribution to unrecognised provident fund (Does not qualify for deduction) 2,500
- (e) Contribution to PPF —
- (f) Accrued interest on N.S.C. VIII Issue 20,000
- (g) 6th year interest is not re-invested, hence, does not qualify for deduction 75,500
- (h) Deposit in Sukanya Samridhi A/c 20,000
- (i) Qualifying Amount (Sec. 80CCC) 75,500

(II) Deduction in respect of contribution to certain pension funds
It provides for a deduction to an individual for any amount paid or deposited by him in an annuity plan of the Life Insurance Corporation of India or any other insurer for receiving pension from the fund [referred to in section 10(23AAB)]. The deduction under this section is the amount so paid or ₹ 1,50,000, whichever is less.

Conditions for deductions

- (i) The amount should have been paid out of his income chargeable to tax.
- (ii) If the assessee or his nominee surrenders the annuity before the maturity date of such annuity, the surrender value shall be taxable in the hands of the assessee or his nominee, as the case may be, in the year of the receipt.
- (iii) The amount received by the assessee or his nominee as pension will be taxable in the hands of the assessee or his nominee, as the case may be, in the year of its receipt.
- (iv) Where any amount has been allowed as a deduction under section 80CCC no deduction with reference to such amount shall be allowed u/s 80C.

(III) Deduction in respect of contribution to pension scheme of Central Government (Sec. 80CCD)

1. Who is entitled to it: (i) An employee of the Central Government who has been appointed on or after 1.1.2004, or (ii) an employee of any other employer, or (iii) an assessee being an individual.

DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME

GENERAL PRINCIPLES FOR DEDUCTIONS FROM INCOMES (Sec. 80A)

1. From gross total income deductions shall be allowed under sections 80C to 80U.
2. The aggregate amount of deductions under sections 80C to 80U shall not exceed the gross total income.
However, deductions are not allowed against short-term capital gains specified in Sec. 111A and long-term capital gains.
3. If an association of persons or a body of individuals is entitled to any of the deductions referred to in sections 80G, 80GGA, 80GGC, 80IA, 80IB, 80IC, 80ID and 80IE a member of the association is not again entitled to claim such deduction in his own assessment in respect of his share in the income of the association. This is to prevent duplication of deductions.
4. Where deductions under sections 10AA or 80IA to 80RRB have been claimed and allowed against the income specified in these sections for any assessment year, the deduction in respect of such profits and gains shall not be allowed under any other provisions of the Act.
5. Where the assessee fails to make a claim in his return of income for any deduction in sections mentioned in 4, no deduction shall be allowed to him thereunder.

DEDUCTIONS IN RESPECT OF CERTAIN PAYMENTS

(I) Deduction in respect of Life Insurance Premium, Contribution to Provident Fund, etc. (Sec. 80C)

(A) *Assessee entitled to deduction :*
(a) an individual; or (b) a Hindu undivided family.

(B) *Quantum of deduction :* Upto ₹ 1,50,000.

(C) *Eligible payments and deposits :*

(a) In case of an Individual

Any sums paid or deposited in the previous year by an individual :

- (1) to effect or to keep in force an insurance on the life of self, spouse or his or her child;
 - (i) The qualifying amount of any premium or other payment made on an insurance policy issued before 1.4.2012 shall not exceed 20% of the actual capital sum assured;
 - (ii) The qualifying amount of life insurance premium on an insurance policy issued on or after 1.4.2012 shall not exceed 10% of the actual capital sum assured.
 - (iii) The qualifying amount of life insurance premium on an insurance policy issued on or after 1.4.2013 shall not exceed 15% of the actual capital sum assured if it is on the life of a person who is (a) a person with disability or a person with severe disability; or (b) suffering from disease or ailment specified u/s 80DDB.

