Shree H.N.Shukla Group Of Colleges

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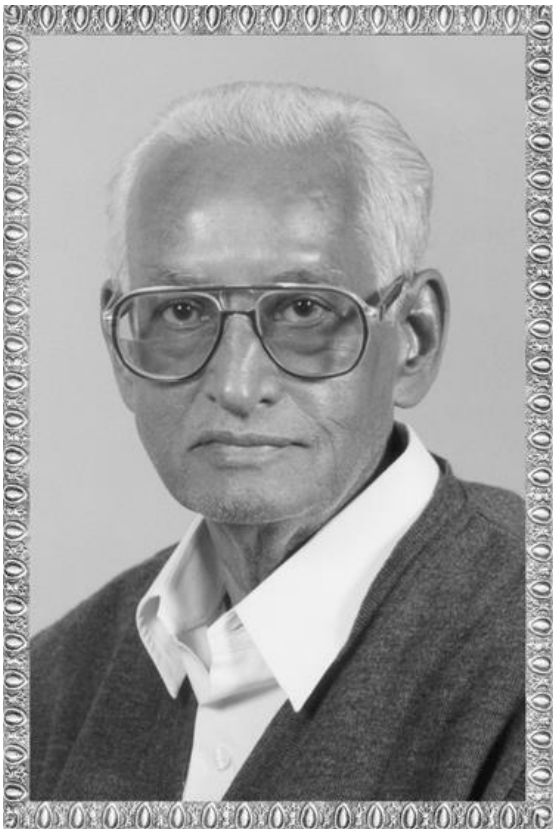

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Shree H.N.Shukla College of Legal Studies *"Sky is the Limit"*

UNIT -1 BASIC CONCEPTS EXTENT AND COMMENCMENT

NO.	NAME OF TOPIC
1	OVERVIEW OF TAX CONCEPT AND VARIOUS DEFINITIONS
2	PERSON- RESIDENTIAL STATUS AND TAX PLANNING
3	COMPUTATION OF TOTAL INCOME
4	INCOME WHICH DO NOT FORM A PART OF INCOME
5	DEDUCTION TO BE MADE IN COMPUTING TOTAL INCOME
6	INCOME FORMING A PART OF TOTAL INCOME ON WHICH NO INCOME TAX IS PAYABLE

1. OVERVIEW OF TAX CONCEPT AND VARIOUS DEFINITIONS:

1.1 OVERVIEW OF TAX CONCEPT :

The word tax is based on the latin word taxo which means to estimate. To tax means to impose a financial charge or other levy upon a taxpayer, an individual or legal entity, by a state or the functional equivalent of a state such that failure to pay is punishable by law.

Taxation has existed since the birth of early civilization. In ancient times taxes were either material or money like goods or services in the primitive society. The subjects used to pay a share of their income to the Head of a tribe or to the King who in return provided them with the administration security from foreign aggression andother civic amenities.

In the medieval centuries feudalism was founded, so the origin of modern tax system also was founded. Feudal market dues, tolls for protection and use of road, bridges, ferries, land rent, and other payment in goods and services were gradually transferred into money payment with the rise of money economy, Kings liked to receive money and the people preferred to pay money instead of goods and services. Step by step the old feudal revenue system changed into taxation.

Then with the development of economic sciences and with the passage of time, the functions of modern state appeared and taxation gradually became a tool of usage with more than one goal and became important source of revenue. During 19th and 20th centuries, there has been both qualitative and quantitative change inthe public expenditures. Taxation has passed through the stages with passage of time, and tax's functions andobjectives also have changed from the ancient communities to medieval societies to modern societies also, sothe tax system has evolved with the evolution of the functions of the modern state.

Taxation is a payment from natural persons or legal entity and it is levied by government ,for which no goods or services is received directly in return, so taxes is that amount of money, the people pay which is not relateddirectly to the benefit of people obtained from the provision of a particular goods or services.

Until the early 1930s, it was universally accepted in principle that governments should balance their budgets. Thus, the principle reason for taxation was to pay for government expenditures. Of course, governments had from time to time resorted to borrowing in order to pay for their expenditures and government borrowing was relatively quite large during some war periods. Government borrowing may be from the private sector or from abroad. Alternatively, governments may borrow from the central bank of the Country. A portion of taxes also goes to pay off the state’s debt and the interest accumulates.

The taxes collected have been used by the government to carry out many functions. Some of these include:

- expenditures on war,
- the enforcement of law and public order,
- protection of property,
- economic infrastructure (roads, legal tender, enforcement of contracts, etc.),
- public works,
- social engineering, and
- the operation of government itself.

Governments also use taxes to fund welfare and public services. These services can include

- education systems,
- health care systems,
- pensions for the elderly
- unemployment benefits, and
- public transportation, energy, water and waste management systems, common public utilities, etc.

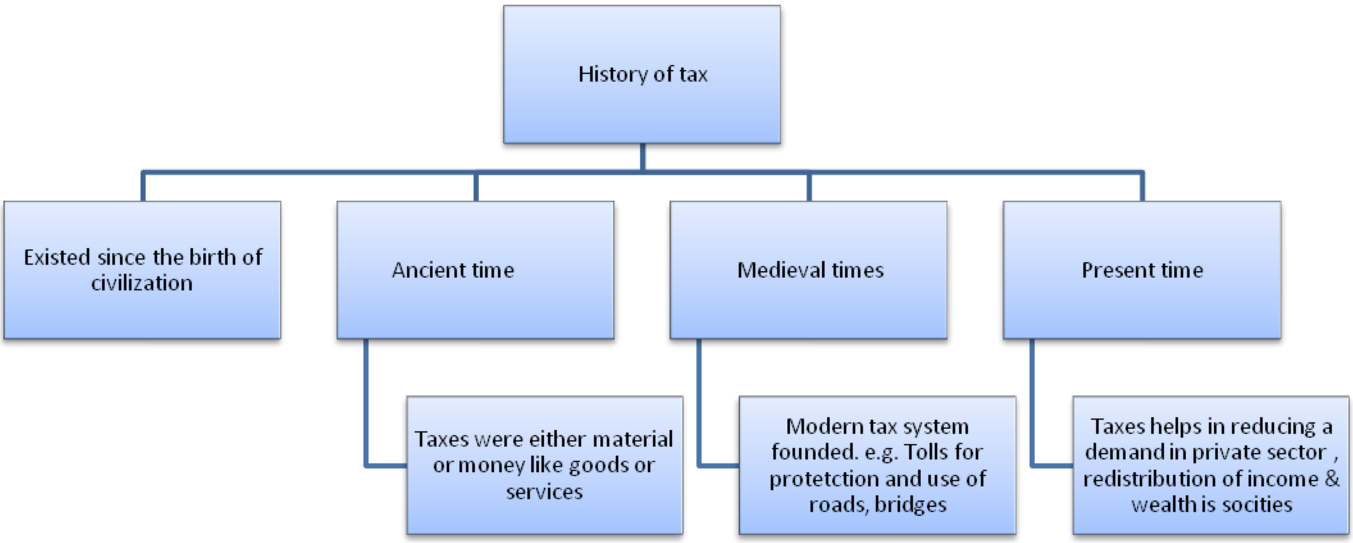
Governments have also financed expenditures in recent years through the sale of publicly owned assets.

(Although asset sales were an important source of funds to the government, however, they are necessarily limited since assets can only be sold once. Thus, governments still have to raise most of the revenue needed to finance their expenditures through taxation or by charging directly for government services (user charges). Governments uses different kinds of taxes and vary the tax rates, this is done to distribute the tax burden among individuals or classes of the population involved in taxable activities, such as business, or to redistribute resources between individuals or classes in the population.

Modern social security systems are intended to support the poor, the disabled, or the retired person by taxes on those who are still working. In addition, taxes are applied to fund foreign aid and military ventures, to influence the macroeconomic performance of the economy or to modify patterns of consumption or employment within an economy, by making some classes of transaction more or less attractive. Thus, there is no doubt that most government expenditures must be paid through the taxation system and it is reasonable to see this as the principle function of taxation. Yet there have always been a variety of subsidiary objectives of taxation.

In the present time, taxation is not just a means of transferring money to the government to spend it for meeting the public expenditures or raise revenue to the government, but taxes have become beside that, as a tool for reduce demand in the private sector, redistribution of income and wealth in the societies in the countries. It is also a means for economic development and for playing very important role in the case of stabilization of income, protection industrial home from foreign industrials. Taxation helps to find out solution for some economic problems that face the state, like unemployment, inflation, and depression. Taxation finds out solution for some economic problems, but not alone, but there are also a lot of another fiscal instruments. They are working together for solution of those economic problem. Countries practice sovereignty authority upon its citizens, through levying of Taxes.

TAX = LATIN WORD= TO ESTIMATE
“ To impose a financial charge or other leavy upon tax payer. By an individual or legal entity, by a state or the functional equivalent of a state, failure of which is punishable by law.


History of tax
Existed since the birth of civilization
Ancient time
Medieval times
Present time
Taxes were either material or money like goods or services
Modern tax system founded. e.g. Tolls for protetction and use of roads, bridges
Taxes helps in reducing a demand in private sector , redistribution of income & wealth is socities

Definitions by Authors:
According to Prof. Seligman :
" A tax is compulsory contribution from the person to the government to defray the expenses incurred in common interest of all without reference to special benefits conffered."
According to Bastable :
" A tax as a compulsory contribution of the wealth of a person , or body of person for the service of public powers"

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1.2 Object:

(1)Revenue Generation:
To produce a necessary amount of revenue to meet the requirement of the government.
To meet the expenditure adequately.

(2) Social objectives :
The social objectives achieves the redistribution of income & wealth. Which imposes a high rate tax upon luxury commodities. This helps in applying progressive tax system when levying taxes from taxpayers. The rules regarding tax exemption has been imposed to basic goods. Revenue generation of tax helps in achieving the objective of social welfare like medical , health.

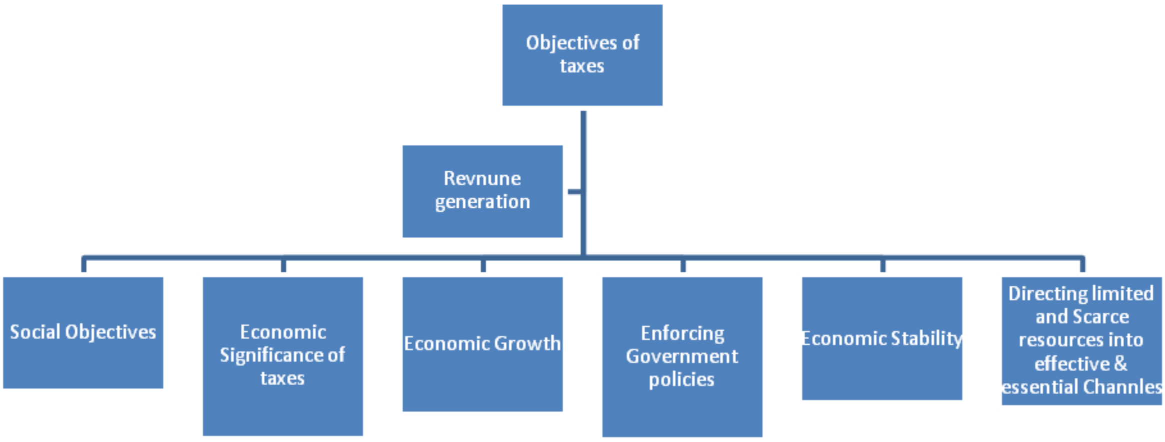
(3)Economic Significance of tax:
Tax and its revenue generation helps in encouraging some economic activities like a formation of taxation policies for start up.

(4)Economic growth :
A proper and accelerated growth of economic development and uses a resources in a productive manner.

(5)Economic stability :
Imposition of tax helps in economic stability and sustain a growth and uses the tax in inflation and depression.

(6)Enforcing Government policy :
Tax and revenue generation encourages investments , savings and investment in MSME or rules regarding export.

(7)Directing limited scarce resources into effective & essential channels:
Tax and revenue generation helps in directing a scarce resources into essential commodities and achieved by exemption of certain industries & imposition of heavy duties.



1.3 Difference Between Direct Tax And Indirect Tax :

Point of difference	**Direct Tax**	**Indirect Tax**
Incidence & Impacts	Incidence & impact of tax are on one and same person	Impact of tax is on one person and incidence on another .
Burden	Imposed on individual & organization & burden of tax can not be shifted to other.	Imposed on commodities and allows the tax burden to shift.
Viability of payment	Lesser burden based on their income earning ability	Borne by consumers based on the MRP of the commodities
Penalty	Levied on assesee	On supplier of goods or services
Example	Income tax , Coporate Tax	GST, Custom , Excise , Stamp duty

1.4 Tax Structure in India :

Income Tax Act, 1962:

(1) Constitution Of India:
Article -265- No tax levied or collected except by the authority of law.
Article -246-Distribute legislative powers including taxation between the parliament of India & State legislature.
Schedule VII- Schedule VII includes : (1) Union list , (2) State list , (3) Concurrent list

(2) List of Taxes by Central and State Government:
(a) Central : (i) Taxes on income other than Agriculture
(ii) Customs including export duties
(iv) Excise duties on tobacco
(v) Corporate Tax
(vi) Tax on interstate trade of goods other than newspapers.
(b) State : (i) Taxes on agriculture income
(ii) Octroi
(iii) Excise duty on alcoholic liquors

1.5 Administration Authority under the Income Tax act, 1962:

(1) CBDT :
Central Board of Direct taxes, works essential inputs for policy and planning of direct taxes. Authority functions under central board of revenue, Act, 1963.

(2) Income Tax Department :
Direct Taxation acts passed by Parliament namely, Income tax act, 1961.

(3) Central Board of Indirect taxes and Customs:
A department of revenue under the ministry of finance. Which deals with the tasks of formulation of policy concerning levy and collection of custom & GST.

(4) GST Council :
GST Council will make recommendation to union & states on Goods & service tax laws. Which consist of representatives from the center as well as state.

1.6 Various Definitions Under the Income Tax Act, 1962 :

(1) **Finance bill :**

Finance Bill as part of the Union Budget is presented usually in the month of February every year and this bill. It contains amendments in direct as well as indirect taxes. It is presented in the Parliament by the Union Finance Minister. The finance bill is passed by both the houses of Parliament after it is being tabled and necessary recommendation amendments have been made in it. Once the bill has been passed by the Parliament, it goes to the President for his assent. After Presidents assent, the finance bill becomes the Finance Act.

The Finance Bill is presented at the time of presentation of the Annual Financial Statement before Parliament, infulfillment of the requirement of Article 110 (1)(a) of the Constitution, detailing the imposition, abolition, remission, alteration or regulation of taxes proposed in the Budget. It is through the Finance Act that amendments are made to the various Acts like Income Tax Act 1961, Customs Act 1962 etc. In short, Finance Bill can be considered as an umbrella Act.

When the proposals are introduced to the Parliament it is called as a Finance Bill. Once it is passed by the Parliament and assented to by the President, Finance Bill becomes the Finance Act for that year.

The different clauses in the Finance Act may get notified eventually, but at different times based on the readiness of the stakeholders and implementing agencies. The effective date of applicability of provisions of the Finance Act is usually mentioned in the notification in the official gazette or in the Act itself. Generally, the amendments by the Finance Act are made applicable from the first day of the next financial year. Likewise, amendments by Finance Act, 2019 are effective from 1st April, 2019. Regarding indirect taxes, the ad valorem tax rates (tax rates based on value) are effective from the midnight of the date of presentation of the Union Budget.

(2) Heads of Income :

Under Income Tax Act all incomes are categorized under 5 Heads of Income. There is a charging section undereach head of income which defines the scope of income chargeable under that head. These heads of income cover all possible avenues for a person to earn any income. Accordingly income earned is classified under thefollowing heads:

a. Income under the head Salary : Earned by employee from his employer

b. Income under the head House Property : Rental income earned by a landlord from house property

c. Income under the head Profits and Gains from Business and Profession(PGBP) : Business income

d. Income under the head Capital Gains: Income by sale/transfer of Capital Asset

e. Income under the head Other Sources: Residual head of income.

Every person whose Total Income of the previous year exceeds the maximum amount which is not chargeable to tax, is an assessee and such total income shall be chargeable to Income Tax at the rates prescribed in the Act for that relevant assessment year. However this Total income shall be determined on the basis of the residentialstatus of the assessee in India.

(3) Person :

Income-tax is charged in respect of the total income of the previous year of every person. Hence, it is important to know the definition of the word person. As per section

2(31), Person includes :

- ***Individual*** : An individual is a natural human being i.e. male, female, minor or a person of sound or unsound mind.
  HUF **:** Under Income Tax Act, 1961 a Hindu Undivided Family (HUF) is treated as separate entity for the purposes of assessment. It consists of all persons lineally descended from a common ancestor and includes their wives and unmarried daughters and also a stranger who has been adopted by the family. Members of the HUF are called as co-parceners which includes the head of the HUF who is called as Karta.

- ***Company*** : It include Domestic company, Foreign company, company in which public are substantially interested. Section 2(17) defines the term company to mean :
    i. any Indian company, or
    ii. any body corporate incorporated by or under the laws of a country outside India i.e. a foreign company, or
    iii. any institution, association or body which is or was assessable or was assessed as a company for any assessment year under the Indian Income Tax Act, 1922 or which is or was assessable or was assessed under this Act as a company for any assessment year commencing on or before the 1st day of April, 1970, or
    iv. 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 CBDT to be a company only for such assessment year or assessment years as may be specified by the order of CBDT.
- ***Firm*** : It includes a partnership firm whether registered or not and shall include a Limited Liability Partnership as defined in the Limited Liability Partnership Act,2008.
- ***Association of Person*** : Two or more persons join in for a common purpose or common action to produce income, profits or gains.
- **Body of Individuals** denote the status of persons who are assessable in like manner and to the same extent as the beneficiaries individually.

A Local Authority : It means a municipal committee, district board, body of port commissioners, or other authority legally entitled to or entrusted by the Government with the control and management of a Municipal or local fund.

(4) Assessee [Section 2(7)] :

In layman language tax payer is assessee, he may be the person of any of the above categories As per Section 2(7) of Income Tax Act, assessee is A person

a. by whom any tax or
b. any other sum of money

is payable under Income Tax Act. It includes every person :

(a) in respect of whom any proceeding under Income Tax Act has been taken for assessment of
- his income or
- fringe benefits or
- the income of any other person in respect of which he is assessable or
- the loss sustained by him or by such other person or
- the amount of refund due to him or to such other person

(b) who is deemed to be an assessee under any provision of Income Tax Act;

(c) who is deemed to be an assessee in default under any provision of Income Tax Act;

Accordingly, assessee is a person by whom tax or any other sum is payable under the Act. The expression
"other sum of money" includes

– fine, interest, penalty and tax or

– person to whom any refund of tax etc. is due under the Act or

– if any proceeding under the Act has been taken against any person, he is also an assessee. Remember, the proceedings must be initiated under the provisions of the Act. In other words, a single enquiry letter issued by the Income-tax Department without reference to any specific provision of the Act does not constitute proceeding under the Act and, as such, till proceedings are initiated under the Act, the person may not become an assessee within the ambit of Section 2(7) of the Act.

(5) Assessment year :

"Assessment year" means the period of twelve months commencing on 1st April every year. Therefore, the period beginning on 1st April of one year and ending on 31st March of the next year. Income of previous year of an assessee is taxed during the following assessment year at the rates prescribed by the relevant Finance Act.

Exception to the General Rule : In the following situation, the Income of previous year of an assessee is assessed in the previous year itself:

1. Income of Non-Resident from Shipping: [Section 172]- A non resident who is carrying on a shipping business and earns income any port in India, shall be charged to tax before the ship is allowed to leave Indian Port. Hence income is deemed and computed at a presumptive rate of 7.5% of the amount of the fare/freight charged by the non-resident ship from the Indian port.
2. Income of persons leaving India either permanently or for long duration: [Section 174]- When it appears to the Assessing Officer (A.O.) that an individual may leave India and has no intentions of returning back during an assessment year, then the income is charged to tax during the same Assessment year.
3. Income of bodies formed for short duration: [Section 174A]- When it appears to the Assessing Officer (A.O.) that any organization is formed for a particular event and is likely to be dissolved during the current assessment year.
4. Income of person trying to transfer his assets with a view to avoid tax: [Section 175]- When it appearsto the Assessing Officer (A.O.) that during the current assessment year any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets to avoid payment of any liability under this Act, the total income of such person for the period from the expiry of the previous year to the date, when the Assessing Officer commences proceedings

under this section is chargeable to tax in that assessment year.

5. Income of discontinued business: [Section 176]- Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year up to the date.

(6) Previous year [Section 3]:

Income tax is payable on the income which is earned during the Previous Year and it is assessed in the immediately succeeding financial year which is called an Assessment Year.

All assesses are required to follow a uniform previous year i.e. The Financial Year (1st April to 31st March) as their Previous year. Although assessee may maintain books of accounts on calendar year basis (1st January to31st December) but his previous year for income tax purposes shall be the Financial year.

Each financial year is both, a previous year as well as an assessment year. It is the previous year for the income earned during the financial year and assessment year for the income earned during the preceding previous year. For example financial year 2019-20 is the previous year for the income earned during the financial year 2019-20 and assessment year for the income earned during the previous year 2018-19.

In case of newly set up business or profession or a source of income newly coming into existence,

the first previous year will be the period commencing from the date of setting up of business/profession or as the case may be, thedate on which the source of income newly comes into existence and ending on the immediately following March, 31.

Examples of previous year in the case of newly set-up business/profession.

Example 1 **: Y sets up a new business on May 15, 2019. What is the previous year for the assessment year 2020-21.**

Answer **: Previous year for the assessment year 2020-21 is the period commencing on May 15, 2019 and ending on March 31, 2020.**

Example 2 **: A joins an Indian company on February 17, 2019. Prior to joining this Indian company he was not inemployment nor does he have any other source of income. Determine the previous year of A for the assessment years 2019-20 and 2020-21.**

Answer **: Previous years for the assessment years 2018-19 and 2019-20 will be as follows.**

Previous year	**Assessment year**
Feb. 17, 2019 to March 31, 2019	**2019-20**
April 1, 2019 to March 31, 2020	**2020-21**

(7)India : [Section 2(25A)]

The term 'India' means –

(i) the territory of India as per Article 1 of the Constitution,

(ii) its territorial waters, seabed and subsoil underlying such waters,

(iii) continental shelf,

(iv) exclusive economic zone or

(v) any other specified maritime zone and the air space above its territory and territorial waters.

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

(8)Income : [Section 2(24)]:

Income is the consumption and savings opportunity gained by an entity within a specified timeframe, which is generally expressed in monetary terms. However, for households and individuals, "income is the sum of all the wages, salaries, profits, interests payments, rents, and other forms of earnings received in a given period of time."

In general terms, Income is a periodical monetary return with some sort of regularity. However, the Income Tax Act, even certain income which does not arise regularly are treated as income for tax purposes e.g. Winnings from lotteries, crossword puzzles.

The definition of Income as given in Section 2(24) of the Act starts with the word includes therefore the list is inclusive not exhaustive. The definition enumerates certain items, including those which cannot ordinarily be considered as income but are treated statutorily as such.

As per section 2(24), the term income includes :

S. No.	Income under Section 2(24)	Head Of Income
1.	Profits and gains	PGBP
2.	Dividend	Other Sources
3.	Voluntary contributions received by a trust/institution created wholly or partly for charitable or religious purposes or by certain research association or universities and other educational institutions or hospitals and other medical institutions or an electoral trust.	Generally exempt under Section 11 and 12
4.	The value of any perquisite or profit in lieu of salary taxable	Salary
5.	**Any special allowance** or benefit specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of	Salary (Generally exempt)

	profit.	
6.	**City Compensatory Allowance/ Dearness allowance** : Any allowance granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living.	Salary
7.	**Benefit or Perquisite to a Director** : The value of any benefit or perquisite, whether convertible into money or not, obtained from a company by. (a) a director, or (b) a person having substantial interest in the company, or (c) a relative of the director or of the person having substantial interest, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;	Salary (If as per employment agreement) Else under Other Sources (If not in the terms of employment agreement)

8.	**Any Benefit or perquisite to a Representative Assessee** : The value of any benefit or perquisite (whether convertible into money or not) obtained by any representative assessee under Section 160(1) (iii)/ (iv) or beneficiary, or any amount paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary;	Other Sources
9.	Deemed profits chargeable to tax under section 28 or section 41 or section 59	PGBP
10.	**Capital Gain** : Any capital gains chargeable to tax under Section 45; since the definition of income in Section 2(24) is inclusive and not exhaustive capital gains chargeable under Section 46(2) are also assessable as income.	Capital Gains
11.	**Insurance Profit** : The profits and gains of any Insurance business carried on by a mutual insurance company or by a co-operative society computed in accordance with the provisions of Section 44 or any surplus taken to be such profits and gains by virtue of the profits contained in the First Schedule to the Income-tax Act	PGBP

12.	**Banking income of a Co-operative Society** : The profits and gains of any business of banking (including) providing credit facilities carriedon by a cooperative society with its members.	PGBP
13.	***Winnings from Lottery*** : Any winnings from lotteries, crossword puzzles, races, including horse-races, card-games and games of any sort or from gambling or betting of any form.	Other Sources
14.	**Employees Contribution Towards Provident Fund** : 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 provisions of the Employees State Insurance Act, 1948 (34 of 1948) or any other fund for the welfare of such employees.	PGBP if not deposited by the assessee to the specified fund
15.	**Amount Received under Keyman Insurance Policy** : Any sum received under a Keyman Insurance Policy including the sum allocated 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 the employee of the first mentioned person or is or was connected with the business of the first mentioned person in any manner whatsoever.	PGBP
16.	**Amount received for not carrying out any activity** : Any sum referredto in Section 28(va), i.e. any sum, whether received or receivable in cash or kind, under an agreement for - (i) not carrying out any activity in relation to any business or profession;[Amendment vide Finance Act, 2016] (ii) not sharing any know-how, patent, copyright, trade-mark, license, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processingof goods or provision for services	PGBP

17.	Any sum referred to in clause (v) or (vi) of sub-section (2) of section 56	Other sources
18.	**Gift received for an amount exceeding Rs. 50,000 :** Any sum of money or value of property referred to in clause (vii) or clause (viia) ofsub-section (2) of Section 56	Other sources

19.	Any consideration received for issue of shares as exceeds the fair market value of the shares referred in section 56(2)(viib).	Other sources
20.	Amount received as an advance or otherwise in the course of negotiation for transfer of a capital asset referred to in clause (ix) of section 56(2).	Other sources
21.	Any sum of money or value of property received without consideration or for inadequate consideration as referred to in clause (x) of Section 56(2)	Other sources
22.	Any compensation or payment in connection with termination of employment as referred under clause (xi) of Section 56(2).	Other sources
23.	Assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than the subsidy or grant or reimbursement which is taken into account for determination of the actual cost of the asset in accordance with the provisions of Explanation 10 to clause (1) of section 43.	PGBP

1.7 Charge of Income Tax: [Section 4]:

Section 4 of the Act is the charging section. It lays down the basis on which tax is imposed. Section 4 of Income tax act is the most effective and operative of the various provisions in the Act since, it is because of this section alone all other sections become enforceable. The charging section is the backbone of the act, it lays down the provisions as to what are taxable and at what rates; income of which period is taxable and in whose hands. Accordingly, the section provides that :

a) Income tax shall be charged at the rate or rates prescribed in the finance act for the relevant previous year,

b) the charge of tax is on various persons specified u/s 2(31);

c) the income sought to be taxed is that of the previous year and not of the of assessment year

d) the levy of tax on the assessee is on his total or taxable income computed in accordance with and subject to the appropriate provisions of the income tax Act, including provisions for the levy of additional income tax

1.8 Residential Status : [Section 6]

Total income of an assessee cannot be computed unless the person's residential status in India during the previous year is known. Thus, determining residential status of a person is important for calculating tax liabilityof a person.

Section 6 of the Income tax Act prescribes the tests to be applied to determine the residential status of all tax payers for purposes of income-tax. An assessee's residential status must be determined with reference to the previous year in respect of which the income is sought to be taxed.

Under Section 6(1) of the Income-tax Act, an individual is said to be resident in India in any previous year if he:

(a) is in India in the previous year for a period or periods amounting in all to one hundred and eighty-two days or more i.e., he has been in India for at least 182 days during the previous year; or,

(b) has been in India for at least three hundred and sixty-five days (365 days) during the four years preceding the previous year and has been in India for at least sixty days (60 days) during the previousyear.

Exception to the basic condition

In the case of following individual –

(a) being a citizen of India, who leaves India in any previous year as a member of the crew of an Indian ship as defined in clause (18) of section 3 of the Merchant Shipping Act, 1958 (44 of 1958), or for the purposes of employment outside India,

Rule 126 Computation of period of stay in India in certain cases

An individual, being a citizen of India and a member of the crew of a ship, the period of stay in India inrespect of an eligible voyage shall not include the period beginning from the date of joining till the date of signing off as mentioned in the Continuous Discharge Certificate under the Merchant Shipping Act, 1958

"eligible voyage" shall mean a voyage undertaken by a ship engaged in the carriage of passengers orfreight in international traffic where –

(i) for the voyage having originated from any port in India, has as its destination any port outside India; and

(ii) for the voyage having originated from any port outside India, has as its destination any port in India.

(b) being a citizen of India, or a person of Indian origin within the meaning of Explanation to clause (e)of section 115C, who, being outside India, comes on a visit to India in any previous year,

The provisions of the second condition shall apply in relation to that year as if for the words "sixty days (60 days)", occurring therein, the words "one hundred and eighty-two days (182 days) " had been substituted.

A person is deemed to be of Indian origin if he, or either of his parents or any of his grandparents, was born in Undivided India. It may be noted that grandparents include both maternal and paternal grand parents.

Non-Resident :

If an individual does not satisfy any of the above basic condition then, he will be treated as Non-Resident. It must be noted that the fulfillment of any one of the above conditions (a) or (b) as applicable will make an individual resident in India for tax purposes. Further it is to be noted that these conditions are alternative and not cumulative in their application.

