CHAPTER 15. MISCELLANEOUS PROVISIONS

SECTION 154: RECTIFICATION OF MISTAKE

(1) **Manner of rectification of a mistake apparent from the record** - With a view to rectifying any mistake apparent from the record, an income tax authority referred to in section 116 may:

- Amend any order passed by it under the provisions of this Act
- Amend any intimation under section 206CB(1)
- Recitation of mistake apparent from the record
- Amend any intimation of deemed intimation under section 143(1)
- Amend any intimation under section 200A(1)

(2) **Mistake apparent from the record** - The jurisdiction of any authority under the Act to make an order under section 154 depends upon the existence of a mistake apparent on the face of the record.

(i) **Mistake apparent from the record may be a mistake of fact as well as mistake of law** - For instance, the treatment of non-agricultural income as agricultural income and granting exemption in respect of such income is an obvious mistake of law which could be rectified under section 154.

(ii) **Mere change of opinion cannot be basis for rectification** - A mere change of opinion, however, cannot be the basis on which the same or the successor Assessing Officer can treat a case as one of rectification of mistake. A mistake is one apparent from the record in case, where it is a glaring, obvious, patent or self-evident. Mistake, which has to be discovered by a long-drawn process of reasoning or examination or arguments on points, where there may be two opinions, cannot be said to be mistake or error apparent from the record.
(iii) **Subsequent decision of Supreme Court** - A mistake arising as a result of subsequent interpretation of law by the Supreme Court would also constitute error apparent from the record.

(iv) **Retrospective amendment of law** - could also lead to rectification if an order is plainly and obviously inconsistent with the specific and clear provision, as amended retrospectively.

(3) **Doctrine of Partial Merger** - Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to a rectifiable order, the authority passing such order may, amend the order in relation to any matter other than the matter which has been so considered and decided.

<table>
<thead>
<tr>
<th>Assessing Officer Order</th>
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<tbody>
<tr>
<td>Expense A</td>
</tr>
<tr>
<td>Expense B</td>
</tr>
<tr>
<td>Expense C</td>
</tr>
<tr>
<td>Expense D</td>
</tr>
</tbody>
</table>

Appeal to Commissioner of Income-tax (Appeals) made on Expense C & D

Now if it is found later that expense B, C & D are allowable then Assessing Officer under section 154 can pass rectification order only for expense B. He cannot rectify under section 154 expense C and D which can be allowed by Commissioner of Income-tax (Appeals) only.

**Illustration**
The Assessing Officer has disallowed deductions A, B, C, D and E. The assessee has gone for an appeal to CIT(Appeals) and in the appeal he has raised matters A, B and C. The appeal has been decided for those three items. Now the Assessing Officer can amend the order only in respect of items D and E. He cannot amend the order in respect of items A, B and C, which have been considered and decided in appeal.

(4) **Amendment may be suo motu or the same may be brought to notice by the assessee or deductor** - The concerned authority may make an amendment on its own motion. However, he should mandatorily make the amendment for rectifying any such mistake which has been brought to its notice by the assessee or the deductor. Where the authority concerned is the Deputy Commissioner (Appeals) or the Commissioner (appeals), the mistake can be pointed out by the Assessing Officer also.

(5) **Opportunity of being heard to be given to the assessee or deductor before enhancing an assessment or reducing a refund** - An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor, shall not be made unless the authority concerned has given notice to the assessee or the deductor of its intention so to do and has allowed the assessee or the deductor a reasonable opportunity of being heard.
(6) **Action to be taken by the Assessing Officer depending upon the effect of the amendment made**

<table>
<thead>
<tr>
<th>Case</th>
<th>Action to be taken by A.O.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Where an amendment is made under this section</td>
<td>An order shall be passed in writing by the authority concerned</td>
</tr>
<tr>
<td>(ii) Where any such amendment has the effect of reducing the assessment, or otherwise reducing the liability of the assessee or the deductor</td>
<td>The Assessing Officer shall make any refund due to such assessee or the deductor</td>
</tr>
<tr>
<td>(iii) Where any such amendment has the effect of enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee or the deductor</td>
<td>The Assessing Officer shall serve on the assessee or the deductor, as the case may be a notice of demand in the prescribed form specifying the sum payable</td>
</tr>
</tbody>
</table>

(7) **Section 154(7)**

No amendment shall be made under this section after the expiry of four years from the end of the Financial Year in which the order sought to be amended was passed.

[Please refer Circulars given in point 12 & 13]

**KEY NOTES:**

The rectification order under section 154 for rectification of intimation / deemed intimation under section 143(1) should be passed within 4 years from the end of the financial year in which intimation / deemed intimation under section 143(1) was passed. [Deemed intimation under section 143(1) is passed on date of filing of ROI].

**Illustration:**

For Assessment Year 2015-2016, the assessment under section 143(3) was completed on 31.3.2017. The order under section 143(3) was received by the assessee on 2.4.2017. There was a mistake apparent from record in the order passed under section 143(3).

The rectification order under section 154 can be passed up to 31.03.2021.

(8) **SECTION 154(8)**

Without prejudice to the provisions of sub-section (7), where an application for amendment under this section is made by the assessee to an Income-tax authority, the Income-tax authority shall pass an order, within a period of six months from the end of the month in which the application is received by it -

(a) making the amendment or

(b) refusing to allow the claim.

If order under section 154 is not passed within passed within 6 months as said above making the amendment or refusing to allow the claim, then the rectification application of the assessee shall be deemed to be allowed in favour of the assessee.
CBDT CIRCULAR NO. 14/2001

The overall time limit of four years provided in the section for passing any rectification order shall however continue to apply. In other words, the period of six months mentioned in the new sub-section (8) cannot extend, under any circumstances, beyond the overall time limit of four years from the end of the Financial Year in which order sought to be rectified was passed.

Illustration:

For Assessment Year 2015-2016, the order under section 143(3) was passed on 31.3.2017. There was a mistake apparent from record in the order passed under section 143(3). The assessee files a rectification application under section 154 on:

(i) 20.07.2019
Rectification order under section 154 should be passed by 31.01.2020 as per section 154(8). If rectification order is not passed by 31.01.2020, it shall be deemed that the rectification application of the assessee is deemed to be allowed in favour of the assessee.

(ii) 31.1.2021/31.3.2021
Rectification order under section 154 should be passed by 31.03.2021. After 31.03.2021, rectification under section 154 is possible only to the benefit of the assessee. Section 154(8) shall not apply since six months were not available to the Assessing Officer for making rectification. Now assessee is at the mercy of Assessing Officer and there is no time limit for passing the order under section 154. Board's Circular given in point 11 shall apply.

9. HIND WIRE INDUSTRIES LIMITED (SC)

In this case, the assessee was assessed for Assessment Year 2007-2008 under section 143(3) by an assessment order dated 30.1.2010. In the said assessment, the Assessing Officer allowed depreciation on buildings @ 5% whereas the correct rate of depreciation was 10%. The Assessing Officer also did not allow deduction under section 43B although it was clearly allowable. The assessee filed a rectification application under section 154 on 12.7.2013 claiming the deductions under section 43B. However, the assessee did not claim the issue of depreciation in the said application. The Assessing Officer passed the rectification order on 31.12.2013 and allowed deductions under section 43B. The assessee filed another rectification application under section 154 on 4.7.2015 claiming that depreciation should have been allowed to him @ 10% instead of 5%. The issue arose before the Supreme Court as to whether the rectification application is valid since it was made after the expiry of 4 years from the end of Financial Year in which the order under section 143(3) was passed.

The Supreme Court held that section 154 provides that rectification can be made before the expiry of 4 years from the end of the Financial Year in which the order sought to be amended was passed. The order sought to be amended will not necessarily mean the original order but also the rectified order. The Assessing Officer should have rectified both the mistakes in his rectification order passed under section 154 on 31.12.2013. Since he has rectified only one mistake, there is a mistake in the order passed under section 154. Therefore, the rectification application made on 4.7.2015 was valid and the same could have been made upto 31.3.2018. Therefore, the Assessing Officer should have considered the rectification application and allowed depreciation @ 10%.
10. **CBDT Circular:** The application for rectification under section 154 can be filed before the expiry of 4 years from the end of the Financial Year in which the order sought to be amended was passed.

11. **CBDT Circular:** If the Assessee has made the rectification application within the prescribed period of 4 years and the concerned Income-tax authority could not pass the rectification order within the said 4 years, then it is permitted that the Income-tax authority can make a belated rectification (after the said four years) **TO THE ADVANTAGE OF THE ASSESSEE.**

**SECTION 156: NOTICE OF DEMAND**
When any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under the Act, then the Assessing Officer shall serve upon the assessee a notice of demand specifying the sum so payable.

**AMENDMENT MADE BY FINANCE ACT 2020:**
Where the income of the assessee of any assessment year, beginning on or after the 1st day of April, 2021, includes income of the nature specified in clause (vi) of sub-section (2) of section 17 and such specified security or sweat equity shares referred to in the said clause are allotted or transferred directly or indirectly by the current employer, being an eligible start-up referred to in section 80-IAC, the tax or interest on such income included in the notice of demand referred to in sub-section (1) shall be payable by the assessee within fourteen days—

(i) after the expiry of forty-eight months from the end of the relevant assessment year; or

(ii) from the date of the sale of such specified security or sweat equity share by the assessee; or

(iii) from the date of the assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or sweat equity share, whichever is the earliest.

**PROTECTIVE ASSESSMENT**
Though there is no provision in the Income-tax Act authorizing the levy of Income-tax on a person other than by whom the Income-tax is payable, yet it is open to Income-tax authorities to make a protective or alternative assessment if it is not ascertainable who is really liable to pay the tax among a few possible persons.

**Examples of cases where Protective Assessment can be made are:**

(i) **Litigation between two parties concerned in Civil Courts:**
Suppose there is a dispute between Mr. A and Mr. B over the ownership of a house property and both of them claim to be the owner of the property. Now the Assessing Officer can make a protective assessment of the income from such property. In doing the protective assessment, he will assess the income from house property in hands of both Mr. A and Mr. B and will write in the assessment order, that one of the assessments will be annulled as and when it is decided as who is the real owner.
Suppose, the Civil Court decides that Mr. A is the real owner, then the protective assessment in the hands of Mr. A is sustainable and the protective assessment in the hands of Mr. B will be declared as void-ab-initio.

(ii) **Possibility of Benami Transaction but still not totally clear:**
If the Assessing Officer suspects that the property which is registered in the name of Mr. X really belongs to Mr. Y, i.e., Mr. Y is the benami holder, then he can make a protective assessment in the hands of Mr. X and Mr. Y till such time he ascertains as to who is the real owner.

(iii) **Possibility of Diversion of Income to close Kith & Kin but still not totally clear:**
If the Assessing Officer suspects that the assessee has diverted his income to his relatives, then pending investigation, he can make a protective assessment.

In short, where it appear to Income-tax authorities that certain income has been received during the relevant Assessment Year but it is not clear who has received that income and prima facie it appears that income may have been received by one party or another or by both it would be open to authorities to take appropriate proceedings against both. As and when the final assessment is made, the department must recover the tax from the person in whose hands the income is finally assessed.

It must, however, be noted that while protective assessment is permissible, a protective order for recovery is not permissible. In making a protective assessment, the authorities are merely making an assessment and leaving it as a paper assessment until the matter is decided one way or another. Furthermore, a protective order of assessment can be passed but not a protective order of penalty.

### SECTION 139A: PERMANENT ACCOUNT NUMBER

*(TO BE DONE BY STUDENTS THEMSELVES, IF TIME PERMIT WHICH YOU WILL NEVER GET)*

(1) Sub-section (1) requires the following persons, who have not been allotted a permanent account number (PAN), to apply to the Assessing Officer within the prescribed time for the allotment of a PAN -

(i) Every person whose total income or the total income of any other person in respect of which he is assessable under this Act during any previous year exceeded the basic exemption limit; or

(ii) Every person carrying on any business or profession whose total sales, turnover or gross receipts exceeds or is likely to exceed **Rs. 5 lakhs** in any previous year; or

(iii) Every person who is required to furnish a return of income under section 139(4A).

(iv) **Every person, being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to Rs. 2,50,000 or more in a financial year.**
(v) Every person who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person mentioned in (iii) above or any person competent to act on behalf of such person.

(2) The Central Government is empowered to specify, by notification in the Official Gazette, any class or classes of persons by whom tax is payable under the Act or any tax or duty is payable under any other law for the time being is force. Such persons are required to apply within such time as may be mentioned in that notification to the Assessing Officer for the allotment of a PAN [Sub-section (1A)].

(3) For the purpose of collecting any information which may be useful for or relevant to the purposes of the Act, the Central Government may notify any class or classes of persons, and such persons shall within the prescribed time, apply to the Assessing Officer for allotment of a PAN [Sub-section (1B)].

(4) The Assessing Officer, having regard to the nature of transactions as may be prescribed, may also allot a PAN to any other person (whether any tax is payable by him or not) in the manner and in accordance with the procedure as may be prescribed [Sub-section (2)].

(5) Any person, other than the persons mentioned in (1) to (5) above, may apply to the Assessing Officer for the allotment of a PAN and the Assessing Officer shall allot a PAN to such person immediately.

(6) Such PAN comprises of 10 alphanumeric characters.

(7) Quoting of PAN is mandatory in all documents pertaining to the following prescribed transactions:

(a) in all returns to, or correspondence with, any income-tax authority;

(b) in all challans for the payment of any sum due under the Act;

(c) in all documents pertaining to such transactions entered into by him, as may be prescribed by the CBDT in the interests of revenue. In this connection, CBDT has notified the following transactions, namely:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Nature of transaction</th>
<th>Value of transaction</th>
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<tbody>
<tr>
<td>1.</td>
<td>Sale or purchase of a motor vehicle or vehicle, as defined in the Motor Vehicles Act, 1988 which requires registration by a registering authority under that Act, other than two wheeled vehicles.</td>
<td>All such transactions</td>
</tr>
<tr>
<td>2.</td>
<td>Opening an account [other than a time deposit referred to at SI. No.12 and a Basic Savings Bank Deposit Account] with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of</td>
<td>All such transactions</td>
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<tr>
<td>3.</td>
<td>Making an application to any banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for issue of a credit or debit card.</td>
<td>All such transactions</td>
</tr>
<tr>
<td>4.</td>
<td>Opening of a demat account with a depository, participant, custodian of securities or any other person registered under section 12(1A) of the SEBI Act, 1992.</td>
<td>All such transactions</td>
</tr>
<tr>
<td>5.</td>
<td>Payment to a hotel or restaurant against a bill or bills at any one time.</td>
<td>Payment in cash of an amount exceeding <strong>Rs. 50,000</strong>.</td>
</tr>
<tr>
<td>6.</td>
<td>Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.</td>
<td>Payment in cash of an amount exceeding <strong>Rs. 50,000</strong>.</td>
</tr>
<tr>
<td>7.</td>
<td>Payment to a Mutual Fund for purchase of its units</td>
<td>Amount exceeding <strong>Rs. 50,000</strong>.</td>
</tr>
<tr>
<td>8.</td>
<td>Payment to a company or an institution for acquiring debentures or bonds issued by it.</td>
<td>Amount exceeding <strong>Rs. 50,000</strong>.</td>
</tr>
<tr>
<td>9.</td>
<td>Payment to the Reserve Bank of India for acquiring bonds issued by it.</td>
<td>Amount exceeding <strong>Rs. 50,000</strong>.</td>
</tr>
<tr>
<td>10.</td>
<td>Deposit with - a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act); or - post office</td>
<td>Cash deposits exceeding <strong>Rs. 50,000</strong> during any one day.</td>
</tr>
<tr>
<td>11.</td>
<td>Purchase of bank drafts or pay orders or banker’s cheques from a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).</td>
<td>Payment in cash of an amount exceeding <strong>Rs. 50,000</strong> during any one day.</td>
</tr>
<tr>
<td>12.</td>
<td>A time deposit with, - (i) a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);</td>
<td>Amount exceeding <strong>Rs. 50,000</strong> or aggregating to more than <strong>Rs. 5 lakhs</strong> during a financial year.</td>
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<tr>
<td>(ii)</td>
<td>a Post Office;</td>
<td></td>
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<td>(iii)</td>
<td>a Nidhi referred to in section 406 of the Companies Act, 2013; or</td>
<td></td>
</tr>
<tr>
<td>(iv)</td>
<td>a non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.</td>
<td></td>
</tr>
</tbody>
</table>

13. Payment for one or more pre-paid payment instruments, as defined in the policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007, to a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution. Payment in cash or by way of a bank draft or pay order or banker’s cheque of an amount aggregating to more than Rs. 50,000 in a financial year.

14. Payment as life insurance premium to an insurer as defined in the Insurance Act, 1938. Amount aggregating to more than Rs. 50,000 in a financial year.

15. A contract for sale or purchase of securities (other than shares) as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956. Amount exceeding Rs. 1 lakh per transaction.

16. Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange. Amount exceeding Rs. 1 lakh per transaction.

17. Sale or purchase of any immovable property. Amount exceeding Rs. 10 lakh or valued by stamp valuation authority referred to in section 50C at an amount exceeding Rs. 10 lakhs.

18. Sale or purchase, by any person, of goods or services of any nature other than those specified at SI. No. 1 to 17 of this Table, if any. Amount exceeding Rs. 2 lakh per transaction.
Minor to quote PAN of parent or guardian

Where a person, entering into any transaction referred to in this rule, is a minor and who does not have any income chargeable to income-tax, he shall quote the PAN of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction.

Declaration by a person not having PAN

Further, any person who does not have a PAN and who enters into any transaction specified in this rule, shall make a declaration in Form No.60 giving therein the particulars of such transaction.

Non-applicability of Rule 114B

Also, the provisions of this rule shall not apply to the following class or classes of persons, namely:

(i) the Central Government, the State Governments and the Consular Offices;

(ii) the non-residents referred to in section 2(30) in respect of the transactions other than a transaction referred to at SI. No. 1 or 2 or 4 or 7 or 8 or 10 or 12 or 14 or 15 or 16 or 17 of the Table.

Meaning of certain phrases:

<table>
<thead>
<tr>
<th>Phrase</th>
<th>Inclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Payment in connection with travel</td>
<td>Payment towards fare, or to a travel agent or a tour operator, or to an authorized person as defined in section 2(c) of the Foreign Exchange Management Act, 1999</td>
</tr>
<tr>
<td>(ii) Travel agent or tour operator</td>
<td>A person who makes arrangements for air, surface or maritime travel or provides services relating to accommodation, tours, entertainment, passport, visa, foreign exchange, travel related insurance or other travel related services either severally or in package</td>
</tr>
<tr>
<td>(iii) Time deposit</td>
<td>Any deposit which is repayable on the expiry of a fixed period.</td>
</tr>
</tbody>
</table>

(8) Every person who receives any document relating to any transaction cited above shall ensure that the PAN is duly quoted in the document.

(9) If there is a change in the address or in the name and nature of the business of a person, on the basis of which PAN was allotted to him, he should intimate such change to the Assessing Officer.

(10) Intimation of PAN to person deducting tax at source

Every person who receives any amount from which tax has been deducted at source shall intimate his PAN to the person responsible for deducting such tax [Sub-section (5A)].
(11) **Quoting of PAN in certain documents**

Where any amount has been paid after deducting tax at source, the person deducting tax shall quote the PAN of the person to whom the amount was paid in the following documents:

(i) in the statement furnished under section 192(2C) giving particulars of perquisites or profits in lieu of salary provided to any employee;

(ii) in all certificates for tax deducted issued to the person to whom payment is made;

(iii) in all returns made to the prescribed income-tax authority under section 206;

(iv) in all statements prepared and delivered or caused to be delivered in accordance with the provisions of section 200(3)[Sub-section (5B)].

(12) **Requirement to intimate PAN and quote PAN not to apply to certain persons**

The above sub-sections (5A) and (5B) shall not apply to a person who –

(i) does not have taxable income or

(ii) who is not required to obtain PAN

if such person furnishes a declaration under section 197A in the prescribed form and manner that the tax on his estimated total income for that previous year will be nil.

(13) **Intimation of PAN to person collecting tax at source**

Likewise, every buyer or licensee or lessee referred to in section 206C shall intimate his PAN to the person responsible for collecting tax.

(14) **Quoting of PAN in certain documents**

Every person collecting tax in accordance with section 206C shall quote PAN of every buyer or licensee or lessee referred to therein –

(i) in all certificates furnished in accordance with the provisions of section 206C(5);

(ii) in all returns prepared and delivered or caused to be delivered in accordance with the provisions of section 206C(5A) or section 206C(5B) to an income-tax authority;

(iii) in all statements prepared and delivered or caused to be delivered in accordance with the provisions of section 206C(3).

(15) **Power to make rules**

The CBDT is empowered to make rules with regard to the following:

(a) the form and manner in which an application for PAN may be made and the particulars to be given there;

(b) the categories of transactions in relation to which PAN is required to be quoted on the related documents;

(c) the categories of documents pertaining to business or profession in which PAN shall be quoted by every person;
(d) the class or classes of persons to whom the provisions of this section shall not apply;

The following classes of persons are exempt from the provisions of section 139A:

(i) the Central Government, the State Governments and the Consular Offices;

(ii) the non-residents referred to in section 2(30) of the Act in respect of the transactions other than a transaction referred to at SI. No. 1 or 2 or 4 or 7 or 8 or 10 or 12 or 14 or 15 or 16 or 17 of the Table in point (7).

(e) the form and manner in which a person who has not been allotted a PAN shall make a declaration;

(f) the manner in which PAN shall be quoted for transactions cited in (b) above;

(g) the time and manner in which such transactions shall be intimated to the prescribed authority.

**********************************************************************
## CHAPTER 16. INCOME – TAX AUTHORITIES & THEIR POWERS

### SECTION 116: INCOME TAX AUTHORITIES

<table>
<thead>
<tr>
<th>(a)</th>
<th>Central Board of Direct Taxes.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b)</td>
<td>Directors General of Income-tax or <strong>Principal Director General of Income-tax</strong> or chief Commissioner of Income-tax or <strong>Principal Chief Commissioner of Income-tax</strong>.</td>
</tr>
<tr>
<td>(c)</td>
<td>Directors of Income-tax or <strong>Principal Director of Income-tax</strong> or Commissioners of Income-tax or CIT (Appeals) or <strong>Principal Commissioner of Income-tax</strong>.</td>
</tr>
<tr>
<td>(cc)</td>
<td>Additional Directors of Income-tax or Additional Commissioners of Income-tax.</td>
</tr>
<tr>
<td>(cca)</td>
<td>Joint Directors of Income tax or Joint Commissioners of Income tax.</td>
</tr>
<tr>
<td>(d)</td>
<td>Deputy Directors of Income-tax or Assistant Directors of Income-tax or Deputy Commissioner of Income-tax or Assistant Commissioners of Income-tax.</td>
</tr>
<tr>
<td>(e)</td>
<td>Income-tax Officers.</td>
</tr>
<tr>
<td>(f)</td>
<td>Tax Recovery Officers.</td>
</tr>
<tr>
<td>(g)</td>
<td>Inspectors of Income-tax.</td>
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</tbody>
</table>

### POWERS REGARDING DISCOVERY, PRODUCTION OF EVIDENCE, ETC.

#### (SECTION 131)

#### SECTION 131(1): POWER TO SUMMON

- **Income-tax Authorities to have powers vested in a Civil Court in certain matters**
  - [Section 131(1)]: The Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals), the Principal Chief Commissioner or Chief Commissioner and the Dispute Resolution Panel referred to in section 144C have the powers vested in a Civil Court under the Code of Civil Procedure, 1908 while dealing with the following matters:
    - (a) discovery and inspection;
    - (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
    - (c) compelling the production of books of account and documents; and
    - (d) issuing commissions [Section 131(1)]
The powers aforementioned are normally those exercisable by a Court when it is trying a suit. While exercising these powers, the authorities act in a quasi-judicial capacity and ought to conform to the principles of judicial procedure.