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- (2) to effect or to keep in force a contract of annuity on the life of self, spouse or his or her child, provided that such contract does not contain a provision for the exercise by the insured of an option to receive a cash payment (upto 20% of salary) payable by or on behalf of the Government for the purpose of securing a deferred annuity;
- (3) by way of deduction from the salary to any provident fund to which the Provident Fund Government for an individual to any provident fund is to an account;
- (4) as contribution by an individual to where such contribution is to an account;
- Act, 1925 applies;
- (5) as a contribution to public provident fund, where such contribution is to an account, standing in the name of self, spouse or his or her child;
- Note: An individual can deposit maximum ₹ 1,50,000 in a financial year in PPF in Self-Account and Account(s) on behalf of minor(s), taken all the accounts together. If a person deposits the amount in excess of the prescribed limit, to the extent of the excess, the amount of deposits found in excess of the prescribed limit, shall be treated as superannuation fund.

Note: An individual is considered a minor if he or she is under the age of 18. If an individual is a minor, the account is payable on the amount of deposits made by the minor(s), taken to a recognized private pension or superannuation fund.

- [illegible]

- DEDUCTIONS TO BE MADE IN COMPUTING TOTAL INCOME
- (19) sum paid as subscription to equity shares or debentures of a public company or a public financial institution forming part of any eligible issue of capital approved by the Board; Eligible issue of Capital means an issue made by a public company formed and registered in India or a public financial institution and the entire proceeds of the issue are utilised wholly and exclusively for the purposes of any business referred to in Sec. 80IA(4), i.e., developing, maintaining and operating an infrastructure facility; or (ii) providing basic or cellular telecommunication services; or (iii) developing industrial park or special economic zone; or (iv) generation or generation and distribution of power.
- (20) sum paid as subscription to any unit (approved by the Board) of any mutual fund [Specified in Sec. 10(23D)] provided the subscription to these units is subscribed only in the eligible capital of any company;

- (20) Secured by any company; in *Sec. 10(23D)* provision issue of capital of any company;
- (21) interest due on the National Savings Certificates (VIII Issue) and (IX Issue);
- (22) term deposit for a fixed period of not less than five years with a scheduled bank in accordance with a scheme framed and notified by the Central Government;
- (23) as subscription to such bonds issued by the National Bank for Agriculture and Rural Development, as the Central Government may notify;

- (24) deposit in Senior Citizen Savings Scheme, 2004;
- (25) deposit in Sukanya Samridhi Account.
- (26) The deduction is available in respect of premia paid on life insurance policies on the lives of major children deposited in any fund notified under NSC VIII issue is not re-invested, hence, interest contribution to any fund shall not include any sums in repayment of loan taken from that fund.
- Notes : 1.

2. Contribution to any fund shall not increase the value of the fund for the purposes of the Income Tax Act, 1961.
3. In the 6th year interest accrued on NSC VIII Issue is not re-invested, hence, interest is eligible for deduction.
4. In case NSC VIII Issue purchased on or after 1.12.2011, 5th year interest is not re-invested, hence, interest is not eligible for deduction.

- | | | | |
|--|--------------------------|---|-------|
| 4. | for 6th year will not be | 5 | 6 |
| The accrued interest on NSC VIII issue is deemed to be | | | |
| of section 80C. | | | |
| if such certificates are purchased on or after 1.3.2003 but before 1.12.2011, the interest | | | |
| investment of ₹ 100 : | | | |
| 4 | 5 | 6 | 12/08 |

- | Year | 1 | 2 | 3 | 4 | 5 |
|----------|------|------|------|-------|-------|
| Interest | 8.16 | 8.83 | 9.55 | 10.33 | 11.17 |

- | | | | | | |
|--|------|------|-------|-------|-------|
| 1.12.2011 shall be five years | 1 | 2 | 3 | 4 | 5 |
| If such certificates are purchased on or after 1.12.2011 | | | | | |
| shall accrue as under on an investment of ₹ 100 : | | | | | |
| | 1 | 2 | 3 | 4 | 5 |
| | 9.50 | 9.31 | 10.11 | 10.98 | 11.92 |
| shall accrue as under on an investment of ₹ 100 : | | | | | |
| | 1 | 2 | 3 | 4 | 5 |
| | 9.50 | 9.31 | 10.11 | 10.98 | 11.92 |
| shall accrue as under on an investment of ₹ 100 : | | | | | |
| | 1 | 2 | 3 | 4 | 5 |
| | 9.50 | 9.31 | 10.11 | 10.98 | 11.92 |