Resident but Ordinary resident (ROR):

An individual may become a resident and ordinarily resident in India if he satisfy both the following conditionsgiven u/s 6(1)besides satisfying any one of the above mentioned conditions:

(i) he is a resident in atleast any two out of the ten previous years immediately preceding the relevantprevious year, and

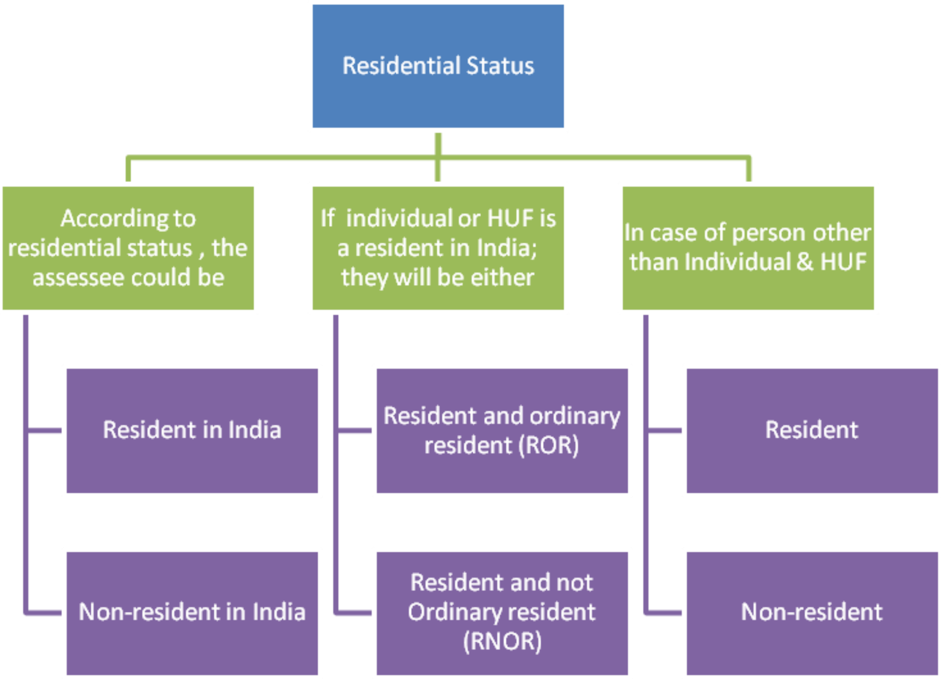
(ii) he has been in India for 730 days or more during the seven previous years immediately preceding therelevant previous year.

Resident but not Ordinary resident (RNOR) :

An individual is not ordinarily resident in any previous year if –

(a) he has been a non-resident in India in nine out of the ten previous years preceding that year, or

(b) he has during the seven previous years preceding that year been in India for a period of, or periods amounting in all to, seven hundred and twenty-nine days (729 days) or less.



1.9 Computation of Total Income:

Under Income Tax Act all incomes are categorized under 5 Heads of Income. There is a charging section under each head of income which defines the scope of income chargeable under that head. These heads of income cover all possible avenues for a person to earn any income. Accordingly income earned is classified under the following heads:

a. Income under the head Salary : Earned by employee from his employer
b. Income under the head House Property : Rental income earned by a landlord from house property
c. Income under the head Profits and Gains from Business and Profession(PGBP) : Business income
d. Income under the head Capital Gains: Income by sale/transfer of Capital Asset
e. Income under the head Other Sources: Residual head of income.

Every person whose Total Income of the previous year exceeds the maximum amount which is not chargeable to tax, is an assessee and such total income shall be chargeable to Income Tax at the rates prescribed in the Act for that relevant assessment year. However this Total income shall be determined on the basis of the residential status of the assessee in India.

To levy income tax, one must have an understanding of the various concepts related to the charge of tax like previous year, assessment year, Income, total income, person, maximum amount not chargeable to tax etc.

Total income is computed under the 5 heads of income. Income computed under each head of income is aggregated and the aggregate income is called as the Gross Total Income, certain deductions are allowed under Chapter VIA and the balance income taxable after deductions is called as Total Income.

A study of some of the broad principles given below will help to understand the concept of income.

1. Cash or kind

   Income may be received in cash or kind. When the income is received in kind, its valuation will be madein accordance with the rules prescribed in the Income-tax Rules, 1962.

2. Receipt basis/ Accrual basis

   Income arises either on receipt basis or on accrual basis. It may accrue to a taxpayer without its actual receipt. The income in some cases is deemed to accrue or arise to a person without its actual accrualor receipt. Income accrues where the right to receive arises.

3. Legal or illegal source

   The income-tax law does not make any distinction between income accrued or arisen from a legal source and income tainted with illegality. In *CIT* v. *Piara Singh* (1980) , the Supreme Court has held that if smuggling activity can be regarded as a business, the confiscation of currency notes by customs authorities is a loss which springs directly from the carrying on of the business and is, therefore, permissible as a deduction.

4. Temporary/Permanent

   There is no difference between temporary and permanent income under the Act. Even temporary income is taxable under the Income Tax Act.

5. Lumpsum/instalments

   Income whether received in lump sum or in installment is liable to tax. For example : arrears of salary or bonus received in lump sum is income and charged to tax as salary.

6. Gifts

   Normally, gifts constitute a capital receipt in the hands of the recipient. However, certain gifts are brought within the purview of income- tax, for example, receipt of property without consideration is brought to tax under section 56(2)(x). Gifts of personal nature do not constitute income subject to maximum of Rs. 50,000 received in cash. The recipient of gifts like birthday, marriage gifts, etc., isnot liable to income-tax as received in kind however as per the Finance Act, 2009 gifts in kind having fair value upto Rs. 50,000 are not liable to tax but having fair value of more than Rs. 50,000 is wholly taxable.

7. Revenue or Capital receipt

Income-tax, as the name implies, is a tax on income and not a tax on every item of money received. Therefore, unless the receipt in question constitutes income as distinguished from capital, it cannot be charged to tax. For this purpose, income should be distinguished from capital which gives rise to income. However, some capital receipts have been specifically included in the definition of income.

Particulars	Amount (Rs.)
Income under the head:	
Income from Salaries	XXX
+ Income from House Property	XXX
+ Profits and gains of business or profession	XXX
+ Capital gains	XXX
+ Income from other sources	XXX
Adjustment in respect of:	
+ Clubbing of Income	XXX
– Set off and carry forward of losses	(XXX)
= Gross Total Income	**XXX**
– Deductions under section 80C to 80U (or Chapter VIA)	(XXX)
= Total Income	**XXX**

1.10 Income which do not form a part of total income (exempt income) [Section 10]:

Various categories of income are exempt from income tax under section 10. The assessee has to establish that his case clearly and squarely falls within the ambit of the said provisions of the act.

1.Agriculture Income:

We can still consider India is the country mostly depending upon the agriculture and income generated from the activities of agriculture. Agriculture income shall be excluded from the assessee total income (section 10, (1)) however, it shall be taken for considering rate to tax non-agriculture income.

2. Share Of Profit From A Firm:

A partners share in the total income of the firm is totally exempted from the total income of the hands of the partner because firm is separately assess as such. However, any salary interest commission paid or payable to the partner which was deductible from the total income of the firm shall be included in the income of the partners total income as his business.

3. Leave Travel Concession:

If an employee goes on travel (on leave) with his family and traveling cost is reimbursed by the employer, then such reimbursement is fully exempted. But some provisions for it was as bellow;

1) Journey may be performed during service or after retirement.

2) Employer may be present or former.

3) Journey must be performed to any place within India.

4) In case, journey was performed to various places together, then exemption is limited to the extent of cost of journey from the place of origin to the farthest point reached, by the shortest route.

5) Employee may or may not be a citizen of India.

6) Stay cost is not exempt.

4. Allowance Or Perquisite Paid Outside India [Sec. 10(7)]:

Any allowance or perquisite paid outside India by the Government to a citizen of India for Rendering Services Outside India.

5. Death-Cum-Retirement-Gratuity [Sec. 10(10)]:

Gratuity is a retirement benefit given by the employer to the employee in consideration of past services. Sec. 10(10) deals with the exemptions from gratuity income. Such exemption can be claimed by a salaried assessee. Gratuity received by an assessee other than employee shall not be eligible for exemption u/s 10(10). E.g. Gratuity received by an agent of LIC of India is not eligible for exemption u/s 10(10) as agents are not employees of LIC of India.

6. Compensation For Any Disaster [Sec. 10(10bc)]:

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, except the amount received or receivable to the extent such individual or his legal heir has been allowed a deduction under this Act on account of any loss or damage caused by such disaster.

7. Sum Received Under A Life Insurance Policy [Sec. 10(10d)]:

Any sum received under a life insurance policy including bonus on such policy is wholly exempt from tax. However, exemption is not available on – 1. any sum received u/s 80DD(3) or u/s 80DDA(3); or 2. any sum received under a Keyman insurance policy; or 3. any sum received under an insurance policy issued on or after 1-4-20121 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.

8. Payment From National Pension Trust [Sec. 10(12a) & 10(12b)]:

Any payment from the National Pension Scheme Trust to an assessee on closure of his account or on his opting out of the pension scheme referred to in sec. 80CCD, to the extent it does not exceed 60% of the total amount payable to him at the time of such closure or his opting out of the scheme [Sec. 10(12A)] Any payment from the National Pension System Trust to an employee under the pension scheme referred to in sec. 80CCD, on partial withdrawal made out of his account in accordance with the terms and conditions, specified under the Pension Fund Regulatory and Development Authority Act, 2013, to the extent it does not exceed 25% of the amount of contributions made by him [Sec. 10(12B)]

9. Payment From Approved Superannuation Fund [Sec. 10(13)]:

Any payment from an approved superannuation fund made –

• on the death of a beneficiary; or

• to an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement; or

• by way of refund of contributions on the death of a beneficiary; or

• by way of refund of contributions to an employee on his leaving the service (otherwise than by retirement at or after a specified age or on his becoming incapacitated prior to such retirement) to the extent to which such payment does not exceed the contributions made prior to 1-4-1962 and any interest thereon.

• by way of transfer to the account of the employee under a pension scheme referred to in sec. 80CCD and notified by the Central Government.

10. Income Of Mutual Fund [Sec. 10(23D)]:

Any income of – a. A Mutual Fund registered under the Securities and Exchange Board of India Act, 1992 or regulation made thereunder; b. A Mutual Fund set up by a public sector bank or a public financial institution or authorised by the Reserve Bank of India and subject to certain notified conditions.

11. Income Of Business Trust [Sec 10(23FC)]:

Any income of a business trust by way of a) interest received or receivable from a special purpose vehicle; or b) dividend referred to in sec. 115-O(7) "Special purpose vehicle" means an Indian company in which the business trust holds controlling interest and any specific percentage of shareholding or interest, as may be required by the regulations under which such trust is granted registration.

12. Income Of Specified Boards [Sec. 10(29A)]:

Any income accruing or arising to The Coffee Board; The Rubber Board; The Tea Board; The Tobacco Board; The Marine Products Export Development Authority; The Coir Board; The Agricultural and Processed Food Products Export Development Authority and The Spices Board.

13. Subsidy Received From Tea Board [Sec. 10(30)]:

Any subsidy received from or through the Tea Board under any scheme for replantation or replacement of tea bushes or for rejuvenation or consolidation of areas used for cultivation of tea as the Central Government may specify, is exempt.

14. Awards And Rewards [Sec. 10(17A)]:

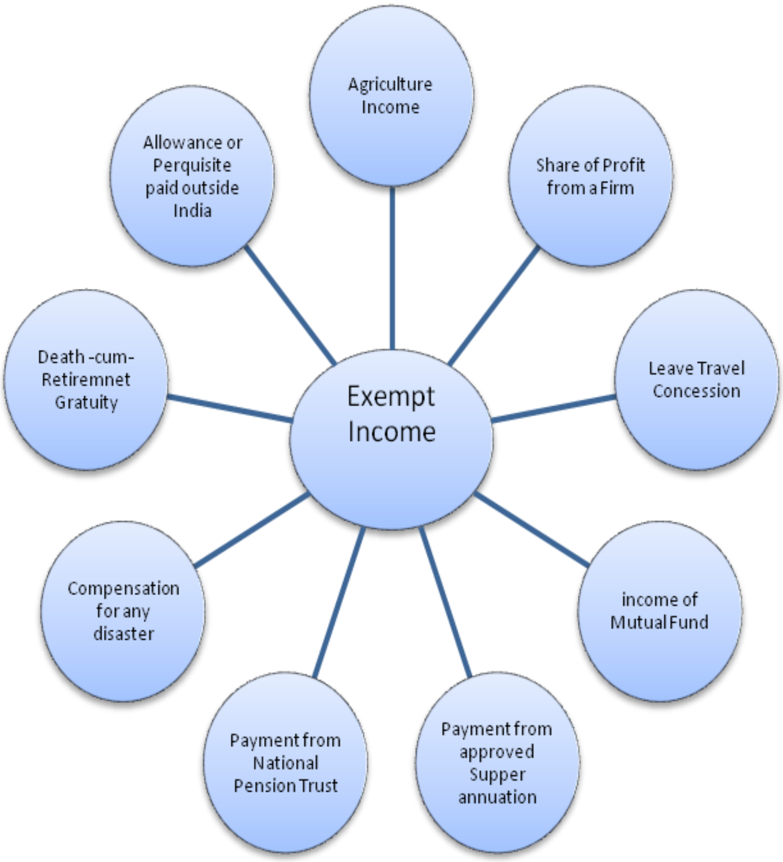
Any payment made, whether in cash or in kind – a. in pursuance of any award instituted in the public interest by the Central Government or any State Government or by any other approved body; or b. as a reward by the Central Government or any State Government for approved purposes.

15. Income Of Scientific Research Association [Sec. 10(21)]:

Any income of a scientific research association [being approved for the purpose of Sec. 35(1)(ii)] or research association which has its object, undertaking research in social science or statistical research [being approved and notified for the purpose of Sec. 35(1)(iii)], is exempt provided such association— a. applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established; and b. invest or deposit its funds in specified investments.

16. Expenditure Related To Exempted Income [Sec. 14A]:

For the purposes of computing the total income, no deduction shall be allowed in respect of expenditure incurred by the assessee in relation to income, which does not form part of the total income under this Act. Where the AO is not satisfied with the correctness of the claim of such expenditure by assessee, he can determine the disallowable expenditure in accordance with the method prescribed by the CBDT.


Exempt Income
Agriculture Income
Share of Profit from a Firm
Leave Travel Concession
income of Mutual Fund
Payment from approved Supper annuation
Payment from National Pension Trust
Compensation for any disaster
Death -cum- Retiremnet Gratuity
Allowance or Perquisite paid outside India

1.11 Deduction to be made in computing total income : [Chapter VI A] [Section 80]:

The Income-tax Act provides various tax exemptions and deductions. The incomes which are exempt from tax, i.e. which are not included in total income are provided under Sections 10 to 13A. Chapter VI A contains deductions from gross total income under section 80C to 80U in respect of certain payments, investments, incomes and other deductions. Deduction helps in reducing the taxable income. It decreases the overall tax liabilities and helps to save tax. However, depending on the type of tax deduction claim, the amount of deduction varies.

The deductions are available only to the assessees where the gross total income is positive. If however, the gross total income is nil or negative, the question of any deduction from the gross total income does not arise. For this purpose, the expression 'gross total income' means the total income of the assessee computed in accordance with the provisions of the Income-Tax Act, before making any deduction under Chapter VIA, i.e., the aggregate income computed under each head, after giving effect to the provisions for clubbing of income and set off of losses, is known as "Gross Total Income". Sections 80C to 80U of the Income- tax Act lay down the provisions relating to the deductions allowable to assessees from their gross total income. The income arising after deduction under section 80C to 80U is called Total Income.

Summary of Deductions under Chapter VI-A

SECTION	NATURE OF DEDUCTIONS	WHO CAN CLAIM
80C	• Life insurance premium • Sum paid towards notified annuity plan of LIC or other insurer, a contract for a deferred annuity • Contributions towards Employees' Provident Fund Scheme, Public Provident Fund Account, a recognised provident fund, an approved superannuation fund, notified unit-linked insurance plan of LIC Mutual Fund, participation in unit-linked Insurance Plan of UTI, any pension fund set up by any mutual fund which is referred to in section 10(23D)or by the UTI • Subscription to any notified security, notified deposit scheme of the Central Government, notified savings certificates, notified pension fund set up by National Housing Bank • Tuition fees paid by an individual to any	Individual/HUF

	university, college, school or other educational institution situated in India, for full time education ofany 2 of his/her children • Certain payments for purchase/construction of residential house property • Subscription to notified schemes of (a) public sector companies engaged in providing long-term finance for purchase/construction of houses in India for residential purposes/(b) authority constituted under any law for satisfying need for housing accommodation or for planning, development or improvement of cities, towns and villages, or for both • Subscription to equity shares or debentures forming part of any approved eligible issue of capital made by a public company or public financial institutions, any units of any approved mutual fund referred to in section 10(23D), notified bonds issued by the NABARD. • Term deposits for a fixed period of not less than 5 years with a scheduled bank or post office • Deposit in an account under the Senior Citizen Savings Scheme Rules, 2004	
80CCC	Contributions to certain pension funds of LIC or any other insurer (upto Rs. 1,50,000)	Individual
80CCD	• Contribution to pension scheme notified by Central Government up to 10% of salary. • Contribution made by employer shall also be allowed as deduction under section 80CCD(2) while computing total income of the employee. However, amount of deduction could not exceed 10% of salary of the employee *Note*: The maximum limit of Rs. 1,50,000 is the aggregate of the deduction that may be claimed under sections 80C, 80CCC and 80CCD. However, additional deduction of maximum Rs. 50,000 be allowed under section 80CCD(1b) over and above the limit of Rs. 1,50,000.	
80CCG	50 per cent of amount invested by specified resident individuals in notified equity savings scheme (subject to certain conditions and limits) (maximum deduction : Rs. 25,000)	Specified resident individuals (new retail investors)
80D	Amount paid (in any mode other than cash) by an	Individual/HUF

	individual or HUF to LIC or other insurer to effect or keep in force an insurance on the health of specified person. Payment towards health scheme and/or on account of preventive health check-up	
80DD	Deduction of Rs. 75,000 (Rs. 1,25,000 in case of severe disability) to a resident individual/HUF where (a) any expenditure has been incurred for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability, or (b) any amount is paid or deposited under an approved scheme framed in this behalf by the LIC or any other insurer or the Administrator or the specified company for the maintenance of a dependent, being a person with disability	Resident Individual/HUF
80DDB	Expenses actually paid for medical treatment of specified diseases and ailments subject to certain conditions	Resident Individual/HUF
80E	Interest on loan taken from financial institution/approved charitable institution for pursuing higher education	Individual
80EE	Interest payable on loan taken from any financial institution for the purpose of acquisition of a residential house property	Individual
80EEA	Tax incentives for affordable housing	All assessees
80EEB	Tax incentives for electric vehicles	All assesses
80G	Donations to certain approved funds, trusts, charitable institutions/ donations for renovation or repairs of notified temples, etc.	All assessees
80GG	Rent paid in excess of 10% of total income for furnished/unfurnished residential accommodation (subject to maximum of Rs. 5,000 p.m. or 25% of total income, whichever is less)	Individuals not receiving any house rent allowance
80GGA	Certain donations for scientific, social or statistical research or rural development programme or for carrying out an eligible project or scheme or National Urban Poverty Eradication Fund	All assessees not having any income chargeable under the head 'Profits and gains of business or profession'
80GGB	Sum contributed to any political party/electoral trust	Indian company
80GGC	Sum contributed to any political party/electoral trust	All assessees, other than local authority and artificial juridical person wholly or partly funded by Government
80GGB	Sum contributed to any political party/electoral trust	Indian company
80-IA	Profits and gains from industrial undertakings engaged in infrastructure facility, telecommunication services, industrial park, development of Special Economic Zone, power undertakings, etc.	All assessees
80-IAB	Profits and gains derived by undertaking/enterprise	Assessee being Developer of

	from business ofdeveloping a Special Economic Zone notified on or after 1-4-2005	SEZ
80-IB	Profits and gains from industrial undertakings, cold storage plant, hotel, scientific research & development, mineral oil concern, housing projects, cold chain facility, multiplex theatres, convention centres, ships, etc.	All assesses
80-IC	Profits and gains derived by an undertaking or an enterprise in special category States (Himachal Pradesh, Uttaranchal, Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura)	All assesses
80IAC	Deduction in respect of eligible Start-Up	All assesses
80IBA	Deductions in respect of profits and gains from Housing Projects	All assesses
80IC	Special provisions in respect of certain undertakings or enterprises incertain special category States	All assesses
80-ID	Profits and gains from business of hotels and convention centres inspecified areas	All assesses
80-IE	Deduction in respect of certain undertakings in North Eastern States.	All assesses
80JJA	Entire income from 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 for producing bio-gas, making pellets or briquettes for fuel or organic manure	All assesses
80JJAA	Additional wages paid to new regular workmen employed in the previousyear for 3 assessment years	Indian company having profits and gains derived from manufacture of goods in a factory
80LA	Certain incomes of Scheduled banks/banks incorporated outside India	Scheduled banks/banks incorporated outside India having Offshore Banking Units in a Special Economic Zone/ Units of International Financial Services Centre
80P	Specified incomes	Co-operative societies
80PA	Specified incomes	Producer Company
80QQB	Royalty income of author of certain specified category of books (up to Rs. 3,00,000)	Resident Individual - Author
80RRB	Royalty on patents up to Rs. 3,00,000	Resident individuals who is a patentee and is in receipt of income by way of royalty in respect of a patent registered on or after 1-4-2003
80TTA	Interest on deposits in savings bank accounts (up to Rs. 10,000 per year)	Individuals/HUFs
80TTB	Interest on deposits in case of senior citizens upto Rs. 50,000	Senior Citizen Individuals
80U	Deduction of Rs. 75,000, in the case of a person with severe disability,allowable deduction is Rs. 1,25,000	Resident individuals who, at any time during the previous

		year, is certified by the medical authority to be a person with disability
80-IAB	Profits and gains derived by undertaking/enterprise from business ofdeveloping a Special Economic Zone notified on or after 1-4-2005	Assessee being Developer of SEZ
87A	Rebate of Rs. 12,500 or the income tax whichever is less	Resident individual whose total income does not exceed five lakh rupees

CASE LAW

1. F&O Transaction carried out through recognized Stock Exchange is not Speculative Transactioncan be set off against Ordinary Business Income:

The Ahmedabad bench of Income Tax Appellate Tribunal recently ruled that the future and option transaction carried out through recognized stock exchange cannot be treated as speculative transaction, can be set offagainst ordinary business income.

The assesse raised the ground of appeal that CIT(A) has erred in not allowing set off of loss of Rs.3,19,071/-
being loss on trading of shares/securities against other business income.

The assesse in the instant case has started trading activities in shares, filed a copy of bank statement andledger account of M/s. Marfatia Stock Brokings P.Ltd wherein AO held that the loss shown by the assesseeas speculative loss and observed that since the assessee has no speculative profit, therefore, he has neither entitled to claim set off nor to claim carry forward.

Dissatisfied with this finding of the AO, the assessee carried the matter in appeal before the CIT (A). On appeal, the CIT (A) and confirmed the order of the AO.

Aggrieved, assessee went in appeal before the tribunal challenging the order of lower authority. The counsel for the assessee submits that loss from F&O carried out through recognized stock exchange cannot be treated as speculative transaction.

After considering the arguments from both sides and identical case laws, the judicial member found that inthe assessment order, the AO has observed that return was filed on 4.6.2008 and not 4.8.2008. it was noted that the second aspect is whether the loss from F&O could be considered as speculative loss, has been considered by the Tribunal in the case of Babubhai Ramanlal Patel (supra).

In that case, it was found that the loss from F&O business carried out through recognized stock exchange cannot be treated as speculative loss in view of the exceptions carried out under section 43(5) of the Income Tax Act. Thus the loss arising out from the trading in derivatives must be considered as ordinary business loss.

TOPIC ROUND UP

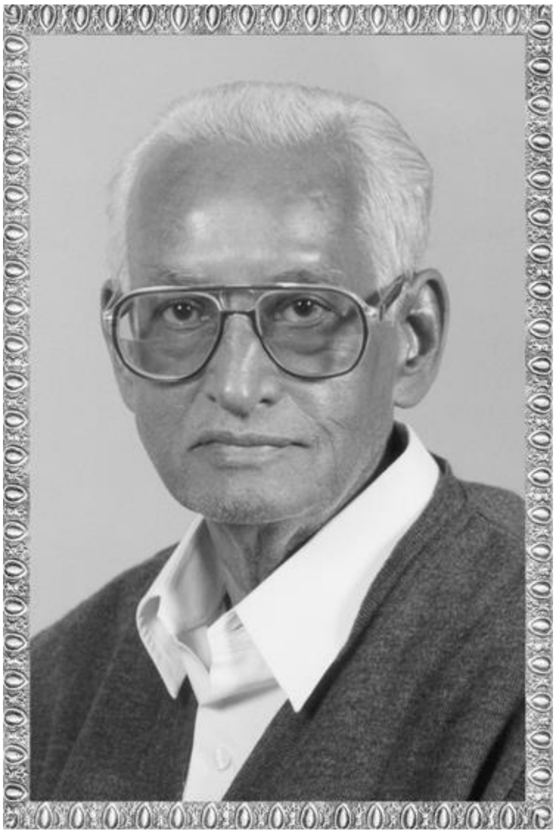
- Section 80C: Deduction on life insurance premia, contribution to provident fund, etc - Available toindividual/HUF for a maximum amount of Rs.1,50,000.
- Section 80CCC: Deduction for contribution to pension fund - Available to individual for maximumamount of Rs.150,000.
- Section 80CCD: Deduction in respect of contribution to pension scheme of Central Government-available to individual.
- Section 80CCE: Limit on deductions under Sections 80C, 80CCC and 80CCD - can not exceedRs.1,50,000. Additional deduction allowed under section 80CCD(1B) of maximum Rs. 50,000.
- Section 80CCG: Deduction in respect of investment made under any equity saving scheme : Availableto resident individual subject to maximum of Rs. 25,000.
- Section 80D: Deduction in respect of medical insurance premia - Available to individual/HUF.
- Section 80DD: Deduction in respect of maintenance including medical treatment of a dependant whois a person with disability or severe disability.
- Section 80DDB read with Rule 11DD: Deduction in respect of medical treatment, etc.: Available toResident individual/resident HUF.
- Section 80E: Deduction in respect of repayment of loan taken for higher education: Available toindividual.
- Section 80G: Deduction in respect of donations to certain funds, charitable institutions, etc. Availableto all assessees subject to maximum of 50% of qualifying amount, 100% as the case may be.
- Section 80GG: Deduction in respect of rent paid Available to individual for a maximum of Rs. 60,000.
- Section 80GGA: Deduction in respect of certain donations for scientific research or rural development
- Section 80GGB: Deduction in respect of contributions given by companies to political parties
- Section 80GGC: Deduction in respect of contributions given by any person to political parties

TOPIC ROUND UP

- Section 80IAC: Deduction in respect of Eligible start-up
- Section 80-IB: Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings
- Section 80IBA: Deductions in respect of profits and gains from housing projects
- Section 80-IC: Special provisions in respect of certain undertakings or enterprises in certain special category States
- Section 80-JJA: Deduction in respect of profits and gains from the business of collecting and processing bio-degradable waste - Available to all assessees carrying on the business of collecting and processing bio-degradable waste.
- Section 80-JJAA: Deduction in respect of employment of new workmen - Available to Indian company of 30% of additional wages paid to new regular workmen.
- Section 80LA: Deduction in respect of certain incomes of Offshore Banking Units - 100% of certain income for 5 years, 50% of such income for 5 years.
- Section 80P: Deduction in respect of income of co-operative societies - Specified incomes subject to amount specified in sub section (2).
- Section 80PA: Deduction of specified income of producer company.
- Section 80QQB: Deduction in respect of royalty income, etc., of authors of certain books other thantext books - Available to resident individual, for a maximum deduction of Rs. 3,00,000.
- Section 80RRB: Deduction in respect of royalty on patents - Available to Resident Individual, maximumof Rs. 3,00,000.

Shree H.N.Shukla Group Of Legal Studies

(Affiliated to Saurashtra University & B.C.I)



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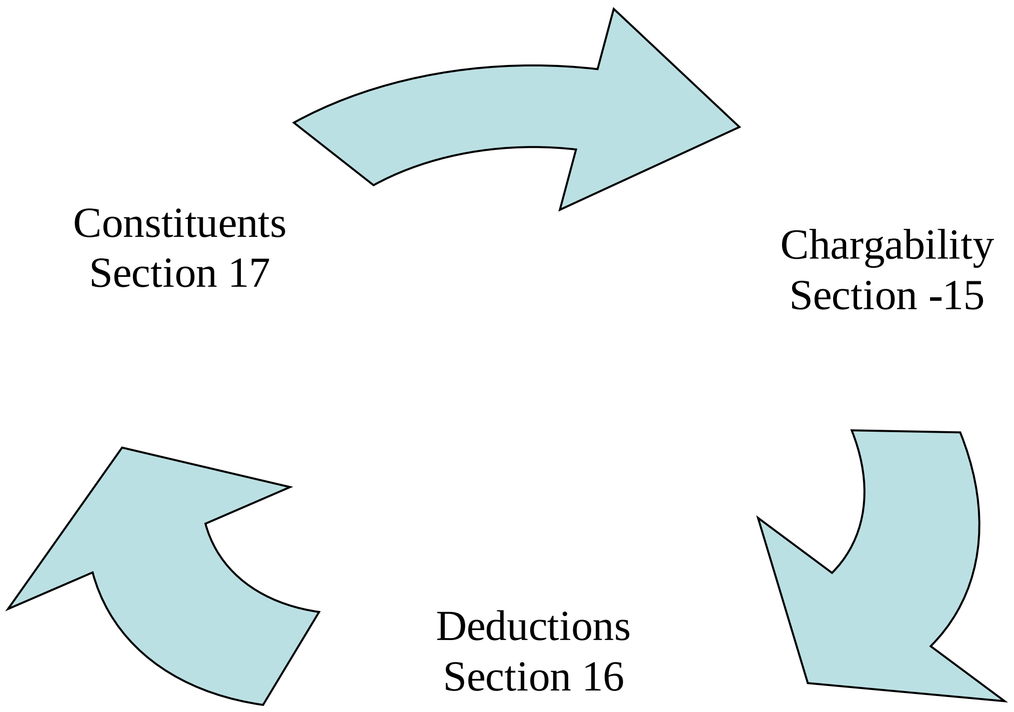
UNIT -2 HEADS OF INCOME TAX

NO.	NAME OF TOPIC
1	INCOME FROM SALARIES
2	INCOME FROM HOUSE PROPERTIES
3	PROFITS AND GAINS FROM BUSINESS & PROFFESSION – DEPRICIATION ALLOWANCE AND DEVLOPMENT-REBATE
4	INCOME FROM CAPITAL GAIN
5	INCOME FORM OTHER SOURCES

1. INCOME FROM SALARIES:

1.1 CONCEPT OF SALARIES UNDER INCOME TAX ACT :

The provisions related to “Salaries” are contained as under:



The most fundamental of all aspects is to know that it is a pre-requisite that an employer-employee relationship exists, and that is the premise basis which the Income can be charged as “Salaries”. It is also important to note that the employment could be full time or part time, that really doesn’t matter, what matters is that the relationship should be employer-employee.