(ii) **Powers under section 131(1) to be exercised in certain cases, even if no proceeding is pending [Section 131(1A)/(2)]:**

(a) If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director or the authorized officer referred to in section 132(1), before he takes action under the said sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then for the purposes of making an enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred in section 131(1) on the income-tax authorities referred to therein, even if no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority [Section 131(1A)].

(b) For facilitating quick collection of information on request from tax authorities outside India, notified income-tax authorities (not below the rank of Assistant Commissioner of Income-tax), as may be notified by the Board, to now have powers under section 131(1) for making an inquiry or investigation in respect of any person or class of persons relating to an agreement for exchange of information under section 90 or 90A, even if no proceeding is pending before it or any other income-tax authority with respect to the concerned person or class of persons [Section 131(2)].

(iii) **Power to impound or retain books of accounts [Section 131(3)]:** The income-tax authority is vested with the power to impound or retain in its custody for such period as it may think fit, any books of account or other documents produced before it in any proceeding under this Act.

The powers are unrestricted in the case of all the authorities except the Assessing Officer or an Assistant Director or Deputy Director whose powers are subjected to two restrictions;

(a) he must record his reasons for impounding books of account or other documents; and 

(b) if he desires to retain in his custody any such books or documents for a period exceeding 15 days (excluding holidays), he must obtain the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Commissioner or Principal Commissioner or Principal Director or Director, as the case may be, for the purpose.
The Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals) may call for following information for the purposes of this Act:

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Person</th>
<th>Information to be furnished</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Firm</td>
<td>The names and addresses of the partners of the firm and their respective shares.</td>
</tr>
<tr>
<td>(b)</td>
<td>Hindu undivided family</td>
<td>The names and addresses of the manager and the members of the family.</td>
</tr>
<tr>
<td>(c)</td>
<td>A trustee, guardian or agent</td>
<td>The names of the persons for or of whom he is trustee, guardian or agent, and of their addresses.</td>
</tr>
<tr>
<td>(d)</td>
<td>Any assessee</td>
<td>A statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head &quot;Salaries&quot; amounting to more than one thousand rupees, or such higher amount as may be prescribed], together with particulars of all such payments made.</td>
</tr>
<tr>
<td>(e)</td>
<td>Any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange</td>
<td>A statement of the names and addresses of all persons to whom he or the exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the exchange has received any such sum, together with particulars of all such payments and receipts.</td>
</tr>
<tr>
<td>(f)</td>
<td>Any person, including a banking company or any officer thereof</td>
<td>Information in relation to such points or matters, or statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the Assessing Officer, the Deputy Commissioner (Appeals), the Joint Commissioner or the Commissioner (Appeals), will be useful for, or relevant to, any enquiry or proceeding under this Act.</td>
</tr>
</tbody>
</table>
(ii) **Exercise of power by the Income-tax authorities:** Under the existing provisions of section 133(6), the prescribed authorities have the power to call for any information from any person which will be useful for or relevant to any proceedings under the Act. Such powers may also be exercised by the Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director or the Principal Commissioner or Commissioner other than the Joint Director or Deputy Director or Assistant Director. Further, the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Principal Director or Director or Commissioner or Principal Commissioner other than the Joint Director or Deputy Director or Assistant Director without the prior approval of the Principal Director or Director or as the case may be, the Commissioner or Principal Commissioner.

For facilitating quick collection of information on request from tax authorities outside India, notified income-tax authorities (not below the rank of Assistant Commissioner of Income-tax) to have powers under section 131(1) for making an inquiry or investigation in respect of any person or class of persons relating to an agreement for exchange of information under section 90 or 90A, even if no proceeding is pending before it or any other income-tax authority with respect to the concerned person or class of persons. Such notified authorities are also empowered, for the purposes of an agreement referred to in section 90 or section 90A, to exercise the powers conferred under section 133 to call for information, irrespective of whether any proceedings are pending before it or any other income-tax authority.

**SECTION 133B: POWER TO COLLECT INFORMATION**

(i) Under this section, an income-tax authority may enter any building or place (at which a business or profession is carried on) within its jurisdiction or any building or place (at which a business or profession is carried on) which is occupied by any person in respect of whom the said authority exercises jurisdiction for the purpose of collecting any information which may be useful for or relevant for the purposes of the Act. It is not necessary that such a place should be the principal place of the business or profession.

(ii) The authority may require any proprietor, employee or any other person who may at the time and place be attending in any manner to or helping in carrying on such business or profession to furnish such information as may be prescribed.

(iii) An income-tax authority may enter any place of business or profession referred to above only during the hours at which such place is open for business.

(iv) Such authority shall on no account remove or cause to be removed from the building or place wherein he has entered any books of account or other valuable articles or things.

(v) In this section, income-tax authority means a Joint Commissioner, an Assistant Director or Deputy Director or an Assessing Officer, and includes an Inspector of Income-tax who has been authorised by the Assessing Officer to exercise the
power conferred under this section in relation to the area in respect of which the Assessing Officer exercises jurisdiction or any part thereof.

SECTION 133C: POWER TO COLL FOR INFORMATION BY PRESCRIBED INCOME-TAX AUTHORITY

(i) Section 133C enables the prescribed income-tax authority to verify the information in its possession relating to any person.

(ii) Under this section, for the purposes of verification of information in its possession relating to any person, prescribed income-tax authority, may, issue a notice to such person requiring him,
- on or before a date to be therein specified,
- to furnish information or documents,
- verified in the manner specified therein
- which may be useful for, or relevant to, any inquiry or proceeding under the Act.

(iii) The prescribed income-tax authority may process such information or documents received from the assessee and make available the outcome of such processing to the Assessing Officer.

(iv) The CBDT may make a scheme for centralised issuance of notice and for processing of information or documents and making available the outcome of the processing to the Assessing Officer.

(v) The term “proceeding” means any proceeding under the Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date. The term “proceeding” also includes all proceedings under the Income-tax Act, 1961 which may be commenced after such date in respect of any year.

SECTION 133A: POWER OF SURVEY

(i) **Power to enter a place within jurisdiction to inspect books of account, to verify cash, stock etc. [Section 133A(1)]:** An income-tax authority may enter any place:

(a) within the limits of the area assigned to him, or

(b) any place occupied by any person in respect of whom he exercises jurisdiction, or

(c) any place in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place

at which a business or profession or an activity for charitable purpose is carried on, whether such place be the principal place or not of such business or
profession or of such activity for charitable purpose, and require any proprietor, trustee, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession or such activity for charitable purpose. This power may be exercised:

(a) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place;

(b) to afford him the necessary facility to check or verify the cash, stock or other valuable articles or things which may be found therein; and

(c) to furnish such information as he may require as to any matter which may be useful for or relevant to any proceeding under the Income-tax Act, 1961.

This power may be exercised in respect of any place with which the assessee is connected, whether or not such place is the principal place of business or profession or activity for charitable purpose. It will also include any other place, whether any business or profession or activity for charitable purpose is carried on therein or not, in which the person carrying on the business or profession or activity for charitable purpose states that any of his books of account or other valuable article or thing relating to his business or profession or activity for charitable purpose are kept.

(ii) **Permitted time for conduct of survey [Section 133A(2)]:** The income-tax authority may enter any place of business or profession mentioned above only during the hours at which such place is open for the conduct of business or profession and in the case of any other place, only after sunrise and before sunset.

(iii) **Powers of an income-tax authority while conducting survey [Section 133A(3)]:** The income-tax authority exercising this power of survey may:

(a) place marks of identification, if he finds it necessary, on the books of account or other documents inspected by him and make or cause to be made extracts or copies therefrom;

(b) impound and retain in his custody for such period as he thinks fit any book of account or other documents inspected by him after recording reasons for doing so.

However, the income tax authority cannot retain in his custody such books of account etc. for a period exceeding 15 days (excluding holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or the Principal Commissioner or Commissioner or Principal Director or Director, as the case may be.
(c) make an inventory of any cash, stock or valuable article or thing checked or verified by him; and

(d) record the statements of any person which may be useful for or relevant to any proceedings under the Income-tax Act, 1961.

However, the income-tax authority cannot remove or cause to be removed from the place where he has entered, any cash, stock or other valuable article or thing [Section 133A(4)].

(iv) Exercise of power of survey for verification of TDS/TCS [Section 133A(2A)]: An income-tax authority may, for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions of Chapter XVII-B or Chapter XVII- BB, as the case may be, enter-

(a) any office, or a place where business or profession is carried on, within the limits of the area assigned to him, or

(b) any such place in respect of which he is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated, where books of account or documents are kept.

The income-tax authority may for this purpose enter an office, or a place where business or profession is carried on after sunrise and before sunset. Further, such income-tax authority may require the deductor or the collector or any other person who may at the time and place of survey be attending to such work,—

(a) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and

(b) to furnish such information as he may require in relation to such matter.

(v) Permissible and impermissible acts while conducting survey [Section 133A(3)]: An income-tax authority may -

(a) place marks of identification on the books of account or other documents inspected by him and take extracts and copies thereof;

(b) record the statement of any person which may be useful for, or relevant to, any proceeding under the Act.

However, while acting under sub-section (2A), the income-tax authority shall not impound and retain in his custody, any books of account or documents inspected by him or make an inventory of any cash, stock or other valuable articles or thing checked or verified by him.

(vi) Power to collect information and record statements [Section 133A(5)]: The income-tax authorities would also have the power to collect information and record the statements of any of the persons concerned at any time after any function, ceremony or event even before the stage of commencement of
assessment proceedings for the following year for which the information may be relevant, if they are of the opinion that having due regard to the nature, scale and extent of the expenditure incurred, it is necessary to do so. This provision is intended to help in collecting evidence about ostentatious expenditure immediately after the event to be used at the time of the assessment.

(vii) **Power to enforce compliance [Section 133A(6)]:** If any person who is required to provide facility to the income-tax authority to inspect the books of account or the other documents or to check or verify any cash, stock or other valuable articles or to furnish any information or to have his statement recorded, either refuses or evades do so, the income-tax authority would be entitled to use all the powers vested in it under section 131(1) for enforcing proper compliance with the requirements. However, no action under sub-section (1) shall be taken by the Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax except with the prior approval of the Joint Director or the Joint Commissioner, as the case may be.

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**AMENDMENT MADE BY FINANCE ACT 2020**

_Providing check on survey operations under section 133A of the Act._

Under the existing provisions of section 133A of the Act, an income-tax authority as defined therein is empowered to conduct survey at the business premises of the assessee under his jurisdiction. To prevent the possible misuse of such powers, vide Finance Act 2003, a proviso to sub-section (6) in the said section was inserted to provide that no income-tax authority below the rank of Joint Director or Joint Commissioner, shall conduct any survey under the said section without prior approval of the Joint Director or the Joint Commissioner, as the case may be.

It is proposed to substitute the proviso to sub-section (6) of section 133A to provide that,-

(A) in a case where the information has been received from such authority, as may be prescribed, no action under sub-section (1) shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner, as the case may be;

(B) in any other case, no action under sub-section (1) shall be taken by a Joint Director or a Joint Commissioner or an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Director or the Commissioner, as the case may be.”.

This amendment will take effect from 1st April, 2020.
(viii) **Meaning of ‘proceeding’:** For the purpose of this section, “proceeding” means any proceeding under this Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

**CERTAIN CONCEPTS RELATED TO ASSESSMENTS, APPEALS, ETC.**

**SECTION 281: CERTAIN TRANSFERS TO BE VOID**

As a safeguard against non-realisation of revenue due to fraudulent transfers of assets by a defaulting assessee, it is provided under this Section that, certain transfers specified therein are deemed to be void. Accordingly, in cases where, during the pendency of any proceeding under the Income-tax Act or after the completion thereof, any assessee creates a charge on, or parts with, the possession (by way of sale, mortgage, gift, exchange, or any other mode of transfer whatsoever) of any of his assets in favour of any other person, such a charge or transfer will be deemed to be void as against any claim in respect of any tax, penalty, interest or fine payable by the assessee as a result of the completion of the proceedings or otherwise. However, the charge or transfer made by the assessee would not be void in case where it is made

(a) for adequate consideration and without any notice of the pendency of such proceeding or, as the case may be, without any notice of such tax or other monies remaining payable by the assessee; or

(b) with the previous permission of the Assessing Officer.

This section applies to all cases where the amount of tax or other sum of money which is payable or likely to be payable exceeds Rs.5,000 and the assets which are charged or transferred by the assessee exceeds Rs. 10,000 in value. For this purpose, the term 'assets' should be taken to mean land, buildings, machinery, plant, shares, securities and fixed deposits in bank to the extent to which any of these assets do not form part of the stock-in-trade of the business carried on by the assessee. In other words, if these items represent the stock-trade of the assessee's business, their transfer would not be treated as void.

**SECTION 281B: PROVISIONAL ATTACHMENT TO PROTECT THE INTEREST OF THE REVENUE IN CERTAIN CASES**

(1) Where, during the pendency of any proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment, the Assessing Officer is of the opinion that, for the purpose of protecting the interest of the Revenue, it is necessary to do so, he may, by an order in writing, attach provisionally any property belonging to the assessee.

However, before passing an order, the Assessing Officer is required to take the prior permission of the Chief Commissioner of Income-tax or Commissioner of Income-tax.

**Explanation**—for the purposes of this sub-section, proceedings under section 132 shall be deemed to be proceedings for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment.
(2) Every provisional attachment would cease to be effective after the expiry of a period of six months from the date on which order for the attachment is passed by the Assessing Officer.

Provided that the Chief Commissioner, Commissioner, Director General or Director may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years or sixty days after the date of order of assessment or reassessment, whichever is later.

(3) Where the assessee furnishes a guarantee from a scheduled bank for an amount not less than the fair market value of the property provisionally attached under sub-section (1), the Assessing Officer shall, by an order in writing, revoke such attachment:

Provided that where the Assessing Officer is satisfied that a guarantee from a scheduled bank for an amount lower than the fair market value of the property is sufficient to protect the interests of the revenue, he may accept such guarantee and revoke the attachment.

(4) The Assessing Officer may, for the purposes of determining the value of the property provisionally attached under sub-section (1), make a reference to the valuation Officer referred to in section 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the Assessing Officer within a period of thirty days from the date of receipt of such reference.

(5) An order revoking the provisional attachment under sub-section (3) shall be made –

(i) Within forty-five days from the date of receipt of the guarantee, where a reference to the Valuation officer has been made under sub-section (4); or

(ii) within fifteen days from the date of receipt of guarantee in any other case.

(6) Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay that sum within the time specified in the notice of demand, the Assessing Officer may invoke the guarantee furnished under sub-section (3), wholly or in part, to recover the amount.

(7) The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, if the assessee fails to renew the guarantee referred to in sub-section (3), or fails to furnish a new guaranteed from a scheduled bank for an equal amount, fifteen days before the expiry of the guarantee referred to in sub-section (3).

(8) The amount realized by invoking the guarantee referred to in sub-section (3) shall be adjusted against the existing demand which is payable by the assessee and the balance amount, if any, shall be deposited in the Personal Deposit Account of the
Principal Commissioner or Commissioner in the branch of the Reserve Bank of India or the State Bank of India or of its subsidiaries.

(9) Where the Assessing Officer is satisfied that the guarantee referred to in sub-section (3) is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.

SECTION 292BB: NOTICE DEEMED TO BE VALID IN CERTAIN CIRCUMSTANCES

Where an assessee has appeared in any proceeding or cooperated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—

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

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.

OBLIGATION TO FURNISH STATEMENT OF FINANCIAL TRANSACTION OR REPORTABLE ACCOUNT [SECTION 285BA]

(1) Section 285BA imposes an obligation on specified persons to furnish statement of financial transaction or reportable account. Thus, the section also provides for furnishing of statement by a prescribed reporting financial institution in respect of a specified financial transaction or reportable account to the prescribed income-tax authority.

(2) As per section 285BA(1), the following persons, who are responsible for registering or maintaining books of account or other document containing a record of any specified financial transaction or any reportable account as may be prescribed under any law for the time being in force, are required to furnish a statement in respect of such specified financial transaction or reportable account which is registered or recorded or maintained by him and information relating to which is relevant and required for the purposes of the Income-tax Act, 1961 to the income-tax authority or such other authority or agency as may be prescribed -

(a) an assessee;
(b) a prescribed person in the case of an office of Government;
(c) a local authority or other public body or association; or
(d) the Registrar or Sub-Registrar appointed under the Registration Act, 1908; or
(e) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or
(f) the Postmaster General referred to in the Indian Post Office Act, 1898; or
(g) the Collector referred to in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
(h) the recognised stock exchange referred to in the Securities Contracts (Regulation) Act, 1956; or
(i) an officer of the Reserve Bank of India; or
(j) a depository referred to in the Depositories Act, 1996; or
(k) a prescribed reporting financial institution.

(3) “Specified financial transactions” means any of the following transactions which may be prescribed -
(a) transaction of purchase, sale or exchange of goods or property or right or interest in a property; or
(b) transaction for rendering any service; or
(c) transaction under a works contract; or
(d) transaction by way of an investment made or an expenditure incurred; or
(e) transaction for taking or accepting any loan or deposit,

(4) The CBDT may prescribe different values for different transactions in respect of different persons having regard to the nature of such transaction. Further, the value or, as the case may be, the aggregate value of such transactions during a financial year so prescribed shall not be less than Rs. 50,000.

(5) As per Rule 114E, the statement of financial transaction or reportable account shall be furnished in Form No. 61A and shall be verified in the manner indicated therein.
Accordingly, the statement of financial transactions has to be furnished on or before 31st May, immediately following the financial year in which the transaction is registered or recorded.

(6) Where the prescribed income-tax authority considers that the statement furnished under section 285BA(1) is defective, he may intimate the defect to the person who has furnished such statement and give him an opportunity of rectifying the defect within a period of 30 days from the date of such intimation. The prescribed income-tax authority may allow, on an application made in this behalf, a further period of time, at his discretion.

(7) If the defect is not rectified within the said period of 30 days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such statement shall be treated as an invalid statement. Consequently, the provisions of this Act shall apply as if such person had failed to furnish the statement.

(8) Where a person who is required to furnish a statement under section 285BA(1), has not furnished the same within the specified time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such statement within a period not exceeding thirty days from the date of service of such
notice and he shall furnish the statement within the time specified in the notice [Section 285BA(5)].

(9) If any person, having furnished a statement under section 285BA(1), or in pursuance of a notice issued under section 285BA(5), comes to know or discovers any inaccuracy in the information provided in the statement, he shall, within a period of ten days inform the income-tax authority or other authority or agency referred to in section 285BA(1), the inaccuracy in such statement and furnish the correct information in the prescribed manner [Section 285BA(6)]

(10) Under section 285BA(7), the Central Government may, by way of rules, specify —

(i) the persons referred to in section 285BA(1) to be registered with the prescribed income-tax authority;

(ii) the nature of information and the manner in which such information shall be maintained by the persons referred to in clause (a); and

(iii) the due diligence to be carried out by the persons for the purpose of identification of any reportable account referred to in section 285BA(1).

(11) Furnishing of statement of financial transaction [Rule 114E: The statement of financial transaction required to be furnished under section 285BA(1) of the Income-tax Act, 1961 shall be furnished by every person mentioned in column (3) of the Table below in respect of all the transactions of the nature and value specified in the corresponding entry in column (2) of the said Table, which are registered and recorded by him on or after 1st April, 2016.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>Nature and value of transaction</th>
<th>Class of person (reporting person)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>(a) Payment made in cash for purchase of bank drafts or pay orders or banker’s cheque of an amount aggregating to Rs. 10 lakh or more in a financial year.</td>
<td>A banking company or a cooperative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act)</td>
</tr>
<tr>
<td></td>
<td>(b) Payments made in cash aggregating to Rs. 10 lakh or more during the financial year for purchase of prepaid instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007.</td>
<td>A banking company or a cooperative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act)</td>
</tr>
<tr>
<td></td>
<td>(c) Cash deposits or cash withdrawals (including through bearer’s cheque) aggregating to Rs. 50 lakhs or more in a financial year, in or from one or more current account of a person.</td>
<td>A banking company or a cooperative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act)</td>
</tr>
</tbody>
</table>
| 2.     | Cash deposits aggregating to Rs. 10 | (i) A banking company or a co-
Income Tax authorities & Their powers

lakhs or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.

operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) Postmaster General as referred to in the Indian Post Office Act, 1898.

3. One or more-time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to Rs. 10 lakhs or more in a financial year of a person.

(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);

(ii) Postmaster General as referred to in the Indian Post Office Act, 1898;

(iii) Nidhi referred to in section 406 of the Companies Act, 2013;

(iv) NBFC which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.

4. Payments made by any person of an amount aggregating to-

(i) Rs. 1 lakh or more in cash; or

(ii) Rs. 10 lakh or more by any other mode,

against bills raised in respect of one or more credit cards issued to that person, in a financial year.

A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) or any other company or institution issuing credit card.

5. Receipt from any person of an amount aggregating to Rs. 10 lakh or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that

A company or institution issuing bonds or debentures.
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Reporting Authority/Condition</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Receipt from any person of an amount aggregating to <strong>Rs. 10 lakh</strong> or more in a financial year for acquiring shares (including share application money) issued by the company.</td>
<td>A company issuing shares</td>
</tr>
<tr>
<td>7</td>
<td>Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to <strong>Rs. 10 lakh</strong> or more in a financial year.</td>
<td>A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013.</td>
</tr>
<tr>
<td>8</td>
<td>Receipt from any person of an amount aggregating to <strong>Rs. 10 lakh</strong> or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from one scheme to another scheme of that Mutual Fund).</td>
<td>A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.</td>
</tr>
<tr>
<td>9</td>
<td>Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of traveler’s cheque or draft or any other instrument of an amount aggregating to <strong>Rs. 10 lakh</strong> or more during a financial year.</td>
<td>Authorised person as referred to in section 2(c) of the Foreign Exchange Management Act, 1999.</td>
</tr>
<tr>
<td>10</td>
<td>Purchase or sale by any person of immovable property for an amount of <strong>Rs. 30 lakhs</strong> or more or valued by the stamp valuation authority referred to in section 50C at <strong>Rs. 30 lakhs</strong> or more.</td>
<td>Inspector-General appointed under the Registration Act, 1908 or Registrar or Sub-Registrar appointed under that Act</td>
</tr>
<tr>
<td>11</td>
<td>Receipt of cash payment exceeding <strong>Rs. 2 lakhs</strong> for sale, by any person, of goods or services of any nature (other than those specified at SI. Nos. 1 to 10 of this rule, if any).</td>
<td>Any person who is liable for audit under section 44AB.</td>
</tr>
</tbody>
</table>

**Manner of application of threshold limit:** The reporting person mentioned in column (3) of the Table under sub-rule (2) [other than the person at SI.No.10 and 11] shall, while aggregating the amounts for determining the threshold amount for reporting in respect of any person as specified in column (2) of the said Table,
(a) take into account all the accounts of the same nature as specified in column (2) of the said Table maintained in respect of that person during the financial year;

(b) aggregate all the transactions of the same nature as specified in column (2) of the said Table recorded in respect of that person during the financial year;

(c) attribute the entire value of the transaction or the aggregated value of all the transactions to all the persons, in a case where the account is maintained or transaction is recorded in the name of more than one person;

(d) apply the threshold limit separately to deposits and withdrawals in respect of transaction specified in item (c) under column (2), against SI. No.1 of the said Table.