- [illegible]

- | Interest | 1 | 2 | 3 | 4 | 5 |
|---|------|-------|-------|-------|---|
| If such certificates are purchased on or after 1.1.2004 | | | | | |
| an investment of ₹ 100 : | | | | | |
| Year | 1 | 2 | 3 | 4 | 5 |
| | 9.43 | 10.25 | 11.14 | 12.11 | |

- | | | | |
|--|------|---|----|
| Interest | 8.05 | | |
| A new scheme of the National Savings Certificate | | | |
| 1.12.2011. | | | |
| The maturity period of this scheme shall be ten years. | | | |
| If the maturity period of this scheme shall be ten years, the interest | | | |
| of the maturity period of this scheme shall be ten years. | | | |
| | 8 | 9 | 10 |

- | Year | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
|----------|--------|------|-------|-------|-------|-------|-------|-------|-------|-------|
| Interest | ₹ 8.89 | 9.68 | 10.54 | 11.48 | 12.50 | 13.61 | 14.82 | 16.13 | 17.57 | 19.13 |

ASSESSMENT OF ASSOCIATION OF PERSONS OR BODY OF INDIVIDUALS

Association of Persons. When two or more persons associate themselves for managing a property for the purpose of producing income, or when there is a combination of persons formed for the promotion of a joint enterprise, they are said to have formed an association of persons provided that it is not a Hindu undivided family, firm, company or a local authority. The association must be one for the purpose of producing income.

Body of Individuals. When two or more individuals associate themselves to earn income, it is called body of individuals.

It should be noted that in both the aforesaid cases there should not be an agreement to form a partnership firm.

Computation of Share of a Member of Association of Persons or Body of Individuals

(Sec. 67A)

The share of a member of AOP or BOI in the income of the AOP/BOI (when the shares of the members are determinate and known) shall be computed as under :

(1) Any interest, salary, commission or other remuneration paid to any member in respect of the previous year shall be deducted from the total income of the AOP/BOI and the balance ascertained and apportioned among the members.

(2) If the amount apportioned to a member under clause (1) is a profit, any salary, interest, commission or other remuneration paid to the member by the AOP/BOI in respect of the previous year shall be added to the amount, and the result shall be treated as the member's share in the income of the AOP/BOI.

(3) If the amount apportioned to a member under clause (1) is a loss, any salary, interest, commission or the remuneration paid to the member by the AOP/BOI in respect of the previous year shall be adjusted against that amount and the result be treated as member's share in the income or loss of AOP/BOI.

(4) The share of a member in the income or loss of AOP/BOI, as computed in the manner described in the above clauses (1) to (3) shall, for the purpose of assessment; be apportioned under the various heads of income in the same manner in which the income or loss of the AOP/BOI has been determined under each head of income.

Any interest paid by a member on capital borrowed by him for the purposes of investment in AOP/BOI shall be deducted from his share in the income of AOP/BOI, while computing his share chargeable under the head 'Profits and Gains of Business or Profession'.

Note : If the share of a member in the income of AOP/BOI is a loss, he is not entitled to set it off against his personal income.

Exemption of Share of a Member

An association of persons or body of individuals is assessed separately. The share of income received by its members from the association shall be dealt with as given ahead :

- (1) If the association of persons or body of individuals is taxed at the maximum marginal rate or any higher rate, the share of member shall not be included in his total income at all.
- (2) If no income tax is chargeable on the total income of the association or body, the share of a member therein shall be chargeable to tax as part of his total income, and no rebate will be allowed.
- (3) If tax has been paid by the association or body at normal rates, income tax shall not be payable in respect of such share, although it shall form part of total income of the member. It means on such share income tax relief shall be allowed at the average rate of tax.

TAX LIABILITY

Charge of tax where shares of members in association of persons or body of individuals are unknown

(1) If the individual shares of the members of an AOP or BOI in the income of such AOP or BOI are indeterminate or unknown, tax shall be charged on its total income at the maximum marginal rate.