The question whether a particular person receives the income in his capacity as an employee or not has to be decided from the facts of each case.

Let’s examine the following cases, whether payments are chargeable under head salaries;

(i) Professor : The professor of university would be receiving income by way of monthly salary from the university which is chargeable to tax under this head. But this does not mean that every item of income received by the employee from his employer would be taxable under this head. Thus, income by way of examinership fees received by a professor from the same university in which he is employed would not be chargeable to tax under this head but must be taxed as Income from other sources under Section 56. This is because of the fact that the essential condition that the income in question must be received for services rendered in the ordinary course of employment would not be fulfilled in the case of examinership fees.

(ii) Director :A director of a company may, in some cases, be an employee of a company where there is a specific contract of employment between him and the company. The fact that the same person has dual capacity in his relationship with the company does not mean that he cannot be taxed under this head. Every item of income arising to such a director who is also an employee of the company (e.g. a managing director or other whole-time director) by virtue of his employment would be taxable as his income from salary. Thus, income by way of remuneration received by a managing director would be taxable as his salary income whereas the income received by him as director’s fees in his capacity as director for attending the meetings of the Board would be assessable under the head “Income from other sources”.

(iii) Official Liquidator : An official liquidator appointed by the Court or by the Central Government would also become an employee of the Central Government under Section 448 of the Companies Act, 1956 and consequently the remuneration due to him would also be assessable under the head ‘Salaries’

(iv) Manager : Remuneration received by a manager of a company even if he is wrongly designated as a director or by any other name would be chargeable to tax under this head regardless of the fact that the amount is payable to him monthly or is calculated at a certain percentage of the company's profits.

(v) Partner of a firm : Salary paid to a partner by a firm is nothing but appropriation of profits. Any salary, bonus, commission, or remuneration by whatever name called due to or received by partner of a firm shall not be regarded as salary but has to be charged as income from business. It is because of the fact that the relationship between the firm and its partner is not of employer and employee.

(vi) Member of Parliament : According to a circular of the Board dated 22-5-1967, the salary received by a person as Member of Parliament will not be chargeable to income-tax under the head "Salaries" but as "Income from other sources" because a Member of Parliament is not an employee of the Government but only an elected representative of the people.

(vii) Treasurer of a bank : The income received by a treasurer of a bank would be taxable as his salary income if the treasurer is an employee of the bank. If he does not happen to be an employee, the income received by him would be taxable as "Income from other sources". For this purpose, the question whether in a particular case the treasurer is an employee or not has to be decided on the basis of the facts and circumstances of each case having due regard to his powers, responsibilities and functions.

(viii) Person carrying on a profession or vocation : Income derived by any person from carrying on a profession or vocation must be taxed as business income and not as salary income because employment is different from profession. But, if an employee receives any money from his employer as part of the terms of employment for not carrying on any profession, such income must be taxed as salary income. For instance, the allowance given by employer to a doctor employed by him for not carrying on a profession in addition to the employment would be income arising from employment in accordance with the terms and conditions of such employment and must, therefore, be taxed as salary income. If an employee gets money from persons other than his employer and if such money is not in any way related to the contract of services with the employer under whom he is working, the receipts, if taxable as income, must be assessed under the head "Income from other sources". However, gratuity, bonus, commission or other items of payment made by the employer without any specific stipulation in the contract of employment to this effect, would still be taxable as salary, because they are paid by the employer for the services rendered by the employee.

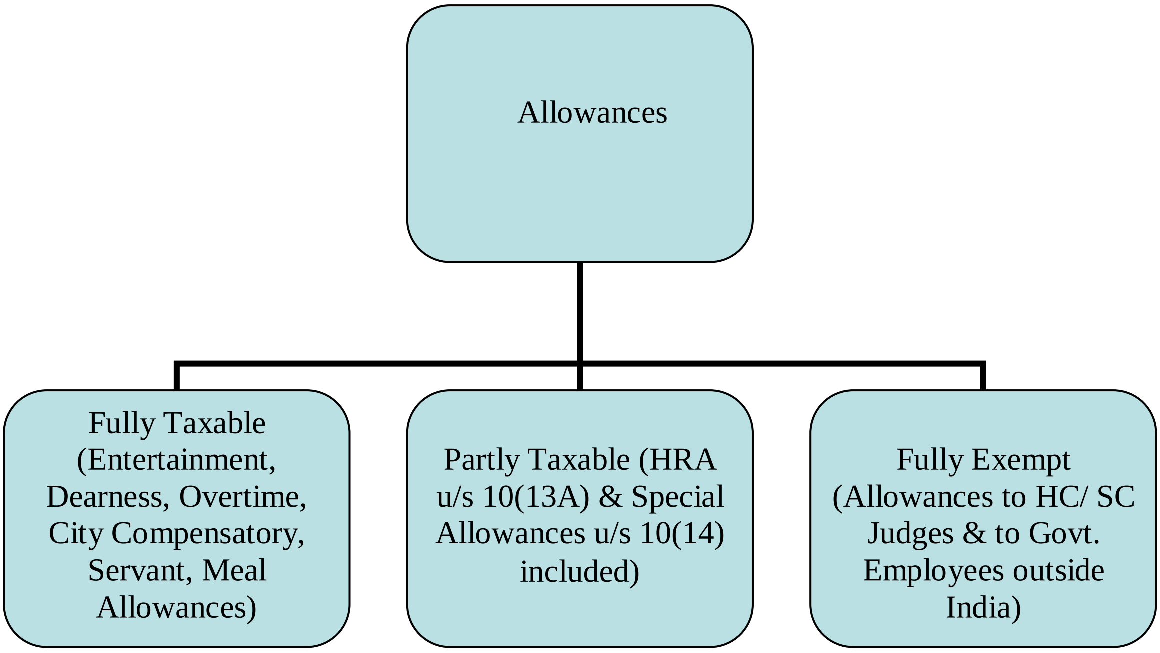
The fact that such payments are voluntary and in certain circumstances may qualify for exemption from income-tax in the hands of the employee, would not affect the income being computed under the head salary

BASIS OF CHARGE

The charging section, Section 15 states that, salary is taxable on "due" or "paid" basis whichever is earlier. That is, if it is due, it is included in taxable salary, irrespective of whether it is paid or not, and if it is paid, it is taxable, irrespective of whether it is due or not. Therefore, it is only logical to note that if it has already been taxed on due basis, the same cannot be taxed again when it is paid. Similarly, if a salary which was paid in advance, if it has already been taxed in the year of payment, it cannot subsequently be taxed when it becomes due

SALARY [SECTION 17(1)] Salary would include wages, allowances, annuity, pension, gratuity, fees, commission, advance, leave encashment and also perquisites and profits in lieu of salary etc.

ALLOWANCES: An allowance is defined as a fixed amount of money given periodically in addition to the salary for the purpose of meeting some specific requirements connected with the service rendered by the employee or by way of compensation for some unusual conditions of employment. It is taxable on due/accrued basis whether it is paid in addition to the salary or in lieu thereon. These allowances are generally taxable and are to be included in the gross salary unless a specific exemption has been provided in respect of allowances provided under the Act.



Fully Taxable Allowances :

(1) Dearness Allowance, Additional Dearness Allowance and Dearness Pay: This is a very common allowance these days on account of high prices. Sometimes Additional Dearness Allowance is also given. It is included in the income from salary and is taxable in full. Sometimes it is given under the terms of employment and sometimes without it. When it 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 value of rent free house and is also taken into account for the purposes of retirement benefits. Sometimes dearness allowance is given as ‘Dearness Pay’. It means that it is being given under the terms of employment.

(2) Fixed Medical Allowance: It is fully taxable.

(3) Tiffin Allowance: It is given for lunch and refreshments to the employees. It is taxable.

(4) 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

(5) 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.

(6) 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 metres height from sea level.

(7) 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.

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

(9) 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.

(10) Other Allowances like Family allowance, Project allowance, Marriage allowance, City Compensatory allowance, Dinner allowance, Telephone allowance etc. These are fully taxable

Allowances not fully taxable:

(1) House Rent Allowance u/s 10(13A) House Rent Allowance (HRA) received by any employee is exempt to the extent of least of the following: – 50% of Salary for Metro Cities (Delhi, Mumbai, Kolkata and Chennai), else 40% of Salary – HRA actually received – Rent paid minus 10% of Salary Note: Salary for the purposes of HRA = Basic + DA (if forming part of salary/retirement benefit)+ Commission as a fixed % of Turnover.

(2) Special Allowances [Section 10(14)] :

i) All special allowances specifically granted to meet expenses, incurred, for the purposes of performance of duties a) Wholly b) Exclusively & c) Necessarily These are exempt to the extent such expenses are actually incurred or the amount received whichever is less. Examples include, Travelling & Conveyance, Relocation, Helper & Uniform Allowances. (no cap or upper limit)

ii) Special allowances granted to an assessee either to meet his personal expenses at the place of duty OR to compensate for increased cost of living. Allowances which are granted to meet personal expenses are exempt to the extent of amount received or the limits specified whichever is less.

iii) Examples include, a) Tribal Area Allowance capped to INR 200 per month is exempt. b) Children Education Allowance capped to INR 100 per month (per child, max 2 children) is exempt. c) Hostel Expenditure Allowance capped to INR 300 per month (per child, max 2 children) is exempt. d) Transport Allowance for handicapped capped at INR 3200 per month is exempt

Besides the above there are compensatory allowances for hilly areas, and for work in difficult conditions too. As per section 10(14), read with rule 2BB following allowances granted to an employee are exempt from tax subject to certain limit:

Allowances	Exemption Limit
Children Education Allowance	Up to Rs. 100 per month per child up to a maximum of 2 children is exempt
Hostel Expenditure Allowance	Up to Rs. 300 per month per child up to a maximum of 2 children is exempt
Transport Allowance granted to an employee to meet expenditure on commuting between place of residence and place of duty. Consequent to introduction of Standard Deduction under section 16, exemption of transport allowance of Rs. 1600 P.M. is withdrawn.	Only Rs. 3,200 per month for blind and handicapped employees is exempt
Allowance granted to an employee working in any transport business to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another place provided employee is not in receipt of daily allowance	Amount of exemption shall be lower of following: a) 70% of such allowance; or b) Rs. 10,000 per month
Conveyance Allowance granted to meet the expenditure on conveyance in performance of duties of an office	Exempt to the extent of expenditure incurred for official purposes
Travelling Allowance to meet the cost of travel on tour or on transfer	Exempt to the extent of expenditure incurred for official purposes
Daily Allowance to meet the ordinary daily charges incurred by an employee on account of absence from his normal place of duty	Exempt to the extent of expenditure incurred for official purposes
Helper/Assistant Allowance	Exempt to the extent of expenditure incurred for official purposes
Research Allowance granted for encouraging the academic research and other professional pursuits	Exempt to the extent of expenditure incurred for official purposes
Uniform Allowance	Exempt to the extent of expenditure incurred for official purposes
Special compensatory Allowance (Hilly A r e a s) (Subject to certain conditions and locations)	(Subject to certain conditions and locations) Amount exempt from tax varies from Rs. 300 to Rs. 7,000 per month
Border area, Remote Locality or Disturbed Area or Difficult Area Allowance (Subject to certain conditions and locations	Amount exempt from tax varies from Rs. 200 to Rs. 1,300 per month.
Tribal area allowance in (a) Madhya Pradesh (b) Tamil Nadu (c) Uttar Pradesh (d) Karnataka (e) Tripura (f) Assam (g) West Bengal (h) Bihar (i) Orissa	Up to Rs. 200 per month

RETIREMENT BENEFITS

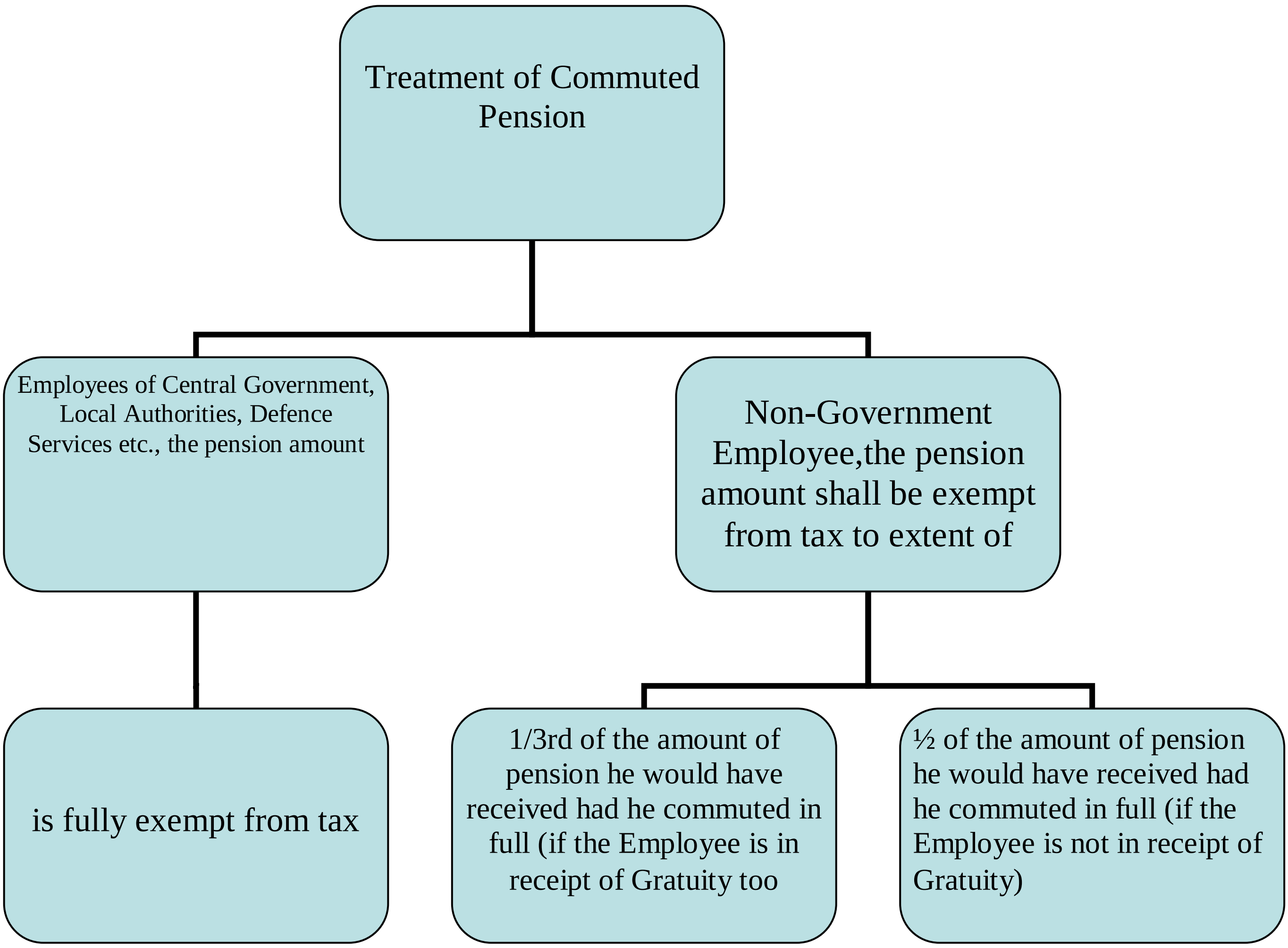
Annuity / Pension Annuity is a yearly payment to an employee post his retirement on account of the funds that were saved by him by way of subscription to the annuity fund vide his salary when he was in employment. Annuity received from the present employer is chargeable to tax as Salary and any amount received from the past employer is chargeable to tax as Profits In lieu of Salary. Pension however is generally paid by the Government or a Company to the employee for his past service and this too is payable after the retirement.

This pension so received could be commuted / uncommuted, explained as under:

(1) **Un commuted Pension:** Received periodically, Fully taxable for all employees

Commuted Pension: Received in Lumpsum (whole / part), Future right to receive payments given up to receive immediate lumpsum (refer below on the treatment

Treatment of Commuted Pension



(2) Gratuity:

Gratuity is normally paid in lieu of the long-term service of an employee (usually > 5 years), but is a voluntary payment by the employer, as an appreciation of the long-standing services. The Gratuity so received at the time of retirement or termination of employment or death of employee, is exempt as under:

a) For the Central / State Government employees and for the members of the Defence Services, any amount received as Gratuity at the time of retirement/death is fully exempt

b) For all other employees in the private sector: l In case the employee is covered under the Payment of Gratuity Act, 1972, any death-cum retirement Gratuity is exempt to the extent of least of the following:

i. INR 20,00,000
ii. Gratuity actually received
iii. 15 days' Salary based on salary last drawn for each year of service or part thereof in excess of 6 months Note: Here Salary would mean (Basic + DA) and number of days in the month to be assumed to be 26. L

In case the employee is NOT covered under the Payment of Gratuity Act, 1972, any death-cum retirement Gratuity is exempt to the extent of least of the following:

i. INR 20,00,000
ii. Gratuity actually received
iii. Half months' Salary based on last 10 months' average salary drawn immediately preceding the month of retirement / death, for each completed year of service (fraction of year to be ignored)

Leave Encashment :

Leave encashment means getting salary equivalent to the number of leaves which were entitled to an employee but not availed (i.e. earned). Leave Encashment taken during employment is fully taxable for all employees.

Leave Encashment taken at the time of retirement is exempted as follows :- Leave Encashment Salary received by employees of the Government, is fully exempt from tax.

For the Non-Government employees, the Leave Encashment Salary so received is exempt from tax to the extent of least of the following:

a) INR 3,00,000
b) Leave Salary actually received
c) 10 month's Salary on the basis of average Salary drawn in the last 10 months
d) Cash Equivalent of Leave standing to the credit of the employee at the time of retirement / death, based on last 10 month's average salary drawn. Earned leave entitlement per year cannot exceed 30

Profits in lieu of Salary :

Profits in lieu of Salary Under this the following items are included:

(i) The amount of any compensation due to or received by an assessee from the employer or former employer at or in connection with the termination of his employment. The termination of employment means retirement, premature termination of employment, termination by death or voluntary resignation. Generally, under the Income- tax Act, the income that is chargeable to tax is only a receipt which is revenue in nature; receipts of a capital nature are not chargeable to tax but this provision constitutes an exception to this rule because compensation received by an employee for termination of his employment would be a capital receipt since it is received in replacement of the sources of income itself. Still it is chargeable to tax because of the specific provision in the Act. However, relief under Section 89(1) would be available to the assessee in cases where he gets money which represents a profit in lieu of salary.

(ii) The amount of any compensation due to or received by any assessee from his employer in connection with the modification of the terms and conditions relating to employment. For example, where an employer wants to cut down the salary payable to the employee, the lump sum paid to compensate the employee shall be treated as profits in lieu of salary. In the same way, where the remuneration for services is paid at the end of the period of employment or a lump sum remuneration is paid at the beginning of employment for a number of years, such payment shall be treated as profits in lieu of salary.

(iii) Any amount due to or received, whether in lump sum or otherwise, by any assessee from any person - (A) before his joining any employment with that person; or (B) after cessation of his employment with that person.

(iv) Any payment other than the following payment due to or received by assessee from an employer or a former employer or from a provident or other fund, other than Gratuity [Section 10(10)], Pension [Section 10(10A)], HRA [Section 10(13A)], Provident Fund / Public Provident Fund/ Recognised Provident Fund.

(v) Any sum received under Keyman Insurance Policy

PERQUISITES :

Perquisite may be defined as any casual emolument or benefit attached to an office or position in addition to salary or wages. It also denotes something that benefits a man by going into his own pocket. Perquisites may be provided in cash or in kind. However, perquisites are taxable under the head “Salaries” only if they are a. allowed by an employer to his employee; b. allowed during the continuance of employment; c. directly dependent upon service; d. resulting in the nature of personal advantage to the employee; and e. derived by virtue of employer’s authority. It is not necessary that a recurring and regular receipt alone is a perquisite. Even a casual and non-recurring receipt can be perquisite if the aforesaid conditions are satisfied. Any facility / benefit that is granted by the employer, the use of which is enjoyed by the employee or any member of the employee’s household, is construed as a perquisite under the Income Tax Act, and hence attracts tax.

Taxable Perquisites

•Rent Free Residential Accommodation •Interest Free / Concessional Loan •Use of movable assets by employee / any member of his household •Transfer of movable assets •Provision of gas / electricity / water •Provision of free / concessional educational facilities •Credit Card Expenses •Club expenditure •Health Club, Sports, Similar facilities •Sweat Equity

Tax-free Perquisites (in all cases)

Medical Facilities
•Refreshment
•Subsidized lunch or dinner
•Recreational facilities
•Telephone facility
•Transport
•Personal accident insurance
•Refresher Course
•Free rations
•Computer/laptops
•Rent free houses / conveyance
•Employers' Contribution
•Annual Premium

Taxable Perquisites: We need to understand the valuation of perquisites. The table appended below, summarizes the taxable value of various perquisites in the hands of the employee assessees.

Sl. No	Perquisite	Category of Employee	Value of perquisites
1	Rent Free Residential Accommodation	Government Employee	Licence Fee determined as per the Government Rules, as reduced by rent actually paid by the employee for unfurnished accommodation. For a furnished accommodation, 10% p.a. of the furniture cost is added to the value obtained above for unfurnished. In case the furniture is hired, the actual hire charges would be added to the value obtained above for unfurnished
		Non-Government Employee	In case of Unfurnished Accommodation; a) If the accommodation is owned by the employer, the value would be based on the population, i.e., i) if in cities having a population of > 25 Lacs (2001 Census) - 15% of Salary; ii) if the population is between 10 Lacs up to 25 Lacs – 10% of Salary; iii) else 7.5% of Salary b) If the accommodation is taken on lease by the employer, the actual value of lease rentals paid by the employer subject to a maximum

			of 15% of Salary is considered as Value.
2	Interest Free / Concessional Loan	All employees	Where the employer grants a loan to an employee, exceeding INR 20000, the interest at the rate charged by SBI, as on the first date of the relevant PY, at maximum outstanding monthly balance as reduced by the Interest actually charged to the employee; would be the taxable value of the perquisite. Known for medical purpose is exempted
3	Use of movable assets by employee / any member of his household	All employees	10% p.a. of the actual cost of the asset, if it is owned by the employer OR the actual hire charges incurred by the employer if the asset is hired as reduced by the amount, if any, paid or recovered from the employee for such use would be the taxable value of the perquisite
4	Transfer of movable assets	All employees	If Computers / electronic items are transferred, 50% Depreciation p.a. (WDV) for every completed year of usage; if Motor cars are transferred, 20% Depreciation p.a. (WDV) for every completed year of usage; and for all other assets transferred, 10% Depreciation p.a. (SLM)

			for every completed year of usage would be treated as the taxable value of perquisite net of any amount so recovered from the employee
5	Provision of gas / electricity / water	All employees	The value of benefit to the employee resulting from the supply of gas, electric energy or water for his household consumption shall be determined as the sum equal to the amount paid on that account by the employer to the agency supplying the gas, electric energy or water. Where such supply is made from the sources owned by the employer, without purchasing them from any other outside agency, the value of perquisites would be the manufacturing cost per unit incurred by the employer. Where the employee is paying any amount in respect of such services, the amount so paid shall be deducted from the value so arrived at.
6	Provision of free / concessional educational facilities	All employees	Amount actually expended by the employer net of the amount so recovered. However, if the educational institution is owned by the employer, and free educational

			facilities are provided to the employee's children, there wouldn't be any perquisite as long as the value of benefit in a month is < INR 1000. Any amount recovered from the employee would be reduced
7	Credit Card Expenses	All employees	Membership fees / Annual fees incurred by the employer, on a card provided to the employee, would be the taxable value of perquisite net of the amount, if any, recovered from him
8	Club expenditure	All employees	Cost incurred by the employer at actual, net of recovery from the employee would be the taxable value of perquisite. However, in case the employee enjoys Corporate Membership in a club, the value of benefit wouldn't include the initial membership paid by the Employer to acquire the corporate membership
9	Health Club, Sports, Similar facilities	All employees	No perquisite if provided uniformly by the employer to all employees.
10	Sweat Equity	All employees	n case where, on the date of exercising the option, the share of the company is listed on a recognised stock exchange, the fair market value (FMV)

			would be the average of the opening and closing price of the share on that date on the said stock exchange. If the shares of the company are listed on more than one stock exchange, the FMV would be the average of the opening and closing prices of the share on the recognised stock exchange which records the highest volume of trading in the share. In case on the date of the exercising of the option, if there was no trading in the share, the FMV would be the closing price on the recognised stock exchange, on a date closest to exercising the option, immediately before that date, and if the shares of the company are listed on more than one stock exchange, the FMV would be the closing price of the share on the recognised stock exchange which records the highest volume of trading in the share. In case the shares of the company are not listed on any recognised stock exchange, the FMV would be that as determined by the Merchant Banker on the specified date, i.e., the

			date of exercising the option or any date earlier not exceeding 180 days prior to the date of exercise of the option

Motor Cars – Perquisites Valuation:

The taxable value of use of motor cars are dealt with separately, as it is situational, as under: Where the Expenses are met by the employer If the Car is owned / hired by the employer; expenses met by the employer & is used by the employee wholly for Official purposes, there is no perquisite.

If the Car is owned / hired by the employer; expenses met by the employer & is used by the employee wholly for Personal purposes, the running and maintenance charges / wear & tear / hire charges / driver's salary would be treated as the taxable value of the perquisite net of the amount so recovered from the employee. (Including Depreciation @ 10% p.a. on SLM basis)

If the If the Car is owned / hired by the employer; expenses met by the employer & is used by the employee partly for Official and partly for Personal purposes, the taxable value of the perquisite would be based on the cc (cubic capacity) of the engine, as under:
l Up to 1.6 litres, the taxable value of the perquisite would be INR 1800 pm l > 1.6 litres, the taxable value of the perquisite would be INR 2400 pm l If chauffer is also provided, INR 900 pm is to be added to either of the above, depending on the engine capacity. (In this case recovery is not deductible)

If the Car is owned / hired by the employee; expenses met by the employer & is used by the employee wholly for Official purposes, there is no perquisite. If the Car is owned / hired by the employee; expenses met by the employer & is used by the employee wholly for Personal purposes, the actual expenditure so incurred would be treated as the taxable value of the perquisite.

If the Car is owned / hired by the employee; expenses met by the employer & is used by the employee partly for Official and partly for Personal purposes, the taxable value of the perquisite would be the actual expenditure incurred by the employer as reduced by the taxable value of the perquisite determined above basis the engine capacity.

Where the Expenses are met by the employee If the Car is owned / hired by the employer; expenses met by the employee & is used by the employee wholly for Official purposes, there is no perquisite If the Car is owned / hired by the employer; expenses met by the employee & is used by the employee wholly for Personal purposes, the wear & tear / hire charges / driver's salary would be treated as the taxable value of the perquisite. (Including Depreciation @ 10% p.a. on SLM basis)

If the If the Car is owned / hired by the employer; expenses met by the employee & is used by the employee partly for Official and partly for Personal purposes, the taxable value of the perquisite would be based on the cc of the engine, as under: l Up to 1.6 litres, the taxable value of the perquisite would be INR 600 pm l > 1.6 litres, the taxable value of the perquisite would be INR 900 pm l If chauffer is also provided, INR 900 pm is to be added to either of the above, depending on the engine capacity. (In this case recovery is not deductible)

Tax-free perquisites (in all cases) The value of the following perquisites is not to be included in the salary income of an employee:

1. Medical Facilities:

a) The value of any Medical facility provided to an employee or his family member in any hospitals, clinics, etc. maintained by the employer.

b) Reimbursement of expenditure actually incurred by the employee on medical treatment for self or for his family members in any hospitals, dispensaries etc. maintained by the Government or local authority or in a hospital approved under the Central Health Scheme or any similar scheme of the state Government or in a hospital, approved by the chief commissioner having regard to the prescribed guidelines for the purposes of medical treatment of the prescribed diseases or ailments.

c) Group medical insurance obtained by the employer for his employees (including family members of the employees) or all medical insurance payments made directly or reimbursement of insurance premium to such employees who take such insurance.

d) Any expenditure incurred or paid by the employer on the medical treatment of the employee or any family member of the employee outside India, the travel and stay abroad of such employee or any family member of such employee or any travel or stay abroad of one attendant who accompanies the patient in connection with such treatment will not be included in perquisites of the employee.

However, the travel expenditure shall be excluded from the perquisites only when the employee's gross total income as computed before including the said expenditure does not exceed two lakh rupees and further to such conditions and limits as the Board may prescribe having regard to guidelines, if any, issued by the Reserve Bank of India.

2. Refreshment : The value of refreshment provided by the employer during office hours and in office premises is fully exempt

3.Subsidized lunch or dinner provided by employer is exempt

4. Recreational facilities : The value of recreational facilities provided is exempt. However, the facility should not be restricted to a selected few.

5. Telephone facility provided at the residence of the employee is exempt to the extent of the amount of telephone bills paid by the employer when it is used for official and personal purposes of the employee.

6. Transport provided by the employer to the employees as a group (and not to any individual or a few employees alone) from their place of residence to the place of work and back in the case of an employer engaged in the business of carriage of goods or passengers, to his employees either free of charge or at a concessional rate. Also from the assessment year 1990-91, conveyance facility provided for the journey between office and residence and back at free of charge or at concessional rate.

7. Personal accident insurance, i.e. payment of annual premium by employer on personal accident policy effected by him to his employee

8. Refresher Course: Where the employee attends any refresher course in management and the fees are paid by the employer, the amount spent by employer for the purpose.

9. Free rations: The value of free rations given to the armed forces personnel.

10. Computer/laptops provided only for use, ownership is retained by the employer

11. Rent free houses / conveyance to High Court & Supreme Court Judges

12. Employers' Contribution to Group Insurance Schemes, to recognised Provident Funds

13. Annual Premium by employer on policy taken on life of employee

PROVIDENT FUNDS - TREATMENT OF CONTRIBUTIONS TO AND MONEY RECEIVED FROM THE PROVIDENT FUND:

For purposes of Income-tax, provident funds are grouped under three heads

(1) Statutory provident fund Meaning: All provident funds which are set up under the Provident Funds Act, 1925 are called Statutory Provident Funds. Provident funds of institutions such an Universities, Colleges or other Educational Institutions, Reserve Bank of India, State Bank of India, the Central Government and State Government would constitute Statutory Provident Funds.