AMENDMENT MADE BY FINANCE ACT (NO.2) 2019

Widening the scope of Statement of Financial Transactions (SFT)

Existing provisions of section 285BA of the Act, inter alia, provide for furnishing of statement of financial transaction (SFT) or reportable account by person specified therein. In order to enable pre-filling of return of income, it is proposed to obtain information by widening the scope of furnishing of statement of financial transactions by mandating furnishing of statement by certain prescribed persons other than those who are currently furnishing the same. It is also proposed to remove the current threshold of rupees fifty thousand on aggregate value of transactions during a financial year, for furnishing of information, with a view to ensure pre-filling of information relating to small amount of transactions as well. In order to ensure proper compliance, it is also proposed to amend the provisions of sub-section (4) of aforesaid section so as to provide that if the defect in the statement is not rectified within the time specified therein, the provisions of the Act shall apply as if such person had furnished inaccurate information in the statement. Consequently, it is also proposed to amend the penalty provisions contained in section 271FAA so as to ensure correct furnishing of information in the SFT and widen the scope of penalty to cover all the reporting entities under section 285BA. These amendments will take effect from 1st day of September, 2019.
CHAPTER 17. APPEALS AND REVISION

FOR NOTES ON APPEALS REFER CHARTS IN COMPENDIUM.

AMENDMENT MADE BY FINANCE ACT 2020

Provision for e-appeal.

In order to impart greater efficiency, transparency and accountability to the assessment process under the Act a new e-assessment scheme has already been introduced. With the advent of the e-assessment scheme, most of the functions/processes under the Act, including of filing of return, processing of returns, issuance of refunds or demand notices and assessment, which used to require person-to-person contact between the taxpayer and the Income-tax Department, are now in the electronic mode. This is a result of efforts by the Department to harness the power of technology in reforming the system. All these processes are now not only faceless but also very taxpayer friendly. Now a taxpayer can manage to comply with most of his obligations under the Act without any requirement for physical attendance in the offices of the Department.

The filing of appeals before Commissioner (Appeals) has already been enabled in an electronic mode. However, the first appeal process under the Commissioner (Appeals), which is one of the major functions/processes that is not yet in full electronic mode. A taxpayer can file appeal through his registered account on the e-filing portal. However, the process that follows after filing of appeal is neither electronic nor faceless. In order to ensure that the reforms initiated by the Department to eliminate human interface from the system reach the next level, it is imperative that an e-appeal scheme be launched on the lines of e-assessment scheme.

Accordingly, it is proposed to insert sub-section (6A) in section 250 of the Act to provide for the following:

- Empowering Central Government to notify an e-appeal scheme for disposal of appeal so as to impart greater efficiency, transparency and accountability.
- Eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible.
- Optimizing utilization of the resources through economies of scale and functional specialisation.
- Introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

It is also proposed to empower the Central Government, for the purpose of giving effect to the scheme made under the proposed sub-section, by notification in the Official Gazette, to direct that any of the provisions of this Act relating to jurisdiction and procedure of disposal of appeal shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. Such directions are to be issued on or before 31st March 2022. It is proposed that every notification issued shall be required to be laid before each House of Parliament.

This amendment will take effect from 1st April, 2020.
REVISION BY COMMISSIONER

SECTION 263: REVISION OF ORDERS PREJUDICIAL TO REVENUE

(i) Under section 263(1), if the Principal Commissioner or Commissioner considers that any order passed by the Assessing Officer is *erroneous in so far as it is prejudicial to the interests of the Revenue*, he may, after giving the assessee an opportunity of being heard and after making an enquiry, pass an order enhancing or modifying the assessment made by the Assessing Officer or cancelling the assessment and directing fresh assessment.

(ii) An order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the Revenue, if, in the opinion of the Principal Commissioner or Commissioner, —

(a) the order is passed without making inquiries or verification which should have been made;

(b) the order is passed allowing any relief without inquiring into the claim;

(c) the order has not been made in accordance with any order, direction or instruction issued by the CBDT under section 119;

(d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.

(iii) The term ‘record’ shall include and shall be deemed always to have included all records relating to any proceedings under the Act available at the time of examination by the Principal Commissioner or Commissioner.

(iv) Where any order referred to in section 263(1) passed by the Assessing Officer had been the subject-matter of any appeal, the powers of the Principal Commissioner or Commissioner under section 263(1) shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.

(v) No order shall be made after the expiry of 2 years from the end of the financial year in which the order sought to be revised was passed.

(vi) In computing the period of 2 years, the time taken in giving an opportunity to the assessee to be reheard under section 129 and any period during which the revision proceeding is stayed by an order or injunction of any court shall be excluded.

(vii) The time limit, however, does not apply in case where the Principal Commissioner or Commissioner has to give effect to a finding or direction contained in the order of the Appellate Tribunal, High Court or the Supreme Court.
CIT V. ICICI BANK LTD. (BOM.)

Would the period of limitation for an order passed under section 263 be reckoned from the original order passed by the Assessing Officer under section 143(3) or from the order of reassessment passed under section 147, where the subject matter of revision is different from the subject matter of reassessment under section 147?

In the present case, an order of assessment for Assessment Year 2011-2012 was passed under section 143(3) on 30.1.2013 allowing the deductions under section 36(1)(vii), 36(1)(viia) and foreign exchange rate difference. Further, on 10-2-2015 notice of reassessment was issued under section 148 and an order of reassessment was passed under section 147 on 31-12-2015 which did not deal with the above deductions. Certain incomes not shown by assessee were assessed under section 147.

Later, the Commissioner passed an order under section 263 on 31-3-2017 for disallowing the deduction under section 36(1)(vii), 36(1)(viia) and in respect of foreign exchange rate difference which have not been taken up in the reassessment proceedings under section 147 but which was decided in the original order of assessment passed under section 143(3).

Held, period of limitation in respect of the order of Commissioner under section 263 in respect of a matter which does not form the subject matter of reassessment shall be reckoned from the date of the original order under section 143(3) and not from the date of the reassessment order under section 147. Therefore, Commissioner of Income-tax could have passed the order under section 263 up to 31-3-2015 and order passed by Commissioner of Income-tax on 31-3-2017 is time barred and invalid.

DOCTRINE OF PARTIAL MERGER

As per this doctrine, the order of Assessing Officer merges with the order of appellate authority. The judicial controversy centered around the question as to whether the entire order of assessment passed by the Assessing Officer gets merged with the order of appellate authority or the merger is in respect of that part of order of Assessing Officer which relates to matters considered and decided in an appeal.

One view of the judiciary was that there is a complete/ total merger of the order of Assessing Officer with the order of appellate authority, once an appeal is decided on one or two points alone.

The other view of the judiciary was that there is a "partial merger" and only that part of order of Assessing Officer which relates to matters considered and decided in an appeal gets merged with the order of appellate authority.

The doctrine of total merger has been overruled in section 263, section 154 and section 147 by amendments in law. In section 263, 154 and 147, the doctrine of PARTIAL MERGER has been affirmed.

The doctrine of TOTAL MERGER has been affirmed in section 264 wherein the doctrine of partial merger has been overruled.

Illustration 1:
The Assessing Officer in an assessment under section 143(3) allowed deductions A and B and disallowed C, D and E. The assessee filed an appeal to CIT (Appeals) on deduction C, D and E. The CIT (Appeals) allows deductions C, D and E. It is later on found by CIT that deductions A, B, C and E are not allowable to the assessee. Can the CIT invoke section 263 and disallow the deductions?
Answer:
CIT can disallow deduction A & B under section 263. He cannot disallow deduction C & E under section 263.

Illustration 2:
The Assessing Officer in an assessment under section 143(3) allowed deductions P and Q and disallowed deductions X, Y and Z. The assessee filed an appeal to the CIT (Appeals) on deductions X and Y only. The CIT (Appeals) suo-moto also allows deduction Z and also confirms the allowance of deduction P. It is later on found by the CIT that deductions P, Q, X, Y and Z are not allowable to the assessee. Can the CIT invoke section 263 and disallow the deductions?
Answer:
CIT can disallow deduction Q only, under section 263.

SECTION 264: REVISION OF OTHER ORDERS

1. In case of any order other than an order to which section 263 applies, passed by an authority subordinate to the Commissioner, he may, either of his own motion or on an application by the assessee for revision, call for the record of any proceeding under this Act in which such order has been passed and may make further inquiries.

Meaning of "Any order other than an order to which Section 263 applies"
An order of Assessing Officer which has been revised under Section 263 cannot be revised under Section 264. Therefore, after revision under section 263, revision under section 264 is not possible. However, after revision under Section 264, revision under Section 263 is possible.

Illustration 1: Assessing Officer in his order:
- Allows Deduction A
- Allows Deduction B
- Allows Deduction C
- Disallows Deduction D
- Disallows Deduction E
Commissioner under Section 263 makes a revision of order of A.O. and disallows Deduction A & B. Now Revision under section 264 is not possible on any issue.

Illustration 2: Assessing Officer in his order:
- Allows Deduction A
- Allows Deduction B
- Allows Deduction C
- Disallows Deduction D
- Disallows Deduction E
Commissioner under section 264 makes a revision and allows deduction D & E. Now Commissioner under section 263 can revise the order of A.O. and disallow deduction A, B and C.

2. Thereafter, the Commissioner may pass an order not being an order prejudicial to the assessee.
Key Notes:
(i) Under section 264, only the order of Assessing Officer can be revised.
(ii) Intimation or deemed intimation under section 143(1) is not an order and therefore cannot be revised under section 264.
(iii) CIT under section 264 can declare the assessment to be void ab-initio.
(iv) CIT under section 264 can cancel/set aside the order of assessment of the Assessing Officer and direct him to make a fresh assessment and such directions shall not be prejudicial to the assessee.

3. The Commissioner shall not of his own motion any order if the order has been made more than one year previously.

4. In case an application for revision is made by the assessee, the application must be within one year from the date on which the order was communicated to him.

5. However, if the Commissioner is satisfied that the assessee was prevented by sufficient cause from making the application in the said one year, he may admit the application after the expiry of one year.

6. In the following cases, the Commissioner shall not revise the order:
   (i) Where an appeal against the order lies to the CIT (Appeals) but has not been made and
       (a) the time within which such an appeal may be made has not expired, or
       (b) the assessee has not waived his right of appeal.
   (ii) Where the order has been made the subject of an appeal to the CIT (Appeals).

Note 1: Revision under section 264 is not possible if an appeal has been filed to CIT(A) on any issue.

Note 2: Revision under section 264 is possible if the assessee has not filed an appeal to CIT(A) and
   (i) The time period for filing an appeal to CIT(A) has expired or
   (ii) Where the time for filing appeal to CIT(A) has not expired, the assessee has waived his right to appeal to CIT(A).

7. The application for revision filed by an assessee shall be accompanied by a fee of Rs. 500.

8. An order by the Commissioner under this section whereby he declines to interfere shall not be deemed to be an order prejudicial to the assessee.

9. On a revision application made by the assessee under section 264, an order shall be passed by the CIT within one year from the end of the financial year in which such application under section 264 is made by the assessee.

Key Note:
In computing the period of limitation, the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129 and any period during
which any proceeding under section 264 is stayed by an order or injunction of any Court, shall be excluded.

Illustration: Application under section 264 is made on 27.03.2021 - Revision order under section 264 can be passed up to 31.03.2022
If revision order under section 264 is not passed up to 31.03.2022 then it shall be deemed that the reliefs claimed by the assessee in the application under section 264 have been allowed.

KEY NOTES:
1. No appeal is possible against an order under section 264. No appeal is possible against the order under section 264 whether the CIT has totally rejected the application by passing an order under section 264 or has granted a relief partially. Order under section 264 can be challenged in the High Court through a WRIT PETITION and thereafter in the Supreme Court through a SPECIAL LEAVE PETITION.
2. No appeal can be filed against the order under section 264 either by the assessee or the Assessing Officer.
3. If there is a mistake apparent from record in the order passed under section 264, then the CIT can rectify the mistake in the order under section 264 by passing a rectification order under section 154.
4. Where appeal has been preferred to CIT (Appeals), no revision under section 264 is possible even on the matters not raised in the appeal.

Illustration: Whether revision under Section 264 can be made in the following cases:
(i) Assessing Officer has made the order and no appeal has been filed to CIT(Appeals) and the time period of filing the appeal has not expired. - Revision under section 264 is not possible.

(ii) Assessing Officer has made the order and no appeal has been filed to CIT(Appeals) and the time period for filing the appeal has not expired and the assessee waives his right of appeal to CIT(Appeals). - Revision under section 264 can be made.

(iii) Assessing Officer has made the order and appeal has been filed to CIT(Appeals). - Revision under section 264 is not possible.
JUDICIAL PRONOUNCEMENTS:

1. Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision under section 254(2)?

CIT v. Earnest Exports Ltd. (2010) (Bom.)

High Court’s Observations: In this case, the High Court observed that the power under section 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters. Section 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance. Section 254(2) is not a mandate to unsettle decisions taken after due reflection.

High Court’s Decision: In this case, the Tribunal, while dealing with the application under section 245(2), virtually reconsidered the entire matter and came to a different conclusion. This amounted to a reappreciation of the correctness of the earlier decision on merits, which is beyond the scope of the power conferred under section 254(2).
2. Can revision under section 263 be made on the ground that the order is passed without making inquiries or verification which should have been made?


**Facts of the case:** The assessee filed his return of income and subsequently, filed a revised return in which he claimed 30% of gross professional receipts amounting to Rs.3.17 crore as expenditure towards his personal security. When the Assessing Officer asked for the details of expenditure, the assessee replied that the expenses were for security for the personal safety of the assessee and the payments were made out of cash balances. Thereafter, by way of a letter, the assessee informed the Assessing Officer that the claim was made on a belief that it was allowable but as it is not feasible to substantiate the claim, the revised return may be taken to be withdrawn. The Assessing Officer had proposed to treat the expenditure claim as unexplained expenditure under section 69C but after considering the assessee’s reply, did not pursue the matter.

After the assessment was finalized, the Commissioner issued show cause notice under section 263 containing the grounds on which the assessment order was proposed to be revised. On getting the replies to the show cause notice, the Commissioner set aside the order of assessment and directed a fresh assessment on the principal ground that requisite and due enquiries were not made by the Assessing Officer prior to finalization of the assessment. On this basis, the Commissioner came to the conclusion that the assessment order in question was erroneous and prejudicial to the interests of the Revenue warranting exercise of power under section 263. In his order, the Commissioner of Income-tax did not record any finding on the several issues mentioned in the show cause notice whereas he recorded conclusions adverse to the assessee in respect of issues which were not specifically mentioned in the show cause notice. However, few of the issues, including the claim of additional expenses in the revised return were common to the show cause notice as well as the revisionary order.

**Appellate Authorities’ view:** The Tribunal opined that in respect of the issues not mentioned in the show-cause notice, the findings as recorded in the revisional order under section 263 would be considered as breach of principles of natural justice, since the Commissioner of Income-tax cannot go beyond the issues mentioned in the show-cause notice. Accordingly, the Tribunal reversed the order of the *suo motu* revision of order under section 263.

The High Court also dismissed the appeal of the Revenue holding that as the Commissioner had gone beyond the scope of the show cause notice and had dealt with issues not covered or mentioned in the notice the revisional order which was in violation of the principles of natural justice. The Court also observed that the question whether the Assessing Officer had made sufficient enquiries about the assessee’s claim made in the revised return was a pure question of fact and cannot be examined under section 260A.

**Supreme Court’s Observations:** The Apex Court noted that to exercise jurisdiction under section 263 the requirement is that the order passed by the assessing authority is erroneous and prejudicial to the interests of the revenue. Section 263 does not require any specific show cause notice to be served on the assessee. What is required is granting of opportunity to the assessee of being heard before making the revision order. Failure to give such an opportunity would render the revisionary order legally fragile not on the ground of lack of jurisdiction but on the ground of violation of principles of natural justice.
The Supreme Court observed that the Tribunal had not recorded any finding that in course of the *suo moto* revisionary proceedings, the opportunity of hearing was not afforded to the assessee and that the assessee was denied an opportunity to contest the facts on the basis of which the Commissioner had come to the conclusions as recorded in the order under section 263.

In the course of revision, the documents and books of accounts overlooked in the assessment proceedings were considered and at every stage of revisionary proceeding, the authorized representative of the assessee had appeared and had full opportunity to contest the basis on which the revisionary authority was proceeding in the matter.

Where the Commissioner had come its conclusions on the basis of the record of the assessment proceedings which was open for scrutiny by the assessee and available to his authorized representative at all times, there is no breach of the requirement to give a reasonable opportunity of being heard as required under section 263.

Further, it also observed that when the Assessing Officer has dropped the investigation of the claim of expenses, it does not preclude the Commissioner of Income-tax from looking in to the same. Making a claim which would prima facie disclose that the expenses in respect of which deduction had been claimed had been incurred and thereafter, withdrawing the claim gave rise to the necessity of further enquiry in the interests of the Revenue. The notice issued under section 69C of the Act could not have been simply dropped on the ground that the claim had been withdrawn.

**Supreme Court’s Decision:** The Apex Court, accordingly, held that the order of the Tribunal setting aside the revisional order on the ground that it went beyond the show cause notice was not sustainable. It further held that the High Court having failed to fully deal with the matter, its order was not tenable.

**Note –** As per Explanation 2 to section 263(1), inserted by the Finance Act, 2015, with effect from 01.06.2015, an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the revenue, if in the opinion of the Principal Commissioner or Commissioner, the order is passed without making inquiries or verification which should have been made. The rationale of the above court ruling is, thus, also in line with Explanation 2 to Section 263(1).

3. **Does the CIT (Appeals) have the power to change the status of assessee?**

**Mega Trends Inc. v. CIT (2016) (Mad).**

**Facts of the case:** The assessee filed its return of income as a partnership firm for the relevant assessment year admitting a total income of Rs. 174.36 lakhs. The firm consisted of thirteen individuals and two firms. The return of income was selected for scrutiny which led to disallowance of certain deductions to the tune of Rs. 262.50 lakhs. The assessee preferred an appeal. The CIT (Appeals) invoked section 251 and issued a show cause notice proposing to change the assessee’s status to AOP on the reasoning that a partnership firm cannot be a partner in another firm. The assessee filed writ of *certiorari* to quash the show cause notice.

**Note:** ‘Certiorari’ is “a writ issued by a superior court calling up the record of a proceeding in a lower court for review”.

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17.9
The Revenue contended that the CIT(Appeals) has power to modify the assessee’s status, since a partnership firm is a relationship between persons who have agreed to share the profits of the business carried on by all or any of them acting for all, and the term persons only connotes natural persons. Since some of the partners are other firms, the assessment cannot be carried out as a firm. They relied on the Supreme Court’s ruling in *Dhulichand Laxminarayan v. CIT* (1956) 29 ITR 535 (SC) to argue this point.

The High Court observed that, under section 251(1), the powers of the first appellate authority are coterminous with those of the Assessing Officer and the appellate authority can do what the Assessing Officer ought to have done and also direct him to do what he had failed to do. If the Assessing Officer had erred in concluding the status of the assessee as a firm, it could not be said that the Commissioner (Appeals) had no jurisdiction to go into the issue. The appeal was in continuation of the original proceedings and unless fetters were placed upon the powers of the appellate authority by express words, the appellate authority could exercise all the powers of the original authority.

The High Court held that the power to change the status of the assessee is available to the assessing authority and when it is not used by him, the appellate authority is empowered to use such power and change the status. The Court relied on a full bench decision of the Madras High Court in *State of Tamil Nadu v. Arulmurugan and Co.* reported in [1982] 51 STC 381 to come to such conclusion.

### Facts of the Case

The appellants have approached the Supreme Court under a special leave petition. There has been a delay of 439 days in filing the appeal under section 260A for which reason the appellants requested for a condonation of delay under section 14 of Limitation Act, 1963. The appellants submitted that the delay was on account of pursuing an alternate remedy of filing a miscellaneous application before the Income-tax Appellate Tribunal (ITAT) under section 254(2).

### Issue

The issue under consideration is whether delay in filing appeal under section 260A can be condoned where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT under section 254(2) for rectification of mistake apparent on record.

### Supreme Court’s Observations

1. The Court refused to accept the submission that the application before the ITAT under section 254(2) was an alternate remedy to filing of the application under section 260A.
2. The former is an application for rectifying a ‘mistake apparent from the record’ which is much narrower in scope than the latter. Under section 260A, an order of the ITAT can be challenged on substantial questions of law.
3. The Court stated that the appellant had the option of filing an appeal under section 260A while also mentioning in the Memorandum of Appeal that its application under section 254(2) was pending before the ITAT.
4. The time period for filing an appeal under section 260A does not get suspended on account of the pendency of an application before the ITAT under section 254(2) of the Act.
Supreme Court’s Decision:

5. Since no satisfactory reason has been provided by the Appellant for the extraordinary delay of 439 days in filing the appeal, the Supreme Court dismissed the application for condonation of delay.

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CHAPTER 18. SEARCH AND SEIZURE

SECTION 132: SEARCH AND SEIZURE

Under this section wide powers of search and seizure are conferred on the income-tax authorities. The important points relating to this provision have been briefly summarised below:

1. **WHO CAN AUTHORISE SEARCH & SEIZURE i.e. issue search warrants:**
   Search and seizure can be authorised by Director General or Director or Chief Commissioner or Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner.
   However, search can be authorized by Additional Director or Additional Commissioner or Joint Director or Joint Commissioner only if he is empowered by the CBDT to do so.

2. **WHEN CAN SEARCH & SEIZURE BE AUTHORISED:**
   Such authorisation could take place if the authority on the basis of information in his possession, has reasons to believe that:
   
   (a) the person to whom a summons or notice was issued to produce books of account or other documents under section 131 or section 142(1), has omitted or failed to do so; or
   
   (b) a person to whom a summons or a notice under section 131 or section 142(1) has been or might be issued, will not or would not, produce any books of account or other documents which will be useful or relevant to any proceeding under the Income-tax Act; or
   
   (c) a person is in possession of any articles or things, including money bullion or jewellery etc. and these assets represents either wholly or partly the income which has not been, or which would not be disclosed by him.