(2) If the total income of any member of such AOP or BOI is chargeable to tax at a rate which is higher than the maximum marginal rate, tax shall be charged on its total income at such higher rate. For example, where a non-domestic company is a member of an AOP, the tax on total income of the AOP shall be charged at the rate applicable to the company.

Explanation : The individual shares of the members of AOP or BOI shall be deemed to be indeterminate or unknown if such shares (in relation to the whole or any part of income) are indeterminate on the date of the formation of AOP or BOI or at any time thereafter.

Note : AOP stands for Association of Persons and BOI stands for Body of Individuals.

Charge of tax where shares of members in association of persons or body of individuals are known

(1) **None of the members is liable to tax.** Where none of the member of an AOP has income in excess of the maximum amount which is not chargeable to tax, the AOP shall pay tax on its income at the same rates as are applicable to an individual or normal rates.

(2) **Member liable to tax.** The total income of any member of the AOP for the previous year (excluding his share from AOP or BOI) exceeds the minimum taxable limit, tax shall be charged on its total income at the maximum marginal rate.

(3) **Member liable to tax at a rate higher than maximum marginal rate.** Where any member of such Association is chargeable to tax for the previous year at a rate or rates which is higher than the maximum marginal rate, tax shall be charged on that portion or portions of the total income of the Association which is relateable to the share of such member at such higher rate as the case may be, and the balance of the total income of the Association shall be taxed at the maximum marginal rate.

Maximum Marginal Rate

[Sec. 2(29C)]

It means the rate of income tax (including surcharge on income tax, if any) applicable in relation to the highest slab of income in the case of an individual, association of persons or body of individuals as specified in the Finance Act of the relevant year.

Note : The rate of income tax for the highest slab of income for the assessment year 2016-17 is 30%. Surcharge @ 12% if total income exceeds one crore rupees. Further, on the amount of income tax and surcharge education cess and Secondary and Higher education cess are leviable @ 2% and 1%, respectively.

Illustration 1

A, B and C are members of an Association of Persons. They share profit or loss equally. During the previous year the income of AOP is ₹ 2,20,000 and the income of A, B and C is ₹ 40,000, ₹ 5,10,000 and ₹ 5,20,000 respectively. Compute tax liability of AOP and A, B and C for the assessment year 2016-17.

Solution

The members of the AOP (B and C) are liable to pay tax on their personal income. Hence, AOP will pay tax at the maximum marginal rate of tax i.e. 30%.

Computation of Tax Liability of AOP
(for the Assessment Year 2016-17)

₹ 2,20,000 × 30 ÷ 100

Add : Education cess & SHEC @ 3%

Tax Liability (for the Assessment Year 2016-17)	
	₹
	56,000
	1,980
	67,980

Personal Income	A	B	C
Share in AOP will not be included as it has paid tax at maximum marginal rate	40,000	5,10,000	5,20,000

Tax on Total Income	Total Income	
	40,000	5,10,000
	Nil	27,000
		29,000
Add : Education cess & SHEC @ 3%		810
		27,810
		29,870

Illustration 2

The total income of an association of persons in which A, B & C are Members, sharing profits and losses in the ratio of 1 : 2 : 2 was assessed at ₹ 16,000. In computing the total income of ₹ 16,000 the assessing officer has made the necessary adjustments in respect of the following sums :

- (a) Salaries of ₹ 6,000 and ₹ 4,000 to A and B respectively.
 - (b) Interest on Capital ₹ 7,000, ₹ 10,000, ₹ 25,000 to A, B and C respectively.
 - (c) Commission of ₹ 1,000, ₹ 3,500 and ₹ 4,500 to A, B and C respectively.
 - (d) Bonus of ₹ 1,000, ₹ 1,500 and ₹ 2,500 to A, B and C respectively.
- C has borrowed capital for Investment in the A.O.P. and had paid interest of ₹ 15,000 separately to the lender. Members do not have any other income.

Allocate the income amongst the Members.