Treatment: In case of Statutory Provident Fund, the entire amount of employer's contribution without any limit or restriction whatsoever and the interest thereon received by the employee shall not be includible in the total income of the employee both at the time when the contribution is made and at the time when the money is received by or on behalf of the employee on his retirement, death or otherwise. This exemption is specifically conferred by Sub-section (11) of Section 10 of the Income-tax Act. The employee can contribute to this fund out of his salary as much as he likes.

(2) Recognised provident fund Meaning: All Provident Funds recognised by the Commissioner of Income-tax under Rule 3 of Part 'A' of the Fourth Schedule to the Income-tax Act, 1961 and also Provident Funds established under a scheme framed under the Employees Provident Funds Act, 1952 are known under the Income-tax Act as Recognised Provident Funds.

For the purposes of being treated as Recognised Provident Fund, the Fund in question must be recognised by the Commissioner of Income-tax at the time of its setting up and must continue to be so recognised even subsequently. The moment the recognition is withdrawn by the Commissioner, the Fund ceases to be a Recognised Provident Fund. The Provident Funds of various Public Sector Undertakings, Semi-Government bodies and other institutions and organisations including companies which are recognised by the Commissioner for income-tax purposes, would be treated as Recognised Provident Funds.

Treatment: In the case of a Recognised Provident Fund, the employer's contribution to the Provident Fund is not treated as the employee's income so long as the contribution by the employer does not exceed 12% of the salary of the employee. But if the contribution of the employer exceeds 12% of the employee's salary, the excess of the contribution over 12% of the salary of the employee is to be treated as part of the taxable income from salaries in the hands of the employee in respect of the financial year in which the contributions were made by the employer.

The fact that the employee concerned does not receive the money in hand nor is he entitled to get the money immediately does not in any way affect the taxability of the excess over 12% of the employee's salary. The employee's own contribution qualifies for deduction under Section 80C of the Income-tax Act. [Salary for this purpose, includes basic salary; dearness allowance/pay (if the terms of employment so provide) and commission (if based on a fixed percentage of turnover achieved by the employee)].

As regards interest on the contributions to the Provident Fund, only an amount exceeding a sum calculated at 12% per annum on the balance standing to the credit of the employee would be treated as part of the taxable income of the employee. In other words, so long as the amount of interest does not exceed this limit, the interest does not become chargeable to tax in the hands of the employee.

(3) Unrecognised provident Fund Meaning: The Provident Fund which is neither Statutory nor recognised by the Commissioner of Income-tax nor Public Provident Fund, would be an Unrecognised Provident Fund for income-tax purposes.

Treatment: In the case of an Unrecognised Provident Fund, the employee's own contribution to the Fund would not be allowed as a deduction. The employer's contribution and the interest thereon would, however, be exempt from tax as and when the contributions are being made. But when the money in lump sum is received back by the employee, that part of the amount attributable to the employer's contribution would be taxable as income from salaries and the interest on the employer's contribution would also be taxable as salary income in the hands of the employee. The employee's own contributions when received back would not be taxable because they do not contain an element of income. However, the interest thereon would be chargeable to tax as income from other sources and not as income from salaries

Relief :

when salary is paid in arrears or advance (section 89) Tax is calculated on total income earned or received during the year. If any portion received ‘salary in arrears or in advance’, or have received a family pension in arrears, assessee is allowed some tax relief under section 89(1) of the Income Tax Act, 1961. Relief under section 89(1) for arrears of salary are available in the following cases: • Salary received in advance or as arrears • Gratuity • Compensation on Termination of employment • Commutation of Pension

DEDUCTIONS FROM SALARY:

Standard Deduction Standard deduction of Rs. 50,000 (fifty thousand) or the amount of the salary, whichever is less w.e.f. Finance Act 2019 w.e.f. Assessment year 2020-21 [clause (ia) to section 16]. Entertainment Allowance Fully taxable⎫ First to be included in salary and then deduction to be made.⎫ In case of Government Employees, the deduction is available, which would be lower of:⎫ l 1/5th of Basic Salary Or l INR 5000/- Or l Actual Entertainment Allowance received Profession Tax Allowed as a deduction when paid by the employee (recovered from salary) during the previous year⎫

2.2 Income from House Property :

BASIS OF CHARGE [SECTION 22]:

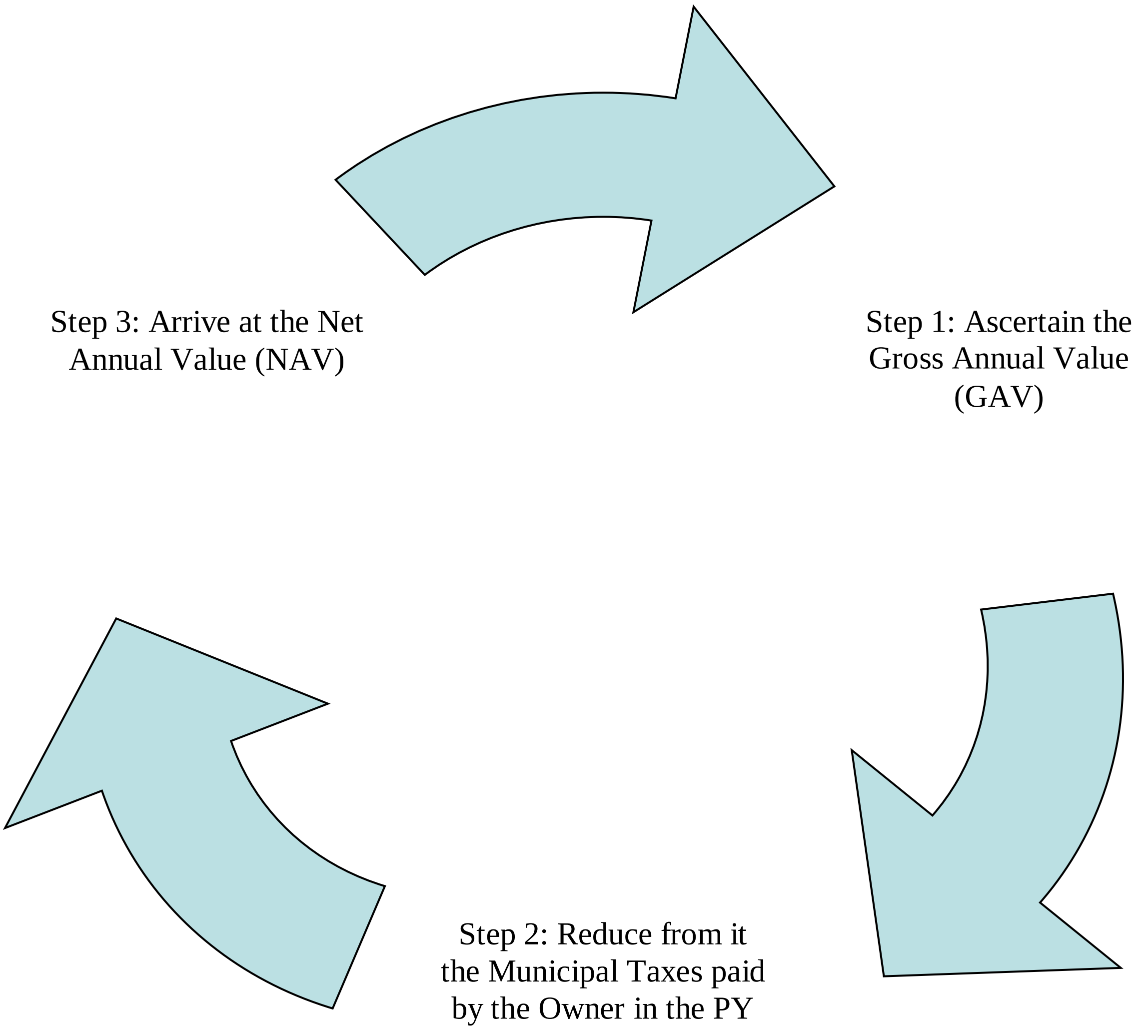
The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him, the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head Income from House Property"

In other words a house property is taxable under this head if following conditions are satisfied:-
1. There should be a property consisting of any buildings or lands appurtenant thereto;
2. Assessee should be the owner of such property (including deemed owner as given u/s 27)
3. Such property should not be occupied by the assesse for the purposes of any business or profession carried on by him, the profit of which are chargeable to income tax. Income from house property is one of the important heads of income under the Income Tax Act. The tax payers have been, in particular, keen to know about the exemptions and deductions available to them on repayment of interest and principal of the loan obtained to purchase the house property, if that house property is let out or self-occupied.

The amount of interest on borrowed capital of the current year is available under the head house property further repayment of principal is available under section 80C to individuals and Hindu Undivided Families. The annual value (AV) of the property of which the assessee is the owner is chargeable to Income Tax, under the head "house property". It is imperative to note though, that the purpose of occupation is also a determinant, for example, a property that is occupied for the purpose of business / profession carried on by him is not chargeable under "Income from House Property", which deals with self-occupied or let out properties for residential use.

DETERMINATION OF ANNUAL VALUE :

The process of determination of Annual Value is exhibited below.



Annual Value: The measure of charging income-tax under this head is the annual value of the property, i.e., the inherent capacity of a building to yield income.

The expression 'annual value' has been defined in Section 23(1) of the Income-tax Act as:
(1) the annual value of any property shall be deemed to be:

(a) the sum for which the property might reasonably be expected to let from year to year; or

(b) where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so 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 clause (a), the amount so received or receivable.

Provided that the taxes levied by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him, i.e., municipal taxes will be allowed only in the year in which it was paid.

2) Where the property consists of a house or part of a house- (a) which is in the occupation of the owner for the purposes of his own residence; (b) or 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.

(3) However, the provisions of sub-section (2) shall not apply if:

(a) the house or part of the house is actually let during the whole or any part of the previous year; or (b) any other benefit therefrom is derived by the owner.

(4) Where the property referred to in Sub-section (2) consists of more than two houses:

(a) the provisions of that sub-section shall apply only in respect of two of such houses, which the assessee may, at his option, specify in this behalf;

(b) the annual value of the house or houses, other than the house or houses in respect of which the assessee has exercised an option under clause (a), shall be determined under Sub-section (1) as if such house or houses had been let.

Unrealized Rent: The amount of rent which the owner cannot realise shall be equal to the amount of rent payable but not paid by a tenant of the assessee and so proved to be lost and irrevocable only if following conditions under Rule 4 are satisfied:

(a) tenancy is bonafide;

(b) the defaulting tenant has vacated, or steps have been taken to compel him to vacate the property;

(c) the defaulting tenant is not in occupation of any other property of the assessee;

(d) the assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfied the Assessing Officer that legal proceedings would be useless.

Where the property is let out for the whole year [Section 23(1)]

The GAV is the higher of
o Expected Rent (ER) and
o Actual Rent received / receivable (AR)

MUNICIPAL TAXES: The taxes including service taxes (fire tax, conservancy tax, education, water tax, etc.) levied by any municipality or local authority in respect of any house property to the extent to which such taxes are borne and paid by the owner, and include enhanced municipal tax finally determined on appeal and payable by assessee - Clive Buildings Cola Ltd. v. CIT (1989) 44 Taxman 160. However, deduction in respect of municipal taxes will be allowed in determining the annual value of the property only in the year in which municipal taxes are actually paid by the owner

Where let out property is vacant for part of the year [Section 23(1)] :
In a scenario of vacancy for a part of the year, it is quite probable that the Actual Rent received / receivable would fall lower than Expected Rent and in such an eventuality; therefore the Actual Rent becomes the Gross Annual Value.

Where property is self-occupied / unoccupied [Section 23(2)] :

Where the property consists of a house or part of a house in the occupation of the owner for his own residence, and is not actually let during any part of the previous year and no other benefit is derived therefrom by the owner, the annual value of such a house or part of the house shall be taken to be nil. The only deduction available in respect of such house is towards interest on borrowed capital in terms of Section 24(1)(vi) but subject to a ceiling of Rs. 30,000 or Rs. 2,00,000 as the case may be.. In other words, to this extent there could be a loss from such house

Concession for two Houses only: Where the assessee has occupied more than two houses for the purposes of residence for himself and family members, he has to make a choice of two houses only in respect of which he would like to claim exemption. Other self-occupied houses will be treated as if they were let out and their annual value will be determined in the same manner as we have discussed in the case of let out property. ü Annual Value would be taken as Nil ü It is imperative that the property is self-occupied OR unoccupied for the whole year ü This benefit is for two houses This benefit is for Individual / HUF only No deduction is allowed for Municipal Taxes for such property

Self-occupied House remaining vacant :

If the assessee has reserved any two houses (owned by him) for his residence or he is the owner of two houses which is meant for his own residence but could not be occupied by him for residential purposes in the previous year owing to the fact that he had to live at some other place in a house not belonging to him, then he can claim non-occupation or vacancy allowance during the previous year for the period during which house remained vacant. The reason for his living at a different place might be for business or professional purposes or for a salaried employee due to transfer etc.

The annual value of the house, which remained vacant in these circumstances, shall be nil. The above mentioned concession will be granted to the assessee only if he has neither let out the said house nor has derived any benefit from it during the period for which it remained vacant.

Only deduction for interest on borrowed capital upto a maximum of Rs. 2,00,000 is allowed if following conditions are satisfied:-

1. Capital is borrowed for Purchase/Construction of property;
2. Capital borrowed on or after the 1st day of April 1999 and such acquisition or construction is completed within five years(3 years up-to assessment year 16-17) from the end of the financial year in which capital was borrowed. If any of above conditions are not met then maximum deduction allowed shall be limited to Rs. 30,000 only

Deemed to be let-out property [Section 23(4)] :
If Assessee given the choice of any two houses to be construed as self-occupied and for that the Annual Value would be NIL ü For others, they would be treated as deemed to be let out

The assessee is allowed by the Income Tax Act; the flexibility to change the option to suit his needs / benefits In such as case, therefore, the Expected Rent becomes the Gross Annual Value

Municipal Taxes paid by the owner for the whole year allowed as a deduction

Notional income from house property held as stock in trade [Section 23(5) w.e.f. AY 2018-19] :Annual value of house property held by a person as stock in trade shall be taken as NIL if following conditions are satisfied: (a) The Property (consisting of buildings or land appurtenant thereto) is held as stock in trade by the owner of the property; (b) The property (or any part of property) is not let out during whole or any part of the previous year. Above benefit/concession is available only for 2 years from the end of the financial year in which certificate of completion of construction of the property is obtained from the competent Authority

DEDUCTIONS FROM NET ANNUAL VALUE (SECTION 24):
Standard Deduction:
30% of Net Annual Value

a. This is not available when the Annual Value is NIL

b. This is a flat deduction irrespective of the actual expenditure incurred Interest on Borrowed Capital

a. Interest on borrowed capital for purchase/construction/repair/renewal / re-construction is allowed as a deduction from gross annual value.

b. Pre-construction period interest is also allowed as a deduction. Pre-construction period refers to the period starting from the date of taking of loan and ending with the end of financial year immediately preceding the previous year in which construction is completed (or the date of repayment of loan; whichever is earlier).

This can be claimed for a period of 5 equal installments starting from the year of acquisition / completion of construction.

c. No deduction shall be made under the second proviso unless the assessee furnishes a certificate, from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property, or, conversion of the whole or any part of the capital borrowed which remains to be repaid as a new loan.

Inadmissible Deductions (Section 25):

•Interest under the Act, which is payable outside India, shall not be allowed as a deduction, if tax has not been deducted from such Interest and there is no person in India, who could be treated as an agent.

Treatment of Unrealized Rent / Arrear of Rent (Section 25A):

•Arrears of Rent and the unrealised rent received subsequently from a tenant by an assessee, shall be deemed to be the income from House Property in the FY in which such rental is received and shall be included in the Income from House Property of that year; irrespective of whether he is the owner of the property any more or not, in that FY.

•30% of such arrears or unrealised rent received subsequently is allowed as a deduction

Income from Co-Owned Property (Section 26):

The share of each co-owner should be determined in accordance with Section 22 – 25 and included in the respective individual assessments

•In a scenario, where the house property owned by co-owners is self-occupied by them, the AV for each of them will be construed as NIL. Each Co-Owner shall be allowed a deduction of INR 30000 / INR 200,000 as the case may be vis-à-vis Interest on Borrowed Capital. Income from Co-Owned Property (Section 26)

•In a scenario, where the house property owned by the co-owners is let out, the income from the property will be computed as if the property is owned by one owner, and thereafter such computed income would be apportioned amongst each of them as per their respective share.

DEEMED OWNERSHIP [SECTION 27]

House property is transferred by an individual to his / her spouse, otherwise than for adequate consideration:
The transferor will be the deemed owner. Exception: In case the transfer is necessitated owing to a separation between, them, the transferee will be the deemed owner

House property is transferred by an individual to his / her minor child, otherwise than for adequate consideration:
The transferor will be the deemed owner. Exception: In case the transfer is to a minor married daughter, then, the transferor will not be the deemed owner.

2.3 PROFITS FORM BUINESS AND PROFFESSION:

The meaning of the expression 'Business, has been defined in Section 2(13) of the Income-tax Act. According to this definition, business includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The concept of business presupposes the carrying on of any activity for profit. The definition of business given in the Act does not make it essential for any taxpayer to carry on his activities constituting business for a considerable length of time. The definition of business given in Section 2(13) being an inclusive definition and not being exhaustive, is wide enough to cover every case of transaction entered into with the idea of earning income.

Example: If a person purchases a piece of land, gets it surveyed, lays down a scheme of development, divides it into a number of building plots and sells some of the plots from time to time, he would be chargeable to tax not only on the notional profits made on individual sale of plots but also on the surplus, if any, remaining after the sale of all plots and after the venture had come to an end.

The expression 'Profession' has been defined in Section 2(36) of the Act to include any vocation. In the case of a profession, the definition given in the Act is very much inadequate since it does not clearly specify what activities constitute profession and what activities do not. According to the generally accepted principles, the meaning of the term 'profession' involves the concept of an occupation requiring either intellectual skill or manual skill controlled and directed by the intellectual skill of the operator. For instance, an auditor carrying on his practice, the lawyer or a doctor, a painter, an actor, an architect or sculptor, would be persons carrying on a profession and not a business.

The common feature in the case of both profession as well as business is that the object of carrying them out is to derive income or to make profit. The distinction between business, profession and vocation is not however material because income from all these activities is taxable under the same head.

INCOME CHARGEABLE TO TAX UNDER THE HEAD BUSINESS OR PROFESSION (SECTION 28)

The scope of income chargeable under this head is covered by Section 28 of the Act which lays down the following:

(i) the profits and gains of any business or profession which was carried on by the assessee at any time during the previous year.

(ii) any compensation received or receivable by any person, by whatever name called—

(a) For managing the affairs of an Indian company or any other company or in connection with the termination of his agreement or the modification of the terms and conditions relating thereto.

(b) For holding an agency in India for any part of the activities relating to the business of any other person or in connection with the termination of the agency or the modification of the terms and conditions relating thereto.

(c) For or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, of the management of any property or business.

(d) Any compensation received or receivable by any person at or in connection with the termination or the modification of the terms and conditions, whether revenue or capital of any contract relating to his business. (inserted by the Finance Act, 2018)

(iii)income derived by a trade, professional or similar association from specific services performed for its members. This is an exception to the general principle of mutuality that no one can make profit out of himself. Therefore any surplus arising to the mutual associations such as Labour Welfare Association, Chamber of Commerce etc. by performing specific services to its members is deemed as income earned as carrying on business in respect of these services and accordingly chargeable to tax.

(iv) Export incentives : Profits on sale of a Import entitlement licence granted under the Imports (Control) Order. Cash compensatory assistance against export and Duty Drawback of Customs and Central excise Duties. Profit on the transfer of the Duty Entitlement Pass Book Scheme. Profit on the transfer of the Duty Free Replenishment Certificate.

(v) the value of any benefit or perquisite, whether convertible into money or not arising from business or profession. For Example value of a rent free accommodation secured by an assessee from a company in consideration of his professional services to the company will be assessable in the hands of the assessee.

(vi) any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm to the extent under section 40(b). For Example: A firm pays interest to a partner at 18% simple interest p.a. The allowable rate of interest is 12% p.a. Hence the excess 6% paid will be disallowed in the hands of the firm. Since the excess interest has suffered tax in the hands of the firm, the same will not be taxed in the hands of the partner. The interest taxable in the hands of the partner shall be 12% only.

(vii) 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, provided it is not taxable as capital gains. Example Non compete Fees. (b) not sharing any know-how, patent, copyright, trade-mark, licence, franchise etc.

(viii) any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

(ix) the fair market value of inventory as on the date on which it is converted into, or treated as, a capital asset determined in the prescribed manner. (inserted by the Finance Act, 2018)

(x) any sum received from transfer or destruction of any capital asset (other than land or goodwill or financial instrument) whose cost has been allowed as a deduction under section 35AD

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 36 contain those specific deductions which are expressly allowed while Section 37(1) extends the allowance to items of business expenditure not covered by sections 30 to 36 which are otherwise allowable according to accepted commercial practices, while computing profits of business or profession. Section 40 provides those expenses 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.

COMPUTATION OF INCOME UNDER THE HEAD “PROFITS AND GAINS FROM BUSINESS OR PROFESSION”

Net Profit as per profit and loss account	xxx
Add : Inadmissible expenses debited to profit and loss account	xxx
Add : Deemed incomes not credited to profit and loss account	xxx
Less : Deductible expenses not debited to profit and loss account	xxx
Less : Incomes chargeable under other heads credited to Profit & Loss A/c	xxx

ADMISSIBLE DEDUCTIONS

Rent, rates, repairs and insurance for buildings (Section 30) This section allows the deduction in respect of rent, rates, repairs and insurance for buildings that are used by the assessee for his business / profession.

• If the property is partly used, the deduction will be proportionate to the use.

• In case part of the property is sub-let, the differential, i.e., rent paid minus rent recovered would be allowable as deduction.

• No notional rent is allowable for owned properties

. • Repairs undertaken, whether as a owner / tenant, are allowed.

• Municipal taxes, rates, insurance incurred by the assessee for the property is also allowed

Repairs and insurance for Plant & Machinery, Furniture (Section 31):

This section allows deduction in respect of expenses on current repairs and insurance of Plant & Machinery, & furniture used for business / profession.

• Allowable in full, even if used for part of the year

• Current repairs which are of capital nature aren’t allowed

• Insurance premia paid to insure the assets against risks of losses owing to damage / destruction, provided that the assets are used for business / profession are allowed, only if these premiums are paid / payable during the Previous Year

Depreciation (Section 32):

This section allows a deduction in respect of depreciation resulting from the diminution or exhaustion in the value of certain capital assets. The deduction on account of depreciation shall be made compulsorily, whether or not the assessee has claimed the deduction in computing his total income.

The deduction towards depreciation is very essential to arrive at the income of the assessee and also to amortise the capital cost of the amount invested in buildings, machinery, plant and furniture. The provisions for allowing depreciation are contained in Section 32 and are regulated under Rule 5 of the Income- tax Rules. The rates of depreciation are also provided in the Income-tax Rules. Assets should have been owned and used by the assessee for the purpose of his business / profession during the Previous Year irrespective they are wholly owned by the assessee or not.

Conditions for Allowability of Depreciation as per Rule 5 of The Income Tax Rules, 1962

In order that the depreciation is allowable, all the following conditions must be fulfilled:

(a) Classification of Assets: The assets in respect of which depreciation is claimed must be buildings, machinery, plant or furniture. In addition to these tangible assets intangible assets like know how, patent rights, copy rights, trade marks, licences, franchises or any other business or commercial right of similar nature acquired on or after 1.4.1998 are eligible for depreciation. No depreciation is allowable on the cost of the land on which the building is erected because the term 'building' refers only to superstructure but not the land on which it has been erected. The term 'plant' includes ships, books, vehicles, scientific apparatus and surgical equipments used for the purposes of the business or profession but does not include tea bushes or livestock or buildings or furniture and fittings. Similarly, the term 'buildings' includes within its scope roads, bridges, culverts, wells and tubewells.

(b) Assets must be owned either wholly or partially: Depreciation is allowable to the assessee only in respect of those capital assets which are owned by him. In case of a building, the assessee must be owner of the super-structure and not necessarily of the land on which it is constructed. If the assessee is only a tenant of the building but not its owner he is not entitled for allowance in respect of depreciation thereof. Where the land on which the building is constructed has been taken on lease by the assessee, the allowance of depreciation would be admissible only if, according to the lease deed, the assessee is entitled to be the owner of the super structure. The fact that as part of the terms of the lease deed, the building, after expiry of the lease is to be transferred to the lessor of the land would not affect the allowance for depreciation. In the case of assets acquired on hire-purchase e.g., plant and machinery taken on hire, the assessee would not be the owner thereof and consequently would not be entitled for depreciation in respect of the same. But if the plant and machinery had been acquired on instalment basis, the assessee becomes the owner of the assets the moment the purchase or sale is concluded and consequently is entitled to depreciation although a part or whole of the price is payable in future.

(c) Used for the purpose of Business or Profession: The allowance for depreciation is subject to the condition that the assets on which depreciation is claimed are actually put to use by the assessee for the purposes of his business or profession during the accounting year. The allowance for depreciation, however, is not subject to the condition that the asset in question must be used throughout the relevant accounting year in order to enable the assessee to claim depreciation. Use could also include passive use that means kept ready for use, example – fire extinguishers. In cases where the depreciable asset is used partly for business purposes and partly for other purposes, the deduction towards depreciation allowable under Section 32 would be of a sum proportionate to the depreciation allowance to which the assessee would have otherwise been entitled. It's not just use that's important, it's owned and used that's mandatory, i.e., the assets should be owned and used by the assessee in the Previous Year. If the asset is used for < 180 days, 50% of depreciation is allowable for that previous year

(d) No deduction on sold assets: No depreciation is allowable in respect of the depreciable asset if the asset concerned is sold, destroyed, discarded or demolished in the same year in which it was acquired.

(e) Depreciation is allowed on the Written Down Value (WDV) Method: Depreciation is computed on the written down value of the Block of the asset as on the last day of the previous year. However in case of the assess engaged in the generation or distribution of power, depreciation may be claimed on the basis of Straight Line Method.

(f) Where an assessee incurs any expenditure for acquisition of depreciable asset in respect of which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft or use of ECS through a bank account or such other electronic mode as may be prescribed, exceeds Rs. 10,000 such payment shall not be eligible for normal/ additional depreciation. Also such Payment will be ignored for the purpose of computation of Actual Cost of such asset under section 43(1).

(g) Depreciation is allowable in the hands of the predecessor and successor, in case of succession of a firm, proprietary concern, by a company, or predecessor company and successor LLP, in case of conversion of Pvt. Ltd. Co. to LLP., in case of amalgamation or demerger, and that shall not exceed the depreciation that would have been allowed if the succession, demerger, amalgamation had not taken place and such depreciation shall be apportioned between them proportionate to use.

(h) Rates of Depreciation:
• Buildings (residential use): 5%
• Buildings (non-residential use): 10%
• Furniture and Fittings : 10%
• Computers (Including Computer Software): 40%
• Plant & Machinery: 15%
• Motor Vehicles (personal use): 15%
• Motor Vehicles (commercial use): 30%
• Ships: 20%
• Aircrafts: 40%
• Intangible Assets: 25%

Block of Assets: The depreciation is provided in respect of “Block of assets”.

As per Section 2(11) Block of assets means “a group of assets falling within a class of assets, being tangible assets such as buildings, machinery, plant or furniture and intangible assets, being know-how, patents, copyrights, trademarks, licences, Franchises or any other business or commercial rights of similar nature, in respect of which the same percentage of depreciation is prescribed”. There are four classes of the assets which are further categorized into ten Blocks of Assets according to different rates of assets prescribed as under:

S. No.	Class of Asset	Block of Asset
1.	Building	3 blocks (5%, 10% and 40%)
2	Furniture & Fixture	1 block (10%)
3	Plant and machinery	5 blocks (15%, 20%, 30%, 40%, 45%)
4	Intangible Assets	1 block (25%)

Actual Cost [Section 43(1)]:

The actual cost of an asset to the assessee is normally the amount of capital expenditure incurred in respect of the acquisition, installation, etc., of the asset and also the other expenses, if any, incurred by him to make the asset ready for the purpose of its use in the business.

The expression 'actual cost' has been defined in Section 43(1) of the Act to mean that actual cost of the asset to the assessee as reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority.

For instance, if an assessee gets a subsidy from the Government for the purchase of a particular item of machinery, the actual cost of the machinery to the assessee would be total of the purchase price and the expenses in regard to installation etc. minus the subsidy received from the Government.

It is important to note that where, an assessee, in acquisition of an asset, makes payment(s) in a day otherwise than by an a/c payee cheque / demand draft / ECS / or such other electronic modes as may be prescribed, which is > INR 10000, such expenditure would not be a part of the actual cost. The provisions of Section 43(1) of the Act clarify that the actual cost of depreciable asset should be determined in the following circumstances as indicated below

If an asset was first used for scientific research and then used for business later, the actual cost would be the initial cost incurred in acquiring the asset minus the deduction already claimed under section 3. ü If the asset is acquired as a gift / inheritance, the actual cost is the WDV of the previous owner. ü If an asset was once in use, then transferred and later re-acquired, the actual cost would be the WDV at the time of transfer OR the price of re-acquisition, whichever is lower

If an asset is transferred from a holding co. to a subsidiary co. or vice-versa, then subject to specified conditions, the transaction wouldn't be a transfer of a capital asset and hence, the actual cost to the transferee company shall be taken to be the same as it would have been used by the transferor company had it continued to hold it for the purposes of business / profession, and similar approach to be adopted for amalgamation / demerger.

Any amount of interest paid / payable as interest in connection with the acquisition of an asset, and relatable to period after the asset is put to use, shall not be included in the actual cost of the asset. Ü

Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee.

Where an asset which was acquired outside India by an assessee, being a non-resident, is brought by him to India and used for the purposes of his business or profession, the actual cost of the asset to the

assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date of its acquisition by the assessee.
Where any capital asset is acquired by the assessee under a scheme for corporatisation of a recognised stock exchange in India, approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the actual cost of the asset shall be deemed to be the amount which would have been regarded as actual cost had there been no such corporatization. Capital Asset on which deduction has been allowed or allowable u/s 35ADshall be treated as nil: Actual cost of inventory converted into capital asset, if used for business, shall be the fair Market Value. [By Finance Act, 2018]

Written Down Value (WDV) [Section 43(6)] :

In case of acquisition of assets during the Previous Year, the actual cost becomes the WDV . In case of assets acquired before the Previous Year, the WDV = Actual Cost to the Assessee MINUS Depreciation c/f if any. ü In case of transfer of assets from holding company to subsidiary, or vice-versa, or from a amalgamating company to an amalgamated company, then the actual cost of assets in the books of the transferee company would be the WDV of the block of assets, as in the books of transferor company for the immediately preceding Previous Year, minus, the allowable depreciation during the Current Year.