3. **POWERS OF AUTHORISED OFFICER IN COURSE OF SEARCH & SEIZURE:**
   (a) The Director General or Director or Chief CIT or CIT may authorise any Assessing Officer or
   
   (b) the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner empowered by CBDT, may authorise any Assessing Officer.

MEMORANDUM EXPLAINING FINANCE BILL, 2017

**Reason to believe to conduct a search, etc. not to be disclosed**
Confidentiality and sensitivity are the hallmarks of proceedings under section 132. However, certain judicial pronouncements have created ambiguity in respect of the disclosure of 'reason to believe' or 'reason to suspect' recorded by the income-tax authority to conduct a search under section 132. Therefore, an explanation is inserted to declare that the 'reason to believe' or 'reason to suspect', as the case may be, shall not be disclosed to any person or any authority or the Appellate Tribunal.
[the officer so authorised is referred as Authorised Officer]

to

(i) enter and search any building, place, vessel, vehicle or aircraft where he has reasons to suspect that such books of account, other documents, money, bullion, jewellery and other valuable articles are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred under (i) above, where the keys thereof are not available.

(iii) search any person who has got out of, or is about to get into, or is in, the building, vessel, place, vehicle or aircraft, if the authorised officer has reasons to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing.

(iv) 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, to afford the authorised officer the necessary facility to inspect such books of account or other documents. [Section 132(1)(iib)]

(v) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search. 

Provided that bullion, jewellery or other valuable article or thing, being stock in trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business.

(vi) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom.

(vii) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

**Note 1: Deemed/ Constructive Seizure:** Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised Officer may serve an order on the owner or the person who is in immediate possession thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such authorised Officer and such action of the authorised Officer shall be deemed to be seizure of such valuable article or thing. [Second Proviso to section 132(1)]

**Note 1A:** Nothing contained in Note 1 above [i.e. second Proviso to section 132(1)] shall apply in case of any article or thing, being stock-in-trade of the business.
Note 2: Section 132(3): ORDER OF RESTRAINT:
The authorized officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, for reasons other than mentioned in the Second Proviso to section 132(1), serve an order on the owner or the person, who is in immediate possession thereof that he shall not remove, part with or otherwise deal with it except with previous permission of authorised officer. The Explanation to section 132(3) provides that serving of an order as aforesaid shall not be deemed to be a seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing. The Finance Act, 2002 provides that such an order under section 132(3) shall not be in force for a period exceeding 60 days from the date of order and under no circumstances a prohibitory order passed under section 132(3) shall remain in force beyond a period of 60 days, from the date of order.

For example, the authorised officer when he conducted search on the assessee, found certain jewellery in the room of the brother of the assessee. The brother has shown the jewellery in his returns but authorized officer had doubt whether the jewellery in possession of assessee's brother belonged to the assessee or not, then he can pass a restraint order under section 132(3) on assessee's brother. Within 60 days of the date of order he can ask the assessee's brother to handover jewellery to him and in case he does not do so, the order of restraint will come to an end.

4. Where the building, place, vessel or aircraft in which search is to be conducted is within the area of jurisdiction of a Chief CIT or CIT but such Chief CIT or CIT has no jurisdiction over the person oil whom raid is to be conducted, and such Chief CIT or CIT has reasons to believe that delay in getting the authorisation from the Chief CIT or CIT having jurisdiction over such person may be prejudicial to the interests of the revenue, then he is competent to authorise the authorised officer to conduct the search. For example, the raid is to be conducted in a Building in Bombay and the assessee lives in Delhi, i.e., the jurisdiction on the assessee is with Chief CIT or CIT of Delhi, then the Chief CIT or CIT of Bombay can authorise the conduct of raid in building in Bombay on the assessee.

5. Where any Chief Commissioner or Commissioner has reasons to suspect that any books of account, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by any other Chief CIT or CIT, are kept in a building, place, vehicle or aircraft not mentioned in the search warrant, then such Chief CIT or CIT may authorise the said officer to conduct search of such building, place, vessel or aircraft. In other words, where a search for any books of account or other documents or assets has been authorised by any authority who is competent to do so, and some other Chief CIT or Commissioner not having jurisdiction over the assessee has reasons to suspect that such books of account or the documents of the assessee are kept in any building, place, vessel, vehicle or aircraft not specified in the search warrant, he may authorise the authorised officer to search such other building, place, vessel, vehicle or aircraft.

Accordingly if a search warrant is issued by the Commissioner of Income-tax Bombay, authorising the search of a premises in Madras and the Authorised Officer finds that the books of account or other documents and/ or assets have been secreted in a building or place not specified in the search warrant, he could request the Commissioner or Chief CIT in Madras to authorise him to search that building or place.
6. The authorised officer may requisition the services of any police officer or any officer of the Central Government or both to assist him in search and seizure, and it shall be the duty of every such officer to comply with such requisition.

7. **EXAMINATION ON OATH:**

   The authorised officer may during the course of search and seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or valuable article and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Act. [Section 132(4)]

   **Note:** The examination of any person may not be merely in respect of any books of account, documents or other assets found as a result of search, but also in respect of all matters relevant for the purposes of any investigation under the Act.

8. **PRESUMPTIONS IN COURSE OF SEARCH AND SEIZURE**

   Where any books of account, other documents, money, bullion, jewellery and other valuable article is found in the possession or control of any person in course of a search, it may be presumed:

   (i) That such books of account, other documents, money, bullion, jewellery or other valuable article or thing belongs to such person.

   (ii) That the contents of such books of account and documents are true and

   (iii) That the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped, executed or attested by the person by whom it purports to have been so executed or attested.

9. **PERIOD OF RETENTION OF BOOKS OF ACCOUNT AND OTHER DOCUMENTS**

   The books of account or other documents seized under section 132 shall not be retained by the authorised officer for a period exceeding 30 days from the date of the order of assessment or reassessment under section 153A unless the reasons for retaining the same are recorded by him in writing and approval of Chief Commissioner or Commissioner for such retention is obtained. However, the Chief Commissioner or Commissioner shall not authorise the retention of books of account and other documents for a period exceeding 30 days after all proceedings are completed in respect of the years for which such books of accounts and other documents are relevant (i.e. proceedings of penalties etc.).

10. The person from whose custody any books of account or other documents are seized, may make copies thereof, or take extracts therefrom, in the presence of authorized officer, at such place and time as the authorised officer may appoint in this behalf.

11. **Section 132(9A):** Where the authorised officer has no jurisdiction over the person searched by him, the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which search was completed and
thereupon the powers exercisable by the authorised officer shall be exercisable by such Assessing Officer.

MEMORANDUM EXPLAINING FINANCE BILL, 2017

Power of provisional attachment and to make reference to Valuation Officer to authorised officer
Section 132 of the Act provides the power of search and seizure subject to fulfilment of conditions specified therein.

In order to protect the interest of revenue and safeguard recovery in search cases, it is proposed to insert sub-section (9B) and (9C) in the said section, to provide that during the course of a search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer on being satisfied that for protecting the interest of revenue it is necessary so to do, may attach provisionally any property belonging to the assessee with the prior approval of Principal Director General or Director General or Principal Director or Director. It has been proposed that such provisional attachment shall cease to have effect after the expiry of six months from the date of order of such attachment. (DO WITH SEC 281B)

In order to enable correct estimation and quantification of undisclosed income held in the form of investment or property by the assessee by the Investigation wing of the Department, it is further proposed to insert a new sub-section (9D) in the said section to provide that in a case of search, the authorised officer may, for the purpose of estimation of fair market value of a property, make a reference to a Valuation Officer referred to in section 142A, for valuation in the manner provided under that sub-section. It also provides that the Valuation Officer shall furnish the valuation report within sixty days of receipt of such reference. (DO WITH SEC 142A)

SECTION 132A: POWERS TO REQUISITION BOOKS OF ACCOUNT, ETC.

(1) Where the Director General or Director or the Chief Commissioner or Commissioner, in consequence of information in his possession, has reason to believe that—

(a) Any person to whom a summon or notice was issued to produce books of account or other documents under section 131 or section 142(1), has omitted or failed to do so and the said books of account or other documents have been taken into custody by any officer or authority under any other law (e.g. seized under the Customs Act, FEMA, Sales tax Act etc.) or

(b) A person to whom a summon or a notice under section 131 or 142(1) has been or might be issued, will not or would not, produce any books of account or other documents which will be useful or relevant to any proceeding under the Income-tax Act and the said books of account have been taken into custody by any officer or authority under any other law (e.g. seized under the Customs Act, FEMA, ales Tax Act etc.) or

(c) Any articles or things including money, bullion or jewellery etc represents either wholly or partly the income which has not been or which would not be disclosed by him and the possession or control of such assets has been taken into custody
by any officer or authority under any other law (e.g. seized under the Customs Act, FEMA, Sales Tax Act etc.)

then, the Director General or Director or the Chief Commissioner or Commissioner may authorise any Assessing Officer (hereafter in this section referred to as the requisitioning officer) to require the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

(2) On a requisition being made under sub-section (1), the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, of that sub-section shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

(3) Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of section 132 and section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under section 132 by the requisitioning officer from the custody of the person referred to in clause (a) or clause (b) or clause (c), as the case may be, of sub-section (1) of this section.

SECTION 132B: APPLICATION OF SEIZED OR REQUISITIONED ASSETS

(1) The assets seized under section 132 or requisitioned under section 132A may be dealt with in the following manner, namely: —

(i) - The amount of existing liability under the Income-tax Act, the Wealth-tax Act and the Gift-tax Act
- The amount of liability determined on completion of assessment or reassessment under section 153A and the assessment of the assessment year relevant to the previous year in which search is initiated or requisition is made (including any penalty levied or interest payable in connection with such assessment or reassessment) and
- Penalty and interest for being an assessee in default
- Amount of liability arising on an application made before Settlement Commission under section 245C

(Amended by Finance Act, 2015)

MAY BE RECOVERED OUT OF SUCH ASSETS

Provided that where the person concerned makes an application to the Assessing Officer within thirty days from the end of the month in which the asset was seized, for release of asset and the nature and source of acquisition of any such asset is explained to the satisfaction of the Assessing Officer, the amount of any existing liability referred to in this clause may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Chief Commissioner or Commissioner, to the person from whose custody the assets were seized: [For example, out of the cash seized of Rs. 200 Lakhs, the assessee explains to the satisfaction of Assessing Officer that Rs. 50 Lakhs is
explained cash and existing income tax liabilities are Rs. 35 Lakhs, then the Assessing Officer shall release 15 Lakhs after paying the existing liabilities of Rs. 35 Lakhs]

**Provided further** that such asset or any portion thereof as is referred to in the first proviso **shall be released** within a period of **120 days** from the date on which the search was completed or the assets/ books of accounts were delivered to the requisitioning officer under section 132A.

(ii) If the assets consist solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied;

(iii) The assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose Assessing Officer may recover the amount of such liabilities by the sale of such assets.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

**Explanation—** For the removal of doubts, it is hereby declared that the "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII.

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CHAPTER 19. SPECIAL PROCEDURE OF ASSESSMENT OR REASSESSMENT IN CASE OF SEARCH & SEIZURE

SECTION 153A: ASSESSMENT IN CASE OF SEARCH

Section 153A(1): Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and relevant assessment years referred to in clause (b), 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 required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years and relevant assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and relevant assessment years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and relevant assessment years referred to in this sub section pending on the date of initiation of the search under section 132, shall abate.

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six/ten assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation. —For the removal of doubts, it is hereby declared that,—

(i) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

AMENDMENT MADE BY FINANCE ACT 2017:
EXTENSION OF SCOPE OF SECTION 153A TO ASSESS INCOME FOR A PERIOD BEYOND 6 YEARS

The scope of section 153A has been enlarged with effect from April 1, 2017. After this amendment, the Assessing Officer can issue a notice of assessment under section 153A for a period beyond 6 years.
For instance, if search is conducted under section 132 on June 26, 2020, the Assessing Officer shall issue notice requiring the assessee to furnish return of income in respect of assessment years 2015-16 to 2020-21.

**Amendment** - After amendment, the concerned Assessing Officer can issue notice for 6 preceding assessment years and for “the relevant assessment year or years”. For this purpose, “relevant assessment year” shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond 6 assessment years but not later than 10 assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. However, for the “relevant assessment year”, notice can be issued if -

a. the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to (or is likely to amount) to Rs. 50 lakh (or more) in one year or in aggregate in the relevant 4 assessment years (falling beyond the 6th year);

b. such income escaping assessment is represented in the form of asset (for this purpose “asset” shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account);

c. the income escaping assessment or part thereof relates to such year or years; and

d. search under section 132 is initiated or requisition under section 132A is made on or after April 1, 2017.

**Provisions illustrated** - Search is conducted on the premises of X Ltd. on May 20, 2020. The Assessing Officer can issue notice requiring X Ltd. to furnish return of income in respect of 6 preceding assessment years (i.e., assessment years 2015-16 to 2020-21). The Assessing Officer has documents in his possession which reveal that X Ltd. has undisclosed income (represented in the form of asset) pertaining to earlier assessment years as follows -

<table>
<thead>
<tr>
<th>Assessment years</th>
<th>Undisclosed income (Rs. in lakh)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Situation 1</td>
</tr>
<tr>
<td>2014-15 (7th year)</td>
<td>10</td>
</tr>
<tr>
<td>2013-14 (8th year)</td>
<td>12</td>
</tr>
<tr>
<td>2012-13 (9th year)</td>
<td>13</td>
</tr>
<tr>
<td>2011-12 (10th year)</td>
<td>15</td>
</tr>
<tr>
<td>2010-11 (11th year)</td>
<td>5</td>
</tr>
</tbody>
</table>

**Situation 1** - Notice can also be issued under section 153A for the assessment years 2011-12 to 2014-15 (as the aggregate undisclosed income for these assessment years is Rs. 50 lakh). However, notice cannot be issued for years earlier than 10th year (i.e., assessment year 2010-11 or earlier).
Situation 2 - Notice cannot be issued for the assessment years 2011-12 to 2014-15 (as the aggregate undisclosed income for these assessment years is less than Rs. 50 lakh). Even for earlier years, notice cannot be issued.

Situation 3 - Notice can also be issued for the assessment years 2011-12, 2012-13 and 2014-15. For earlier years, notice cannot be issued.

SECTION 153B: TIME LIMIT FOR COMPLETION OF ASSESSMENT OR REASSESSMENT UNDER SECTION 153A

<table>
<thead>
<tr>
<th>Normal Period of Assessment/Reassessment under section 153B</th>
<th>Period of Assessment/Reassessment where a reference has been made to Transfer Pricing Officer under section 92CA in course of proceedings under</th>
</tr>
</thead>
<tbody>
<tr>
<td>For 6/10 Assessment Years immediately preceding the Assessment Year relevant to the Previous Year in which search is started</td>
<td>12 months from the end of the financial year in which search is completed.</td>
</tr>
<tr>
<td>For Assessment Year relevant to the Previous Year in which search is started</td>
<td>Same as above</td>
</tr>
</tbody>
</table>

TIME LIMIT FOR COMPLETION OF ASSESSMENT OR REASSESSMENT UNDER SECTION 153A IN CASE OF A PERSON REFERRED TO IN SECTION 153C

<table>
<thead>
<tr>
<th>Normal Period of Assessment/Reassessment under section 153B</th>
<th>Period of Assessment/Reassessment where a reference has been made to Transfer Pricing Officer under section 92CA in course of proceedings under section 153A</th>
</tr>
</thead>
<tbody>
<tr>
<td>For 6/10 Assessment Years immediately preceding the Assessment Year relevant to the Previous Year in which search is started</td>
<td>(i) 12 months from the end of the financial year in which search is completed, or (ii) 24 months from the end of the Financial Year in which books of accounts, assets etc. are handed over under section 153C to the A.O. having jurisdiction over such other person.</td>
</tr>
<tr>
<td>WHICHEVER IS LATER.</td>
<td>(i) 24 months from the end of the financial year in which search is completed, or (ii) 24 months from the end of the Financial Year in which books of accounts, assets etc. are handed over under section 153C to the A.O. having jurisdiction over such other person.</td>
</tr>
<tr>
<td>WHICHEVER IS LATER.</td>
<td></td>
</tr>
</tbody>
</table>
Note: Date of completion of search is the date of completion of search as recorded in the last panchnama made in case of assessee.
ANALYSIS

1. The Finance Act, 2003 has done away with the procedure of Block Assessment. For search initiated under section 132, the new procedure as laid down in section 153A, 153B, 153C and 153D as introduced by Finance Act, 2003 shall apply.

2. **Section 153A:**
   (i) Section 153A overrides section 139 so as to give power to the Assessing Officer to call for the return of income of the Assessment Years falling in the specified period of 6/10 assessment years even if the assessee was not required to file the return of income for such assessment years in accordance with section 139.

   (ii) Section 153A overrides sections 147, 148, 149 and 151 which contains the provisions for assessment or reassessment of incomes escaping assessment. These sections have been over-ridden because the Assessing Officer shall now assess/reassess the incomes of the assessment years falling in specified period of six/ten assessment years under section 153A. He shall not issue notice under section 148 for these assessment years. The notice for these assessment years shall be issued under section 153A.

   (iii) Section 153A over-rides section 153 which contains the time limits for making assessment/reassessment. The time limits for making assessment/reassessment in respect of the assessment years falling in the specified period of six/ten assessment years have been given in section 153B.

3. **Section 153A provides as under:**
   - Notwithstanding anything contained in section 139/147/148/149/151/153
   - in case of any person where search is initiated (search is initiated by issuing a search warrant) under section 132,
   - then the Assessing Officer shall issue a notice to such person (Notice under section 153A) requiring him to furnish within such period, as may be specified in the notice
   - the return of income in respect of each assessment year falling in the specified period. Specified period means six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted. For example, if search is initiated on 30.06.2020, then by issuing the notice under section 153A, the Assessing Officer shall require the assessee to furnish the returns of income for Assessment Year 2015-2016 to Assessment Year 2020-2021. (PLUS 4 MORE AY, IF CONDITIONS ARE FULFILLED)

   - The following points may be noted:
     - Return is required to be furnished for the assessment years falling in the specified period even if the assessee is not required to furnish the return of income for any assessment year since his income is below taxable limit.
     - Return is required to be furnished for the assessment years falling in the specified period even if-
       - Returns have already been filed earlier under section 139/142(1)/148 or
4. The Assessing Officer shall assess/reassess the total income of the assessment years falling in the specified period i.e. the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted. The assessment/reassessment shall be made separately for the 6 assessment years under section 153A.

5. It may be noted that if a search is conducted on 30.06.2020, the Assessing Officer shall assess/reassess the income under section 153A for Assessment Year 2015-2016 to Assessment Year 2020-2021. If the assessment/reassessment relating to any assessment year falling within the specified period of 6/10 years is pending under section 143(3)/144/147 on the date of initiation of search under section 132, then such pending assessment/reassessment shall abate i.e. come to an end. The assessment/reassessment shall be made under section 153A only.

6. It has been clarified in the CBDT Circular explaining the provisions of Finance Act, 2003 that the appeal, revision or rectification proceedings pending on the date of initiation of search under section 132 shall not abate but shall continue.

7. All the provisions of the Income-tax Act shall apply to assessment/reassessment made under section 153A. Therefore,
   - Penalties for concealment of income
   - Penalties for defaults like non-filing of return
   - Interest under section 234A/B/C
   - Prosecution (Prosecution under section 276CC for failure to file the return under section 153A and prosecution under section 276C for concealment of income)

   shall apply to assessment/reassessment made under section 153A.

8. In the assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rates applicable to such an assessment year.

9. An appeal against the order under section 153A lies to CIT (Appeals).

### CONCEPT OF ABATEMENT

#### CONCEPT OF ABATEMENT (2nd Proviso to Sec 153A)

Suppose a search is conducted on 30.06.2020 and following information is given:

1. **For AY 2015-2016:**
   - The A.O. made re-assessment u/s 147 on 10.01.2020 re-assessing the income at Rs. 70,00,000. The Assessee filed on appeal to CIT (A) and appeal is pending on 30.06.2020.
(2) **For AY 2016 – 2017 :-**
Re-Assessment under 147 was completed on 20th March, 2020 re-assessing the income at Rs. 50,00,000. No appeal has been filed.

(3) **For AY 2017 – 2018 :-**
Assessment under 143(3) was completed on 31.12.2019, assessing the income at Rs. 40,00,000. An appeal was filed against the assessment and CIT(A) reduces the income to Rs. 30,00,000 by an order passed on 20th June, 2020 u/s 250. No further appeal has been filed.

(4) **For A.Y. 2018 – 2019 :-**
Returned income (declared income) of Rs. 70,00,000 and assessment is pending on 30th June, 2020 u/s 147.

(5) **For A.Y. 2019 – 2020 :-**
Returned income was Rs. 55,00,000 and assessment is pending on 30th June, 2020 u/s 143 (3).

(6) **For A.Y. 2020 – 2021 :-**
No return has been filed on 30th June 2020.

Now, the A.O. shall assess or re-assess income of A.Y. 15 – 16 to A.Y. 2020 – 21 u/s 153A. Now let us say that in the search, A.O. finds concealed income of Rs. 20,00,000 in each years of above A.Y’s.

**Solution :-**

(1) **For A.Y. 2015 – 16 :-**
The appeal proceedings pending on 30th June 2020 shall not abate but shall continue.

(2) **For A.Y. 2016 – 17 :-**
Re-assessment completed on 20th March, 2020 shall not abate but shall remain.

(3) **For A.Y. 2017 – 18 :-**
Assessment completed on 31.12.2019 shall not abate but shall remain.

(4) **For A.Y. 2018 – 19 :-**
Assessment proceeding pending u/s 147 on 30th June, 2020 shall abate.

(5) **For A.Y. 2019 – 20 :-**
Assessment proceeding pending u/s 143(3) shall abate.

Under section 153A the A.O. shall assess or re-assess the income as under:-

(1) **A.Y. 2015 – 2016 :-**
Rs. 70,00,000 (+) Rs. 20,00,000 = Rs. 90,00,000

Assuming that appeal is pending at the time of passing the order u/s 153A. Suppose after passing an order u/s 153A, the CIT appeal reduces the income to Rs. 60,00,000. Now the order under 153A can be rectified u/s 154.

(2) **For A.Y. 2016 – 17 :-**
Rs. 50,00,000 (+) Rs. 20,00,000 = Rs. 70,00,000

(3) **For A.Y. 2017 – 18 :-**
Rs. 30,00,000 (+) Rs. 20,00,000 = Rs. 50,00,000

(4) **For A.Y. 2018 – 19 :-**
Rs. 70,00,000 (+) conceal income detected u/s 147 not assessed yet (+) Rs. 20L. {It is presumed that Rs. 20,00,000 found in search is in addition to income found u/s 147}.  

(5) For A.Y. 2019 – 20 :-

Rs. 55,00,000 (+) conceal income detected u/s 143(3) not assessed yet (+) Rs. 20L. {It is presumed that Rs. 20,00,000 found in search is in addition to income found u/s 143(3)}.  