Solution

Allocation of Income amongst the Members of AOP

	A	B	C
1. Salary	6,000	4,000	—
2. Interest	7,000	10,000	25,000
3. Commission	1,000	3,500	4,500
4. Bonus	1,000	1,500	2,500
	10,000	20,000	20,000
5. Loss (₹ 66,000 – 16,000)	5,000	—	—
	—	—	—
6. Interest paid	—	—	15,000
Net Income/Loss	<u>5,000</u>	<u>—1,000</u>	<u>—3,000</u>

11. *In the case of a company other than a domestic company :*

4 but

1

10%/20%

(ii) @ 5% if total income exceeds ₹ ten crore.

Surcharge and SHEL. On the amount of income-tax and surcharge @ 3%.

(Sec. 115BA)

option if it fulfils the following conditions:

production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it; and

(c) The company has not claimed deductions from its income under the following sections:

- A. (i) 10A—Unit in Special Economic Zone or

(iv) 33AB—Deposit in Tea Development Account etc.; or

(vi) 35—Payment to outsiders for research or expenditure on in-house research; or

(viii) 35AD—Capital expenditure on specified business; or

(x) 3500D—Expenditure on any skill development project; or

(xi) Deductions u/s 80A, 80AB, 80AC, 80B, 80BA, 80C, 80D, 80E, 80JA, from gross total income.

B. Brought forward loss if such loss is attributable to any aforesaid deduction. Further, such loss cannot be carried forward and set-off in any subsequent year.

(1) The depreciation w/s 32 shall be determined in the manner as may be prescribed for this section.

(2) The option, to pay tax under the provisions of this section, shall be exercised in the prescribed manner on or before the due date specified in Sec. 139(1) for furnishing the first return of income.

Once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

1. Where the total income of an Indian company is derived from foreign companies declared, distributed or paid by such companies.

(Sec. 115BRD)

...shall be liable

(11) @ 12% if total income exceed

seed ₹ ten crore

4. "Specified foreign country" means the same meaning as contained in the definition of "Specified foreign country" in the Income Tax Act, 1961.

o), (c) and (d).

OR MINIMUM PAYMENT OF TAX BY CERTAIN COMPANIES

(Sec. 115JB)

much book profit

(a) 7½%, if total income or book profit (deemed total income) is

(b) 12% if total income or book-profit exceeds 7 ten crore

(a) 2%, if total income or book profit (deemed total income)

(b) 5% if total income or book profit exceeds ₹ ten crore

Education cess and SHEC : 3%.

(1) Any insurance or banking company or any company engaged in generation or supply of electricity shall

of electricity shall prepare its Statement of Profit and Loss in accordance with provisions of the Act governing such class of company.

(ia) Any other company shall prepare its Statement of Profit and Loss in accordance with the provisions of Part II of Schedule III to the Companies Act, 2013.

(a) the accounting policies;

(b) the accounting standards followed for preparing accounts;

(c) the record and the statement shall be the same as have been adopted for preparing such statements laid before the company at its annual general meeting.

(iii) Where a Company adopts the accounting year different from the previous year, the items mentioned in (ii) shall correspond for such financial year or part of this Act, the items mentioned in (ii) shall correspond for such financial year or part of such financial year falling within the relevant previous year.

ared as aforesaid and

It means the net profit as shown in Statement of Profit & Loss : adjusted as specified below :

(a) Increased by the following if devoted to:

- (ii) The amounts carried to any reserve by whatever name called;
- (iii) The amounts set aside to provisions made for meeting liabilities other than ascertained liabilities;
- (iv) The amount by way of provisions for losses of subsidiary Companies;
- (v) The amount of dividends paid or proposed;
- (vi) The amounts of expenditure relatable to income to which sections 10, 11 or 12 apply. However, the expenses relatable to long-term capital gains which are exempt u/s 10(38) shall not be added;
- (vii) The amount of expenditure relatable to income (share of the assessee in the income of an AOP or BOI) on which AOP or BOI has paid tax at maximum marginal rate, chargeable to tax u/s 115BBF—*u.e.f.* A.Y. 2017-18.]
- (viii) The amount of depreciation;
- (ix) The amount or amounts set aside as provision for diminution in the value of any asset, *e.g.*, Provision for doubtful debts, provision for diminution of investment etc.)
- (x) The amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset, if not credited to the Statement of Profit & Loss.