In case of a successor LLP, the WDV in the books of the LLP would be the WDV in the books of the predecessor company on the date of such conversion. ü The WDV of the following assets may be reduced to NIL, a) the moneys receivable by the assessee in respect of the assets sold, together with the scrap value if any is > than the current WDV of the assets, OR where the entire block of assets is sold

Unabsorbed Depreciation It's the depreciation that couldn't be consumed fully, that is, the profits were not sufficient to absorb it. ü Can be carried forward indefinitely. The current year depreciation and the brought forward business losses get priority in the set off over the unabsorbed depreciation, in that order.

Depreciation on Straight line basis In the case of Power Units [Section 2(1)(i)] : (optional to power generating units) From the assessment year 1998-99, an undertaking engaged in generation or generation and distribution of power can claim depreciation on straight line basis on the actual cost of individual asset. But the aggregate depreciation can not exceed the actual cost. Alternatively, such undertaking can claim depreciation, at its option, according to written down value method like any other assessee.

The option for this purpose shall be exercised before the due date of furnishing return of income. Once this option is exercised, it shall be final and shall apply to all the subsequent years. Where an assessee incurs any expenditure for acquisition of any asset in respect of which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft or use of ECS through a bank account or such other electronic mode as may be prescribed, exceeds Rs. 10,000, such Payment shall be ignored for the purpose of computation of Actual Cost of such asset. [Amendment vide Finance Act, 2017 w.e.f. AY 2018-19

Additional Depreciation [Section 32(1)]: The additional depreciation is available to assessee engaged in the business of manufacture or production of any article or thing or engaged in the business of generation or generation and distribution or transmission of power at the rate of 20% of actual cost of eligible new machinery or plant (other than ships and aircrafts acquired and installed in a previous year. However in case of Investment is made in New Plant and Machinery in Notified Backward areas in state of Andhra Pradesh or Telangana on or after 1/4/15, Additional depreciation shall be allowed @ 35% of Actual cost. Additional Depreciation shall not be allowed if –

(a) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person; or
(b) any machinery or plant installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house; or
(c) any office appliances or road transport vehicles; or
(d) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year.

Investment in New Plant or Machinery in Notified Backward Areas in Certain States (Section 32AD):
Additional investment allowance of an amount equal to 15% of the cost of new asset acquired and installed by an assessee is allowed, if
(a) he sets up an undertaking or enterprise for manufacture or production of any article or thing on or after 1st April, 2015 in any notified backward areas in the State of Andhra Pradesh and the State of Telangana; and
(b) the new assets are acquired and installed for the purposes of said undertaking or enterprise during the period beginning from the 1st April, 2015 to 31st March, 2020. Transfer of the plant or machinery for a period of 5 years has also been restricted. However, this restriction shall not apply in a case of amalgamation or demerger but shall continue to apply to the amalgamated company or resulting company, as the case may be. Where an assessee incurs any expenditure for acquisition of any asset in respect of which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft or use of ECS through a bank account, exceeds Rs. 10,000, such payment shall not be eligible for Investment Allowance u/s 32AD. [Amendment vide Finance Act, 2017 w.e.f. AY 2018-19]

Tea/Coffee/Rubber Development Account (Section 33AB):

Section 33AB is applicable to an assessee carrying on the business of growing and manufacturing tea in India. For claiming the deduction u/s 33AB the assessee has to satisfy the following conditions:

• an assessee, carrying on business of growing and manufacturing tea or coffee or rubber in India

• Any amount deposited with the National Bank or in an account maintained by the assessee with the Bank in accordance with and for the purposes specified in a scheme approved in this behalf by the Tea Board of India or the Coffee Board of India or the Rubber Board;

• assessees whose accounts have been audited and the assessee furnishes along with his return of income the report of such audit in the prescribed form and duly signed and verified by such accountant.

In cases where the accounts of the tax payer are required to be audited under any other law, it would be sufficient if the accounts are audited under that law and the audit report asper that law is furnished with the return along with a further report in the form prescribed for the purposes of this provision. Deduction :

(a) a sum equal to the amount or the aggregate of the amounts so deposited; or

(b) Forty per cent of the profits of such business (computed under the head "Profits and gains of business or profession" before making any deduction under Section 33AB), whichever is less

Site restoration fund [Section 33ABA]:

• The taxpayer is engaged in the business of the prospecting for, or extraction or production of, petroleum or natural gas or both in India.

• The Central Government has entered into an agreement with the taxpayer for such business.

• The assessee deposit with SBI any amount in an account maintained by the assessee with that bank in a scheme approved by the Government of India in the Ministry of Petroleum and Natural Gas; or deposit any amount in an account opened by the assessee in accordance with, and for the purposes specified in, a scheme framed by the Ministry of Petroleum and Natural Gas.

• The aforesaid amount shall be deposited before the end of the previous year.

• The accounts of the taxpayer should be audited by an accountant as defined in the explanation below Sub-section (2) of Section 288 and the report of the auditor is filed along with the return of the relevant assessment year.

Further, in case where the accounts of the taxpayer are required to be audited under any other law, e.g. under the Companies Act, it would be sufficient if the accounts are audited under that law and the audit report as per that law is furnished with the return along with a further report in the form prescribed for the purposes of the provision. Amount of deduction: (a) a sum equal to amounts deposited as mentioned above; or

b) 20 per cent of the profit of such business computed under the head "Profits and gains of business or profession" before making any deduction under Section 33ABA and before adjusting brought forward business loss under Section 72, whichever is less

Scientific Research (Section 35):

The term scientific research connotes and implies activities for the extension and advancement of knowledge, in the fields of natural or applied science, including, agriculture, animal husbandries and fisheries. The allowability of expenditure on scientific research would depend on: In case the expenditure is made by the assessee himself, then irrespective of whether the expenditure is revenue or capital in nature, 100% of the expenditure would be allowable. However, it is prudent to note that if the expenditure is towards acquisition of land, that would not be allowable.

Key-points with respect to the deduction are as follows :

Any revenue expenditure incurred by the assessee within 3 years immediately preceding the commencement of business, for which research is conducted, by way of salary to research personnel engaged in such research, or material inputs for such research, will be allowed as a deduction in the year in which such business is commenced. However, such expenditure would be limited to the amount certified by the prescribed authority.

Any capital expenditure incurred by the assessee, within 3 years immediately preceding the commencement of the business would be deemed to have been incurred in the year in which the business was commenced and will therefore rank for deduction in the year of commencement of business, in full ü In case such expenditure cannot be absorbed by business profits in any year, such deficiency can be carried forward indefinitely until it is fully absorbed / consumed

In case the research is conducted by a third party, and the payment is made by the assessee for conducting the research, the allowability is as under:
a) In case the amount is paid to a company for scientific research, 100% of such expenditure is allowable ü This deduction is allowable only if the company is an Indian company and has as it's main object, scientific research and development

b) In case the amount is paid to a university, college or research association for social science or statistical research, 100% of such expenditure is allowable . The deduction is allowable only if the payment is to an approved institution and such deduction cannot be denied later, subsequent to such payments, merely on the grounds, that the approval so granted to the institution is withdrawn

c) In case the amount is paid to a National Laboratory / IIT, 150% of the expenditure can be claimed as a deduction ü A National Laboratory is a scientific laboratory functioning at the national level, under the ambit of Indian Council of Agricultural OR Medical OR Scientific Research, the Defence Research and Development Organisation (DRDO), the Department of Atomic Energy / Bio-technology are included ü However, effective AY 2021-22, the deduction would be only 100%

d) In case the amount is paid to a university, college or research association for scientific research, 150% of such expenditure is allowable The payments made to such institutions would be allowable irrespective of whether such research is related to the assessee's business or not and irrespective of whether the expenditure is revenue or capital in nature ü However, effective AY 2021-22, the deduction would be only 100%

e) Where a company is engaged in the business of bio-technology or in the business of manufacture or production of any article / thing, not being one which is specified in the eleventh schedule, incurs any expenditure on scientific research, OR in-house research & development facility as may be approved by the prescribed authority, a weighted deduction of 150% is allowable in the Previous Year.

No deduction is allowable in case of any expenditure that is towards acquisition of land Expenditure in case of drugs and pharmaceuticals shall include the expenditure of clinical drug trial, obtaining approvals from any state regulatory authority, and filing an application under the Patents Act, 1970

Amortization of Spectrum Fees for Purchase of Spectrum New section 35ABA is inserted to provide amortization of amount paid on the acquisition of any right to use spectrum for telecommunication services by paying spectrum fees.

The section provides :

i. Any capital expenditure incurred and actually paid by the assessee on acquisition of any right ot use spectrum for Telecom services by paying spectrum fee will be allowed as deduction in equal instalments. Deduction will start from the year in which payment is made (or the year of commencement of business, whichever is later) and ending with the year in which spectrum comes to an end, irrespective of the previous year in which liability for expenditure was incurred according to the method of accounting regularly followed by assessee or payable in such manner as may be prescribed.

ii. Where the spectrum is transferred and the proceeds of transfer are less than the expenditure remaining unallowed, a deduction equal to the expenditure remaining unallowed as reduced by the proceeds of transfer, shall be allowed in the year of transfer of spectrum.

iii. If spectrum is transferred and proceeds of transfer exceed the amount of expenditure remaining unallowed, the excess amount (to the extent it does not exceed deduction claimed u/s 35ABA) shall be chargeable to tax as profits and gains of business in the previous year in which such spectrum has been transferred.

iv. Unallowed expenditure in a case where a part of spectrum is transferred would be amortised.

v. Where the deduction has been claimed and granted to the assessee in accordance with the provisions of this section and, subsequently, there is failure to comply with any of the provisions of this section, then the deduction shall be deemed to have been wrongly allowed. In such case, the assessing officer can re-compute the total income of the assessee for the previous year (in which deduction was claimed) and make necessary rectification. Such rectification can be made within 4 years from the end of the previous year in which failure takes place. vi. Under the scheme of amalgamation, if the amalgamating company sells or transfers the spectrum to an amalgamated company, being an Indian company, then the provisions of this section shall apply the amalgamated company as they would have applied to the amalgamating company if later had not transferred the spectrum. Similar rule will be applicable in case of demerger.

Where, in a previous year, any deduction has been claimed and granted to the assessee under sub-section (1), and, subsequently, there is failure to comply with any of the provisions of this section, then, -

(a) the deduction shall be deemed to have been wrongly allowed;

(b) the Assessing Officer may, notwithstanding anything contained in this Act, re-compute the total income of the assessee for the said previous year and make the necessary rectification;

(c) the provisions of section 154 shall, so far as may be, apply and the period of four years specified in subsection (7) of that section being reckoned from the end of the previous year in which the failure to comply with the provisions of this section takes place.

Expenditure on telecom licence (Section 35ABB):
Where any capital expenditure is incurred by the assessee for acquiring any right to operate telecommunications services and for which payment has actually been made to obtain a licence, a deduction will be allowed in equal instalments over the period for which the licence remains in force, subject to the following:

(a) If the fee is paid for acquiring any right to operate telecommunications services before the commencement of such business, the deduction shall be allowed for the previous years beginning with the previous year in which such business is commenced.

(b) If the fee is paid for acquiring such rights after the commencement of such business the deduction shall be allowed for the previous years beginning with the previous year in which the license fee is actually paid (irrespective of the previous year in which the liability for the expenditure is incurred)

Expenditure of capital nature incurred in respect of specified business (Section 35AD) :

An assessee shall be allowed a deduction of capital nature expenditure incurred for any specified business carried on by him during the previous year in which such expenditure is incurred by him. This section talks about investment linked incentives for specified businesses as under:

A) Setting up & operating cold chain facilities for specified products

B) Setting up & operating warehousing facilities for agricultural produce

C) Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for storage and distribution, as a part of the network

D) Building and operating a 2-star hotel or above, anywhere in India, Building and operating a hospital with > 100 beds, anywhere in India

F) Developing & building a housing project under a scheme for slum redevelopment / affordable housing

G) Production of fertilizers in India

H) Setting up and operating an Inland Container Depot OR a Container Freight Station, under Customs Act, 1962

I) Bee-keeping and production of honey and beeswax

J) Setting up and operating a warehousing facility for storage of sugar

K) Laying and operating a slurry pipeline for transportation of iron-ore

L) Setting up and operating a semi-conductor wafer fabrication manufacturing unit

M) Developing / Maintaining & Operating / Developing & Maintaining & Operating a new infrastructure facility in India 100% of the capital expenditure incurred during the Previous Year, wholly and exclusively for the above businesses would be allowable as a deduction

Expenditure by way of Payment to Associations and Institutions for carrying out Rural Development Programmes (Section 35CCA) :

Any sum paid to a rural development fund set up and notified by the Central Government and to the National Urban Poverty Eradication Fund similarly set up and notified qualifies for deduction on fulfilment of certain conditions.

Expenditure on Agricultural extension project (Section 35CCC):

Where an assessee incurs any expenditure on agricultural extension project notified by the Board then, there shall be allowed a deduction of a sum equal to 150% of such expenditure. [w.e.f. AY 2021-22 deduction under section 35CCC is restricted to 100% only - Amendment vide Finance Act, 2016].

Expenditure on skill development project (Section 35CCD):

Where a company incurs any expenditure (not being expenditure in the nature of cost of any land or building) on any skill development project notified by the Board then, there shall be allowed a deduction of a sum equal to 150% of such expenditure. [w.e.f. AY 2021-22 deduction under section 35CCD is restricted to 100% only - Amendment vide Finance Act, 2016]

Amortization of Preliminary Expenses (Section 35D):

Under Section 35D, Indian companies and other non-corporate taxpayers resident in India would be entitled to amortisation of certain preliminary expenses incurred by them for the establishment of business concerns or the expansion of the business of existing concerns.

The expenditure which qualifies for amortisation should have been incurred by the assessee before the commencement of his business. If, however, the expenditure is incurred after the commencement of business, it is essential that the expenditure should be in connection with the extension or expansion of the undertaking of the assessee or in connection with the setting up of a new unit by the assessee. The amount qualifying for amortisation would be allowable as a deduction in five equal instalments beginning with the previous year in which the business of the assessee actually commences or the previous year in which the extension of the present undertaking is completed or the new unit commences production or operation, as the case may be.

The following expenses incurred by the assessee, qualify for amortisation under this section as preliminary expenses:

(i) Expenses in connection with the preparation of feasibility report or project report;

(ii) Expenses for conducting market survey or any other survey necessary for the purpose of the business of the assessee;

(iii) expenditure for getting engineering services related to the business of the assessee;

(iv) expenses by way of 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;

(v) in the case of a company

(a) expenses by way of legal charges for drafting the Memorandum and Articles of Association of the Company;
b) expenses for printing the Memorandum and Articles of Association;
(c) expenses by way of fees for registration of the company under Companies Act, and
(d) expenditure incurred in connection with issue for public subscription of shares or debentures of the company, being underwriting commission, brokerage and the charges of drafting, typing, printing and advertisement of the prospectus; and

(vi) such other items of expenses not covered by the list specified above which the Central Board of Direct Taxes may prescribe for the purpose of amortisation under this section

Amortisation of Expenditure in the case of Voluntary Retirement Scheme (Section 35DDA):

One-fifth of the expenditure incurred by an assessee-employer in any previous year in the form of payment to any employee in connection with his voluntary retirement in accordance with a scheme of voluntary retirement, shall be allowed as deduction in that previous year and the balance in four equal installments in the immediately four succeeding previous year

Other Deductions [Section 36]:

The other deductions allowable while computing the income from business/professions are as follows

Type & Section	Deductions
Insurance Premia paid u/s 36(1)(i)	Premia paid on insurance policy to cover risk of damage / destruction to stock / stores of the business
Premia paid by employer for health insurance of employees u/s 36 (1) (ib)	Premia paid by employer by any mode other than by cash, on health insurance of it's employees, in accordance with the scheme framed by GIC of India, or approved by the IRDA
Bonus & Commission u/s 36 (1)(ii)	Deductible in full as long as the bonus / commission shall not be payable to them as profits / dividends, if it had not been paid as bonus / commission
Interest on Borrowed Capital u/s 36(1)(iii)	Deduction allowed for any interest paid in respect of capital borrowed for business. In case the capital is borrowed for acquiring an asset, the interest is capitalised from the date of borrowing until the date when the asset is put to use. Post the "put to use" date, it cannot be capitalised anymore and then such interest becomes an allowable deduction
Discount on Zero Coupon Bonds u/s 36(1)(iiia	Difference between the issue and the redemption values, as these are issued at a discount and redeemed at par. Available to Infra. Companies / funds / Scheduled Banks, starting from the date of issue of the bond, ending with the maturity / redemption.

Disallowance of unpaid statutory liability (Section 43B)

Under the income-tax law, a person carrying on a business or profession can maintain account for his income either on cash or mercantile basis. The latter, however, have to reckon with the restrictions contained in Section 43B of the Income-tax Act.

This section cuts into the freedom of a business to claim certain specified expenses on due basis. The section has broadly divided the targeted expenses into two i.e., according to section 43B even if an assessee maintains books on mercantile system even then the following sums are allowed as deduction only on the basis of actual payment within the time limits specified in section 43B. In the first category are:

(a) taxes, duties, cess or fees payable under any law;

(b) bonus and commission to employees;

(c) interest on any loan or borrowing from public financial institutions, state financial corporations, state industrial investment corporations, non banking financial company (deposit taking & non deposit taking NBFCs) and on any loan or advance from a scheduled bank or co-operative bank (other than primary agricultural credit society or primary co-operative agricultural and rural development bank) in accordance with the terms and conditions of the agreement governing such loan or borrowing.

(d) leave encashment paid by employer.

(e) any sum payable by employer by way of contribution to provident fund or super annuation fund or any other fund for welfare of employees

Changes in Rate of Exchange (Section 43A):

As per Section 43A of the Income-tax Act, where an assessee has acquired any asset in any previous year from a country outside India for the purposes of his business or profession and, in consequence of a change in the rate of exchange during any previous year after the acquisition of such asset, there is an increase or reduction in the liability of the assessee as expressed in Indian currency (as compared to the liability existing at the time of acquisition of the asset) at the time of making payment towards the whole or part of the cost of the asset or for payment of the whole or part of the moneys borrowed by him from any person directly or indirectly in any foreign currency specifically for the purpose of acquiring the capital asset.

The amount by which the liability of the assessee in terms of Indian Rupees is increased or reduced as a result of change in the rate of exchange of the currency, would be added to or as the case may be deducted from the actual cost of the asset as defined in Section 43(1).Consequently, the amounts of depreciation allowable to assessee in respect of the asset would correspondingly be increased or reduced, as the case may be. For these purposes, the expression “rate of exchange” must be taken to mean the rate of exchange determined or recognised by the Central Government for the conversion of Indian Rupee into foreign currency or vice-versa.

In cases where the whole or part of the liability in respect of the payment for the cost of the asset or in respect of the money borrowed from a foreign source for acquiring the capital asset is not met by the assessee but directly or indirectly by any other person or authority, the liability so met by the other persons should not be taken into account for the purposes of any adjustment in the actual cost of the asset and consequently the depreciation allowable to the assessee arising from the change in the rate of exchange of the currency.

If, at the time of change in the rate of exchange arising on account of devaluation or otherwise the actual cost of the asset has been fully paid by the assessee and no money remains outstanding in respect of any sum borrowed specifically for the purpose, no adjustment would be permissible to the assessee. The special provision would, however, apply only in respect of capital expenditure or the value of the capital asset and would not in any way affect the value of the current assets, such as stock-in-trade or other trading assets. The addition or deduction from the actual cost of the asset on account of change in the rate of exchange in any previous year shall be allowed to be made only on actual payment by the assessee towards the cost of the asset or repayment of the foreign loan or interest, irrespective of the method of accounting adopted by him.

Transfer of Immovable Property [Section 43CA]:

Currently, when a capital asset, being immovable property, is transferred for a consideration which is less than the value adopted, assessed or assessable by any authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, then such value (stamp duty value) is taken as full value of consideration under section 50C of the Income-tax Act.

It has been pointed out this variation between the stamp duty value and the value of sale consideration can occur in respect of similar properties in the same area because of a variety of factors such as shape of plot or location. (Amended by the Finance Act, 2018)

SPECIAL PROVISION IN CASE OF INCOME OF PUBLIC FINANCIAL INSTITUTIONS, ETC. (SECTION 43D) :

Section 43D has been inserted by Finance (No. 2) Act, 1991 w.e.f. 1.4.1991. This section provides that in the case of a public financial institution or a scheduled bank or a state financial corporation or a state industrial investment corporation, the income by way of interest on such categories of bad and doubtful debts as may be prescribed having regard to the guidelines issued by the Reserve Bank of India in relation to such debts shall be chargeable to tax in the previous year in which it is credited to profit and loss account by such institution referred above for that year or in the previous year in which it is actually received by them whichever is earlier

SPECIAL PROVISIONS RELATED TO INSURANCE BUSINESS (SECTION 44):

The profits and gains of any business of insurance must, according to Section 44, be computed in accordance with the rules contained in the First Schedule to the Income-tax Act. For the purpose of the computation, it is immaterial whether the insurance business is carried on by mutual insurance company or by a co-operative society or by any other person. The rules contained in the Schedule would apply notwithstanding anything to the contrary contained in the provisions of the Income-tax Act relating to the computation of income chargeableunder the head 'Interest on Securities', 'income from house property', 'capital gains', or 'income from other sources' or under the head 'income from business or profession'

COMPULSORY MAINTENANCE OF BOOKS OF ACCOUNT (SECTION 44AA):

1) Every person carrying on the legal / medical / engineering / architectural profession / accountancy / technical consultancy / interior decoration, or any other profession as notified by the Central Board of Direct Taxes (CBDT), in the Official Gazette, must statutorily maintain such books of account and other documents as may enable the Assessing Officer to compute his total income under the Act, If total gross receipts exceeds Rs. 1,50,000 in any one of three immediately preceding years.

2) An individual or HUF carrying on any business / profession other than those specified above, must maintain the books of accounts necessary for computation and assessment, if the income from business / profession exceeds INR 250,000 OR the total turnover / gross receipts as the case may be, exceeds INR 25,00,000 in any 1 of the 3 years immediately preceding the accounting year and if the business / profession is newly set up, if the income / sales turnover is likely to exceed the thresholds mentioned, in the Previous Year.

3) Every person other than an Individual / HUF carrying on any business / profession other than those specified above, must maintain the books of accounts necessary for computation and assessment, if the income from business / profession exceeds INR 120,000 OR the total turnover / gross receipts as the case may be, exceeds INR 10,00,000 in any 1 of the 3 years immediately preceding the accounting year and if the business / profession is newly set up, if the income / sales turnover is likely to exceed the thresholds mentioned, in the Previous Year.

4) Where profits and gains from business are deemed to be profits and gains under section 44AE or Section 44BB or Section 44BBB and assessee has claimed his income to be lower than the profits and gains then such profits and gains shall be deemed to be profits and gains of his business during the previous year or

5) where the provisions of section 44AD(4) or section 44ADA are applicable to him and his total income exceeds the maximum amount which is not chargeable to income tax.

COMPULSORY AUDIT OF BOOKS OF ACCOUNT (SECTION 44AB):

Section 44AB makes it obligatory fora person to get his accounts audited before the "specified date" by a "Chartered Accountant"; if the total sales, turnover or gross receipts in business for the previous year exceeds INR 1 crore or if his gross receipts in profession for the previous year exceeds INR 50 lakhs. This includes professionals who are covered under the provisions of presumptive taxation and claim that their profits and gains from business / profession is lower than what computed under presumptive basis. The provision also casts an obligation on such persons to furnish by the "specified date", a report of the audit inthe prescribed form duly signed and verified by the Chartered Accountant setting forth such particulars as may be prescribed by rules made in this behalf by the Central Board of Direct Taxes.(Form 3CA/3CB/3CD). The requirement of audit u/s 44AB, doesn't apply to a person who declares profits / gains on a presumptive basis, u/s 44AD, and his total sales / turnover / gross receipts doesn't exceed INR 2 Cr. Specified Date is the due date for filing Annual Return of Income u/s 139(1)

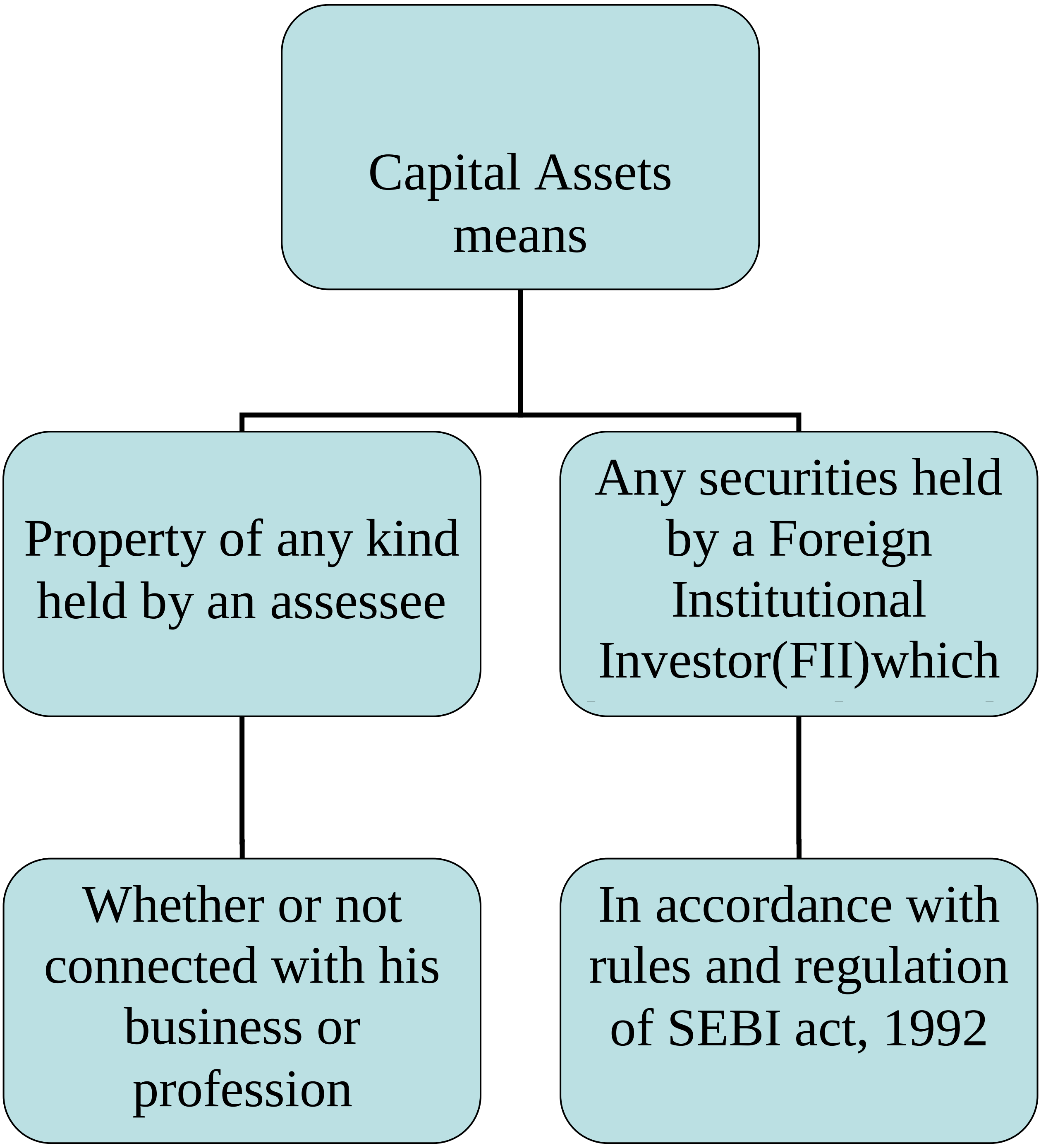
2.4 Income from Capital Gains :

Proforma for Computation of Income under the head "Capital Gains

Particulars	Short term Capital Gain	Long term Capital Gain
Full value of consideration received or accruing as a result of transfer Less: Expenditure incurred wholly and exclusively in connection with such transfer (for e.g., brokerage on sale) (Note: Deduction on account of STT paid will not be allowed	Xxx	xxx
Net Sale Consideration Less: Cost of acquisition Less: Cost of improvement Short Term Capital Gain Exemption under sections 54B/54D	Xxx (xxx) (xxx) Xxx Xxx	Xxx (xxx) (xxx) Xxx Xxx
Short-term Capital Gain (STCG)	XXXX	
Long term Capital Gain		XXXX

Sections 45 to 55A of the Income-tax Act, 1961 deal with capital gains. Section 45 of the Act, provides that any profits or gains arising from the transfer of a capital asset effected in the previous year shall, save as otherwise provided in various sections of Sec. 54, be chargeable to income-tax under the head "Capital Gains" and shall be deemed to be the income of the previous year in which the transfer took place. Doubts may arise as to whether "Capital Gains" being a capital receipt can be brought to tax as income. It may be noted that the ordinary accounting canons of distinctions between a capital receipt and a revenue receipt are not always followed under the Income-tax Act. Section 2(24)(vi) of the Income-tax Act specifically provides that "Income" includes "any capital gains chargeable under Section 45(1)". It may not be out of place to mention here that in the absence of a specific provision in Section 2(24) capital gains have no logic to be taxed as income. The constitutional validity of the provisions of the Act relating to capital gains was challenged in Navin Chandra Mafatlal v. C.I.T. (1955) 27 ITR 245. The Supreme Court while upholding the competence of parliament in legislating with regard to capital gains as part of income, observed that the term income should be given the widest connotation so as to include capital gains within its scope. However, all capital profits do not necessarily constitute capital gains. For instance, profits on re-issue of forfeited shares, profits on redemption of debentures, premium on issue of shares, are capital profits and not capital gains, hence, not liable to tax.

CAPITAL ASSET [Section 2(14)]



But Does not include :

(i) any stock-in-trade(other than securities held by FII mentioned in clause (b) above), consumable stores or raw-materials held for the purposes of his business or profession; The exclusion of stock-in-trade from the definition of capital asset is only in respect of sub-clause (a) above and not sub-clause (b). This implies that even if the nature of such security in the hands of the Foreign Portfolio Investor is stock in trade, the same would be treated as a capital asset and the profit on transfer would be taxable as capital gains.