FROM THE JUDICIARY  

S. R. BATLIBOI & CO. VS. DEPARTMENT OF INCOME TAX (INVESTIGATION)  
(DELHI HIGH COURT) [2010]  
The petitioner was a reputed firm of auditors and accountants. The laptops of two employees of the petitioner were seized by the Dy. Director in the course of conducting a search and seizure operation against the assessee. On the request of the Dy. Director, said employees provided him with the electronic data relating to three companies of the assessee group together with the print copies of the data. Nevertheless, the Dy. Director insisted on securing total and unrestricted access to the laptops, obviously in order to gain information and data of all the other clients of the petitioner. That request was refused by the petitioner. The seized laptops were sent by the respondents to the Central Forensic Science Laboratory (CFSL) which, however, could not ascertain the password and, accordingly, could not access the entire data on the laptops. The petitioner was thereupon asked to disclose the password, which it again declined and thereafter, the laptops were sealed in the presence of the said employees of the petitioner. The petitionary thereafter, filed instant writ petition seeking an appropriate writ to prevent the respondents from forcibly gaining or securing access to the data contained in two seized laptops.  

It was held that granting absolute access to the department of all the data even pertaining to the other clients of the petitioner having no dealings with the assessee group, would tantamount to grave professional misconduct and would be contrary to the Code of Ethics applicable upon the petitioner as well as the obligations contained in the Chartered Accountants Act, 1949, which prohibits them from disclosing confidential information to third parties.  

It could not be accepted that section 153C would entitle and empower the Dy. Director to seize any or all the articles, valuables or documents found during the course of the search, regardless of whether they are relevant for the purpose of assessment of the assessee on whom a search and seizure is conducted.  

It was argued that under section 153C, the department acts as a post office, viz., it sends the seized material to the concerned Assessing Officer. This proposition advanced by the revenue is legally acceptable so long as it is restricted to any person having dealings or transactions with the person who is the subject of the search and seizure operation. The material which is not connected with raided party must be ignored.  

The impugned summons were to be set aside, and the respondents were to be directed to forthwith return the laptops to the petitioner.


SECTION 153A(2): ADDED BY FINANCE ACT, 2008

– If any order of assessment or reassessment made under section 153A(1) has been annulled in any appeal,
– then, notwithstanding anything contained in section 153A(1) or section 153,
– the assessment or reassessment relating to any Assessment Year which has abated under the second proviso to section 153A(1)
– shall stand revived with effect from the date of receipt of the order of such annulment by the Commissioner
– Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Note: Refer summary for Explanation.

SECTION 153(8): TIME LIMIT FOR ASSESSMENT OR REASSESSMENT

– Notwithstanding the time limits for making assessment /reassessment under section 143(3)/144/147 given in section 153
– and notwithstanding the time limits given in section 153B
– the order of assessment or reassessment
– relating to any Assessment Year,
– which stands revived under section 153A(2),
– shall be made
– o within one year from the end of the month of such revival (revival takes place on the date of receipt of order of annulment by Commissioner of Income tax); or
– o within the time period specified in section 153B; or

WHICHEVER IS LATER.

ANALYSIS OF AMENDMENT MADE IN SECTION 153A AND 153C BY FINANCE ACT. 2012

(1) Rule 112F provides for the Class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessment or reassessment of the total income for six assessment years immediately preceding the assessment year relevant to the Previous Year in which search is conducted:

The class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted, shall be the cases—

(i) where, as a result of a search under section 132, a person is found to be in possession of any money, bullion, jewellery or other valuable articles or things, whether or not he is the actual owner of such money, bullion, jewellery etc.; and

(ii) where, such search is conducted in the territorial area of an assembly or Parliamentary constituency in respect of which a notification has been issued by Election Commission or where the assets so seized are connected in any manner to the ongoing election in an assembly or Parliamentary constituency:
Provided that this rule shall not be applicable to cases where such search under section 132 has taken place after the hours of poll so notified:

Provided further that this rule shall not be applicable to cases where any assessment or reassessment has abated under the second proviso to section 153A and where any assessment or reassessment has abated under section 153C.

Illustration:
The Election Commission has issued notification for conduct of Assembly elections in New Delhi on 10.12.2020. The assembly polls will end at 6:00 P.M. on 24.12.2020. The Director of Income tax conduct raids on 10 people and seize cash of Rs. 50 lakhs from each person. Now, proviso to section 153A/ 153C and Rule 112F shall apply if:

(i) Raid is conducted on or after 10.12.2020 and upto 6:00 P.M. on 24.12.2020.

(ii) Raid is conducted in territorial area of New Delhi.

(iii) If raid is conducted in Gurgaon/ Faridabad/ Ghaziabad and Assessing Officer is convinced that the seized cash relates to election in New Delhi.

Now if raid is conducted on 15.12.2020 in New Delhi and Assessing Officer is convinced that these 10 people have no financial worth and are simply holding cash for some political party:

- Assessing Officer need not issue notice under section 153A for any of the 6 Assessment Years i.e., Assessment Year 2015-2016 to Assessment Year 2020-2021.

- Assessing Officer can complete assessment under section 143(3) / 144 for Assessment Year 2021-2022.

- If the persons from whom cash is seized are not able to explain the source, Assessing Officer will invoke section 68 and deemed Rs. 50 Lakhs as income from unexplained credit. He will levy tax at flat rate of 60% under section 115BBE.

- If Assessing Officer wants to issue notice under section 153A for Assessment Year 2015-2016 to Assessment Year 2020-2021 he can do so. But if he finds that there is no use to issue notice under section 153A as these people are simply carriers, then he may not issue notice under section 153A for the 6 Assessment Years.
CHAPTER 20. TAXATION OF TRUST

Disclaimer: It is strictly recommended to do this chapter from compendium only as the language of this chapter is difficult for a student to understand.

AMENDMENT MADE BY FINANCE ACT 2018

Disallowance provisions under section 40(a)(ia) and section 40A(3) to apply to certain exempt entities [Sec. 10(23C) and 11]

For availing of exemption under section section 11 and 10(23C)(iv)/(v)/(vi)/(via), there is no restrictions on payments made in cash or by bearer cheque. Likewise, there is no check on whether such trusts or institutions follow the provisions of TDS.

- **Amendment** - A new explanation has been inserted in section 11 & 10(23C) with effect from the assessment year 2019-20. It provides that for the purpose of determining application of income, the provisions of sections 40(a)(ia) and 40A(3)/(3A), shall, mutatis mutandis, apply as they apply in computing the income chargeable under the head "Profits and gains of business or profession". For the previous years 2019-20 and 2020-21, XY Charitable Trust gives the following information -

<table>
<thead>
<tr>
<th></th>
<th>2019-20 Rs.</th>
<th>2020-21 Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income from property held in trust</td>
<td>7,00,000</td>
<td>11,00,000</td>
</tr>
<tr>
<td>Voluntary contributions (with specific direction that contributions shall form part of corpus of the trust)</td>
<td>6,00,000</td>
<td>8,00,000</td>
</tr>
<tr>
<td>Voluntary contributions (without any specific direction)</td>
<td>18,00,000</td>
<td>17,00,000</td>
</tr>
<tr>
<td>Expenditure -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Donation to other public charitable trusts [Note 1]</td>
<td>3,00,000</td>
<td>4,00,000</td>
</tr>
<tr>
<td>Income applied for charitable purposes during the previous year [Note 2]</td>
<td>10,00,000</td>
<td>16,00,000</td>
</tr>
</tbody>
</table>

Other points-

1. Donation of Rs. 3,00,000 includes (a) cash donation of Rs. 80,000 to PQ Charitable Trust.
2. Application of income of Rs. 10,00,000 includes (a) cash payment of Rs. 30,000, and (b) consultancy fee of Rs. 2,00,000 by an account-payee cheque to Z (a yoga instructor). On this consultancy fee, tax is not deducted at source during the financial year 2019-20. However, TDS is deducted/deposited on December 29, 2020.

<table>
<thead>
<tr>
<th></th>
<th>AY 20-21 Rs.</th>
<th>AY 21-22 Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from property held in trust</td>
<td>7,00,000</td>
<td>11,00,000</td>
</tr>
<tr>
<td>Voluntary contributions (with specific direction that contributions shall form part of corpus of the trust)</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>Voluntary contributions (without any specific direction)</td>
<td>18,00,000</td>
<td>17,00,000</td>
</tr>
<tr>
<td>Total income</td>
<td>25,00,000</td>
<td>28,00,000</td>
</tr>
<tr>
<td>Less: 15% set apart for future</td>
<td>3,75,000</td>
<td>4,20,000</td>
</tr>
<tr>
<td>Balance</td>
<td>21,25,000</td>
<td>23,80,000</td>
</tr>
<tr>
<td>Less: Application of income for charitable purposes -</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Donation to other public charitable trusts [Rs. 3,00,000 - cash donation: Rs. 80,000]</td>
<td>2,20,000</td>
<td>4,00,000</td>
</tr>
<tr>
<td>- Income applied for charitable purposes during the previous year [Rs. 10,0,000 - cash payment: Rs. 30,000 - payment without TDS : Rs. 60,000 (being 30% of consultancy fee paid without TDS)]</td>
<td>9,10,000</td>
<td>16,00,000</td>
</tr>
<tr>
<td>- Consultancy fee to yoga instructor (since tax is deposited during the previous year 2020-21, it is allowable as application of income for the previous year 2020-21)</td>
<td>-</td>
<td>60,000</td>
</tr>
<tr>
<td>Taxable income</td>
<td>9,95,000</td>
<td>3,20,000</td>
</tr>
</tbody>
</table>

**Illustration 1:**
During the previous year 2020-2021, a charitable trust derived income of **Rs. 6,70,600** from the property held under trust for charitable purposes. The trust actually spent only **Rs. 3,50,600** during the previous year 2020-2021. Determine the taxable income of the trust on the assumption that:

(a) the trust has not applied for the option under clause (2) of the Explanation to section 11(1), and

(b) the trust has applied for the option and has opted for applying the unutilized portion of income for charitable purposes during the next previous year, i.e., 2021-2022 and has actually spent **Rs. 67,800** during that previous year.

**Answer:**

**Previous Year 31.03.2021**

| Income from property held for charitable purposes | 6,70,600 |
| Less: 15% set apart for the future | 1,00,590 |
| | 5,70,010 |
| Less: Amount actually spent during the previous year | 3,50,600 |
| **Total Income** | **2,19,410** |

On the first assumption, **Rs. 2,19,410** is taxable for the assessment year 2021-2022 relevant to the previous year 2020-2021. On the second assumption, the total income of P/Y 31.03.2021 shall be NIL and **Rs. 1,51,610** (i.e., **Rs. 2,19,410 – Rs. 67,800**) will be treated as taxable income of the assessment year 2022-2023 relevant to the previous year 2021-2022.

**Illustration 2:**
During the accounting period ending **March 31, 2021** a charitable trust derived:

(a) income from property held for charitable purposes: **Rs. 4,40,000** (**Rs. 2,15,000** received in cash and the remaining balance of **Rs. 2,25,000** is to be received in the year 2022-2023)
(b) voluntary contribution: Rs. 7,05,000 (out of which Rs. 4,00,000 is with specific direction that it shall form part of corpus of the trust).

During the previous year 2020-2021, the trust spent only Rs. 70,000 for charitable purposes. Determine its taxable income on the assumption that the trust has exercised the option for applying the unrealized income of Rs. 2,25,000 in the year of receipt, i.e. 2022-2023, whereas it actually spends Rs. 18,000 in the year 2022-2023 and Rs. 32,000 in the year 2023-2024.

Answer: 

<table>
<thead>
<tr>
<th>Assessment Year 2021-2022</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from property held under trust for charitable purposes</td>
<td>4,40,000</td>
</tr>
<tr>
<td>Voluntary contributions (Rs. 7,05,000 – Rs. 4,00,000)</td>
<td>3,05,000</td>
</tr>
<tr>
<td>Total Income</td>
<td>7,45,000</td>
</tr>
<tr>
<td>Less: 15% set apart for future</td>
<td>1,11,750</td>
</tr>
<tr>
<td>Balance</td>
<td>6,33,250</td>
</tr>
<tr>
<td>Less: Amount spent during the previous year</td>
<td>70,000</td>
</tr>
<tr>
<td>Shortfall</td>
<td>5,63,250</td>
</tr>
<tr>
<td>Less: Amount not realised during the previous year for which option has been exercised under sub - clause (i) of clause (2) of Explanation to section 11(1)</td>
<td>2,25,000</td>
</tr>
<tr>
<td>Taxable income</td>
<td>3,38,250</td>
</tr>
</tbody>
</table>

Assessment Year 2024-2025 Previous Year 31.03.2024
(Previous Year next following the previous year in which the unrealised income of the previous year 2020-2021 is received)

<table>
<thead>
<tr>
<th></th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income received during the previous year 2022-2023</td>
<td>2,25,000</td>
</tr>
<tr>
<td>Less: Amount spent:</td>
<td></td>
</tr>
<tr>
<td>- during the previous year 2022-2023</td>
<td>18,000</td>
</tr>
<tr>
<td>- during the previous year 2023-2024</td>
<td>32,000</td>
</tr>
<tr>
<td>Amount deemed as income of the Assessment Year 2024-2025</td>
<td>1,75,000</td>
</tr>
</tbody>
</table>

FROM THE JUDICIARY:
Can Explanation to section 11(2) be applied in respect of the accumulation up to 15% referred to in section 11(1)(a), to treat the donation made to another charitable trust from the permissible accumulation upto 15%, as income of the trust?

DIT (Exemption) v. Bagri Foundation (Delhi)
Held, that 85% income which is accumulated cannot be donated. However, 15% which is set apart is not subject to any condition. If any amount is donated to other trust registered under section 12AA out of 15% accumulated income, then the amount donated cannot to be said to be violation of 11(2) and shall not be deemed as income of the trust.
Illustration: During the previous year 2020-2021, a charitable trust derived the following income:

- Voluntary contribution (out of Rs. 20,90,000 is with a specific direction that it shall form part of the corpus of the trust) 41,10,000
- Income from property held in trust 2,00,000

During the previous year 2020-2021, the trust spends Rs. 2,19,610 and sets apart Rs 7,46,000 for the purpose of construction of a charitable hospital up to March 31, 2026. Determine the taxable income of the trust on the assumption that the trust utilizes Rs. 4,65,000 up to March 31, 2027 for the purpose of construction of charitable hospital.

Answer: **ASSESSMENT YEAR 2021-2022** (i.e., Previous Year 2020-2021)

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from property held under trust</td>
<td>2,00,000</td>
</tr>
<tr>
<td>Add: Voluntary contribution (Rs 41,10,000 - Rs 20,90,000)</td>
<td>20,20,000</td>
</tr>
<tr>
<td>Total income</td>
<td>22,20,000</td>
</tr>
<tr>
<td>Less: 15% of Rs. 22,20,000</td>
<td>3,33,000</td>
</tr>
<tr>
<td>Balance</td>
<td>18,87,000</td>
</tr>
<tr>
<td>Less: Amount spent during 2020-2021</td>
<td>2,19,610</td>
</tr>
<tr>
<td>Short fall</td>
<td>16,67,300</td>
</tr>
<tr>
<td>Less: Amount set apart for charitable hospital under section 11(2)</td>
<td>7,46,000</td>
</tr>
<tr>
<td>Net income</td>
<td>9,21,390</td>
</tr>
</tbody>
</table>

Assessment Year 2027-28 (previous year 2026-27) (i.e., the previous year next following the previous year ending March 31, 2026):

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amount set apart</td>
<td>7,46,000</td>
</tr>
<tr>
<td>Less: Amount actually spent</td>
<td>4,65,000</td>
</tr>
<tr>
<td>Amount deemed as income of the assessment year 2027-28</td>
<td>2,81,000</td>
</tr>
</tbody>
</table>

**SECTION 11(5): MODES OF INVESTMENT OF TRUST MONEY**

(Do Not Try to Remember)

The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following, namely:

(1) Investment in Government Saving Certificates.
(2) Deposits with Post Office Savings Banks.
(3) Deposit with Scheduled banks or Co-operative Banks.
(4) Investment in units of the Unit Trust of India.
(5) Investment in Central or State Government Securities.
(6) Investments in debentures issued by or on behalf of any company or corporation. However, both the principal and interest thereon must have been guaranteed by the Central or the State Government.
(7) Investment or deposits in any public sector company. Where an investment is made in the shares of any public sector company and such public sector company ceases to be a public sector company, the investment so made shall be deemed to be an investment made for a period of three years from the date of such cessation and in the case of any other investment or deposit, till the date of its maturity.

(8) Investment in bonds of approved financial corporation providing long term finance for industrial development in India and eligible for deduction under section 36(1)(viii).

(9) Investment in bonds of approved public companies whose principal object is to provide long-term finance for construction or purchase of houses in India for residential purposes and eligible for deduction under section 36(1)(viii).

(10) Deposits with or investment in any bonds issued by a public company formed and registered in India with the main object of carrying on the business of providing long-term finance for urban infrastructure in India. "Long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years. "Urban infrastructure" means a project for providing potable water supply, sanitation and sewerage, drainage, solid waste management, road, bridges and flyovers or urban transport.

(11) Investment in immovable property excluding plant and machinery, not being plant and machinery installed in a building for the convenient occupation thereof.

(12) Deposits with Industrial Development Bank of India.

(13) Any other mode of investment or deposit as may be prescribed. Rule 17C specifies the following other modes: (1) Investments in units issued under any scheme of mutual fund referred to in section 10(23D); (2) Any transfer of deposits to Public Account of India; (3) Deposits made with an authority constituted in India or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages, or for both; (4) investment by way of acquiring equity shares of a ‘depository’; (5) investment by a recognized Stock Exchange, in the equity shares of a company promoted by it to acquire the membership rights of other stock exchanges, where at least 51% of the paid-up share capital is held by the Stock Exchange and the balance is held by its members; (6) investment by way of acquiring equity shares of an incubatee by an incubator; (7) investment by way of acquiring shares of National Skill Development Corporation; (8) investment in debt instruments issued by any infrastructure finance company registered with RBI; (9) investment in Stock Certificate as defined in of Sovereign Gold Bonds Scheme, 2015.

SECTION 11(6): DEPRECIATION SHALL NOT BE ALLOWED IF PURCHASE OF ASSET WAS ALREADY CLAIMED AS APPLICATION OF INCOME

- Where an asset
- the cost of acquisition of which has been claimed as application of income under section 11 for any previous year.
- then no deduction by way of depreciation or otherwise in respect of such asset shall be allowed while computing the income of any Previous Year

20.5
- and such depreciation shall not be considered as application of income while computing the income of any Previous Year.

(Added by Finance Act, 2014)

SECTION 11(7): EXEMPTION UNDER SECTION 10 NOT AVAILABLE EXCEPT UNDER SECTION 10(1) AND 10(23C)

- Where a trust has been granted registration under section 12AA/12AB (FA 2020)
- and registration is in force in the Previous Year
- then the trust cannot claim any exemption under any provision of section 10 except under section 10(1), section 10(23C) and section 10(46) for that Previous Year. (FA 2020)

Provided that such registration shall become inoperative from the date on which the trust or institution is approved under clause (23C) of section 10 or is notified under clause (46) of the said section, as the case may be, or the date on which this proviso has come into force, whichever is later. (Added by Finance Act 2020)

Provided further that the trust or institution, whose registration has become inoperative under the first proviso, may apply to get its registration operative under section 12AB subject to the condition that on doing so, the approval under clause (23C) of section 10 or notification under clause (46) of the said section, as the case may be, to such trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it shall not be entitled to exemption under the respective clauses. (Added by Finance Act 2020)

KEY NOTES:
1. Section 10(1) exempts agricultural income and trust can claim exemption under section 10(1) along with exemption section 11 & 12
2. Exemption under section 10(23C) is similar to exemption under section 11 & 12 and it is available to certain big trust who are approved by Central Government.
3. Section 10(46) gives exemption to entities which are established or constituted under a Central or State Act or by a Central or State Government.
4. Trust cannot claim any other exemption of section 10 while computing exemption under section 11 & 12.

SECTION 12A: CONDITIONS FOR APPLICABILITY OF SECTIONS 11 & 12

The income of a Charitable or Religious Trust or Institution is exempt under Sections 11 and 12 of the Income tax Act subject to the limits and conditions specified therein. Section 12A prescribes that the provisions of Section 11 and 12 shall be applicable to a Trust or Institution only if the following conditions are satisfied:

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and manner to the Commissioner and such trust or institution is registered under section 12AA.

The provisions of section 11 & 12 shall apply in relation to income of such trust or institutions from the assessment year immediately following the financial year in which such application is made. Therefore, if application for registration of trust is
made on 31.12.2020, the provisions of section 11 & 12 shall apply for Assessment Year 2021-2022 i.e., Previous Year 31.3.2021 and future Assessment Years.

**AMENDMENT MADE BY FINANCE ACT 2020**

The following clause shall be inserted with effect from the 1st day of June, 2020, namely:—

“12A(1)(ac) - Notwithstanding anything contained in clauses (a) to (ab), the person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution,—

(i) where the trust or institution is registered under section 12A [as it stood immediately before its amendment by the Finance (No. 2) Act, 1996] or under section 12AA, [as it stood immediately before its amendment by the Finance Act, 2020] within three months from the date on which this clause has come into force;

(ii) where the trust or institution is registered under section 12AB and the period of the said registration is due to expire, at least six months prior to expiry of the said period;

(iii) where the trust or institution has been provisionally registered under section 12AB, at least six months prior to expiry of period of the provisional registration or within six months of commencement of its activities, whichever is earlier;

(iv) where registration of the trust or institution has become inoperative due to the first proviso to sub-section (7) of section 11, at least six months prior to the commencement of the assessment year from which the said registration is sought to be made operative;

(v) where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, within a period of thirty days from the date of the said adoption or modification;

(vi) in any other case, at least one month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought, and such trust or institution is registered under section 12AB.

(b) Where the total income of the Trust or Institution computed without giving effect to the provisions of sections 11 and 12 exceeds Rs. 2,50,000 in any previous year, then the accounts of the Trust or Institution for that year should be audited by a Chartered Accountant and the report of such audit should be furnished before the specified date referred to in Sec 44AB.
Provided that the provisions of sections 11 and 12 shall apply to a trust or institution, where the application is made under—

(a) sub-clause (i) of clause (ac) of sub-section (1), from the assessment year from which such trust or institution was earlier granted registration;

(b) sub-clause (iii) of clause (ac) of sub-section (1), from the first of the assessment years for which it was provisionally registered; (Added by Finance Act 2020)

Provided further that where registration has been granted to the trust or institution under section 12AA or 12AB,

then,

the provisions of sections 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year.

Provided also that no action under section 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year.

Provided also that provisions contained in the first and second proviso shall not apply in case of any trust or institution which was refused registration, or the registration granted to it was cancelled at any time under section 12AA or 12AB.