The amount of income-tax under clause (i) shall include :

- (i) any tax on distributed profits (u/s 115-O) or on distributed income (u/s 115R);
- (ii) any interest charged under this Act;
- (iii) Surcharge, if any, as levied by the Central Government;
- (iv) Education cess on income-tax, if any;
- (v) Secondary and Higher Education cess on income-tax, if any.

(b) Reduced by the following :

- (i) The amount withdrawn from any reserve or provision and credited to Statement of Profit & Loss.

Exceptions :

- (a) The amount withdrawn from any reserve created before 1.4.1997, which was not debited to Statement of Profit & Loss, shall not be deductible. For example, revaluation reserve which was not created by way of debit to Statement of Profit & Loss, any amount transferred therefrom to Statement of Profit & Loss to counter balance the claim of additional depreciation on the revalued and enhanced cost of the fixed asset, will not be deductible from book-profit.
 - (b) If any provision or reserve was allowed in computing the book-profit in a previous year relevant to assessment year commencing on or after 1.4.1997, such provision or reserve if credited to Statement of Profit & Loss shall not be deductible.
 - (ii) Exempted incomes (Under Sections 10, 11 or 12) if credited to Statement of Profit & Loss.
- However, the long-term capital gains which are exempt u/s 10(38) shall not be deducted.
- (iia) The amount of depreciation claimed in Statement of Profit & Loss, excluding the claim of depreciation on account of revaluation of assets.
 - (iib) The amount withdrawn from revaluation reserve and credited to Statement of Profit & Loss to the extent it does not exceed the depreciation on account of revaluation of assets.
 - (iic) The amount of income (share of the assessee in the income of an AOP or BOI) on which AOP or BOI has paid tax at maximum marginal rate.
 - (iicd) The amount of income by way of royalty in respect of patent chargeable to tax u/s 115BBF—*u.e.f.* A.Y. 2017-18]
 - (iii) The brought forward loss or unabsorbed depreciation, whichever is less as per books of account.

Explanation :

- (a) The brought forward loss shall not include depreciation.
- (b) No deduction shall be allowed under (iii) if the amount of loss brought forward or unabsorbed depreciation is nil.
- (iv) The profits of sick industrial company for the assessment year commencing from the assessment year relevant to previous year in which the company has become sick and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.
- (v) The amount of deferred tax, if such amount is credited to the Statement of Profit & Loss.

Other provisions

1. The aforesaid provisions shall not affect the carry-forward of unabsorbed depreciation [Sec. 32(2)], business loss [Sec. 72(1)(ii)], speculation business loss (Sec. 73), short-term or long-term capital loss (Sec. 74) and loss on account of owning and maintaining race horses. [Sec. 74A(3)]
2. The company shall furnish a report of Chartered Accountant in the prescribed form, certifying that the book profit has been computed in accordance with the provisions of this section. The report shall be furnished along with the return of income.
3. The book-profit or loss derived from the activities of a tonnage tax company [referred to in Sec. 115VI(1)] shall be excluded from the book-profit of the company for the purposes of Sec. 115JB.
4. The provisions of Sec. 115JB shall not apply to any income accruing or arising to a company from life insurance business referred to in Sec. 115B.
5. Save as otherwise provided in this section, all other provisions of this Act shall apply to a company, mentioned in this section.

Tax Credit in respect of tax paid on deemed income of Certain Companies or Tax Credit in respect of Minimum Alternative Tax (MAT) on Certain Companies

Where MAT is paid by a Company for the assessment year 2006-07 or any subsequent assessment year (u/s 115JB) a tax credit will be allowed to it in subsequent years as under :