(ii) personal effects that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him but excludes a) jewellery; b) archaeological collections; c) drawings; d) paintings; e) sculptures; or f) any work of art

(iii) Rural agriculture land excludes : a) any area within the jurisdiction of a municipality or a cantonment board and which has a population of not less than ten thousand; or b) any area within the distance, measured aerially from the jurisdiction of a municipality or a cantonment board – I. not being more than two kilometres, from the local limits of any municipality or cantonment board and which has a population of more than ten thousand but not exceeding one lakh II. not being more than six kilometres, from the local limits of any municipality or cantonment board and which has a population of more than one lakh but not exceeding ten lakh III. not being more than eight kilometres, from the local limits of any municipality or cantonment board and which has a population of more than ten lakh. (iv) 6 per cent Gold Bonds, 1977 or 7 per cent Gold Bonds, 1980 or National Defence Gold Bonds, 1980 issued by the Central Government;

(iv) Special Bearer Bonds 1991 issued by the Central Govt.

SHORT-TERM & LONG-TERM ASSETS

Section 2(42A) defines short term capital asset as a capital asset held by the assessee for not more than 36 months immediately preceding the date of transfer. Therefore, an asset which is held by the assessee for period of > 36 months immediately preceding the date of transfer is a long-term capital asset.

However, a security (other than a unit) listed in a recognised stock exchange or a unit of an equity oriented fund, or of UTI or a Zero-Coupon Bond, will be considered as a long-term asset if it is held for period of > 12 months immediately preceding the date of transfer.

• A share of a company not being a share which is listed on a recognised stock exchange in India or an immovable property, being land or building or both, would be treated as a short-term capital asset if it was held by an assessee for not more than 24 months immediately preceding the date of its transfer. Thus, the period of holding of unlisted shares or an immovable property, being land or building or both, for being treated as a long-term capital asset would be “more than 24 months” instead of “more than 36 months”.

• Assets other than short-term capital assets are known as ‘long-term capital assets’ and the gains arising therefrom are known as ‘long-term capital gains’. In the case of other long- term capital assets, the period of holding is determinable subject to any rules made by CBDT. An asset should be held for more than 36 months immediately prior to the date of its transfer to become a long term capital asset. However, where a capital asset, being Immoveable property (land or building or both) is transferred on or after April 1, 2017, then it will be treated as Long Term Capital Asset if it is held for more than 24 months immediately prior to the date of its transfer.

TRANSFER [SECTION 2(47)]

The essential requirement for the incidence of tax on capital gains is the transfer of a “capital asset”. The Act contains an inclusive definition of “transfer”, and hence, it includes:

Transfer includes;

- Sale exchange / relinquishment of assets
- extinguishment any of rights therein
- maturity / redemption of zero coupon bond compulsory acquisition thereof under law in a case where the asset is converted by the owner thereof into, or is treated by him as, stock in trade of business carried on by him, such conversion or treatment
- 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 section 53 of Transfer of Property Act,1882 (4 of 1882)
- any transactions which have the effect of transferring or enabling the enjoyment of an immovable property

Year of Chargeability as “Capital Gains

Capital gains shall be Chargeable in the Previous Year in which the transfer takes place. Some exceptions to this Rule are :

(i) Insurance Receipts [Section 45(1A)]:

Where any person receives at any time during any previous year any money or other assets under an 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 declaration of war), then, any profits or gains arising from receipt of such money or other assets shall be chargeable to income-tax under the head “Capital gains” and shall be deemed to be the income of the such person for the previous year in which such money or other asset was received and for the purpose of section 48, value of any money or the FMV of other assets on the date of such receipt shall be deemed to be the full value of consideration received or accruing as a result of the transfer of such capital asset.

(ii) Conversion or treatment of a capital asset as stock-in-trade [Section 45(2)]:

A person who is the owner of a capital asset may convert the same or treat it as stock-in-trade of the business carried on by him. As noted above, the above transaction is a transfer. As per section 45(2), notwithstanding anything contained in section 45(1), being the charging section, the profits or gains arising from the above conversion or treatment will be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him and for the purpose of section 48, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received as a result of the transfer of the capital asset.

Income arising on account of Stock in trade:
1. Business Income = Sale price of stock in trade (-) FMV on the date of conversion
2. Capital Gain= FMV on the date of conversion (-) Cost/Indexed cost of acquisition / improvement [Indexation benefit would be considered in relation to the year of conversion of capital asset into stock in trade.
3. Both Capital Gains and Business income are chargeable to tax in the year in which stock-in-trade is sold or otherwise transferred.

(iii)Transfer of beneficial interest in any securities [Section 45(2A)]:

As per section 45(2A), where any person has had at any time during the previous year any beneficial interest in any securities, then, any profits or gains arising from the 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 such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of the securities by virtue of section 10(1) of the Depositories Act, 1996 and For the purposes of section 48 and proviso to section 2(42A), the cost of acquisition and the period of holding of securities shall be determined on the basis of the first-in-first-out (FIFO) method.

(iv)Introduction of capital asset as capital contribution [Section 45(3)]:

Where a person transfers a capital asset to a firm, AOP or BOI in which he is already a partner/ member or is to become a partner/ member by way of capital contribution or otherwise, the profits or gains arising from such transfer will be chargeable to tax as income of the previous year in which such transfer takes place and For the purpose of section 48, the value of the consideration will be the amount recorded in the books of account of the firm, AOP or BOI as the value of the capital asset.

(v) Distribution of capital assets on dissolution of firm/ AOP or BOI [Section 45(4)]:

The profits or gains arising from the transfer of capital assets by way of – distribution of capital assets on the dissolution of a firm or AOP or BOI or – otherwise shall be chargeable to tax as the income of the firm etc. of the previous year in which such transfer takes place and For the purpose of section 48, the fair market value of the asset on the date of such transfer shall be the full value of consideration. Since the tax treatment accorded to a LLP and a general partnership is the same, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. However, if there is a change in rights and obligations of partners or there is a transfer of asset or liability after conversion, then the provisions of section 45 would get attracted.

(vi) Compensation on compulsory acquisition [Section 45(5)]:

Sometimes, a building or some other capital asset belonging to a person is taken over by the Central Government by way of compulsory acquisition. In that case, the consideration for the transfer is determined or approved by the Central Government or RBI. Such capital gains are chargeable as income of the previous year in which such compensation or part thereof is received.

Enhanced Compensation - Many times, persons whose capital assets have been taken over by the Central Government and who get compensation from the Government go to the Court of law for enhancement of compensation. If the court awards a compensation which is higher than the original compensation, the difference thereof will be chargeable to capital gains in the year in which the same is received from the government.

Cost of acquisition/improvement in case of enhanced compensation - For this purpose, the cost of acquisition and cost of improvement shall be taken to be nil. Compensation received in pursuance of an interim order deemed as income chargeable to tax in the year of final order - In order to remove the uncertainty regarding the year in which the amount of compensation received in pursuance of an interim order of the Court, Tribunal or other authority is to be charged to tax, a proviso has been inserted after clause (b) to provide that such compensation shall be deemed to be income chargeable under the head ‘Capital gains’ in the previous year in which the final order of such Court, Tribunal or other authority is made.

Reduction of enhanced compensation - Where capital gain has been charged on the compensation received by the assessee for the compulsory acquisition of any capital asset or enhanced compensation received by the assessee and subsequently such compensation is reduced by any Court, Tribunal or any authority, the assessed capital gain of that year shall be recomputed by taking into consideration the reduced amount.

This re-computation shall be done by way of rectification. Death of the transferor- It is possible that the transferor may die before he receives the enhanced compensation. In that case, the enhanced compensation or consideration will be chargeable to tax in the hands of the person who received the same

Taxability of capital gains in case of Specified Agreement [Section 45(5A)]

in case of an assessee being individual or Hindu undivided family, – who enters into a specified agreement for development of a project, – the capital gain arising from such transfer shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority. Full value of consideration: For this purpose, the stamp duty value of his share, being land or building or both, in the project on the date of issuing of said certificate of completion as increased by any consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

Non-applicability of the beneficial provision:

It may, however, be noted these beneficial provisions would not apply, where the assessee transfers his share in the project on or before the date of issue of said completion certificate and the capital gain tax liability would be deemed to arise in the previous year in which such transfer took place. In such a case, full value of consideration received or accruing shall be determined by the general provisions of the Act. Meaning of certain terms: Competent authority: The authority empowered to approve the building plan by or under any law for the time being in force Meaning of Specified Agreement: Specified agreement means the registered agreement in which a person owing land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash. Stamp duty value: The value adopted or assessed or reassessable by any authority of Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.

CAPITAL GAINS ON DISTRIBUTION OF ASSETS BY COMPANIES IN LIQUIDATION [SECTION 46]

In the hands of liquidated company: Where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall be regarded as a transfer by the company for the purposes of section 45 [Section 46(1)].

In the hands of shareholders: Shareholders receive money or other assets from the company on its liquidation. They will be chargeable to income-tax under the head 'capital gains' in respect of the market value of the assets received on the date of distribution, or the moneys so received by them. The portion of the distribution which is attributable to the accumulated profits of the company is to be treated as dividend income of the shareholder under section 2(22)(c), which is subject to dividend distribution tax in the hands of the company.

The same will be deducted from the amount received/ fair market value for the purpose of determining the consideration for computation of capital gains. Capital gains tax on subsequent sale by the shareholders: If the shareholder, after receipt of any such asset on liquidation of the company, transfers it, then Fair Market value on the date of distribution would be treated as cost of acquisition of such asset.

CAPITAL GAINS ON BUYBACK OF SHARES OR SPECIFIED SECURITIES [SECTION 46A]

In case of specified securities other than shares: Any consideration received by a holder of specified securities (other than shares) from any company on purchase of its specified securities is chargeable to tax in the hands of the holder of specified securities. The difference between the cost of acquisition and the value of consideration received by the holder of securities is chargeable to tax as capital gains in his hands. The computation of capital gains shall be made in accordance with the provisions of section 48. Such capital gains shall be chargeable in the year in which such securities were purchased by the company. For this purpose, “specified securities” shall have the same meaning as given in Section 68 of the Companies Act, 2013, “specified securities” includes employees’ stock option or other securities as may be notified by the Central Government from time to time.

In case of shares (whether listed or unlisted): With effect from 5.7.2019, in case of buyback of shares (whether listed or unlisted) by domestic companies, additional income-tax @ 20% (plus surcharge@ 12% and cess@ 4%) is leviable in the hands of the company. Consequently, the income arising to the shareholders in respect of such buyback of shares by the domestic company would be exempt under section 10(34A), since the domestic company is liable to pay additional income-tax on the buyback of shares

MODE OF COMPUTATION

Section 48 of the Act provides that the income chargeable under the head “capital gains” shall be computed by deducting from the full value of consideration received or accruing as a result of the transfer of the capital asset the following amounts – (i) the expenditure[No deduction will be allowed in respect of Securities Transaction Tax (STT paid)] incurred wholly and exclusively in connection with such transfer; (ii) the cost of acquisition of the capital asset and the cost of any improvement thereto

Cost of Improvement

Section 55 mentions that in relation to a capital asset, being goodwill, or a right, the cost of improvement will be taken as NIL. For any other capital asset: a) Cost of improvement, prior to 1st Apr’ 01 shall be Nil b) Cost of improvement shall be all expenditure of a capital nature, incurred in making additions / alterations on or after 01.04.2001.

ASCERTAINMENT OF COST IN SPECIFIED CIRCUMSTANCES [SECTION 49]:

A person becomes the owner of a capital asset not only by purchase but also by several other methods. Section 49 gives guidelines as to how to compute the cost under different circumstances.

(1) Cost to previous owner deemed as cost of acquisition of asset: In the following cases, the cost of acquisition of the asset shall be deemed to be cost for which the previous owner of the property acquired it. To this cost, the cost of improvement to the asset incurred by the previous owner or the assessee must be added: Where the capital asset became the property of the assessee: (i) on any distribution of assets on the total or partition of a HUF;
(2) under a gift or will;
(3) by succession, inheritance or devolution;
(4) on any distribution of assets on the liquidation of a company;
(5) under a transfer to revocable or an irrevocable trust;
(6) under any transfer of capital asset by a holding company to its wholly owned subsidiary Indian company or by a subsidiary company to its 100% holding Indian company, referred to in section 47(iv) and 47(v) respectively;
(7) under any transfer referred to in section 47(vi) of a capital asset by amalgamating company to the amalgamated Indian company, in a scheme of amalgamation; under any transfer referred to in section 47(vib), of a capital asset by the demerged company to the resulting Indian company, in a scheme of demerger;
(8) by conversion by an individual of his separate property into a HUF property, by the mode referred to in section 64(2)

Capital Gains for Depreciable Assets (Section 50):

Where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed, the provisions of sections 48 and 49 shall be subject to the following modification: • Where the full value of consideration received or accruing for the transfer of the asset plus the full value of such consideration for the transfer of any other capital asset falling with the block of assets during previous year exceeds the aggregate of the following amounts namely: – expenditure incurred wholly and exclusively in connection with such transfer; – WDV of the block of assets at the beginning of the previous year; – the actual cost of any asset falling within the block of assets acquired during the previous year such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

Where all assets in a block are transferred during the previous year, the block itself will cease to exist. In such a situation, the difference between the sale value of the assets and the WDV of the block of assets at the beginning of the previous year together with the actual cost of any asset falling within that block of assets acquired by the assessee during the previous year will be deemed to be the capital gains arising from the transfer of short- term capital assets.

Cost of acquisition in case of power sector assets [Section 50A]:

With respect to the power sector, in case of depreciable assets referred to in section 32(1)(i), the provisions of sections 48 and 49 shall apply subject to the modification that the WDV of the asset (as defined in section 43(6)), as adjusted, shall be taken to be the cost of acquisition.

Capital Gains in respect of Slump Sale (Section 50B)

Meaning of slump sale [Section 2(42C)] Slump sale' means the 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. In other words it is a sale where the assessee transfers one or more undertaking as a whole including all the assets and liabilities as a going concern. The consideration is fixed for the whole undertaking and received by the transferor it is not fixed for each of the asset of the undertaking as a whole by way of such sale. Thus it may be noted that the undertaking as a whole or the division transferred shall be a capital asset. – Any gains arising from the slump sale of one / more undertakings held for more than 36 months, shall be chargeable to tax as Long-Term Capital Gains in the Previous Year in which the slump sale was effected – Any gains arising from the slump sale of one / more undertakings held for less than 36 months, shall be chargeable to tax as Short-Term Capital Gains in the Previous Year in which the slump sale was effected – The Net Worth of the undertaking or the division, as the case may be, shall be deemed to be the Cost of Acquisition / Improvement of the Unit(s) for the purposes of sections 48 and 49 in relation to capital assets of such undertaking or division transferred by way of such sale and the provisions contained in the second proviso to section 48 shall be ignored [Sub-section (2)]. It means no indexation benefit would be available.

ADVANCE MONEY RECEIVED [SECTION 51]

Section 51 provides that while calculating capital gains, the above advance retained by the assessee must go to reduce the cost of acquisition. However, if advance has been received and retained by the previous owner and not the assessee himself, then the same will not go to reduce the cost of acquisition of the assessee. Section 56(2)(ix) provides for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset. Consequently, such sum shall be chargeable to income□tax under the head 'Income from other sources', if such sum is forfeited on or after 1st April, 2014 and the negotiations do not result in transfer of such capital asset. In order to avoid double taxation of the advance received and retained, section 51 provides that where any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset has been included in the total income of the assessee for any previous year in accordance with section 56(2)(ix), then, such amount shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition. However, any such sum of money forfeited before 1st April, 2014, will be deducted from the cost of acquisition for computing capital gains.

Profit on sale of property used for residence [Section 54]

Conditions for claiming exemption: l Assessee: Individual or HUF l Which asset to transfer:Residential house(buildings or lands appurtenant thereto) l It must be a long-term capital asset l Income from such house should be chargeable to tax under the head “Income from House Property”

S.No	Situation`	Investment
1	Where the amount of capital gains exceeds Rs. 2 crore	one residential house in India should be – l purchased within 1 year before or 2 years after the date of transfer (or) l constructed within a period of 3 years after the date of transfer
2.	Where the amount of capital gains does not exceed Rs. 2 crore	purchase two residential houses in India within 1 year before or 2 years after the date of transfer (or) l construct two residential houses in India within a period of 3 years after the date of transfer.

Transfer of land used for agricultural purposes [Section 54B]:

Conditions for claiming exemption: l Assessee: Individual or HUF
There should be a transfer of an urban agricultural land . Asset must be either short term or long term capital asset. Such land has been used for agricultural purposes for immediately preceding 2 years by such Individual or his parent or HUF

He should purchase another agricultural land (urban or rural) within 2 years from date of transfer If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS Amount utilized by the assessee for purchase of new asset and the amount so deposited shall be deemed to be the cost of new asset.

Amount of Exemption: If cost of new agricultural land ≥ capital gains, entire capital gains is exempt. If cost of new agricultural land < capital gains, capital gains to the extent of cost of new agricultural land is exempt. If the new agricultural land is also transferred within 3 years from date of acquisition, the cost of land would be reduced by the capital gains exempted earlier (not applicable if the new land was rural)

Compulsory acquisition of lands and buildings [Section 54D]:

Conditions for claiming exemption: Assessee: Any assessee There must be a compulsory acquisition of land & building or any right in land or building forming part of an industrial undertaking Such land & building should have been used for business purposes of the industrial undertaking for 2 years immediately preceding the date of transfer. The assessee must purchase any another land / building / construct any building(for shifting or re establishing the existing undertaking or setting up a new industrial undertaking) within 3 years from date of transfer If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS. Amount utilized by the assessee for purchase of new asset and the amount so deposited shall be deemed to be the cost of new asset. In such a case, if the cost of the new land & building is > the Capital Gains, the entire LTCG will be exempt, and if less, then the LTCG will be exempt only to the extent of the cost of new land& building. If the new land & building is also transferred within 3 years from date of acquisition, the cost of such land & building would be reduced by the capital gains exempted earlier

2.5 Income from other sources :

BASIS OF CHARGE OF INCOME FROM OTHER SOURCES [SECTION-56]

Income chargeable under Income-tax Act, which does not specifically fall for assessment under any of the heads discussed earlier, must be charged to tax as "income from other sources". This head is thus a residuary head of income under which income can be computed only after deciding whether the particular item of income is otherwise assessable under any of the first four heads.

Section 56(2) covers certain specific incomes which are chargeable under the head "Income From Other Sources". Section 56(1) covers all the residual incomes which are not covered by first Four Heads of Income and Section 56(2). In other words any income is taxable under this head if following conditions are satisfied: 1. There is an Income. 2. Such income is not exempt under any provisions of the Income Tax Act. 3. Such income is not taxable under First four heads of Income. The following specific incomes are chargeable to Income Tax under the head "Income from other sources" under Section 56(2): -

(a) Dividends [Section 56(2)(i)] : Dividend income other than divided referred under section 10(34) not exceeding Rs. 10 lakh shall be included under income from other sources.

(b) Keyman Insurance policy : Amount received under a Keyman insurance Policy, including bonus on such Policy, if it is not taxable under any other head of income shall be chargeable under Income from other sources.

(c) Winnings from lotteries [Section 56(2)(ib)] : 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 shall be chargeable to tax under Income from other sources. The entire income of winnings, without any expenditure or allowance or deductions under Sections 80C to 80U, will be taxable. However, expenses relating to the activity of owning and maintaining race horses are allowable. Further, such income is taxable at a special rate of income-tax i.e., 30% + surcharge + cess @ 4% [Section115BB]

(d) Contribution to Provident fund : Income of the nature referred to in Section 2(24)(x) (relating to certain contributions to any provident fund or superannuation fund or any fund set up under the provisions of the ESI Act or any other fund for the welfare of such employees received by the assessee from his employees in his capacity as an employer) will be chargeable to income-tax under the head "income from other sources" if such income is not chargeable to income-tax under the head "profits and gains of business or profession". But if the employer deposits such amount on or before due date of deposit applicable for such contribution, he will be allowed a deduction on account of the same. [Section 56(2) (ic)].

(e) Income by way of interest on securities : if the income by way of interest on securities is not chargeable to income-tax under the head," Profits and gains of business or profession", then such income shall be taxable under Income from other sources. It is chargeable on "receipt" basis if books of accounts are maintained on "Cash Basis", however if books are maintained on "Mercantile System" then interest is taxable on "accrual" basis. It is worthwhile to mention here, that many interest incomes are exempt u/s 10(15).

(f) Income from hiring of machinery, etc. [Section 56(2)(ii)] : Income from machinery, plant or furniture belonging to the assessee and let on hire; if the income is not chargeable to income-tax under the head "profits and gains of business or profession" shall be taxable under Income from other sources.

(g) Hiring out of building with machinery etc. [Section 56(2)(iii)] : Where an assessee lets on hire machinery, plant or furniture belonging to him and also building and the letting of the building is inseparable from the letting of the said machinery, plant or furniture, the income from such letting, if it is not chargeable to income-tax under the head "Profits and gains of business or profession" shall be taxable under Income from other sources.

(h) Share premiums in excess of the fair market value to be treated as income [Section 56(2)(viib)]:Where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be taxable under Income from other sources.

However, that this clause 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 a specified fund having Category I or Category II Alternative Investment Fund Certificate (w.e.f. Assessment Year 20-21)] or

(ii) (by a company from a class or classes of persons as may be notified by the Central Government in this behalf (for this purpose Govt. has notified that provisions of this section are not applicable in case consideration is received by a company for issue of shares of a "startup" company) Provided where the class of companies notified by Central Government does not comply on account of fulfilment of conditions specified in the notification issued under clause (ii), then, any consideration received for issue of share that exceeds the face value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place.

whichever is higher;

The following shall be taxable under the head 'Income from other sources' :

Where any person receives, in any previous year, from any person or persons on or after the 1st day of April, 2017,—
(a) Any sum of money, without consideration, the aggregate value of which exceeds INR 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 INR 50,000, the stamp duty value of such property is chargeable to tax;
ii. for a consideration, the stamp duty value of such property as exceeds such consideration, if the amount of such excess is more than the higher of the following amounts, namely:—
• the amount of INR 50,000; or
• the amount equal to five per cent of the consideration
• then the difference between stamp duty value of such property and consideration is chargeable to tax

any property, other than immovable property, –
(A) without consideration, the aggregate fair market value of which exceeds INR 50,000, then the whole of the aggregate fair market value of such property.
(B) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding INR 50,000, the aggregate fair market value of such property as exceeds such consideration

CASUAL INCOME [SECTION 56(2)(IB)]:

Casual income includes income by way of winnings from lotteries; crossword puzzles; races including horse races; gambling and betting of any nature or form; card games, game show or entertainment program on television or electronic mode and any other game of any sort. All these incomes are chargeable to tax under the head income from other sources. However, following income are not chargeable under the head "income from other sources":
(a) Lottery held as stock in trade: Winning from lottery to an agent or trader out of its unsold stock of lottery tickets shall be treated as incidental to business and taxed under the head "profit and gains of business or profession ".
(b) Income of jockey: Income of jockey from such profession is not treated as winning from the horse races Winning from a motor car rally: Winning from a motor car rally is a return for skill and effort and cannot be created as casual income, these are taxable as normal income.
• No deduction or exemption is provided in respect of the casual income. [Section 58 (4)].
• No deduction can be claimed from such income even if such expenditure is incurred exclusively and wholly for earning such income.
• Further, deduction under section 80C to 80U is also not available from such income. Taxation of Casual Income: Casual income is liable to TDS. The casual income is taxed at a flat rate of 30% plus surcharge (if any), plus health and education cess. When the TDS has already been deducted from the income, then in order to calculate the tax liability on such income, the income is to be grossed up. [Section 115BB] However, the following incomes are not liable to TDS: (1) Winning from lottery upto amount Rs.10,000 (2) Winning from racing other than horse race (3) Winning from horse race upto Rs. 10,000

INCOME FROM FAMILY PENSION

Family pension is a regular amount payable by the employer to a family member of a deceased employee. It is taxable under the head income from other sources. The income by way of family pension is eligible for a standard deduction under section 57(iia) which is either 1/3rd of such pension or Rs. 15000 whichever is lower. Family pension received by the widow or children or nominated heirs, as the case may be, of a member of the armed forces (including paramilitary forces) of the Union, where the death of such member has occurred in the course of operational duties, in such circumstances and subject to such conditions, as may be prescribed, shall be exempt from tax. Further, income by way of family pension received as family pension of an individual who has been in the service of Central/State Government and has been awarded Param Vir Chakra or Maha Vir Chakra or Vir Chakra or such other gallantry award as may be notified is also exempt from tax

TAXATION OF DIVIDENDS

Section 10(34) exempts dividend as defined in Section 115-O from tax in the hands of recipients thereof. Section 115-O, the main operative provision in the Chapter XII-D, however, calls upon a company declaring/ distributing dividend to pay 15% plus surcharge plus Health and Education Cess by way of Dividend Distribution Tax (DDT) on distributed profits in addition to what it is liable by way of tax on its income in the normal course.

Meaning of the term “Dividend” [Section 2(22)] :The term “dividend” is ordinarily used to refer to any distribution made by a company to its shareholders out of its profits in proportion to the number of shares held by the shareholder concerned in the company. Apart from that dividend paid by a company to its shareholders, the definition of dividend includes deemed dividend as laid down under section 2(22) of the Act, which is inclusive but not exhaustive. Accordingly the following payments or distribution made by a company to its shareholders are deemed as dividends to the extent of accumulated profits of the company whether capitalised or not (i.e. bonus shares issued is the capitalisation of profit). It may be noted that these payments may not be covered as dividend under Companies Act, 2013.: (a) Any distribution if such distribution entails the release of all or any part of the assets of the company. Such accumulated profits are distributed in cash or in kind. For in kind distribution, the market value of assets shall be the deemed dividend in hands of share holders. (b) Any distribution of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest to Equity or Preference shareholders. Any distribution of bonus shares to its preference shareholders. However bonus shares allotted to equity shareholders does not amount to deemed dividend. (c) Any distribution made on liquidation of a company(d) any distribution on the reduction of capital of a company(d) any distribution on the reduction of capital of a company

DEDUCTIONS ALLOWABLE IN COMPUTING INCOME FROM OTHER SOURCES

The income chargeable under the head "Income from other sources" is the income after making the following deductions:

From interest on securities [Section 57(i) and (iii)]: any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such interest on behalf of the assessee. Interest on money borrowed for investment in securities can be claimed as a deduction.

From the contributions received by employer from employees towards P.F./Superannuation/ other funds [Section 57(ia)]: In the case of income of the nature referred to in Section 2(24(x), which is chargeable to income-tax under the head "Income from other sources" deduction shall be allowable in accordance with the provisions of Section 36(1) (va), i.e., if the employer has credited the employee's accounts in the respective funds with the amounts of contributions received, the employer shall be allowed credit thereof.

Income derived from letting [Section 57(ii)]: Where income is derived from letting out of machinery, plant or furniture on hire and also buildings where the letting of building is inseparable from the letting of such machinery, plant or furniture and the income from such letting is not chargeable to Income tax under the head "Profits and Gains of Business or profession".

Income in the nature of family pension [Section 57(iia)]: Where a regular monthly amount is payable by an employer to a person belonging to the family of an employee in the event of his death, i.e., "family pension", a sum equal to 33-1/3% of the income orRs. 15,000, whichever is less, is allowable as a deduction. All these expenses will be allowed only when the prescribed particulars are furnished by the assessee.

AMOUNTS NOT DEDUCTIBLE [SECTION 58]

The following amounts shall not be deducted in computing income chargeable under the head "Income from other Sources".
In the case of any assessee: (i) Any personal expenses of the assessee. (ii) Any interest chargeable under the Income-tax Act which is payable outside India and from which income- tax has not been paid or deducted at source. (iii) Any payment which is chargeable under the head "Salaries" if it is payable outside India unless tax has been paid thereon or deducted therefrom at source.
Any expenditure referred to in Section 40A of Income-tax Act.

DEEMED INCOME [SECTION 59]

Where any allowance or deduction has been provided in the assessment of Income under the head "Income From Other Sources" in any Assessment Year in respect of loss or expenditure or trading liability incurred by the assesse and later on during any previous year any amount or any remission or any benefit is obtained by assesse (whether in cash or otherwise) then such amount or remission or benefit shall be taxable under the head " Income From Other Sources" in the previous year in which it is so obtained.

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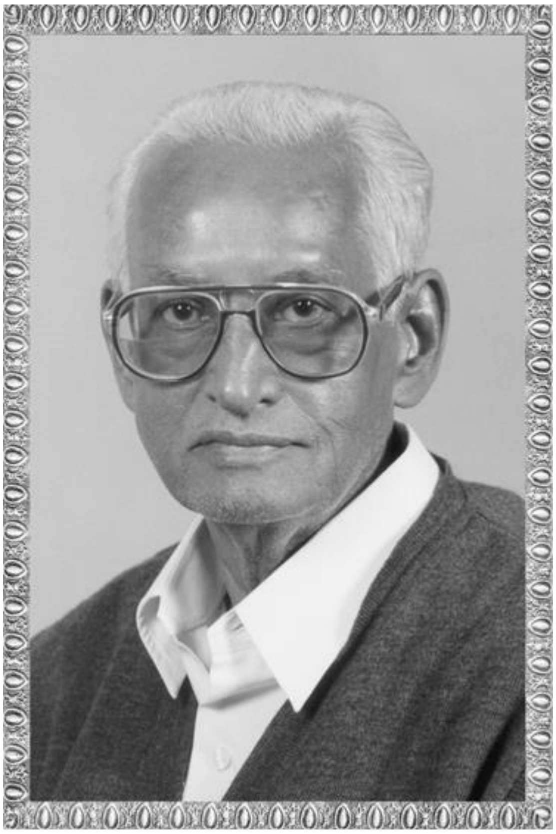

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UNIT -3 Miscellaneous

SR. NO.	TOPIC NAME
1	AGRICULTURAL AND NON –AGRICULTURAL INCOME
2	SET OFF AND CARRY FORWARD OF LOSSES
3	PROCEDURE FOR ASSESSMNET-REBATE AND RELIEF-COLLECTION RECOVERY AND REFUND OF TAX
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1. AGRICULTURAL INCOME :

In India, agricultural income refers to income earned or revenue derived from sources that include farming land, buildings on or identified with an agricultural land and commercial produce from a horticultural land. Agricultural income is defined under section 2(1A) of the Income Tax Act, 1961. According to this Section, agricultural income generally means: (a) Any rent or revenue derived from land which is situated in India and is used for agricultural purposes. (b) Any income derived from such land by agriculture operations including processing of agricultural produce so as to render it fit for the market or sale of such produce. (c) Any income attributable to a farm house subject to satisfaction of certain conditions specified in this regard in section 2(1A). (d) Any income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income.