SECTION 12AA: PROCEDURE FOR REGISTRATION

The Commissioner, on receipt of an application for registration of a Trust or Institution made under Section 12A, shall

(a) Call for such documents and information from the Trust or Institution as he thinks necessary in order to satisfy himself about the genuineness of the activities of the Trust or Institution and may make further enquiries.

(b) After satisfying himself about the objects of the Trust or Institution and the genuineness of its activities:

(i) Pass an order in writing registering the Trust or Institution,
(ii) If he is not satisfied, pass an order in writing refusing to register the Trust or Institution.

No order of refusal to register the Trust shall be passed unless the applicant has been given a reasonable opportunity of being heard.

(2) Every order granting or refusing registration shall be passed before the expiry of six months from the end of the month in which application was received under Section 12A. If no order is passed within the said six months then it shall be deemed that the Trust has been registered.

(3) Where a trust or an institution has been granted registration under section 12AA and subsequently the Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution.

(4) Without prejudice to the provisions of sub-section (3), where a trust or an institution has been granted registration under clause (b) of sub-section (1) and subsequently it is noticed that the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13, then, the Commissioner may by an order in writing cancel the registration of such trust or institution:

Provided that the registration shall not be cancelled under this sub-section, if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner

(5) *Nothing contained in this section shall apply on or after the 1st day of June, 2020.*

**ANALYSIS**

While discussing section 11(7), the trust in the Previous Year 31-3-2021 deliberately invest Rs. 10,000 in equity shares which is prohibited by section 13(1).

Now as per provisions of section 13(1), the provisions of section 11 & 12 shall not apply, and trust will not get exemption under section 11 and 12 for Previous Year 31-3-2021. But prior to amendment by Finance Act, 2014, Commissioner of Income-tax could not cancel the registration of the trust for Previous Year 31-3-2021. The only consequence was that the trust will not get exemption under section 11 & 12 for Previous Year 31-3-2021. The trust therefore claims exemption under section 10. Next year i.e. Previous Year 31-3-2022 when the trust has no such incomes which are exempt under section 10, trust will claim exemption under section 11 & 12.

But after the amendment by Finance Act, 2014, the Commissioner of Income-tax will cancel the Registration of the Trust for Previous Year 31-3-2021 and future Assessment Years.
Practically, registration once cancelled is not granted again. Therefore, assessee will lose exemption under section 11 & 12 for Previous Year 31-3-2021 and all future Assessment Years.

**AMENDMENT MADE BY FINANCE ACT (NO.2) 2019**

**Cancellation of registration of the Trust or Institution**

Section 12AA of the Act prescribes for manner of granting registration in case of trust or institution for the purpose of availing exemption in respect of its income under section 11 of the Act, subject to conditions contained under sections 11, 12, 12AA and 13. Section 12AA also provides for manner of cancellation of said registration. This section provides that cancellation of registration can be on two grounds:

(a) the Principal Commissioner or the Commissioner is satisfied that activities of the exempt entity are not genuine or are not being carried out in accordance with its objects; and

(b) it is noticed that the activities of the exempt entity are being carried out in a manner that either whole or any part of its income would cease to be exempt.

In order to ensure that the trust or institution do not deviate from their objects, it is proposed to amend section 12AA of the Income-tax Act, so as to provide that,-

(i) at the time of granting the registration to a trust or institution, the Principal Commissioner or the Commissioner shall, inter alia, also satisfy himself about the compliance of the trust or institution to requirements of any other law which is material for the purpose of achieving its objects;

(ii) where a trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A and subsequently it is noticed that the trust or institution has violated requirements of any other law which was material for the purpose of achieving its objects, and the order, direction or decree, by whatever name called, holding that such violation has occurred, has either not been disputed or has attained finality, the Principal Commissioner or Commissioner may, by an order in writing, cancel the registration of such trust or institution after affording a reasonable opportunity of being heard.

These amendments shall be effective from 1st September 2019.

**DIT (Exemptions) v. Meenakshi Amma Endowment Trust (Kar.)**

Where a charitable trust applied for issuance of registration under section 12AA within a short time span (nine months, in this case) after its formation, can registration be denied by the concerned authority on the ground that no charitable activity has been commenced by the trust?

The High Court observed that, with the moneys available with the trust, it cannot be expected to carry out activity of charity immediately after its formation. Consequently, in such a case, it cannot be concluded that the trust has not intended to do any activity of charity.

In such a situation, the objects of the trust as mentioned in the trust deed have to be taken into consideration by the authorities for satisfying themselves about the genuineness of the trust and not the activities carried on by it.
Later on, if it is found from the subsequent returns filed by the trust, that it is not carrying on any charitable activity, it would be open to the concerned authorities to withdraw the registration granted or cancel the registration as per the provisions of section 12AA(3).

The registration cannot be denied on the ground that the trust has not carried out any charitable activity so far in the short span of time after its formation.

**U.P. DISTILLERS ASSOCIATION (UPDA) V. CIT [2017] (DEL)**

*Is the cancellation of registration of a trust under section 12AA, on the basis of search conducted in the premises of its Secretary General and the statement recorded by him under section 132(4), valid?*

**Facts of the case:** A search and seizure operation took place in the premises of the Secretary General of the assessee, that is, Uttar Pradesh Distillers Association, in February 2006. During the search, the Secretary General’s statement was recorded under section 132(4) of the Act. The statement was retracted after two years. In the meanwhile, the Commissioner of Income-tax (CIT) cancelled the assessee’s registration under section 12AA(3) on the basis of the search operation and the statement made. The order was upheld by the Appellate Tribunal. The assessee contended that Secretary General’s statement was made in the course of search in respect of his premises and not those of the assessee. Hence, the Secretary General’s statement was not attributable to the assessee nor could the materials indicated by him be the basis for cancellation of registration of the trust under section 12AA.

**Issue:** The issue under consideration is whether the cancellation of registration under section 12AA as a charitable trust on the basis of search conducted in the premises of the Secretary General of the assessee-trust and the statement recorded by him under section 132(4) is valid.

**Delhi High Court’s Observations:**

1. The Court dismissed the appeal to hold that although the premises, in which the search under section 132 took place, belonged to the Secretary General, he virtually ran the assessee-trust’s activities from the same premises.
2. The information which he provided in the course of the search pointed out to the activities of the assessee-trust and not to his own activities.
3. Further, the Tribunal had expressly recorded that the search proceedings took place in the context of section 153A, in the very premises of the Secretary General, with respect to the assessee-trust.

**Delhi High Court’s Decision:** The Delhi High Court, accordingly, held that cancellation of the trust’s registration under section 12AA on the basis of search conducted in the premises of the Secretary General and the statement recorded under section 132(4) from him, is valid.

**Note:** The special leave petition filed against the aforementioned decision of the Delhi High Court was dismissed by the Supreme Court.
AMENDMENT MADE BY FINANCE ACT 2017

Clarity of procedure in respect of change or modifications of object and filing of return of income in case of entities exempt under sections 11 and 12

Where a trust or an institution has been granted registration under section 12AA and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, it shall be required to obtain fresh registration by making an application within a period of thirty days from the date of such adoption or modifications of the objects in the prescribed form and manner.

Section 12A provide for further condition that the person in receipt of the income chargeable to income-tax shall furnish the return of income within the time allowed under section 139(1) of the Act.

AMENDMENT MADE BY FINANCE ACT 2020

After section 12AA of the Income-tax Act, the following section shall be inserted with effect from the 1st day of June, 2020, namely:—

“12AB. (1) The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall,—

(a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the trust or institution for a period of five years;

(b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause (iv) or sub-clause (v) of the said clause,—

(i) call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about—

(A) the genuineness of activities of the trust or institution; and

(B) the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects;

(ii) after satisfying himself about the objects of the trust or institution and the genuineness of its activities under item (A), and compliance of the requirements under item (B), of sub-clause (i),—

(A) pass an order in writing registering the trust or institution for a period of five years; or

(B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard;

(c) where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the trust or institution for a period of three years from the assessment year from which the registration is sought,
and send a copy of such order to the trust or institution.

(2) All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be an application made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.

(3) The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.

(4) Where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner or Commissioner is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution after affording a reasonable opportunity of being heard.

(5) Without prejudice to the provisions of sub-section (4), where registration of a trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that—

(a) the activities of the trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such trust or institution due to operation of sub-section (1) of section 13; or

(b) the trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality,

then, the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being heard, cancel the registration of such trust or institution.”

SECTION 11(1A): CAPITAL GAINS DEEMED TO BE APPLIED FOR CHARITABLE/RELIGIOUS PURPOSES

For the purposes of sub-section (1), -

where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilised for acquiring another capital asset to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely: —

(i) where the whole of the net consideration is utilised in acquiring the new capital asset, the whole of such capital gain;
(ii) where only a part of the net consideration is utilised for acquiring the new capital asset, so much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset;

Explanation. — In this sub-section, —

(i) “cost of the transferred asset" means the aggregate of the cost of acquisition (as ascertained for the purposes of sections 48 and 49) of the capital asset which is the subject of the transfer and the cost of any improvement thereto within the meaning assigned to that expression in section 55;

(ii) "net consideration" means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

**ANALYSIS**

**Illustration:** A trust holds a capital asset, income of which is fully utilized for charitable purposes. The capital asset is transferred on March 1, 2021 and the capital gain is calculated as under:

<table>
<thead>
<tr>
<th>Sale Proceeds</th>
<th>9,80,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less: Cost (i.e. cost of acquisition and cost of improvement)</td>
<td>6,00,000</td>
</tr>
<tr>
<td>Less: Expenses on transfer</td>
<td>20,000</td>
</tr>
<tr>
<td>Capital Gain as per section 45 without giving any exemption</td>
<td>3,60,000</td>
</tr>
</tbody>
</table>

In this case, net sale consideration is Rs. 9,60,000(i.e. Rs. 9,80,000 –Rs. 20,000). Suppose, the trust acquires another capital asset for Rs. 9,60,000 (or more), then the entire capital gain of Rs. 3,60,000 will be exempt from tax. If, however, the amount invested is less than Rs. 9,60,000 then the exemption will be lower than Rs.3,60,000. The amount of exemption shall be determined as follows:

<table>
<thead>
<tr>
<th>Case</th>
<th>Amount of investment in the new capital asset</th>
<th>Cost of the old asset which is transferred</th>
<th>Amount exempt as the amount is applied for charitable purposes</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>(2)</td>
<td>[(1) - (2)]</td>
<td></td>
</tr>
<tr>
<td>Case 1</td>
<td>Rs. 9,60,000</td>
<td>Rs. 6,00,000</td>
<td>Rs. 3,60,000</td>
</tr>
<tr>
<td>Case 2</td>
<td>Rs. 9,00,000</td>
<td>Rs. 6,00,000</td>
<td>Rs. 3,00,000</td>
</tr>
<tr>
<td>Case 3</td>
<td>Rs. 7,00,000</td>
<td>Rs. 6,00,000</td>
<td>Rs. 1,00,000</td>
</tr>
<tr>
<td>Case 4</td>
<td>Rs. 6,00,000</td>
<td>Rs. 6,00,000</td>
<td>NIL</td>
</tr>
<tr>
<td>Case 5</td>
<td>Rs. 5,00,000</td>
<td>Rs. 6,00,000</td>
<td>NIL</td>
</tr>
</tbody>
</table>

**SECTION 13(1): SECTION 11 NOT TO APPLY IN CERTAIN CASES**

Nothing contained in sections 11 & 12 shall operate so as to exclude from the total income of the previous year of the person in receipt of:
Section 13(1)(a): Income for private religious purposes: Entire income from property held under a trust for private religious purposes which does not enure for the benefit of the public is not eligible for exemption under section 11 or 12.

Section 13(1)(b): Income for the benefit of particular religious community: Entire income of a charitable trust/ institution created for the benefit of any particular religious community or caste is not eligible for exemption under section 11 or 12. A trust or institution created or established for the benefit of Scheduled Castes, Backward Classes, Scheduled Tribes or women and children shall not be deemed to be a trust or institution created or established for the benefit of a religious community or caste for this purpose.

Section 13(1)(c): Income for the benefit of specified persons: If any part of income of a religious / charitable trust/ institution enures directly or indirectly for the benefit of any person specified in section 13(3) or any property of the trust or institution is during the previous year applied or used directly or indirectly for the benefit of any person referred to in section 13(3); then entire income of such trust is not eligible for exemption under section 11 or 12.

Therefore, entire income of a trust/ institution is not eligible for exemption under section 11 or 12 if income/ property is used/ applied, during the relevant year, for the direct/ indirect benefit of the author of the trust and other persons mentioned in section 13(3).

Section 13(1)(d): Funds not invested in section 11(5) securities/ deposits: Entire income of a trust/ institution is not eligible for exemption under section 11 & 12, if its funds are invested/ deposited otherwise than as specified under section 11(5).

It has been clarified that investment in
(i) Shares of public sector company; and
(ii) Shares of depository; and
(iii) Units of mutual funds will not amount to contravention to section 13(1)(d).

IN ALL THE ABOVE CASES ENTIRE INCOME OF THE TRUST WILL BE TAXABLE AT MMR.

Exemption not to be denied to charitable trusts providing educational or medical facilities to specified persons [Section 13(6)] - A charitable or religious trust running an educational institution or a medical institution or a hospital shall not be denied the benefit of exemption under section 11 merely due to the reason that the benefit of educational or medical facilities have been provided to the specified persons referred to in section 13(3). However, the value of such facilities provided to such specified persons either free of cost or at a concessional rate would be deemed to be the income of the trust. Such income would not be eligible for exemption under section 11.
SECTION 13(3): MEANING OF SPECIFIED PERSONS

For the purposes of section 13 the following are specified persons:

(a) the author of the trust or the founder of the institution;
(b) any person who has made a total contribution (up to the end of the relevant previous year) of an amount exceeding **Rs. 50,000** (substantial contributor);
(c) where such author or founder or substantial contributor is an HUF, a member of HUF;
(cc) any trustee of the trust or manager (by whatever name called) of the institution;
(d) any relative of such author, founder, substantial contributor, member, trustee or manager; and
(e) any concern in which any of the persons referred to above has a substantial interest.

**Meaning of Substantial Interest** - For the aforesaid provisions, a person will be deemed to have substantial interest in a company if he (or along with "specified persons" mentioned above) beneficially holds at least 20% equity shares capital of the company at any time during the previous year. In the case of a concern other than a company, a person will be deemed to have substantial interest, if he (or along with "specified persons" mentioned above) is entitled to at least 20% of the profits of such concern at any time during the previous year.

SECTION 13(8): NON-APPLICABILITY OF SECTION 11 & 12

Section 13(8) has been added by Finance Act, 2012 which provides as under:

Nothing contained in section 11 or section 12 shall operate so as to exclude any income from the total income of the previous year of the person in receipt thereof if the provisions of the first proviso to section 2(15) become applicable in the case of such person in the said previous year.

SECTION 10(23C) VIS-A-VIS SECTION 11 & 12

Section 10(23C) is similar to section 11 & 12. Exemption under section 10(23C) is available to certain large trusts which are to be approved by Central Government for the purpose of section 10(23C). Conditions of 85% application, investment in specified modes etc. as contained in section 11 & 12 are also there in section 10(23C).

Amendments similar to section 11(6) and 11(7) have also been made in section 10(23C) by the Finance Act, 2014.

ANONYMOUS DONATIONS

SECTION 13(7): SECTION 11 OR 12 NOT TO APPLY IN CASE OF ANONYMOUS DONATION

Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBCon which tax is payable in accordance with the provisions of that section”.

20.16
Illustration: (MUST DO BEFORE EXAM)

Mani Foundations, a charitable trust registered under section 12AA of the Income-tax Act, 1961, run schools for primary and secondary education. The following particulars pertaining to the previous year 2020-21 are furnished to you by the trust:

<table>
<thead>
<tr>
<th>Sr No.</th>
<th>Particulars</th>
<th>Rs. (in lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i)</td>
<td>Gross receipts from students towards tuition fees, development fees, laboratory fees etc.</td>
<td>200</td>
</tr>
<tr>
<td>(ii)</td>
<td>Voluntary contributions received from public (including anonymous donation Rs. 5 lakhs)</td>
<td>25</td>
</tr>
<tr>
<td>(iii)</td>
<td>Government grants</td>
<td>8</td>
</tr>
<tr>
<td>(iv)</td>
<td>Donation given towards Voluntary Donations</td>
<td>2</td>
</tr>
<tr>
<td>(v)</td>
<td>Amount applied for the purpose of schools</td>
<td>90</td>
</tr>
<tr>
<td>(vi)</td>
<td>Included in (v) above, a sum of 5 lakhs, being the amount applied for the benefit of the founder of the trust.</td>
<td></td>
</tr>
<tr>
<td>(vii)</td>
<td>The trust set apart Rs. 55 lakhs for acquiring a building to expand its schools. But the amount was paid in December 2021 when the sale deed was registered in its name</td>
<td></td>
</tr>
<tr>
<td>(viii)</td>
<td>Excess of expenditure over income in the previous year 2019-20</td>
<td>25</td>
</tr>
</tbody>
</table>

Compute the total income of the trust for the assessment year 2021-22 in order to avail maximum benefits within the four corners of law.

**Answer:**

Computations of total income of Mani Foundations for the A.Y.2021-22

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross receipts from students towards tuition fees, development fees etc.</td>
<td>2,00,00,000</td>
<td></td>
</tr>
<tr>
<td>Government Grants (taxable, since only grant for the purpose of corpus of a trust established by the Central or State Government is excluded from the definition of income)</td>
<td>8,00,000</td>
<td></td>
</tr>
</tbody>
</table>
| ![Note - Government Grants would be exempted based on the assumption that Mani Foundations is set up by the Central or State Government and the grant is towards the corpus of the trust](note)
Voluntary contributions (other than anonymous donations) [Rs. 25 lakh–Rs. 5 lakh] | 20,00,000  |          |
|                                                                           | 2,28,00,000 |          |
| **Add:** Anonymous donations [to the extent not chargeable to tax@30% under section 115BBC(1)(i)] [See Note below] | 1,25,000   |          |
|                                                                           | 2,29,25,000 |          |

20.17
### Taxation of Trust

**Less:** 15% of income eligible for being set apart without any condition | 34,38,750
---|---

**Less:** Amount applied for charitable purposes

- Amount applied for the purpose of schools (excluding amount applied for the benefit of the founder) = Rs. 90 lakh
  - Rs. 5 lakh
  
- Amount set apart for acquiring a building to expand its schools
  
  [The word "applied" used in section 11 means that the income is actually applied for the charitable purposes of the trust. The word "applied" does not necessarily imply "spent". Even if a certain amount is irretrievably earmarked and allocated for charitable purposes, the said amount can be deemed to have been applied for charitable purposes.]

- Voluntary Donations | 2,00,000
- Excess of expenditure over income in the P.Y.2019-20 | 25,00,000

**Add:** Amount applied for the benefit of the founder of the trust chargeable to tax under section 12(2) read with section 13(6) | 5,00,000

Anonymous donation taxable @30% under section 115BBC(1)(i) [See Note below] | 3,75,000

**Total Income of the trust (including anonymous donation taxable@30%)** | 36,61,250

**Note** - As per section 115BBC(1)(i), the anonymous donations in excess of the higher of the following would be subject to tax@30%:
- Rs. 1.25 lakh, being 5% of the total donations received i.e., 5% of Rs. 25 lakh; or Rs. 1 lakh

Therefore, anonymous donations of Rs. 3.75 lakh (Rs. 5 lakh – Rs. 1.25 lakh) would be subject to tax@30% under section 115BBC(1)(i).

Such anonymous donations which are subject to tax@30% are not eligible for the benefit of exclusion from total income under sections 11 and 12.

**[Alternate Answer]** – As per the plain reading of section 13(7), it is possible to take a view that the entire anonymous donations may not be eligible for benefit of exclusion from total income under sections 11 and 12. If this view is taken, then Rs. 1.25 lakhs should not be added to Rs. 228 lakhs. Accordingly, Rs. 34.20 lakhs, being 15% of Rs. 228 lakhs would be the income eligible for accumulation without any condition. The total income of the trust (including anonymous donations) would be Rs. 36.80 lakhs.

***************************************************************************

**20.18**
CHAPTER 21. MINIMUM ALTERNATE TAX

SECTION 115JB(1): CHARGING SECTION

Notwithstanding anything contained in any other provisions of the Income-tax Act, where in the case of a company, the income-tax, payable on the total income as computed under the Income-tax Act in respect of a previous year relevant to assessment year, is less than 15% of its book profits, such book profits shall be deemed to be the total income of the assessee and the tax payable on such total income shall be the amount of income-tax at the rate of 15%.

(Amendment made by Ordinance on 20th September 2019)

SECTION 115JB(2): PREPARATION OF PROFIT & LOSS ACCOUNT

Every assessee, —

(a) being a company, other than a company referred to in clause (b), shall, for the purposes of this section, prepare its statement of profit and loss account for the relevant previous year in accordance with the provisions of Schedule III to the Companies Act, 2013; or

(b) being a company, to which the second proviso to sub-section (1) of section 129 of the Companies Act, 2013 is applicable, shall, for the purposes of this section, prepare its statement of profit and loss account for the relevant previous year in accordance with the provisions of the Act governing such company.

(Amended by Finance Act, 2012)

Provided that while preparing the annual accounts including profit and loss account –

(i) the accounting policies;
(ii) the accounting standards adopted for preparing such accounts including profits and loss account;
(iii) the method and rates adopted for calculating the depreciation,

shall be the same as have been adopted for the purpose of preparing such accounts including profit and loss account as laid before the company at its annual general meeting in accordance with section 129 of the Companies Act, 2013.

Provided further that where a company has adopted or adopts the financial year under the Companies Act, 2013 which is different from the previous year under the Income Tax Act,-

(i) the accounting policies;
(ii) the accounting standards adopted for preparing such accounts including profit and loss account;
(iii) the method and rates for calculating the depreciation,

shall correspond to the accounting policies, accounting standards and the method and rates for calculating depreciation which have been adopted for preparing such accounts including profit and loss account for such financial year or part of the financial year falling within the relevant previous year.
EXPLANATION 1 TO SECTION 115JB: COMPUTATION OF BOOK PROFITS

For the purposes of this section, "book profit" means the profit as shown in the statement of profit and loss account for the relevant previous year prepared as per sub-section (2) above, AS INCREASED BY-

(a) the amount of income tax paid or payable, and the provision thereof; or

It has been clarified by Finance Act, 2008 that for the purpose of clause (a) to Explanation 1, the amount of income tax shall include -

(i) any tax on distributed profits under section 115-O or on distributed income section 115R;
(ii) any interest charged under this Act;
(iii) Health & Education Cess.
(iv) Surcharge.

ANALYSIS

1. Income tax and provision thereof shall be added back while computing book profits. (Same is also added back while computing the total income).

2. Corporate Dividend Tax paid or payable under section 115-O represents additional income tax and shall be added back. (Same is also added back while computing the total income).

3. Surcharge, Health & Education Cess on income-tax also constitutes income-tax and shall be added back. (Same is also added back while computing the total income).

4. Any interest paid under the Income tax Act e.g., interest under section 234A/B/C/D, interest for delay in deposit of TDS etc. shall be added back while computing the book profits. (Same is also added back while computing the total income).