1. The tax credit shall be the difference between the tax paid under MAT and the tax payable on the total income computed under other provisions of the Act. Suppose tax payable on total income is ₹ 20,000 and tax has been paid under MAT ₹ 50,000. The tax credit will be allowed ₹ 50,000 - 20,000 = ₹ 30,000.
2. The tax credit will be allowed to be carried forward for a maximum of ten assessment years succeeding the assessment year in which the credit becomes allowable. Suppose credit is allowable in the A.Y. 2010-11, it can be carried forward and set-off upto the A.Y. 2020-21.
3. The tax credit will be allowed in the year in which the tax payable on total income is more than the tax payable under MAT u/s 115B.
4. The set-off will be allowed to the extent of an amount equal to the difference between the tax payable on the total income and the tax payable under MAT u/s 115B. Suppose b/f tax credit is ₹ 40,000. The tax payable on total income is ₹ 1,00,000 and tax payable under MAT u/s 115B is ₹ 80,000. ₹ 20,000 can be set-off this year and the company will pay ₹ 80,000 only.
5. No interest shall be payable on tax credit.
6. Where as a result of assessment, reassessment, rectification of mistake, settlement, appeal or revision, the amount of tax payable is reduced or increased, the amount of tax credit shall also be increased or reduced accordingly.
7. Where a private company or unlisted public company is converted into a limited liability partnership, the benefit of tax credit shall not be available to the successor limited liability partnership.

ASSESSMENT OF COMPANIES

A company is required to pay tax on every rupee of its total income at a flat rate, without there being any exemption limit. For the purpose of assessment of companies the understanding of the meaning of a company and various types of companies is very essential.

Company [Sec. 2(17)]

A company means :

- (i) any Indian company, or
- (ii) any body corporate incorporated under the law of a foreign country, or
- (iii) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the Central Board of Direct Taxes to be a company.

Types of Companies

1. *Company in which the public are substantially interested* [Sec. 2(18)]

In the following cases, a company is said to be a company in which the public are substantially interested :

- (a) it is a company owned by the Government or the Reserve Bank of India or in which not less than 40% shares are held by the Government or the Reserve Bank of India or a corporation owned by the R.B.I.; or
 - (b) it is a company which is registered under *section 8* of the Companies Act, 2013; or
 - (c) it is a company, having no share capital and it is declared by order of the Central Board of Direct Taxes to be a company in which the public are substantially interested; or
 - (d) it is a mutual benefit finance company, *i.e.*, a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government to be a Nidhi or Mutual Benefit Society; or
 - (e) it is a company wherein shares carrying not less than 50% of the voting power are held by one or more co-operative societies throughout the relevant previous year; or
 - (f) it is a company which is not a private company under the Companies Act, 2013, and its equity shares were, as on the last day of the relevant previous year, listed in a recognised stock exchange in India; or
 - (g) it is a company which is not a private company and whose equity shares carrying not less than 50% (40% in case of an industrial company) of the voting power were beneficially held throughout the previous year by the Government, a statutory corporation or any other company in which the public are substantially interested or a wholly owned subsidiary of such a company.
- If the majority of the equity shares of a public company are held by a foreign company in which the public are substantially interested, such a company would be a company in which the public are substantially interested.
- Widely-held Company.** This is the popular name of a company in which the public are substantially interested.

Closely-held Company. This is the popular name of a company in which the public are not substantially interested.

2. Indian Company

An Indian Company means a company formed and registered under the Companies Act, 2013. It includes a corporation established under a Central or State Act and any institution, association or body which is declared by the Central Board of Direct Taxes to be a company under section 2(17). In the case of the State of Jammu and Kashmir, a company formed and registered under any law for the time being in force in that State is called an Indian company. In the case of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry, a company formed and registered under any law for the time being in force in these places is called an Indian company. In all cases the registered or principal office of the company, corporation, institution, association or body has got to be situated in India.

3. Public Sector Company

It means any corporation established by or under any Central or State Act or a Government Company as defined in section 2(71) of the Companies Act, 2013. [Sec. 2(36A)]

4. Domestic Company

Domestic company means an Indian Company or any other company which, in respect of its income liable to tax under this Act, has made the prescribed arrangements for the declaration and payment, within India, of the dividends payable out of such income. [Sec. 2(22A)]

5. Foreign Company

A foreign company is a company which is neither an Indian Company nor has made the prescribed arrangements for the declaration and payment of dividends within India. [Sec. 2(42)]

6. Company registered under section 8 of Companies Act, 2013

It is a company formed to promote art, charity, commerce, religion or any other useful object, not for profit, and which intends to apply its profit, if any, or other income towards the further improvement of such objects and prohibits the payment of any dividend to its members.