Examples of Agricultural Income

The following are some of the examples of agricultural income:

- Income derived from sale of replanted trees.
- Income from sale of seeds.
- Rent received for agricultural land.
- Income from growing flowers and creepers.
- Profits received from a partner from a firm engaged in agricultural produce or activities.
- Interest on capital that a partner from a firm, engaged in agricultural operations, receives.

As per Section 10(1) of the Income Tax Act, 1961, agricultural income is exempted from taxation. The central government cannot levy tax on the agricultural income received. However, agricultural income is considered for rate purposes while assessing the income tax liability if the following two conditions are met:

Net agricultural income is greater than Rs. 5,000/- for previous year.

Total income, excluding net agricultural income, surpasses the basic exemption limit (Rs. 2,50,000 for individuals below 60 years of age and Rs. 3,00,000 for individuals above 60 years of age).

If these two conditions are met, tax liability shall be computed in the following manner:

Step 1: Let us regard agricultural income as X and other income as Y Tax computed on X+Y is B1

Step 2: Let us regard basic exemption slab for income tax payment as A Tax computed on A+X is B2

Step 3: The actual income tax liability shall be B1-B2

Note: If the individual's aggregate agricultural income is up to Rs. 5,000, the individual will have to disclose the agricultural income in the income tax return (ITR). In case the agricultural income crosses Rs. 5,000, the individual will have to disclose the agricultural income in ITR 2.

Section 54B of the Income Tax Act, 1961

Section 54B of the Income Tax Act, 1961, provides relief to taxpayers who sell their agricultural land and use the sale proceeds to acquire another agricultural land. To claim tax benefit under Section 54B of the Income Tax Act, the following conditions will have to be satisfied:

- This benefit can only be claimed by an individual or a HUF
- The agricultural land should be used by the individual or his or her parents for agricultural purpose for at least two years immediately preceding the date on which the exchange of land occurred. In case of HUF, the land should be used by any member of HUF.
- The taxpayer should purchase another agricultural land within two years from the date of selling the old land. In case it is an incident of compulsory acquisition, the period of acquiring new agricultural land will be assessed from the date of receipt of compensation. It must be noted that under Section 10(37), capital gain shall not be chargeable to tax if agricultural land is compulsorily acquired under any law, and the consideration of which is approved by the central government or banking regulator and received on or after 01-04-2004.

3.2 Set Off and Carry Forward of Losses:

While one endeavors to derive income, the possibility of incurring losses cannot be ruled out. Based on the principles of natural justice, a set-off should be available for loss incurred. The income tax laws in India recognize this and provide for adjustment and utilization of the losses. For this purpose, the Income-tax Act, 1961 contains specific provisions (Sections 70 to 80) for the set-off and carry-forward of losses. Income-tax is levied on the total income of the previous year of an assessee and it is necessary to ascertain the total income. Further, loss incurred by the assessee is to be set-off against any income, the net result of the assessee's activities during the particular accounting year cannot be ascertained and consequently the tax payable would also be incapable of determination.

Set-Off of Losses from One Source Against Income from Another Source under the Same Head of Income [Section 70]:

The process of adjustment of loss from a source under a particular head of income against income from other source under the same head of income is called intra-head adjustment,

e.g. Adjustment of loss from business A against profit from business B. Income of a person is computed under five heads. 'Sources' of income derived by an individual may be many but yet they could be classified under the same head. Consider a situation where Harish has two properties - one, occupied by him and the other, let out. Harish pays interest on loan of Rs 1.50 lakh on the property occupied and derives net rental income of Rs 1.50 lakh from the let-out property.

In case of a self-occupied property, income is computed as nil and interest expenditure results in loss. The loss of Rs 1.50 lakh can be set off against rent income of Rs 1.50 lakh; the income chargeable under the head 'House property' will be 'Nil'. Thus, in general, if the net result for any assessment year in respect of any source falling under any head of income is a loss, the assessee is entitled to set off the amount of such loss against his income from any other source under the same head

However, the following are the exceptions to general rule:

Speculative Business Losses:

1. Loss from speculation business cannot be set of against profit from an non speculation business however loss from non speculative business can be set-off against speculation income)

2. Long-term capital Loss: Long Term Capital Loss (LTCL) can only be set off against Long Term Capital Gain (LTCG) and cannot be set off against Short term Capital Gain (STCG) however STCL can be set off against LTCG)

3. Casual Income: No loss can be set-off against casual income i.e. Income from lotteries, crossword puzzles, race including horse race, card game, and any other game of any sort or from gambling or betting of any form or nature. No expenses can be claimed against casual income.

4. Losses from the activity of owning and maintaining race horses: Loss from the business of owning and maintaining race horses cannot be set off against any income other than income from the business of owning and maintaining race horses.

5. Loss from an exempted source cannot be set off against taxable Income: If income from a particular source is exempt from tax, then loss from such source cannot be set off against any other income which is chargeable to tax, e.g., Agricultural income is exempt from tax, hence, if the taxpayer incurs loss from agricultural activity, then such loss cannot be adjusted against any other taxable income.

6. Income Losses of specified Business: Loss from business specified under section 35AD cannot be set off against any other income except income from specified business (section 35AD is applicable in respect of certain specified businesses like setting up a cold chain facility, setting up and operating warehousing facility for storage of agricultural produce, developing and building a housing projects, etc.)

Income losses Intra-head Set off:

(A) Loss from business or profession Any loss from business or profession (other than speculation business or loss from the activity of owning and maintaining race horses) can be set off against the income from any other business or profession including the income from speculation business or income from the activity of owning and maintaining race horses. If any business has been discontinued during the year, the loss from such business can also be set-off from the income of other business or profession.

(B) Loss from speculation business Such loss can be set-off only against the income from speculation business. It is not essential that the nature of the other speculation transaction must be the same. Speculative transactions in different commodities and in different markets are to be treated as one business. However, a loss from an illegal speculation business cannot be set-off against income from any lawful speculation

Set-Off of Loss from One Head Against Income from Another Head [Section 71]:

After making intra-head adjustment (if any) the next step is to make inter-head adjustment. If in any year, the taxpayer has incurred loss under one head of income and is having income under other head of income, then he can adjust the loss from one head against income from other head,

E.g., Loss under the head of house property to be adjusted against salary income. A person may have various sources of income computed under different heads of income. Loss under one head of income is generally allowed to be set off against income under another head. For instance, X has only one property, which is occupied by him and the loss is Rs 1.50 lakh. He derives salary of Rs 10 lakh during the year. Here, he can set off the loss of Rs 1.50 lakh against his salary income by making appropriate declarations to his employer, thereby making his net taxable income Rs 8.50 lakh.

Loss in Non-Speculation Business [Section 72]:

It shall be set-off against the profits and gains, if any, of any business or profession carried on by him and assessable for that assessment year.

The loss can be set-off against the business profits of the year provided such profits are asessable to tax. If the profits are exempt from tax for any reason, no set-off can be made by the income-tax officer against such profits.

Conditions for carry forward and set-off of business loss

(i) The right of carry-forward and set-off is available to the same assessee who has sustained the loss. A holding company however, cannot claim to carry forward the losses, if any, incurred by its wholly owned subsidiary company. Exceptions to this rule are (a) cases of succession by inheritance [a loss incurred by the father in the course of carrying on his business can be carried forward and set-off by his son, if the son succeeds to the business of his father on account of the father's death but not otherwise] (b) accumulated business loss of an amalgamating company under Section 72A (c) the share of loss of partnership taken over by one of its partners can also be set-off by the partner [Dwarkadass Leeladhar v. CIT (1963) 47 ITR 619 (Ker.)] However, loss incurred by HUF cannot be carried forward and set-off after its partition against income of firm formed thereafter by certain coparceners [KeshrichandBhanabhai v. CIT(1951) 20ITR 201 (Bom.)].

(ii) The loss can be carried forward to a maximum of eight consecutive assessment years immediately succeeding the assessment year for which the loss was first computed. In case of a business on which rehabilitation allowance has been allowed, the previous losses are allowed to be carried forward to the assessment year relevant to the previous year in which the business was so revived or re-established and are allowed to be set-off against the profits of that assessment year. Any balance of loss can be carried forward to the succeeding seven assessment years.

(iii) Where any unabsorbed depreciation or capital expenditure on scientific research has been brought forward alongwith business loss, the business loss shall first be set-off.

Loss in Speculation Business [Section 73]:

Where, for any assessment year, any loss computed in respect of a speculation business has not been wholly set-off against the profits of another speculation business, it shall be carried forward to the following assessment year and shall be set-off against the profits of any speculation business carried on by him and assessable for the assessment year.

Carry Forward and Set Off of Losses by Specified Business [Section 73A]:

Any loss of any specified business in section 35AD shall not be set off except against profits and gains of any other specified business.

Where for any assessment year any loss computed of the specified business has not been wholly set off, the loss not set off shall be carried forward to the following assessment year, and

(i) it shall be set off against the profits and gains of any specified business carried on by him and

(ii) if the loss can not be wholly set off, the amount of loss not set off shall be carried forward to the following assessment year and so on.

Set-Off and Carry Forward of Capital Losses [Section 74]:

Where, in respect of any assessment year, the net result of the computation under the head “Capital gains” is a loss to the assessee, it can be carried forward to the following assessment year. The short-term and long-term losses shall be separately carried forward. In case of short-term capital loss it can be set off against income, if any, under the head “Capital gains” (whether short-term or long-term) assessable for that assessment year in respect of any other capital asset.

But in case of long-term capital loss, it can be set off only against long-term capital gain. While losses on transfer of capital assets, whether short-term or long-term cannot be set off against any other income of the assessee under other heads of income i.e. heads other than ‘capital gains’ in the previous year in which such loss was incurred, it can be carried forward to be set off against capital gains if any during the next eight assessment years.

Loss on Maintenance of Race Horses [Section 74A]:

Where an assessee who is the owner of race horses sustains a loss in the activity of owning and maintaining race horses, he can carry-forward and set-off such loss against his income (Prize money received on a race horse or race horses) from the activity of owning and maintaining race horses in subsequent years. This loss can be carried forward to a maximum of four assessment years immediately succeeding the assessment year for which the loss was first computed.

CARRY FORWARD AND SET-OFF OF ACCUMULATED BUSINESS LOSS AND UNABSORBED DEPRECIATION IN CERTAIN CASES OF AMALGAMATION OR DEMERGER ETC. [SECTION 72A]:

Section 72A provides for carry forward and set off of accumulated loss and unabsorbed depreciation allowance in case of:

(i) amalgamation [Section 72A(1), (2) and (3)], or
(ii) demerger [Section 72A(4) and (5], or
(iii) reorganisation of business [Section 72A(6)].

(i) Carry forward and set off of accumulated loss and unabsorbed depreciation in case of amalgamation [Section 72A(1), (2) and (3)]:

(1) Where there has been an amalgamation of a company owning an industrial undertaking or a ship or a hotel with another company or an amalgamation of a banking company referred to in Clause (c) of Section 5 of the Banking Regulation Act, 1949 (10 of 1949) with a specified bank, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or, as the case may be, allowance for depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

(2) Notwithstanding anything contained in Sub-section (1), the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless –

(a) the amalgamating company –
(i) has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years;
(ii) has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation;
(b) the amalgamated company –
(i) holds continuously for a minimum period of five years from the date of amalgamation at least three- fourths of the book value of fixed assets of the amalgamating company acquired in a scheme of amalgamation;
(ii) continues the business of the amalgamating company for a minimum period of five years from the date of amalgamation; fulfils such other conditions as may be prescribed to ensure the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose.

(ii) Carry forward and set off of accumulated losses and unabsorbed depreciation in case of demerger [Sections 72A(4) and (5]:

Notwithstanding anything contained in any other provisions of this Act in the case of a demerger, the accumulated loss and the allowance for absorbed depreciation of the demerged company shall - (a) where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, be allowed to be carried forward and set off in the hands of the resulting company; (b) where such loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting company, be apportioned between the demerged company and the resulting company in the same proportion in which the assets of the undertakings have been retained by the demerged company and transferred to the resulting company, and be allowed to be carried forward and set off transferred to the resulting company, and be allowed to be carried forward and set off in the hands of the demerged company or the resulting company, as the case may be.

(iii) Carry forward and set off of accumulated losses and unabsorbed depreciation in case of reorganisation of business [Section 72A(6)]:

Where there has been reorganisation of business, whereby, a firm is succeeded by a company fulfilling the conditions laid down in Clause (xiii) of Section 47 or a proprietary concern is succeeded by a company fulfilling the conditions laid down in Clause (xiv) of Section 47, then, notwithstanding anything contained in any other provisions of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor firm or the proprietary concern, as the case may be, shall be deemed to be the loss or allowance for depreciation of the successor company for the purpose of previous year in which business reorganisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

Section 72(6A): Where there has been reorganisation of business whereby a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to clause (xiiib) of section 47, then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the predecessor company, shall be deemed to be the loss or allowance for depreciation of the successor limited liability partnership for the purpose of the previous year in which business reorganisation was effected and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly.

TREATMENT OF CARRY-FORWARD OF LOSSES OF CERTAIN ASSESSEES:

(1) Carry-forward and set-off of losses in case of change in constitution of firm [Section 78] Where a change has occurred in the constitution of a firm, the firm is not entitled to carry forward and set off so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year.

(2) Carry-forward and set-off of losses in case of succession of business or profession When a business or profession is succeeded by another person, the brought forward losses by the predecessor can be set-off against the income earned by the predecessor before the succession. The successor is not entitled to carry forward the losses sustained by the predecessor and set them off against the income earned by him. However, there is exception. If the succession is by inheritance, the heir-at-law is entitled to carry-forward and set-off the losses sustained by the predecessor provided the business in question continues to be carried on by the successor

The losses of companies in which the public are not substantially interested can be carried forward and set-off only if the following condition is satisfied:

(a) The shares of the company carrying not less than 51 per cent of the voting power were beneficially heldby the same persons on the last day of the year or years in which the loss was incurred and also on the last day of the previous year in which the brought forward loss is to be adjusted. Where a change in voting power of more than 51 per cent of share holding has occurred between the two dates mentioned above (i.e. last day of the year of occurrence of loss and the last day of the previous year in which the brought forward loss is to be adjusted), the assessee will not be entitled to the benefit of set-off. However, the benefit of set-off will not be denied if the change in voting power is due to the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift. The effect of this provision is that if the majority of the voting power is not in the same hands both on the last day of the previous year in which the loss was sustained by the closely-held company and on the last day of the previous year in which the set off is claimed, set off will not be allowed under Section 72.

(b) This is obviously to frustrate attempts at trafficking in losses. It has been further provided by Finance Act, 1999 w.e.f. 1.4.2000 that benefit of set off will also not be denied in the case where any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty one per cent shareholders of the amalgamating or demerged foreign company continue. It has further been provided by Finance Act, 2018 that benefit of carry forward and set off of losses shall not be denied to a closely held company seeking insolvency resolution, where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

(3) Carry forward and set of losses in case of eligible start-up [Section 79(b)] This section is applicable if following conditions are satisfied: a) The assessee is a company in which public are not substantially interested. b) It is an eligible start up referred u/s 80-IAC. c) Loss is incurred by the assessee company during the period of 7 years (starting from the year in which the company is incorporated).

If the above conditions are satisfied then brought forward loss can be set off against current year's income only if all the shareholders of the company (who held shares carrying voting power) on the last day of the previous year in which the loss was incurred, continue to hold shares on the last day of the current year.

Exceptions : The above mentioned restriction shall not be applicable in following cases:
a) Where the change in the shareholding takes place due to death of a shareholder or any shareholder gifting his shares to his/her relative.
b) Carry forward of unabsorbed Depreciation, unabsorbed capital expenditure on Scientific Research, unabsorbed capital expenditure by a company on promotion of family planning among its employees.
c) If the assessee is a subsidiary of foreign company and the foreign holding company is amalgamated / merged with another foreign company (and the persons holding 51% or more shares in the amalgamating/ demerged company become the shareholders of the amalgamated/resulting foreign company).

SUBMISSION OF RETURN FOR LOSS [SECTION 80]:

An assessee is not entitled to carry-forward a loss unless he has filed a return of loss to the Department in time and in the prescribed form. It is obligatory on the part of the assessee to file such return, otherwise he will be deprived of the benefit of carry-forward of losses. In fact, only that amount of loss is allowed to be carried forward which has been computed by the Assessing Officer and not by the assesee.

However losses under the head 'Income from House Property' and 'Unabsorbed depreciation' shall be carried forward even if the return of income is furnished after the due date as specified under section 139(1). Section 80 of the Act provides that a loss which has not been determined in pursuance of return filed u/s 139(3) shall not be carried forward and set-off u/s 72(1), 73(2), 74(1), 74(3), 74A.

Previously, it does not include Section 73A which provides that any loss, computed in respect of any specified business referred to in section 35AD. Section 80 of the Act has been amended by Finance Act, 2016 to provide that the loss determined u/s 73A shall not be allowed to be carried forward and set off unless it is determined in pursuance of a return filed u/s 139(3).

3.3 Procedure for assessment-Rebate and relief –Collection recovery and refund of tax :

ASSESSMENT:

Every assessee has to submit his income details to income tax department by filing his income tax return. Once the return of income is filed by an assessee, the very next step is the processing of the income tax return by the income tax department. While processing, department verifies and examines the correctness of the income details provided by assessee. This process of examining the income tax return by the Income Tax Department is called "Assessment" and includes re-assessment and best judgment assessment under section 144.

TYPES OF ASSESSMENT:

(A) SELF ASSESSMENT [SECTION 140A]:

Self assessment is the first step in the process of assessments. Self Assessment is simply a process where a person himself assesses his tax liability on the income earned during the particular previous year and submits Income Tax Return to the department. Every person, before furnishing return under sections 139(return of income), 142(1), 148 (issue of notice where income has escaped assessment) and 153A (Assessment in case of search or requisition) shall make self assessment of his income and pay the tax, if due on the basis of such assessment.

The total tax payable is calculated on the total income of the assessee after considering the following amount :

(i) the amount of tax already paid under any provision of this Act;
(ii) any tax deducted or collected at source;
(iii) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India; any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and
(iv) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD.
(v) any relief u/s 89 In case in delay in furnishing of return of income, self assessment tax shall also include interest for delay and fee for delay in filing return under section 234F. Hence, this is an assessment by the assessee himself called "Self Assessment" before filing of his income tax return, so that work of income tax department became easy.

(B) SUMMARY ASSESSMENT: CENTRALISED PROCESSING OF RETURN [SECTION 143(1)]:

Summary assessment is the assessment without calling the assessee and without human intervention. Assessment under section 143(1) is like preliminary checking of the income tax return. Under this assessment no detailed scrutiny of income tax return is carried out but total income or loss is computed after making the following adjustments (if any), namely

i. any arithmetical error in the return; or
ii. an incorrect claim, if such incorrect claim is apparent from any information in the return; or
iii. disallowance of loss claimed, if return of the previous year for which set-off of loss is claimed was furnished beyond the due date specified under section 139(1); or
iv. disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return; or
v. disallowance of deduction claimed u/s 10AA, 80IA to 80-IE, if the return is furnished beyond the due date specified under section 139(1); or vi. addition of income appearing in Form 26AS which has not been included in computing the total income in the return.

However, no such adjustment shall be made unless an intimation is given to the assessee of such adjustment either in writing or in electronic mode. After making the aforesaid adjustments, income tax department sends an intimation under section 143(1) in which comparative income tax computation [i.e. as provided by an assessee in income tax return and as computed u/s 143(1)], which serves as demand notice if there is a tax liability otherwise simply an intimation about processing of return of income.

(C) SCRUTINY (REGULAR) ASSESSMENT [SECTION 143(2) & (3):

Where a return has been made under Section 139, or in response to a notice under Sub-section (1) of Section42, the Assessing Officer shall, if he considers necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return : Provided that no notice under sub-section (2) shall be served on the assessee after the expiry of six months from the end of the Financial year in which the return is furnished.

On the day specified in the notice issued under Sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

E-Assessments :

The Finance Act, 2018 has inserted a new sub-section (3A) in Section 143 that the Central Govt. may make a scheme for the purpose of making assessment 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 proceeding to the extent technologically feasible.
(b) Optimising utilization of the resources through economies of scale and functional specialization.
(c) Introducing a team-based assessment with dynamic jurisdiction.

(D) BEST JUDGMENT ASSESSMENT [SECTION 144]:

The Assessing Officer, after taking into account all relevant material which he has gathered, and after giving the assessee an opportunity of being heard, makes the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment in the following cases : – If any person fails to make the return required under section 139(1) and has not made a return or a revised return under section 139(4) or 139(5), or –

When a person fails to comply with all the terms of a notice issued under section 142(1) or fails to comply with a direction issued under section 142(2A) for getting the accounts audited, or – If any person having made a return, fails to comply with all the terms of a notice issued under section 143(2).

Prior to the proceedings the AO should issue a show cause notice to the assessee. However if the assessee has already issued notice under section 142(1)(i) and the assessee has not complied with the terms then AO can proceed further without issuing a show cause notice. Further AO cannot assess the income below returned income and cannot assess losses higher than the returned losses. A refund cannot be granted under section 144.

(E) INCOME ESCAPING ASSESSMENT OR RE-ASSESSMENT [SECTION 147]:

If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, – assess or reassess income which has escaped assessment or – recompute the loss or the depreciation allowance or any other allowance, as the case may be for the relevant assessment year.

Section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish, within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form, and verified in the prescribed manner and setting forth such other particulars, as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return furnished as per the requirements of Section 139.

PROCEDURE OF APPELLATE TRIBUNAL [SECTION 255]:

The powers and functions of the Appellate Tribunal may be exercised and discharged by benches constituted by the President of the Appellate Tribunal from amongst the members thereof. The bench shall consist of one judicial member and one accountant member.

The President or any other member of the Appellate Tribunal, authorised in this behalf by the Central Government, may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose, total income as computed by the Assessing Officer in the case does not exceed ‘ 50,00,000 [Amendment vide Finance Act, 2016].

The President may, for the disposal of any particular case, constitute a Special Bench consisting of three or more members, one of whom shall necessarily be a judicial member and one an accountant member. If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority if there is a majority.

But if the members are equally divided, they shall state the point or points on which they differ and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal. Such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case including those who first heard it. The Appellate Tribunal shall have the power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Benches shall hold their sittings.

The Appellate Tribunal shall have, for the purpose of discharging its functions, all the powers which are vested in the Income-tax authorities under Section 131, and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding and for the purpose of Section 196 of the Indian Penal Code, the Appellate Tribunal shall be deemed to be a Civil Court for all purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure.

The Appellate Tribunal is a final fact finding authority and if it arrives at its own conclusions or facts after the consideration of the evidence before it, the Court will not interfere. It is necessary, however, that every fact ‘for’ and ‘against’ the assessee must have been considered with due care and the Tribunal must have given its finding in a manner which would have clearly indicated what were the questions which arose for determination, what was the evidence pro and contra in regard to each one of them, and what were the findings reached on the evidence on record before it.

APPEAL TO HIGH COURT:

Sections 260A and 260B are inserted w.e.f. October 1, 1998. Section 260A provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal if the High Court is satisfied that the case involves a substantial question of law.

The Chief Commissioner or the Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal shall be filed within 120 days of the date on which the order appealed against is received by the assessee or the Chief Commissioner or Commissioner and shall be filed in the form of memorandum of appeal precisely stating the substantial question of law involved. If the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate thatquestion.

The appeal shall be heard only on the question so formulated, and the respondents shall at the hearing of the appeal, be allowed to argue that the case does not involve such question. However, the High Court may for reasons to be recorded, hear the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit. The High Court may determine any issue which has not been determined by the Appellate Tribunal or has been wrongly determined by the Appellate Tribunal on such substantial question of law.

Where the High Court delivers a judgment in an appeal filed before it under Section 260A, effect shall be given to the order passed on the appeal by the Assessing Officer on the basis of a certified copy of judgment [Section 260(1A)]. Section 260B provides that an appeal filed under Section 260A shall be heard by a bench of not less than two judges of the High Court and shall be decided in accordance with the opinion such Judges or the majority, if any.

Where, however, there is no such majority, the part of law upon which they differ shall be referred to one or more of the Judges of the High Court and shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it. The High Court also has power to stay a proceeding for recovery of demand arising out of the assessment order pending disposal of appeal.

3.5 Penalty and Prosecution:

An assessee should note that compliance with legal formalities is less costly than the payment of penalties or interest on tax dues. There are several formalities to be complied with to avoid any penalty. In this connection, reference may be made to the following table summarizing the defaults and penalties therefor. Chapters XVII and XXI of Income-tax Act, 1961, contain various provisions empowering an Income-tax Authority to levy penalty in case of certain defaults. The various types of penalties are briefly described in the table given below :

Contravention of order made under section 132(1) (Second Proviso) or under section 132(3) in case of search and seizure:

Section 132 empowers the tax authorities to initiate search proceedings at the premises of the taxpayer. During the course of search the tax authorities are also empowered to seize money, bullion, jewellery or other valuable article or thing found from the taxpayer.

Generally, the seized money, bullion etc. is taken by the tax authorities in their custody (i.e., in the custody of the Government) but in certain cases it may not be possible or practicable for the tax authorities to take physical possession of the same or to remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature. In such a case, second proviso to section 132(1) empowers the tax authorities to seize the asset by keeping the asset at the place of the taxpayer only.

In such case, the asset will be seized by the tax authorities without physically taking the assets with them. For this purpose, the authorised officer would serve an order on the owner or the person who is in immediate possession or control of the asset that he shall not remove, part with or otherwise deal with the asset, except with the previous permission of such authorised officer.

This action of the authorised officer shall be deemed to be a seizure of such valuable article or thing under the Income-tax Act. Many times, during the course of search it may not be practicable to seize any books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than those mentioned in the second proviso to section 132(1) (as discussed above). In such cases, as per section 132(3), the tax authorities may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such officer. Such officer may take such steps as may be necessary for ensuring compliance with the provisions of section 132(3).

Section 275A provides for prosecution in the case of contravention of any of the above discussed provisions by the taxpayers. As per section 275A, whoever contravenes of any of the above provisions shall be punishable with rigorous imprisonment of upto a period of 2 years and shall also be liable for fine.

Failure to afford necessary facility to authorised officer to inspect books of account or other documents as is required under section 132(1)(iib)

In a case where a search is conducted by the tax authorities, the tax authorities as per Section 132(1)(iib)may require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents.. Person who fails to provide such facility shall be punishable with rigorous imprisonment of up to a period of 2 years and shall also be liable to fine.

Removal, concealment, transfer or delivery of property to thwart tax recovery If a taxpayer fails to discharge his tax liability, then the tax authority can recover the tax dues from him by attaching his movable and immovable property.

If the taxpayer fraudulently removes, conceals, transfers or delivers to any person, any property or any interest therein , intending thereby to prevent that property or interest therein from being attached for recovery of tax, then prosecution proceedings can be initiated under section 276. As per section 276 a taxpayer shall be punished with rigorous imprisonment for a term which may extend to two years and shall also be liable for fine.

Failure to comply with provisions of section 178(1) and (3) dealing with company-in -liquidation As per section 178(1) every person:

(a) who is the liquidator of any company which is being wound up, whether under the orders of a Court or otherwise; or
(b) who has been appointed the receiver of any assets of a company, shall, within 30 days after he has become such liquidator give notice of his appointment to the tax authority who is entitled to assess the income of the company.

As per section 178(3) the liquidator:-
(a) shall not, without the leave of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Assessing Officer in this regard; and

(b) on being so notified, shall set aside an amount, equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands : Nothing contained above shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secured creditors whose debts are entitled under law for priority payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner reasonable.

Prosecution :

Section 276A provides for prosecution in the case of failure to give notice or setting aside the sum in compliance with the above provisions of sections 178(1)/178(3) as well as prosecution in case the liquidator parts with any of the assets of the company or the properties in his hands in contravention of the provision of section 178(3).

A person who fails to comply with these provisions shall be punishable with rigorous imprisonment for a minimum period of 6 months which may extend to 2 years. The Finance Act 2023 has amended section 276A by providing a sunset date that no fresh prosecution proceedings shall be initiated under this provision on or after 01-04-2023.

Failure to pay/ensure payment of TDS or DDT to the credit of the Government If a person fails to:

(i) Pay to the credit of the Central Government, the tax deducted by him (i.e., TDS); or

(ii) Pay tax or ensure payment of tax to the credit of the Central Government, as required by or under:

a. Section 115-O(2) - dividend distribution tax (DDT);
b. Section 194B – Tax on winnings from lottery or crossword puzzle;
c. Section 194R – Tax on benefit or perquisite in respect of business or profession;
d. Section 194S – Tax on payment on transfer of virtual digital asset;
e. Section 194BA – Tax on winning from online games.

Then such person shall be punishable with rigorous imprisonment which shall not be less than 3 months but which may extend to 7 years and with fine. Failure to pay the tax collected under the provisions of section 206C Section 206C governs the provisions relating to collection of tax at source.

If a person fails to pay the tax collected by him to the credit of the Government, then as per section 276BB he shall be punishable with rigorous imprisonment for a period of which shall not be less than 3 months but which may extend to 7 years and with fine.

Wilful attempt to evade tax, penalty or interest Section 276C provides for punishment in the case of wilful attempt to evade tax, penalty or interest or under-reporting of income. As per section 276C if a person wilfully attempts to evade tax, penalty or interest or under-reports his income, then he shall be punished as follows: With rigorous imprisonment which shall not be less than 6 months but which may extend to seven years and with fine where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh upto 30-6-2012).

With rigorous imprisonment which shall not be less than 3 months but which may extend to two years (3 years upto 30-6-2012) and with fine in other cases. Where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh till 30-6-2012), imprisonment could be for a period of not less than 6 months which may extend to 7 years and with fine. In other cases imprisonment cannot be of less than 3 months, which may extend to 2 years (3 years upto 30-6-2012) and with fine.

Wilful failure to furnish return of income Section 276CC provides for imprisonment in case of failure to file the return of income. Section 276CC is attracted for any of the following defaults by the taxpayer :

Failure to file the return of income as per section 139(1).

Failure to file the return of income in response to a notice issued under• section142(1)(i) or section 148 or section 153A.

Punishment for the above failures shall be as under: Rigorous imprisonment which shall not be less than 6 months but which may extend to seven years and with fine where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh upto 30-6-2012).