5. However, interest payable under the Wealth Tax Act or any other act shall not be added back while computing the book profits. (Interest under Wealth-tax Act is added back while computing the total income).

6. Wealth-tax, penalties and interest under the Wealth-tax Act and penalties under Income Tax Act and penalties under other laws debited to P & L A/c shall not be added back although these are disallowable while computing the total income.

7. Securities Transaction Tax does not represent income-tax and shall not be added back. [The same is allowable while computing the total income under section 36(1)(xv). However, STT is to be disallowed while computing total income if the income from share/ units is assessable as capital gains.]

8. Commodities Transaction tax does not represent Income tax and shall not be added back. [The same is allowed while computing the total income under section 36]

(b) the amounts carried to any reserves by whatever name called

(c) the amount or amounts set aside to provisions made for meeting liabilities, other than ascertained liabilities; that means provisions made to meet unascertained liabilities) or

(d) the amount by way of provision for losses of subsidiary companies; or
(e) the amount or amounts of dividends paid or proposed; or

(f) the amount or amounts of expenditure relatable to any income to which section 10 or section 11 or section 12; or

(fa) the amount or amounts of expenditure relatable to, income, being share of the assessee in the income of an association of persons or body of individuals, on which no income tax is payable in accordance with the provisions of section 86; or

(fb) the amount or amounts of expenditure relatable to income accruing or arising to an assessee, being a Foreign Company, from,-

(A) The capital gains arising on transactions in securities; or

(B) The interest, royalty or fees for technical services chargeable to tax at the Rate or rates specified in Chapter XII;

if the income tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, it is a rate less than the rate specified in sub-section (1); or

(fc) the amount representing notional loss on transfer of a capital asset, being share or a special purpose vehicle to a business trust in exchange of units allotted by the trust referred to in clause (xvii) of section 47 or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of units referred to in clause (xvii) of section 47;

(To be discussed later with Business Trust)

(fd) the amount or amounts of expenditure relatable to income by way of royalty in respect of patent chargeable to tax under section 115BBF;

(g) the amount of depreciation,

(h) the amount of deferred tax and the provision therefor,

(i) the amount or amounts set aside as provision for diminution in the value of any asset,  
(Added by Finance Act, 2009 w.r.e.f Assessment Year 2001-02)

(j) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset,

(k) the amount of gain on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause.  
(To be discussed later with Business Trust)

if any amount referred to in clauses (a) to (i) is debited to the statement of profit and loss account or if any amount referred to in clause (j) is not credited to the statement of profit and loss account, and AS REDUCED BY,-
(i) the amount withdrawn from any reserves or provisions if any such amount is credited to the statement of profit and loss account:

Provided that where this section is applicable to an assessee in any previous year, the amount withdrawn from reserves created or provisions made in a previous year shall not be reduced from the book profit unless the books profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn).

In other words, as per the proviso, any amount withdrawn from reserve credited to profit and loss account shall be reduced from the book profits only if such reserve has been created out of the book profits of such year i.e., reserve has been created by debiting the Profit & Loss Account.

(ii) the amount of income to which any of the provisions of sections 10 or section 11 or section 12 apply, if any such amount is credited to the statement of profit and loss account; or

(iia) the amount of depreciation debited to the statement of profit and loss account (excluding the depreciation on account of revaluation of assets); or

(iiib) the amount withdrawn from revaluation reserve and credited to statement of profit and loss account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred to in clause (iia); or

(iiic) the amount of income, being the share of the assessee in the income of an association of persons or body of individuals, on which no income-tax is payable in accordance with the provisions of section 86, if any such amount is credited to the statement of profit and loss account; or

(iid) the amount of income accruing or arising to an assessee, being a Foreign Company, from,-

(A) The capital gains arising on transactions in securities; or
(B) The interest, royalty or fees for technical services chargeable to tax at the rate or rates specified in Chapter XII,

If such income is credited to the statement of profit and loss account and the income-tax payable thereon in accordance with the provisions of this Act, other than the provisions of this Chapter, is at a rate less than the rate specified in sub section (1); or

(iiie) the amount representing,-

(A) Notional gain on transfer of a capital asset, being share of special purpose vehicle to a business trust in exchange of units allotted by that trust referred to in clause (xvii) of section 47; or
(B) Notional gain resulting from any change in carrying amount of said units; or
(C) Gain on transfer of units referred to in clause(xvii) of section 47,
If any, credited to the statement of profit and loss account; or

*(To be discussed later with Business Trust)*

(iif) the amount of loss on transfer of units referred to in clause (xvii) of section 47 computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of shares at the time of exchange where such shares are carried at a value other than the cost through profit or loss account, as the case may be;

*(To be discussed later with Business Trust)*

(iig) the amount of income by way of royalty in respect of patent chargeable to tax under section 115BBF;

(iii) the amount of loss brought forward or unabsorbed depreciation, whichever is less as per books of account.

Explanation: For the purposes of this clause:-

(a) LOSS SHALL NOT INCLUDE DEPRECIATION

(b) IF THE AMOUNT OF LOSS BROUGHT FORWARD OR UNABSORBED DEPRECIATION IS NIL, then nothing shall be deducted under this clause

---

**AMENDMENT MADE BY FINANCE ACT 2018**

Section 115JB provides for levy of a minimum alternate tax (MAT) on the "book profits" of a company. In computing the book profit, it provides, inter alia, for a deduction in respect of the amount of loss brought forward or unabsorbed depreciation, whichever is less, as per books of account. Consequently, where the loss brought forward or unabsorbed depreciation is nil no deduction is allowed. This non-deduction is a barrier to rehabilitating companies seeking insolvency resolution.

**Amendment** - In view of the above, section 115JB has been amended (with effect from the assessment year 2018-19) to provide that the aggregate amount of unabsorbed depreciation and loss (excluding unabsorbed depreciation) brought forward shall be allowed to be reduced from the book profit, if a company's application for corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the Adjudicating Authority.

Consequently, a company whose application has been admitted would henceforth be entitled to reduce the loss brought forward (excluding unabsorbed depreciation) and unabsorbed depreciation for the purposes of computing book profit under section 115JB.

Also Refer Sec 79 later on for amendment made by Finance Act (No.2) 2019.

(iv) the amount of profits of sick industrial company for the assessment year commencing from the assessment year relevant to the previous year in which the said company has become a sick industrial company under section 17 of the Sick Industrial Companies (Special Provisions) Act, 1985 and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.
Key Note:
For the purposes of this clause, "net worth" shall have the meaning assigned to it in section 3 of the Sick Industrial Companies (Special Provisions) Act, 1985.

(v) the amount of deferred tax, if any such amount is credited to profit and loss account.

**SECTION 115JB(3): CARRY FORWARD OF LOSSES & DEPRECIATION**

Nothing contained in section 115JB shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of section 32 or section 72 or section 73 or section 74 or section 74A.

THE COMPANY CAN CARRY FORWARD LOSSES AND DEPRECIATION TO THE EXTENT IT COULD HAVE CARRIED FORWARD HAD SECTION 115JB NOT BEEN THERE.

**SECTION 115JB(4): FURNISHING OF REPORT**

Every company to which this section applies shall furnish a report from a Chartered Accountant in the prescribed form certifying that the book profit has been computed in accordance with the provisions of section 115JB and such report shall be furnished before the specified date referred to in section 44AB. (Finance Act 2020)

**SECTION 115JB(5): APPLICABILITY OF OTHER PROVISIONS OF INCOME-TAX ACT**

Save as otherwise provided in this section, all other provisions of this Act shall apply to every company, mentioned in this section. (Therefore, the company to which MAT applies shall be liable to pay advance tax, interest under sections 234A, 234B and 234C. The company shall also be liable to pay penalty for concealment of income.) {Refer Case Law}

**SECTION 115JAA: TAX CREDIT IN RESPECT OF TAX PAID UNDER SECTION 115JB**

(1) Where any amount of tax is paid under section 115JB by an assessee, being a company, then, credit in respect of tax so paid shall be allowed to him in accordance with the provisions of this section.

(2) The tax credit to be allowed under sub-section (1) shall be the difference of the tax paid for any assessment year under section 115JB and the amount of tax payable by the assessee on his total income computed in accordance with the other provisions of this Act:

Provided that no interest shall be payable on the tax credit allowed under sub-section (1).

(3) The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-section (4) and sub-section (5) but such carry forward shall not be allowed beyond the fifteenth assessment year immediately succeeding the assessment year in which tax credit becomes allowable under subsection (1).
(4) The tax credit shall be allowed set-off in a year when tax becomes payable on the total income computed in accordance with the provisions of this Act other than section 115JB.

(5) Set off in respect of brought forward tax credit shall be allowed for any assessment year to the extent of the difference between the tax on his total income and the tax which would have been payable under the provisions of section 115JB for that assessment year.

(6) In case of conversion of a company into a limited liability partnership under the Limited Liability Partnership Act, 2008, the provisions of section 115JAA shall not apply to the successor limited liability partnership. Therefore, the MAT credit available in hands of company shall not be allowed to the LLP.

1. **APOLLO TYRES LTD. V/S. CIT (SUPREME COURT) [2002]**

**FACTS OF THE CASE**

The assessee-company while determining its net profit for the relevant accounting year has provided for arrears of depreciation in its profit and loss account which according to the Assessing Officer was not in accordance with Parts II and III of Schedule VI to the Companies Act, 1956. Hence, the Assessing Officer while considering the case of the assessee-company under section 115JB of the Income-tax Act recomputed the said profit and loss account of the company so as to exclude the provision made for arrears of depreciation. The said action of the Assessing Officer in questioning the correctness of the accounts maintained by the company was challenged by the company before the Income-tax Appellate Tribunal which among other things held that the Assessing Officer has no authority to reopen the accounts of a company which is certified by the auditors of the company as having been maintained in accordance with the provisions of the Companies Act and which accounts have been accepted in the general meeting of the company as well as by the Registrar of Companies. This view of the Tribunal was not accepted by the High Court which held that the Assessing Officer has the authority to examine whether the accounts of the company have been maintained as per the Companies Act and in that process if he finds that the accounts of the company are not in accordance with the provisions of the Companies Act, he could make the necessary changes before proceeding to assess the company for tax under the Explanation to section 115JB of the Income-tax Act.

**DECISION**

The Assessing Officer, while computing the book profits of a company under section 115JB of the Income-tax Act, 1961, has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer, thereafter, has the limited power of making increases and reductions as provided for in the Explanation to section 115JB. The Assessing Officer does not have the jurisdiction to go behind the net profits shown in the profit and loss account except to the extent provided in the Explanation. The use of the words "in accordance with the provisions of Parts II and III of Schedule VI to the Companies Act" in section 115JB was made for the limited purpose of empowering the Assessing Officer to rely upon the authentic statement of accounts of the company. While so looking into the accounts of the company, the Assessing Officer has to accept authenticity of
the accounts with reference to the provisions of the Companies Act, which obligate the company to maintain its accounts in a manner provided by that Act and the same to be scrutinized and certified by statutory auditors and approved by the company in general meeting and thereafter to be filed before the Registrar of Companies who has a statutory obligation also to examine and be satisfied that the accounts of the company are maintained in accordance with the requirements of the Companies Act. 

Section 115JB does not empower the Assessing Officer to embark upon a fresh enquiry in regard to the entries made in the books of account of the company.

Held accordingly, that while determining the "book profits" under section 115JB, the Assessing Officer could not recompute the profits in the profit and loss account by excluding provisions made for arrears of depreciation. Therefore the action of Assessing Officer was unjustified.

2. N. J. JOSE AND CO. (P.) LTD. V. ACIT (2010) (KER.)

Can long-term capital gain exempted by virtue of erstwhile section 54EC be included in the book profit computed under erstwhile section 115JB?

As long as long-term capital gains are part of the profits included in the profit and loss account prepared in accordance with the provisions of Part II of Schedule VI to the Companies Act, 1956, capital gains cannot be excluded. Long term capital gains exempt under section 54EC are part of book profits under section 115JB and are liable to MAT.

3. Should capital gains exempt under section 54EC, which forms part of the net profit in the statement of profit and loss of the assessee-company, be taken into account for calculation of tax on book profits as per section 115JB?

CIT V. METAL AND CHROMIUM PLATER (P) LTD. [2019] (MAD)

Issue: The issue under consideration is, whether, while determining the “book profit” for purposes of section 115JB, can long-term capital gains included in the statement of profit and loss be excluded since the same is eligible for exemption under section 54EC under the regular provisions of the Income-tax Act, 1961.

High Court’s Observations:
1. Sub-section (5) of section 115JB allows for application of all other provisions contained in Income-tax Act, 1961 except if specifically barred by that section itself.
2. Thus, the “book profit” would be further eligible to the benefits set out in the other provisions of the Act.

High Court’s Decision: The High Court affirmed the decision of the Tribunal holding that capital gains which forms part of the net profit in the statement of profit and loss of the assessee-company, in respect of which exemption under section 54EC is available while computing total income under the regular provisions of the Income-tax Act, 1961, should not be taken into account for calculation of minimum alternate tax on book profits under section 115JB.
AMENDMENT MADE BY FINANCE ACT 2016

SECTION 115BBF: TAX ON ROYALTY INCOME FROM PATENT

(1) Where the total income of an eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, the income-tax payable shall be the aggregate of—
   (a) the amount of income-tax calculated on the income by way of royalty in respect of the patent at the rate of ten percent; and
   (b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the income referred to in clause (a).

(2) Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the eligible assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).

(3) The eligible assessee may exercise the option for taxation of income by way of royalty in respect of a patent developed and registered in India in accordance with the provisions of this section, in the prescribed manner, on or before the due date specified under section 139(1) for furnishing the return of income for the relevant previous year.

(4) Where an eligible assessee opts for taxation of income by way of royalty in respect of a patent developed and registered in India for any previous year in accordance with the provisions of this section and the assessee offers the income for taxation for any of the five assessment years relevant to the previous year succeeding the previous year not in accordance with the provisions of sub-section (1), then, the assessee shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which such income has not been offered to tax in accordance with the provisions of sub-section (1).

Explanation – For the purposes of this section, –
   (a) “developed” means at least seventy-five per cent of the expenditure incurred in India by the eligible assessee for any invention in respect of which patent is granted under the Patents Act, 1970 (herein referred to as the Patents Act);

(b) “eligible assessee” means a person resident in India and who is a patentee;

Illustration: An eligible assessee claims concessional rate of tax under section 115BBF for assessment year 2020-21. For assessment year 2021-22 and assessment year 2022-23 also he opts for concessional rate of tax in accordance with the provisions of section 115BBF. However, for assessment year 2023-24, he prefers not to apply concessional rate of tax.
In this case, since he has not opted for the rate under section 115BBF in succeeding five consecutive assessment years, after assessment year 2020-21, he will not be eligible to claim the benefit of section 115BBF for next five assessment years i.e. from assessment years 2024-25 to 2028-29.

EXPLANATION 4 TO SECTION 115JB(2): NON-APPLICABILITY OF SECTION 115JB FOR CERTAIN FOREIGN COMPANIES

Under the existing provisions contained in sub-section (1) of the 115JB in case of a company, if the tax payable on the total income as computed under the Income-tax Act, is less than fifteen per cent of its book profit, such book profit shall be deemed to be the total income of the assessee and the tax payable by the assessee for the relevant previous year shall be fifteen per cent of its book profit. Issues were raised regarding the applicability of this provision to Foreign Institutional Investors (FII) who do not have a permanent establishment (PE) in India. Vide Finance Act, 2015 of the provisions of section 115JB were amended to provide that in case of a foreign company any income chargeable at a rate lower than the rate specified in section 115JB shall be reduced from the book profits and the corresponding expenditure will be added back.

However, since this amendment was prospective w.e.f. assessment year 2016-17, the issue for assessment year prior to 2016-17 remained to be addressed.

A Committee on Direct Tax matters headed by Justice A.P. Shah, set up by the Government to look into the matter, recommended for an amendment of section 115JB to clarify the applicability of Minimum Alternate Tax (MAT) provisions to Foreign Institutional Investors/Foreign Portfolio Investors (FII/FPIs) in view of the fact that FII and FPIs normally do not have a place of business in India.

In view of the recommendations of the committee and with a view to provide certainty in taxation of foreign companies, it is proposed to amend the Income-tax Act so as to provide that with effect from 01.04.2001, the provisions of section 115JB shall not be applicable to a foreign company if –

(i) the assessee is a resident of a country or a specified territory with which India has an agreement referred to in sub-section (1) of section 90 or the Central Government has adopted any agreement under sub-section (1) of section 90A and the assessee does not have a permanent establishment in India in accordance with the provisions of such Agreement; or

(ii) the assessee is a resident of a country with which India does not have an agreement of the nature referred to in clause (i) above and the assessee is not required to seek registration under any law for the time being in force relating to companies.
This amendment is proposed to be made effective retrospectively from the 1st day of April, 2001 and shall accordingly apply in relation to assessment year 2001-02 and subsequent years.

SECTION 115JB(7): LOWER MAT RATE FOR UNIT LOCATED IN INTERNATIONAL FINANCIAL SERVICES CENTER (ADDED BY FINANCE ACT, 2016)

Notwithstanding anything contained in sub-section (1), where the assessee referred to therein, is a unit located in an International Financial Services Center and derives its income solely in convertible foreign exchange, the provisions of sub-section (1) shall have the effect as if for the words “fifteen per cent” wherever occurring in that sub-section, the words “nine per cent” had been substituted.
QUESTIONS FROM PAST EXAMINATIONS

Question 1:
ABC Ltd. is a closely held company engaged in manufacture of insecticides and fertilizers. The value of plant and machinery owned by the company is Rs. 55 lakhs. Its profit and loss account for the year ended March 31, 2021 is as under:

| Domestic sales                  | 22,23,900 |
| Export sales                    | 5,76,100  |
| Other receipts                  | 2,00,000  |
| **Total**                       | 30,00,000 |

**Less: Expenses**

- Depreciation: 4,16,000
- Salary and wages: 1,34,500
- Entertainment expenses: 10,000
- Travelling expenses: 36,000
- General Expenses: 5,000
- Income tax: 3,50,000
- Wealth-tax: 8,000
- Outstanding customs duty: 17,500
- Provision for unascertained liabilities: 70,000
- Proposed dividends: 60,000
- Loss of subsidiary company: 30,000
- Consultation fees paid to a tax consultant: 21,000
- Salary and perquisites of managing director: 1,80,000
- Excise duty of 2011-2012: 75,500

**Net Profit**: 15,86,500

The assessee claims the following as deduction:

(a) Deduction under section 80-IC (30% of Rs. 15,86,500)
(b) Excise duty pertaining to P.Y 2011-2012 paid during 2020-2021 Rs. 75,500 was not debited in P & L A/c of P.Y 2011-2012.
(c) Depreciation under section 32 is Rs. 5,36,000.

The following further particulars are furnished:

<table>
<thead>
<tr>
<th>For tax purposes Rs.</th>
<th>For accounting purposes Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brought forward loss of 2015-2016</td>
<td>11,80,000</td>
</tr>
<tr>
<td>Unabsorbed depreciation</td>
<td>9,10,000</td>
</tr>
</tbody>
</table>

Calculate the tax liability of the company

21.12
**Answer:**

### BOOK PROFIT UNDER SECTION 115JB

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net profit as per profit and loss account (it is assumed that profit and loss account has been prepared according to Parts II of the Schedule VI to the Companies Act)</td>
<td>15,86,500</td>
<td></td>
</tr>
<tr>
<td><strong>Add:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income-tax</td>
<td>3,50,000</td>
<td></td>
</tr>
<tr>
<td>Provision for unascertained liability</td>
<td>70,000</td>
<td></td>
</tr>
<tr>
<td>Loss of subsidiary company</td>
<td>30,000</td>
<td></td>
</tr>
<tr>
<td>Proposed dividend</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>Depreciation</td>
<td>4,16,000</td>
<td>9,26,000</td>
</tr>
<tr>
<td><strong>Less:</strong></td>
<td></td>
<td>25,12,500</td>
</tr>
<tr>
<td>Depreciation</td>
<td>4,16,000</td>
<td></td>
</tr>
<tr>
<td>Unabsorbed depreciation</td>
<td>2,45,000</td>
<td></td>
</tr>
<tr>
<td><strong>Book profit</strong></td>
<td>18,51,500</td>
<td></td>
</tr>
</tbody>
</table>

### COMPUTATION OF TAXABLE INCOME

<table>
<thead>
<tr>
<th>Description</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Profit as per profit and loss account</td>
<td>15,86,500</td>
<td></td>
</tr>
<tr>
<td><strong>Add:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income-tax</td>
<td>3,50,000</td>
<td></td>
</tr>
<tr>
<td>Wealth-tax</td>
<td>8,000</td>
<td></td>
</tr>
<tr>
<td>Outstanding custom duty</td>
<td>17,500</td>
<td></td>
</tr>
<tr>
<td>Provision for unascertained liability</td>
<td>70,000</td>
<td></td>
</tr>
<tr>
<td>Proposed dividend</td>
<td>60,000</td>
<td></td>
</tr>
<tr>
<td>Loss of subsidiary company</td>
<td>30,000</td>
<td>5,35,500</td>
</tr>
<tr>
<td><strong>Less:</strong></td>
<td></td>
<td>21,22,000</td>
</tr>
<tr>
<td>Depreciation (i.e., Rs. 5,36,000 – Rs. 4,16,000)</td>
<td>1,20,000</td>
<td></td>
</tr>
<tr>
<td><strong>Balance</strong></td>
<td>20,02,000</td>
<td></td>
</tr>
<tr>
<td><strong>Less:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brought forward business loss</td>
<td>11,80,000</td>
<td></td>
</tr>
<tr>
<td><strong>Gross total Income</strong></td>
<td>8,22,000</td>
<td></td>
</tr>
<tr>
<td><strong>Less:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Deductions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under section 80IC [i.e., 30% of Rs. 8,22,000]</td>
<td>2,46,600</td>
<td></td>
</tr>
</tbody>
</table>

21.13
### Question 2:

England Oil Corporation is a Foreign Company engaged in the exploration of Oil and Gas in all countries including India. In respect of its Indian Business, the company has prepared the Profit and Loss Account in accordance with the Companies Act and such Profit and Loss Account for the previous year ended 31.03.2021 shows a Net Profit of Rs. 65 Lakhs. The Net Profit from activities in all other countries stands at Rs. 550 Lakhs. The company informs that while arriving at the Net Profit as indicated above in respect of Indian business, the following debits/credits have been made in its Profit and Loss Account.