Principal Officer

Principal Officer means :

- (i) the secretary, treasurer, manager or agent of the company, or
- (ii) any person connected with the management or administration of the company upon whom the Assessing Officer has served a notice of his intention of treating him as the Principal Officer of the Company. [Sec. 2(35)]

Person who has substantial interest in the company

It means a person who is the beneficial owner of equity shares carrying not less than 20% of the voting power. [Sec. 2(32)]

COMPANY'S RESIDENCE

Under section 6(3), a company is said to be resident in India in any previous year if :

- (i) it is an Indian Company, or
- (ii) during the year, the control and management of its affairs is situated wholly in India. *W.e.f. A.Y. 2017-18* point (ii) shall be as under :

Its place of effective management, in that year is in India.

Explanation : "Place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

A company is never not ordinarily resident. A company which is not resident according to the aforesaid conditions is called a non-resident company.

ASSESSMENT OF COMPANIES

COMPUTATION OF TOTAL INCOME OF A COMPANY

The total income of a company is computed in the same manner as that of any other assessee. The procedure is described in detail in the chapter on Assessment of Individuals. However, in brief, it is as under :

- (1) Ascertain the taxable income under each head of income after deducting the losses and allowances brought forward from balances in each head of income after deducting the losses.
- (2) The total of the balances in each head is known as Gross Total Income.
- (3) Deduct from the Gross Total Income the deductions under the following sections : 80C, 80GG, 80GGB, 80-1A, 80-1AB, 80-1B, 80-1C, 80ID, 80IE, 80J, 80JA, 80JAA and 80L.
- (4) The balance left is the total income.

ASSESSMENT OF COMPANIES

A company is required to file its return of income under section 139(1) of Income Tax Act within the prescribed time, just like other assesses. The principal officer of the company files the return of income on behalf of the company. Thereafter, the same procedure is followed by the Assessing Officer for the assessment of the company as is described in the chapter on Assessment Procedure.

Note : The due date for filing the return of income by a company is 30th September of the assessment year.

IMPORTANT POINTS REGARDING THE ASSESSMENT OF COMPANIES

- (1) A company is liable to pay income tax on its total income, however, small it may be. There is no exemption limit.
- (2) Income tax is payable on a company's total income at a flat rate. However, different types of companies pay tax at different rates and on different types of incomes, the rates of tax are also different.
- (3) If the tax payable by a company is less than 18.5% (+ surcharge, if any and education cess & SHEC) of its book profits, it is liable to pay tax 18.5% (+ surcharge, if any and education cess & SHEC) of its book profits.

COMPUTATION OF TAX ON COMPANIES

A Company is assessed in its own name, i.e., a company pays tax on its income as a distinct unit. The tax paid by a company is not deemed to have been paid on behalf of its shareholders.

A company is liable to pay income tax on its total income, however, small it may be. The income tax is payable on its total income at a flat rate except on the incomes for which special rates have been prescribed in the Act.

Rates of Income Tax Applicable to Companies

The rates of income tax which are applicable to companies for the assessment years 2016-17 are as under :

1. In the case of a domestic company

- (i) Winnings u/s 115BB 30%
- (ii) Short-term capital gains specified in Sec. 111A 15%
- (iii) Long-term capital gains u/s 112 10%/20%
- (iv) Other income 30%

Note : If total turnover or the gross receipts in the P.Y. 2014-15 does not exceed ₹ five crore, the tax shall be charged @ 29% instead of 30% for the A.Y. 2017-18.

Surcharge : (i) @ 7% on the amount of income tax, if total income exceeds ₹ one crore but does not exceed ₹ ten crore.

(ii) @ 12% if total income exceeds ten crore rupees.

Marginal relief : (i) Where total income exceeds ₹ one crore but does not exceed ₹ ten crore, the total amount payable as income tax and surcharge on such income shall not exceed the total amount payable as income tax on total income of ₹ one crore by more than the amount of income that exceeds ₹ one crore.