Rigorous imprisonment which shall not be less than 3 months but which may extend to two years (3 years upto 30-6-2012) and with fine in other cases . The taxpayer shall not be proceeded against under this section for failure to furnish in due time the return of income under section 139(1), if: (a) the return is furnished by him before the expiry of the assessment year; or (b) the tax payable by him (not being a company) on the total income determined on regular assessment, as reduced by advance tax and TDS, if any, does not exceed Rs. 10,000.

Wilful failure to produce accounts and documents under section 142(1) or to comply with a direction issued under section 142(2A) Section 142(1) deals with the general provisions relating to an inquiry before assessment.

Under section 142(1), the Assessing Officer can issue notice asking the taxpayer to file the return of income, if he has not filed the return of income or to produce or cause to be produced such accounts or documents as he may require and to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the taxpayer, whether included in the accounts or not) as he may require.

Section 142(2A) deals with special audit. As per section 142(2A) if the conditions justifying special audit given in section 142(2A) are satisfied, the Assessing Officer may direct the taxpayer to get his accounts audited or re-audited from a chartered accountant as nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and to furnish a report of such audit in the prescribed form. Section 276D provides for prosecution in the case of wilful failure by the taxpayer to produce accounts and documents under section 142(1) or to comply with a direction issued under section 142(2A).

As per section 276D, if a person wilfully fails to produce accounts and documents as required in any notice issued under section 142(1) or wilfully fails to comply with a direction issued to him under section 142(2A), he shall be punishable with rigorous imprisonment for a term which may extend to one year and with fine.

False statement in verification or delivery of false account, etc:.

Section 277 provides for prosecution for making false statement or producing false accounts / documents. If a taxpayer makes statement in any verification under the Act or under any rules made there under, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe it to be true, he shall be punishable as follows: With rigorous imprisonment which shall not be less than 6 months but which may extend to seven years and with fine where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh upto 30-6-2012). With rigorous imprisonment which shall not be less than 3 months but which may extend to two years (3 years upto 30-6-2012) and with fine in other cases.

Falsification of books of account or document, etc.,:

to enable any other person to evade any tax, penalty or interest chargeable/leviable under the Act Section 277A provides for prosecution in the case of falsification of books of account or document etc. As per section 277A, if any person (hereafter referred to as the first person) wilfully and with an intent to enable any other person (hereafter referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under the Act, makes or causes to be made any entry or statement which is false and which the first person either knows to be false or does not believe it to be true, in any books of account or other document relevant to or useful in any proceedings against the first person or the second person under the Act, then the first person shall be punishable with rigorous imprisonment for a term which shall not be less than 3 months but which may extend to 2 years (3 years upto 30-6-2012) and with fine.

Abetment to make a false return, etc.:

As per section 278 if a person abets or induces in any manner another person to make and deliver an account or a statement or declaration relating to any income chargeable to tax which is false and which he either knows to be false or does not believe it to be true or to commit an offence under section 276C(1), he shall be punished as under: With rigorous imprisonment which shall not be less than 6 months but which may extend to seven years and with fine where tax sought to be evaded exceeds Rs. 25 lakh (Rs. 1 lakh upto 30-6-2012). With rigorous imprisonment which shall not be less than 3 months but which may extend to two years (3 years upto 30-6-2012) and with fine in other cases. Second and subsequent offences under sections 276B, 276C(1), 276CC, 277 or 278

The provisions of sections 276B, 276BB 276C(1), 276CC, 277 or 278 have already been discussed. Section 278A provides for prosecution in the case of second or subsequent offence under those sections. As per section 278A, a person shall be punishable with imprisonment for a period which shall not be less than 6 months but which may extend to 7 years and with fine.

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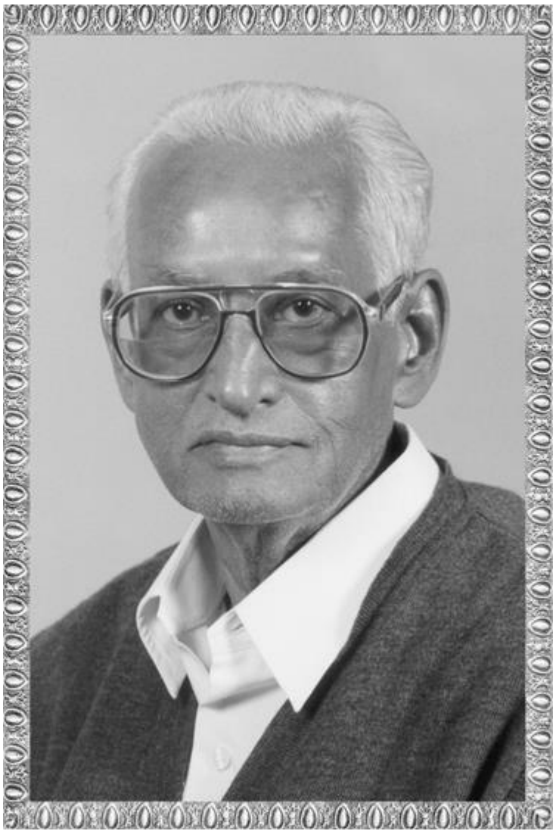

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UNIT -4 Goods and Service Tax

SR. NO.	TOPIC NAME
1	GST in India- Concept, Nature and Features of GST
2	Needs and Benefits of GST
3	Relevant definitions
4	Constitutional Validity of GST
5	Taxes subsumed in GST
6	Incidence of GST
7	Basic concepts –Supply, Composite and Mixed supplies and Charge of tax
8	GST council

4.1 GST in India : Concept, Nature and Features of GST:

GST in India:

GST is one of the biggest taxation reforms of independent India with the objective of integrating State economies. GST, the most historic indirect tax reform, is implemented with the aim of enhancing the overall growth of the Nation along with supporting the Make in India initiative. It aims at creating a single, unified Indian market throughout the Nation. It is a comprehensive destination based indirect tax levy on goods as well as services at the national level.

Its main objective is to consolidate multiple indirect tax levies into a single tax thus subsuming an array of tax levies, overcoming the limitations of previous indirect tax structure, and creating efficiencies in tax administration. GST is a consumption based tax which is levied on the basis of "Destination principle." The concept relates to taxing the supply of goods or services at the point of consumption.

It is a comprehensive tax regime covering both goods and services, and is collected on value-added at each stage of the supply chain. Further, GST paid on the procurement of goods and services can be set off against that payable on the supply of goods or services. Simply put, Goods and Services Tax is a tax levied on goods and services imposed at each point of supply.

GST is a national level tax based on value added principle just like State level VAT which was levied as tax on sale of intra-state goods. The essence of GST is in removing the cascading effects i.e., tax on tax of both Central and State taxes by allowing setting-off of taxes throughout the value chain, right from the original producer and service provider's point up to the consumer level. GST is a major improvement over existing system of VAT and disjointed Service Tax ushering a collective gain for industry, trade and common consumers as well as for the Central Government and the State Governments at large. GST, as a well-designed value added tax on all goods and services, is the most elegant method to eliminate distortions and to tax consumption.

Models of GST:

The principles of GST are largely common in almost all the countries. However, there are significant differences in the implementation of the same depending on continued existence of exemptions and special arrangements to meet specific policy objectives.

The point of difference also arises from differences of approaches in the defining the jurisdiction of consumption and hence of the taxation. Moreover, there are a number of variations in the application of GST along with different interpretation of the same or similar concepts; different approaches to time of supply and its interaction with place of supply; different definitions of services and intangibles and inconsistent treatment of mixed supplies, around the world.

Different countries follow different model of GST based upon their own legislative and administrative structure and their requirements. Some of these models are:
• Australian Model wherein, tax is collected by the Centre and distributed to the States • Canadian Model wherein there are three variants of taxes
• Kelkar-Shah Model based on Canada Model wherein taxes are collected by the Centre however, two different rates of tax are to be levied by the Centre and the States and
• Bagchi-Poddar Model which envisages a combination of Central Excise, Service Tax and VAT to make it a common base of GST to be levied both by the Centre and the States separately.

Mostly all over the world, many countries follow a unified GST regime. However, considering the federal nature of Indian Constitution, dual model of GST was required, proposed and levied. In dual model of GST, where the power to levy taxes is subjectively distributed between Centre and States, GST is levied by both, the Centre as well as the States and there are separate levies in the form of Central Goods and Services Tax (CGST), Stateoods and Services Tax (SGST) and Integrated Goods and Services Tax (IGST) enabling the tax credit across these three variants of taxes. Currently, Brazil and Canada also follow dual GST model.

The Indian GST system has its own uniqueness in many ways. Apart from India, Brazil is the only country in the world which follows a similar dual GST System. In India, GST has been rolled out as a uniform taxation system all across the Nation by removing entry barriers between states. In Canada, though GST scheme closely resembles that of India, it failed to achieve consensus among states. As a result the GST was made optional not mandatory. States are free to adopt or reject GST. In India, GST is uniformly applicable all over India including the State of Jammu and Kashmir.

BASIC CONCEPTS AND OVERVIEW OF GOODS AND SERVICES TAX:

GST is a single, unified tax on every value-add, right from manufacture to sale / consumption of goods / services. Hence, with the advent of GST, the legacy taxes on manufacture (Excise), Inter-state sales (CST), Intra-state sales (VAT) and Service Tax have been subsumed. There has been a paradigm shift in the way the tax is being levied.

We have now moved from source based to destination-based taxation, with GST coming into foray. Hence GST is also labelled as a destination-based / consumption-based tax. GST also does away with the cascading effects of taxation, by providing a comprehensive and continuous chain of tax credits, end to end and taxing only the value-added at every stage. The final tax is borne by the end consumer, as all the parties in the interim can extinguish their respective collections against their respective liabilities and the tax already paid by them (Input Tax Credit).

GST MODEL:

India has adopted a dual GST model, i.e., where the tax is imposed concurrently by the Centre and the States. For an intra-state sale, the GST is equally divided between the Centre and the State (CGST + SGST), and for inter-state sales, the GST is collected by the Centre (IGST). GST, therefore is a destination-based tax applicable on all transactions, involving supply of goods / services for a consideration, and comprises of Central Goods & Services Tax (CGST), levied by the Central Government, and State Goods and Services Tax (SGST), levied by the State Government OR Union Territory Goods and Services Tax (UTGST) levied by Union Territories, on Intra-state supplies of taxable goods & services.

Inter-state supplies of taxable goods / services are subject to Integrated Goods & Services Tax (IGST), which is levied by the Central Government and is equal to CGST + SGST. The CGST is levied under the CGST Act, 2017. UTGST is levied under the UTGST Act, 2017 and this is applicable to Union Territories, i.e., Andaman & Nicobar Islands, Lakshadweep, Dadra & Nagar Haveli, Daman & Diu, Chandigarh and other territory.

SGST is levied under the respective state legislations. Jammu & Kashmir & Ladakh has been made union territories but for the time being J&K SGST Act is applicable. Dadra & Nagar Haveli & Daman & Diu are to be merged into a single Union Territory.

4.2 Needs & Benefits of GST :

GST is beneficial not only for the business and industry but also for the government and consumers. Here, we bring the ten benefits of Goods and Service Tax (GST).

1. Easy compliance:
A robust and comprehensive IT system would be the foundation of the GST regime in India. Therefore, all taxpayer services such as registrations, returns, payments, etc. would be available to the taxpayers online, which would make compliance easy and transparent.

2. Uniformity of tax rates and structures:
GST will ensure that indirect tax rates and structures are common across the country, thereby increasing certainty and ease of doing business. In other words, GST would make doing business in the country tax neutral, irrespective of the choice of place of doing business.

3. Removal of cascading:
A system of seamless tax credits throughout the value-chain, and across boundaries of States, would ensure that there is minimal cascading of taxes. This would reduce the hidden costs of doing business.

4. Improved competitiveness:
Reduction in transaction costs of doing business would eventually lead to improved competitiveness for the trade and industry. World Bank believes that the implementation of the Goods and Service Tax (GST), combined with the dismantling of inter-state check-posts, is the most crucial reform that could improve the competitiveness of India's manufacturing sector.

5. Gain to manufacturers and exporters:
The subsuming of major Central and State taxes in GST, complete and comprehensive set-off of input goods and services and phasing out of Central Sales Tax (CST) would reduce the cost of locally manufactured goods and services. This will increase the competitiveness of Indian goods and services in the international market and give a boost to Indian exports. The uniformity in tax rates and procedures across the country will also go a long way in reducing compliance costs.

6. Simple and easy to administer:
Multiple indirect taxes at the Central and State levels are being replaced by GST. Backed with a robust end-to-end IT system, GST would be simpler and easier to administer than all other indirect taxes of the Centre and State levied so far.

7. Better controls on leakage:
GST will result in better tax compliance due to a robust IT infrastructure. Due to the seamless transfer of input tax credit from one stage to another in the chain of value addition, there is an in-built mechanism in the design of GST that would incentivize tax compliance by traders.

8. Higher revenue efficiency:
GST is expected to decrease the cost of collection of tax revenues of the Government, and will, therefore, lead to higher revenue efficiency.

9. Single and transparent tax proportionate to the value of goods and services:

Due to multiple indirect taxes being levied by the Centre and State, with incomplete or no input tax credits available at progressive stages of value addition, the cost of most goods and services in the country today is laden with many hidden taxes. Under GST, there would be only one tax from the manufacturer to the consumer, leading to transparency of taxes paid to the final consumer.

10. Relief in the overall tax burden:

Credits of input taxes paid at each stage will be available in the subsequent stage of value addition, which makes GST essentially a tax only on value addition at each stage. Because of efficiency gains and the prevention of leakages, the overall tax burden on most commodities will come down, which will benefit consumers. The final consumer will thus bear only the GST charged by the last dealer in the supply chain, with set-off benefits at all the previous stages.

4.3 Relevant Definitions under GST act :

1. Definition of Goods under GST:

Goods under GST, means every kind of movable property other than money and securities, but includes actionable claims, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Definition of Services:

Services under GST mean anything other than goods, money, and securities, but includes activities relating to the use of money or its conversion by cash or any other mode, for which a separate consideration is charged.

2. GSTIN:

Goods and Services Tax Identification Number is a unique and legal identity granted to a business registered under GST, by the government of India. **GSTIN** is a 15 character alphanumeric, PAN-based, distinctive number, which is allotted state-wise.

3. CGST, SGST, and IGST:

These are the three major taxes under GST:

a) CGST: Is Central GST and is to be taxed by the Centre on intra-state businesses

b) SGST: Is State GST and is to be taxed by the State, on intra-state businesses

c) IGST: Integrated GST, and is to be taxed by the Centre, on inter-state businesses and imports

Awareness of this taxing structure and different terms of GST will enable the taxpayers to avail credit against each other- as per the eligibility, enhancing ease and transparency in the taxation cycle.

4. Reverse Charge:

Reverse Charge is a mechanism with a supervisory framework, to help monitor and increase the tax coverage, compliance, synchronisation, and trackability amongst the unorganised, partly organised, and fully organised sectors in the country.

Generally, the supplier of goods or services is liable to pay GST. However, in specified cases like imports and other notified supplies, the tax liability will be the responsibility of the recipient under the reverse charge mechanism.

5. Mixed Supply:

A mixed supply is an amalgamation of two or more individual supplies of goods or services or any other arrangement of goods or services made by a GST Taxpayer, at a single price. The components of the mixed supply are an intentional blending and made from a business perspective.

Example: A mixed supply could be a gift set comprising of a pen, a wallet, and a tie.

6. Composite Supply:

A composite supply is an organic mixing of two or more individual supplies of goods and services or any other natural arrangement of goods or services made by a GST Taxpayer, at a single price. A composite supply is further broken into two parts.

- Principal Supply:

This is the major and the foremost element in the Composite Supply of goods or services.

- Dependent Supply**:**

This is the dependent element resting on the Principal Supply.

A composite supply could be a breakfast combined with the accommodation package in a hotel, which would be seen as a natural blend. In this case, the accommodation package is the Principal Supply and the breakfast is a dependent Supply.

7. Continuous Supply:

A continuous supply is the supply of goods and/or services at a specific recurrent interval. (Eg: fortnightly/monthly), with the payments also received in the same manner.

The continuous supply of goods/services example is the services provided by a telecom operator.

8. ITC:

ITC is an Input tax credit. It is the credit received by manufacturers for paying taxes for inputs used in the manufacture of products. Similarly, a dealer is entitled to receiving an input tax credit, if s/he has purchased goods for resale.

To avoid double taxation on raw materials or items used as inputs to make other products (items), the maker of the next item can avail credit of taxes paid on the inputs while paying tax on the output.

- If the tax paid on inputs is higher than the tax on the output, the difference in tax can be claimed as a refund.
- Input Tax Credit is not the same pan-India, but differs as per states, and does not apply to the composite taxpayers.

9. GSTR:

GSTR is GST Return. It is a document that captures the income details supposed to be filed by the Taxpayer with the GST Authority, to determine his/her tax liability.

There are eleven types of GST returns, from GSTR-1 to GSTR-11, capturing and catering to different taxpayers.

A GSTR usually includes:

- Sales data
- Purchase data
- Output GST - as derived from Sales
- Input Tax Credit - GST paid on purchases

10. GST Compliance Rating:

GST Compliance Rating is a numerical value from 0 to 10, which indicates a measure of GST compliance. GST compliance rating is assigned by the government to all the taxpayers. The rating is based on several factors like timely filing of returns, the accuracy of the data submitted.

4.4 Constitutional Validity of GST:

Before 2017, India was a country where there were several direct and indirect taxes imposed on its citizens. The payment of several indirect taxes makes it a hectic process for each individual involved in regular economic activities. The Goods and Services Tax (GST) was introduced to address this issue and close the possible loopholes in the tax system.

To bring down corruption, the Goods and Services Tax (GST) was introduced. It brought the Indian market under the umbrella of 1.3 billion citizens. The solo indirect tax of GST brought and subsumed several taxes like Value Added Tax (VAT), Excise Duty, Central Sales Tax (CST), etc. into one single tax. The establishment and introduction of GST was one of the biggest game changers for businessmen and manufacturers and helped them eliminate the tedious process of filing multiple taxes.

Along with this reduction of tax evasion and corruption by adopting one tax regime i.e., GST helped bring more tax collection transparency. As a result, enhanced and increased government revenue by widening the tax base and Gross Domestic Product (GDP). However, there remained many problems that the manufacturers and businessmen faced. Some of these were related to the GSTN Portal, filing of monthly returns, GST slabs, etc. People managed to find loopholes and new methods of tax evasion, which in turn decreased the government's revenue.

History of Goods and Services Tax

Vishwanath Pratap Singh, Finance Minister in Rajiv Gandhi's government, initiated the reform of the indirect tax regime in the year 1986. The regime started with certain modifications to the Value Added Tax, and hence the Modified Value Added Tax (MODVAT) was introduced. Further, Finance Minister Manmohan Singh, under the leadership of P.V. Narasimha Rao, initiated state-level discussions on VAT. Consequently, the Goods and Services Tax (GST) Bill was proposed in 1999 and was given the go-ahead by then Prime Minister Atal Bihari Vajpayee along with former RBI governors Bimal Jalan, I.G. Patel, and C. Rangarajan. In order to design the GST model, a committee was set up, which was headed by West Bengal's Finance Minister, Asim Dasgupta.

In 2002, the Prime Minister formed a task force for the recommendation of tax reforms. As suggested in the 12th Finance Commission, the Committee recommended the rollout of GST. The newly elected Finance Minister, P Chidambaram, proposed to roll out GST in the year 2010. The 115th Constitution Amendment Bill was introduced by the United Progressive Alliance (UPA) in 2011 to bring in the GST. However, it was opposed and then recommended to the Standing Committee led by the BJP's former Finance Minister, Yashwant Sinha.

In 2014, the bill was reintroduced and it got the majority of votes under the BJP government. In 2015, a final deadline for the year 2017 was set by Arun Jaitly. However, the Constitution Amendment Bill faced critical opposition as well, but in 2016, it was finally passed and President Pranab Mukherjee gave his assent. The GST Council approved the Central Goods and Services Tax (CGST) Bill, Integrated Goods and Services Tax (IGST) Bill, Union Territory Goods and Services Tax (UTGST) Bill, and Goods and Services (Compensation to States) Bill, which were passed by the Lok Sabha on 29 March 2017. Subsequently, the Rajya Sabha also passed the bills on 6th April, 2017 and was enacted on 12th April, 2017.

After proper enactment of all the laws, the (GST) was launched nationwide on 1st July 2017. At midnight of 1st July 2017, the President and Prime Minister collectively launched the GST. The Goods and Services Tax (GST) subsumed 17 central and state taxes and created the market for a $2.4 trillion economy with 1.3 billion citizens under one common umbrella. More than 160 countries worldwide have implemented GST. India adopted a dual GST system while many countries have a single GST system. GST was introduced with the slogan of "One Nation, One Market, One Tax".

Constitutional amendments for Goods and Services Tax

Constitution (101st Amendment) Act, 2016 was introduced to make amendments in the Constitution of India for GST. Since the tax was to be levied on both a central and state basis, it was necessary to introduce constitutional amendments to maintain consistency across the centre and state.

Certain articles were amended and altered in order to suit the provisions of GST legislation. The applicability and scope of GST laws were introduced, along with the delineation of powers to make GST laws. The constitution defined the powers and duties of the GST Council of India. The following were the major changes as per the Amendment Act.

Special provisions under Article 246A

Insertion of Article 246A of the Constitution of India gave powers to the State and Union Legislatures, along with Parliament, to make and amend GST laws as imposed by them. Parliament is given a special power over the states to make laws as per inter-state supplies. The IGST Act deals with the inter-state supplies of the country. Petroleum crude, high-speed diesel, motor spirit, natural gas, and aviation turbine fuel were excluded from the article till the time recommended by the GST Council.

Levy and collection of GST under Article 269A

Article 269A of the Constitution of India describes the manner of revenue distribution from inter-state supplies between the centre and state. The GST Council is empowered to frame the rules in this regard. IGST is levied on import transactions. With the help of IGST, taxpayers are enabled to avail of the IGST credit which is paid on imports through the supply chain. This was not possible before the enactment of GST laws.

Distribution of taxes between the Union and states under Article 270

Article 270 majorly deals with the distribution of revenues between the Union and states. After the amendment of this Article, certain new clauses were inserted. Sub-Clause 1(A) and 1(B) were inserted after the amendment. Article 270(1A) says that the tax collected by the Union as per Article 246(A)(1) is to be distributed between the Union and States as prescribed in clause 2 of the said Article. Article 270(1B) was introduced to make sure that a certain amount of tax as mentioned in the Article should also be distributed between the Union and States in the same manner as provided under clause 2.

Powers of GST Council under Article 279A

The powers of the GST Council are given under Article 279A of the Constitution of India. The GST Council comprises a joint forum of the Centre and States formulated by the President of India. The GST Council works for the enactment, procedures, modifications, and procurement of laws related to GST.

In India, The Goods and Services Tax (GST) is an indirect tax that has supplanted many taxes and levies. The GST regime has significantly changed the taxation system, simplifying the taxation process and reducing the burden of multiple taxes. However, many taxpayers still need clarification about which taxes have been subsumed under the GST regime.

The taxes subsumed in GST are:

Central Excise Duty

Additional Excise Duty

Service Tax

Additional Custom Duty (Countervailing Duty)

Special Additional Duty of Customs (SAD)

Value Added Tax (VAT)

Central Sales Tax (CST)

Entry Tax

Luxury Tax

Entertainment Tax

Taxes on Lottery, Betting and Gambling

Octroi and Purchase Tax

4.5 Incidence of Tax:

"Tax incidence" (or incidence of tax) is an economic term for understanding the division of a tax burden between stakeholders, such as buyers and sellers or producers and consumers. Tax incidence can also be related to the price elasticity of supply and demand. When supply is more elastic than demand, the tax burden falls on the buyers. If demand is more elastic than supply, producers will bear the cost of the tax.

How a Tax Incidence Works
The tax incidence depicts the distribution of the tax obligations, which must be covered by the buyer and seller. The level at which each party participates in covering the obligation shifts based on the associated price elasticity of the product or service in question as well as how the product or service is currently affected by the principles of supply and demand.

Tax incidence reveals which group—consumers or producers—will pay the price of a new tax. For example, the demand for prescription drugs is relatively inelastic. Despite changes in cost, its market will remain relatively constant.

4.6 Basic Concepts : Supply, Composite and Mixed supplies , Charge of tax :

CONCEPT OF SUPPLY:

Supply is the point of taxation or the taxable event under Goods & Services Tax. The term supply is characterised by the following necessary traits:

• Supply should be of goods or services

• Anything which is not goods / services (like money, securities etc.) is not supply

• It must be reiterated that only movable property is construed as goods

• Barters and exchanges would be leviable to GST

• Licences, leases, rentals with or without transfer of the right to use are considered as supply and leviable to GST

• Supply should be made for a consideration which could be in the form of money or otherwise

• Supply includes the flow of money from a 3rd party in lieu of OR on behalf of the recipient

• Deposit is not consideration unless specifically applied to by the supplier

• Supply should be made in the course of OR for the furtherance of business

• Any supply made for personal consumption OR in personal capacity does not attract GST

• Supply should be made by a taxable person

• Supply between both non-taxable parties is not leviable to GST

• Supply could be made to a non-taxable person also

• A taxable person is one who is registered OR is liable to be registered under the Act

Schedule I:

There are a few transactions which, even without consideration are construed as supply, also known as deemed supplies as specified in Schedule I:

1 Permanent transfer or disposal of business assets where input tax credit has been availed on such assets

2 Supply of goods/services/ both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business : Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both

3 Supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal

4 Supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal

5 Import of services by a person from a related person or from any of his other establishments outside India

Schedule II:

Schedule II of the Central Goods & Services Tax Act, 2017 lists activities or transactions which are to be treated as supply of goods or supply of services.

Form of Supply	Description
Supply of Goods	Transfer of title in goods
Supply of Goods	Transfer of title in goods under an agreement where property in goods passes at a

	future date on payment of full consideration
Supply of Goods	Permanent transfer or disposal of goods forming part of business assets by or under the directions of the person carrying on the business whether or not for consideration Any goods forming a part of business assets will be deemed to be transferred in furtherance of business, before any person ceases to be a taxable person Exception • The business is transferred as a going concern • The business is carried on by a personal representative who is deemed to be a taxable person
Supply of Goods	Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.
Supply of Services	Any transfer of right in goods or undivided share in goods without transfer of title

Schedule III:

There are a few activities which are specifically not to be considered as Supply. Schedule III to CGST Act, 2017 lists down the following activities which shall be treated neither as supply of goods nor supply of services.

1 Services from Employee to Employer

2 Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause

3 Functions performed by Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities

4 Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity

5 Services by any Court/ Tribunal Note : The term "Court" includes District Court, High Court & Supreme Court

6 Funeral, burial, crematorium or mortuary including transportation of the deceased

7 Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building

8 Actionable claims, other than lottery, betting and gambling

9 Supply of goods from a place in the non-taxable territory to another place in the non taxable territory without such goods entering into India

10 Supply of warehoused goods to any person before clearance for home consumption. Note: "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962

11 Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption

For example, as per Schedule III, the services by an employee to an employer are not chargeable to GST, and the gifts made by employer to any employee up to INR 50,000 in any Financial Year shall not be treated as supply, however if more than INR 50,000 shall be subject to GST.

Composite & Mixed Supply:

Often goods or services or both together are supplied in combination and that's when it may not be simple enough to distinguish supplies and identify them separately, as each of them may attract a different rate of tax but is sold as one package

Composite Supply:

Section 2(30) defines "composite supply" as a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply; The features of a composite supply are: a) Two or more taxable supplies of goods / services / both which are supplied in conjunction with each other b) They are naturally bundled c) A single price is charged for the supply d) One of the supplies within the package is identifiable as a principal supply

Example: On buying a LED Television, along with it, the remote control, the wires and all the accessories that go with it along with the warranty and the maintenance services are provided. It is evident here that the LED Television is the principal supply and the others (remote / wires / warranty are all ancillaries).

Mixed Supply:

Under Section 2(74) of CGST Act, 2017, "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply. The features of a mixed supply are:

a) Two or more taxable supplies of goods / services / both which are supplied in conjunction with each other

b) They are deliberately bundled

c) A single price is charged for the supply

d) None of the supplies within the package is identifiable as a principal supply

Example: One buys a consolidated package of beauty products (that is shampoo, comb, conditioner, nail polish, lipstick and tooth powder). It is evident here that the products can all be independently supplied and any one of them cannot be singled out as a principal supply and these are deliberately bundled and sold together.

TAXABLE EVENT

The crux of any taxation system is the incidence, i.e., the point at which the liability to charge tax arises, and that event is nomenclated as the taxable event. Goods and Services Tax, with its introduction and in the process of subsuming the other Acts, has overcome many shortcomings of the legacy system too, one of them being, the definition of taxable event.

The multitude of tax laws that prevailed earlier, that is Central Excise, Sales Tax, Service Tax, VAT etc., were prone to ambiguity and controversies which has been overcome to a great extent by the comprehensive approach and definition as laid down by GST. The taxable event in GST is the Supply of goods or services rather than sale, manufacture, production of goods and provision of services. GST has kept it not only simple, but also robust, by stating that the entire value of supply of goods / services are taxed in an integrated manner.

4.7 GST COUNCIL :

Clause (1) of Article 279A of the Indian Constitution provides that the President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order constitute a Council to be called the Goods and Services Tax Council.

- The Goods and Services Tax regime came into force after the Constitutional (122nd Amendment) Bill was passed by both Houses of Parliament in 2016.

- More than 15 Indian states then ratified it in their state Assemblies, after which the President gave his assent

The GST Council is a joint forum of the Centre and the states.

It was set up by the President as per Article 279A (1) of the amended Constitution.
Members:

The members of the Council include the Union Finance Minister (chairperson), the Union Minister of State (Finance) from the Centre.

Each state can nominate a minister in-charge of finance or taxation or any other minister as a member.
Functions:

The Council, according to Article 279, is meant to "make recommendations to the Union and the states on important issues related to GST, like the goods and services that may be subjected or exempted from GST, model GST Laws".

It also decides on various rate slabs of GST.

For instance, an interim report by a panel of ministers has suggested imposing 28 % GST on casinos, online gaming and horse racing.

- Recent Developments:

This is the first meeting since a decision of the Supreme Court in May 2022, Supreme Court stated that the recommendations of the GST Council are not binding.

The court said Article 246A of the Constitution gives both Parliament and state legislatures "simultaneous" power to legislate on GST and recommendations of the Council "are the product of a collaborative dialogue involving the Union and States".

This was hailed by some states, such as Kerala and Tamil Nadu, who believe states can be more flexible in accepting the recommendations as suited to them.