#### Credits to the Profit & Loss Account

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs (in Lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Net agricultural income in India</td>
<td>14</td>
</tr>
<tr>
<td>(ii) Share of Profits from a firm engaged in business in India</td>
<td>15</td>
</tr>
<tr>
<td>(iii) Amount withdrawn from Reserve created during 2007-2008 (Book Profit was not increased by the amount transferred to such reserve in the year 2007-2008)</td>
<td>3</td>
</tr>
<tr>
<td>(iv) Profits from an Industrial Undertaking covered and qualified for deduction under section 10AA of Income-tax Act, 1961</td>
<td>30</td>
</tr>
<tr>
<td>(v) Profits from an Industrial Undertaking covered and qualified under section 80-IA of Income-tax Act, 1961</td>
<td>6</td>
</tr>
<tr>
<td>(vi) Deferred Tax Credit</td>
<td>2</td>
</tr>
</tbody>
</table>

#### Debits to the Profit & Loss Account

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs. (in Lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) Expenditure relating to 10AA undertaking</td>
<td>12</td>
</tr>
<tr>
<td>(ii) Depreciation for Current Year under Companies Act, 1956</td>
<td>24</td>
</tr>
<tr>
<td>(iii) Interest to Financial Institutions not paid up to the date of filing the return</td>
<td>6</td>
</tr>
<tr>
<td>(iv) Penalty for infraction of law</td>
<td>1</td>
</tr>
<tr>
<td>(v) Proposed Dividend</td>
<td>3</td>
</tr>
<tr>
<td>(vi) Provision for Taxation (Income-tax) including CDT</td>
<td>2</td>
</tr>
<tr>
<td>(vii) Transfer to General Reserve</td>
<td>5</td>
</tr>
<tr>
<td>(viii) Provision for Unascertained Liabilities</td>
<td>2</td>
</tr>
<tr>
<td>(ix) Expenditure relating to 80-IA undertaking</td>
<td>5</td>
</tr>
</tbody>
</table>
The following additional information is also provided:

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs. (in Lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brought forward Book Loss</td>
<td>12</td>
</tr>
<tr>
<td>Depreciation allowable under Income-tax rules</td>
<td>30</td>
</tr>
<tr>
<td>Brought forward Business Loss and unabsorbed depreciation as per Income-tax law</td>
<td>18</td>
</tr>
<tr>
<td>(Loss Rs. 8 Lakhs and Depreciation Rs.10 Lakhs)</td>
<td></td>
</tr>
</tbody>
</table>

You are requested to compute the total tax liability of the company for the Assessment Year 2021-2022.

**Answer:**

### TOTAL INCOME AS PER NORMAL PROVISIONS OF INCOME-TAX ACT

<table>
<thead>
<tr>
<th>Income under the head P/G/B/P</th>
<th>Rs. (in Lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Profit as per P &amp; L Account</td>
<td>65.00</td>
</tr>
</tbody>
</table>

**Add: Expenses Disallowed:**

1. Depreciation under Companies Act: 24.00
2. Expense disallowed under section 43B
   - Interest not paid to Financial Institutions: 6.00
3. Penalty for infraction of Law: 1.00
4. Proposed Dividend: 3.00
5. Provision for taxation (Income-tax) including CDT: 2.00
6. Transfer to General Reserve: 5.00
7. Provision for unascertained liability: 2.00

**Less:**

1. Net Agricultural Income being exempt u/s 10: 14.00
2. Share of Profits from firm being exempt u/s 10: 15.00
3. Deferred tax Credit: 2.00
4. Amount withdrawn from Reserve: 3.00
5. Depreciation allowable as per Income-tax Rules: 30.00

**Income under the head P/G/B/P:** 44.00

**Less:**

1. Brought forward Business Loss: 8.00
2. Brought forward depreciation: 10.00

**Gross Total Income:** 26.00

Less: Deduction under section 10AA
(Rs.30 Lakhs-Rs. 12 Lakhs): 18.00

Less: Deduction under section 80-IA

---

21.15
**COMPUTATION OF BOOK PROFIT UNDER SECTION 115JB**

<table>
<thead>
<tr>
<th>Net Profit as per P &amp; L Account</th>
<th>65.00</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Add:</strong></td>
<td></td>
</tr>
<tr>
<td>(i) Expenditure relating to 10AA undertaking</td>
<td>NIL</td>
</tr>
<tr>
<td>(ii) Proposed Dividend</td>
<td>3.00</td>
</tr>
<tr>
<td>(iii) Provision for taxation (Income-tax) including CDT</td>
<td>2.00</td>
</tr>
<tr>
<td>(iv) Amount transferred to General Reserve</td>
<td>5.00</td>
</tr>
<tr>
<td>(v) Provision for unascertained liability</td>
<td>2.00</td>
</tr>
<tr>
<td></td>
<td>12.00</td>
</tr>
<tr>
<td><strong>Less:</strong></td>
<td></td>
</tr>
<tr>
<td>(i) Net Agricultural Income exempt under section 10</td>
<td>14.00</td>
</tr>
<tr>
<td>(ii) Share of Profit from firm exempt under section 10</td>
<td>15.00</td>
</tr>
<tr>
<td>(iii) Deferred tax Credit</td>
<td>2.00</td>
</tr>
<tr>
<td>(iv) Profit from undertaking qualified for deduction u/s 10AA</td>
<td>NIL</td>
</tr>
<tr>
<td>(v) Loss Brought forward or Unabsorbed depreciation whichever is less (See Note 3)</td>
<td>NIL</td>
</tr>
<tr>
<td></td>
<td>31.00</td>
</tr>
<tr>
<td><strong>Book Profit as per section 115JB</strong></td>
<td>46.00</td>
</tr>
<tr>
<td><strong>Tax as per section 115JB =_____% of Rs. 46 lakhs =</strong></td>
<td>Rs. _____</td>
</tr>
</tbody>
</table>

**THEREFORE, THE FOREIGN COMPANY SHALL PAY TAX OF Rs. _______ UNDER SECTION 115JB ON ITS BOOK PROFITS. MAT Credit available is Rs. _______.**

**Note 1:** Amount withdrawn from reserve created during 2007-2008 credited to Profit & Loss Account shall not be reduced since book profits of the year 2007-2008 was not increased by such reserve.

**Note 2:** Profits from an industrial undertaking qualified for deduction under section 80-IA and 10AA shall not be reduced since section 115JB provides that only the profits referred to in sections 10, 11 & 12 are to be reduced. Similarly, expenditure relating to 80-IA and 10AA undertaking shall not be added back.

**Note 3:** As per the question the unabsorbed depreciation as per books is NIL. Therefore, lower of the following shall be deducted:

(i) B/F Loss as per books  Rs. 12,00,000

(ii) B/F Depreciation as per books  NIL
Question 3:
A domestic company, ABC Ltd. has an undertaking newly established for export of computer software in a Special Economic Zone, the profits of which have been merged in the net profits of the company as per profit and loss account prepared in accordance with the Schedule III to the Companies Act. It furnishes the following particulars in respect of assessment year 2021-2022 and seeks your opinion on the application of section 115JB. You are also required to compute the total income and tax payable.

Net profit as per Profit and Loss A/c as per Schedule VI

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Rs. in lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net profit as per Profit and Loss A/c</td>
<td>200</td>
</tr>
<tr>
<td>Credit side of Profit and Loss A/c includes -</td>
<td></td>
</tr>
<tr>
<td>Agriculture income</td>
<td>20</td>
</tr>
<tr>
<td>Excess realized on sale of land held as investment</td>
<td>30</td>
</tr>
<tr>
<td>Net profit of the undertaking for export of computer software</td>
<td>100</td>
</tr>
<tr>
<td>Debit side of Profit and Loss A/c includes -</td>
<td></td>
</tr>
<tr>
<td>Depreciation on straight line method basis</td>
<td>100</td>
</tr>
<tr>
<td>Provision for losses of subsidiary company</td>
<td>60</td>
</tr>
<tr>
<td>Depreciation allowable as per income-tax law</td>
<td>150</td>
</tr>
<tr>
<td>Capital Gains as computed as per income-tax law</td>
<td>40</td>
</tr>
<tr>
<td>Losses brought forward as per books of account -</td>
<td></td>
</tr>
<tr>
<td>Business loss</td>
<td>50</td>
</tr>
<tr>
<td>Unabsorbed depreciation</td>
<td>60</td>
</tr>
</tbody>
</table>

The company has represented to you that the excess realized on sale of land cannot form part of the book profit for purposes of section 115JB. You have to deal with his issue.

Answer:

<table>
<thead>
<tr>
<th>Computation of Book Profit</th>
<th>Rs(in lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net profit as per Profit and Loss A/c</td>
<td>200</td>
</tr>
<tr>
<td>Add: Provision for losses of subsidiary company</td>
<td>(+) 60</td>
</tr>
<tr>
<td>Depreciation as per Straight line method</td>
<td>(+)100</td>
</tr>
<tr>
<td>Less:</td>
<td></td>
</tr>
<tr>
<td>Income exempt under section 10AA</td>
<td>NIL</td>
</tr>
<tr>
<td>Depreciation</td>
<td>(-) 100</td>
</tr>
<tr>
<td>Agriculture income (being exempt under section 10)</td>
<td>(-) 20</td>
</tr>
<tr>
<td>Brought forward loss or depreciation, whichever is lower</td>
<td>(-) 50</td>
</tr>
<tr>
<td><strong>Book profit</strong></td>
<td><strong>190</strong></td>
</tr>
</tbody>
</table>
### Computations of Income under Normal Provisions

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net profit as per Profit and Loss A/c</td>
<td>200</td>
</tr>
<tr>
<td>Less: Agriculture Income (being exempt under section 10)</td>
<td>(-) 20</td>
</tr>
<tr>
<td>Less: Capital gain</td>
<td>(-) 30</td>
</tr>
<tr>
<td>Add: Depreciation as per books of account</td>
<td>(+) 100</td>
</tr>
<tr>
<td>Less: Depreciation under section 32</td>
<td>(-) 150</td>
</tr>
<tr>
<td>Add: Provision for loss of subsidiary company</td>
<td>(+) 60</td>
</tr>
<tr>
<td>Business income</td>
<td>160</td>
</tr>
<tr>
<td>Capital gain</td>
<td>40</td>
</tr>
</tbody>
</table>

**Gross Total Income** 200

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net profit as per Profit and Loss A/c</td>
<td>200</td>
</tr>
<tr>
<td>Less: Agriculture Income (being exempt under section 10)</td>
<td>(-) 20</td>
</tr>
<tr>
<td>Less: Capital gain</td>
<td>(-) 30</td>
</tr>
<tr>
<td>Add: Depreciation as per books of account</td>
<td>(+) 100</td>
</tr>
<tr>
<td>Less: Depreciation under section 32</td>
<td>(-) 150</td>
</tr>
<tr>
<td>Add: Provision for loss of subsidiary company</td>
<td>(+) 60</td>
</tr>
<tr>
<td>Business income</td>
<td>160</td>
</tr>
<tr>
<td>Capital gain</td>
<td>40</td>
</tr>
</tbody>
</table>

**Total Income** 100

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax on net income [____ of Rs 40 Lakh + ____ of Rs 60 Lakh plus education cess]</td>
<td>________</td>
</tr>
<tr>
<td>Minimum alternate tax [________ of Rs 190 Lakh]</td>
<td>________</td>
</tr>
</tbody>
</table>

**Tax payable**

**MAT Credit Available**

### Notes:

1. It is assumed that capital gain is long-term capital gain and is not exempt.
2. It is further assumed that the company does not have any brought forward-unadjusted loss under the income-tax provisions.
3. Profit on sale of capital asset is part of book profit.

### Question 4:

The net profit as per profit and loss account of XYZ Ltd., a resident company for the year ended **31.3.2021** is **Rs. 190 lacs** arrived at after following adjustments:

1. **Depreciation on Assets** **Rs. 100 lacs**
2. **Reserve for currency exchange fluctuation** **Rs. 50 lacs**
3. **Provision for tax** **Rs. 40 lacs**
4. **Proposed dividend** **Rs. 120 lacs**

Following further information are also provided by the company:

I. Net profit includes **Rs. 10 lacs** received from a subsidiary company.
II. Provision for tax includes **Rs. 16 lacs** of tax payable on distribution of profit and of **Rs. 2 lacs** of interest payable on income tax.
III. Depreciation includes **Rs. 40 lacs** towards revaluation of assets.
IV. Amount of **Rs. 50 lacs** credited to P & L account was drawn from revaluation reserve.
V. Balance of profit and loss shown in balance sheet at the assets side as at 31.03.2020 was **Rs. 30 lacs** representing unabsorbed depreciation.

Compute the book profits of the company for the year ended **31.03.2021** liable to tax under MAT.
Answer:

Computation of Book Profits and Tax Liability under Section 115JB of M/s XYZ Ltd. For the Assessment Year 2021-2022

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Amount (Rs. In Lakhs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit as per P&amp; L Account</td>
<td>190</td>
</tr>
<tr>
<td>Add:-</td>
<td></td>
</tr>
<tr>
<td>(i) Depreciation on assets including depreciation on revaluation of assets</td>
<td>100</td>
</tr>
<tr>
<td>(ii) Any amount transferred to reserve for currency exchange fluctuation</td>
<td>50</td>
</tr>
<tr>
<td>(iii) Provision for tax including tax on distributed profits under section 115-0 and including interest under the Income tax Act</td>
<td>40</td>
</tr>
<tr>
<td>(iv) Proposed Dividend</td>
<td>120</td>
</tr>
<tr>
<td>Less:-</td>
<td></td>
</tr>
<tr>
<td>(i) 10 Lakh received from subsidiary company shall be in form of dividend and is taxable now</td>
<td>NIL</td>
</tr>
<tr>
<td>(ii) Depreciation excluding depreciation on revaluation of amount</td>
<td>60</td>
</tr>
<tr>
<td>(iii) Amount withdrawn from Revaluation Reserve credited to Profit &amp; Loss A/c Rs. 50 Lakhs restricted to the amount of depreciation on account of revaluation,</td>
<td>40</td>
</tr>
<tr>
<td>(iv) The unabsorbed depreciation or unabsorbed losses as per books, which ever in less is deductible. Assuming that there is no loss as per books, unabsorbed depreciation is not deductible.</td>
<td>Nil</td>
</tr>
</tbody>
</table>

Book Profits as per section 115JB 400

Tax thereon @_______
Add: Surcharge @_______
Tax & Surcharge
Add: Health & Education Cess @_______
Tax Liability

Question 5:
XYZ Limited's Profit & Loss Account for the year ended 31st March, 2021 shows a net profit of Rs. 75 lakhs after debiting / crediting the following items:
(i) Depreciation Rs. 24 lakhs (including Rs. 4 lakhs on revaluation)
(ii) Interest to financial institution not paid before due date of filing return of income Rs. 6 lakhs.
(iii) Provision for doubtful debts Rs. 1 lakh.
(iv) Provision for unascertained liabilities Rs. 2 lakhs.
(v) Transfer to General Reserve Rs. 5 lakhs.

(vi) Net Agricultural Income Rs. 16 lakhs.

(vii) Amount withdrawn from Reserve created during 2016-2017 Rs. 3 lakhs. (Book profit was increased by the amount transferred to such reserve in Assessment Year 2016-2017)

**Other Information:**
Brought forward loss and unabsorbed depreciation as per books are Rs. 12 lakhs and Rs. 10 lakhs respectively.

Compute minimum alternate tax under Section 115JB for Assessment Year 2021-2022.

**Answer:**

**Computation of Book Profit of XYZ Limited under section 115JB**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Profit as per profit and loss account</td>
<td>75,00,000</td>
<td></td>
</tr>
<tr>
<td><strong>Add:</strong> Net Profit to be increased by the following amounts as per Explanation 1 to section 115JB</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transfer to General Reserve</td>
<td>5,00,000</td>
<td></td>
</tr>
<tr>
<td>Provision for unascertained liabilities</td>
<td>2,00,000</td>
<td></td>
</tr>
<tr>
<td>Provision for doubtful debts</td>
<td>1,00,000</td>
<td></td>
</tr>
<tr>
<td>Depreciation</td>
<td>24,00,000</td>
<td>32,00,000</td>
</tr>
<tr>
<td><strong>Less:</strong> Net Profit to be reduced by the following amounts as per Explanation 1 to section 115JB</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amount withdrawn from reserve and credited to profit and loss account [since the book profit was increased by the amount transferred to such reserve in the assessment year 2016-17]</td>
<td>3,00,000</td>
<td></td>
</tr>
<tr>
<td>Depreciation (excluding revaluation)</td>
<td>20,00,000</td>
<td></td>
</tr>
<tr>
<td>Net Agricultural Income [Exempt under section 10(1)]</td>
<td>16,00,000</td>
<td></td>
</tr>
<tr>
<td>Loss brought forward (Rs. 12 lakhs) or unabsorbed depreciation (Rs. 10 lakhs) as per books, whichever is less</td>
<td>10,00,000</td>
<td>49,00,000</td>
</tr>
</tbody>
</table>

**Book Profit for computation of MAT under section 115JB**

<table>
<thead>
<tr>
<th>Rs.</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>58,00,000</td>
<td></td>
</tr>
</tbody>
</table>

**Computation of Minimum Alternative Tax (MAT) under section 115JB**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>_____ of book profit (_____ of Rs. 58 lakh)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Add:</strong> Health &amp; Education cess @ _____</td>
<td></td>
<td>_____</td>
</tr>
<tr>
<td>Minimum Alternate Tax payable under section 115JB</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

21.20
**Note:** Explanation 1 to section 115JB does not require adjustment of interest not paid before due date of filing return of income, while computing book profit.

**Question 6:**

Hyper Ltd., engaged in diversified activities, earned a profit of **Rs. 14,25,000** after debit/credit of the following items to its statement of profit and loss account for the year ended on **31.3.2021**:

(a) Items debited to Statement of Profit and Loss Account

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Rs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provision for loss of subsidiary</td>
<td>70,000</td>
</tr>
<tr>
<td>Provision for income-tax demand</td>
<td>1,05,000</td>
</tr>
<tr>
<td>Expenses on purchase/sale of equity shares</td>
<td>15,000</td>
</tr>
<tr>
<td>Depreciation</td>
<td>3,60,000</td>
</tr>
<tr>
<td>Interest on deposit credited to buyers on 31.3.2021 for advance received from them, on which TDS was deducted in April 2021 and was deposited on 31.7.2021</td>
<td>1,00,000</td>
</tr>
</tbody>
</table>

(b) Items credited to Statement of Profit and Loss Account

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount (Rs)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long term capital gain on sale of equity shares on which securities transaction tax was paid at the time of acquisition and sale</td>
<td>3,60,000</td>
</tr>
<tr>
<td>Income from Agriculture</td>
<td>75,000</td>
</tr>
</tbody>
</table>

The company provides the following additional information:

(i) Depreciation includes **Rs. 1,50,000** on account of revaluation of fixed assets.
(ii) Depreciation allowable as per Income-tax Rules is **Rs. 2,80,000**.
(iii) Brought forward Business Loss/Unabsorbed Depreciation:

<table>
<thead>
<tr>
<th>F.Y.</th>
<th>Amount as per books</th>
<th>Amount as per Income-tax</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Loss Rs.</td>
<td>Depreciation Rs.</td>
</tr>
<tr>
<td>2016-2017</td>
<td>2,50,000</td>
<td>3,00,000</td>
</tr>
<tr>
<td>2017-2018</td>
<td>Nil</td>
<td>2,70,000</td>
</tr>
<tr>
<td>2018-2019</td>
<td>3,50,000</td>
<td>3,15,000</td>
</tr>
</tbody>
</table>

You are required to:

(i) compute the total income of the company for the assessment year **2021-22** giving the reasons for treatment of items and

(ii) examine the applicability of section 115JB of the Income-tax Act, 1961, and compute book profit and the tax credit to be carried forward.

Assume the tax rate applicable to Hyder Ltd for the **P.Y. 2020-21** is 30%. Ignore the provisions of section 115BAA.
**Answer**

**Computation of total income of M/s Hyper Ltd. for the A.Y. 2021-22**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit as per Statement of Profit &amp; Loss Account</td>
<td>14,25,000</td>
<td></td>
</tr>
<tr>
<td><strong>Add: Items disallowed /considered separately</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Provision for loss of subsidiary [since it is not wholly and exclusively for the purpose of business of the assessee]</td>
<td>70,000</td>
<td></td>
</tr>
<tr>
<td>Provision for income-tax [disallowed under section 40(a)(ii)]</td>
<td>1,05,000</td>
<td></td>
</tr>
<tr>
<td>Expenses on transfer of shares [not deductible from business income. It is to be deducted from gross sale consideration while computing capital gains]</td>
<td>15,000</td>
<td></td>
</tr>
<tr>
<td>Interest on deposit credited on 31.3.2021 and tax deducted in April 2021 which was deposited on 31.7.2021 [not allowed under section 40(a)(ia) @ 30%].</td>
<td>30,000</td>
<td></td>
</tr>
<tr>
<td>Depreciation debited to statement of profit and loss account [only depreciation calculated as per the Income-tax Rules, 1962 is allowable as deduction]</td>
<td>3,60,000</td>
<td>5,80,000</td>
</tr>
<tr>
<td><strong>Less: Items credited but not includible under business income or are exempt under the provisions of the Act</strong></td>
<td></td>
<td>20,05,000</td>
</tr>
<tr>
<td>Long-term capital gain on sale of equity shares on which securities transaction tax was paid, since it is not a business income.</td>
<td>3,60,000</td>
<td></td>
</tr>
<tr>
<td>Income from Agriculture.</td>
<td>75,000</td>
<td>4,35,000</td>
</tr>
<tr>
<td><strong>Less: Depreciation (allowable as per the Income-tax Rules, 1962)</strong></td>
<td></td>
<td>15,70,000</td>
</tr>
<tr>
<td><strong>Less: Set-off of brought forward business loss and unabsorbed depreciation</strong></td>
<td></td>
<td>12,90,000</td>
</tr>
<tr>
<td>Brought forward business loss under section 72</td>
<td>4,20,000</td>
<td></td>
</tr>
<tr>
<td>Brought forward depreciation under section 32</td>
<td>6,40,000</td>
<td>10,60,000</td>
</tr>
<tr>
<td><strong>Income from business</strong></td>
<td></td>
<td>2,30,000</td>
</tr>
<tr>
<td><strong>Capital Gains</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Long term capital gain on sale of equity shares on which securities transaction tax was paid at the time of acquisition and sale</td>
<td>3,60,000</td>
<td></td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td></td>
<td>5,90,000</td>
</tr>
<tr>
<td>Tax on LTCG exceeding Rs. 1 lakh @10%</td>
<td>26,000</td>
<td></td>
</tr>
<tr>
<td>Tax on other income of Rs. 2,30,000 @30%</td>
<td>69,000</td>
<td>95,000</td>
</tr>
</tbody>
</table>
Add: Health and Education cess @4%  3,800
Tax Payable as per the Income-tax Act, 1961  98,800

**Computation of Book Profit under section 115JB**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profit as per Statement of Profit &amp; Loss Account</td>
<td>14,25,000</td>
<td></td>
</tr>
</tbody>
</table>

**Add: Net Profit to be increased by the following amounts as per Explanation 1 to section 115JB**

- Provision for loss of subsidiary  70,000
- Provision for income-tax  1,05,000
- Depreciation debited to profit and loss account  3,60,000

<table>
<thead>
<tr>
<th></th>
<th>5,35,000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>19,60,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Less: Net Profit to be reduced by the following amounts as per Explanation 1 to section 115JB**

- Depreciation debited to profit and loss account (excluding depreciation on account of revaluation of fixed assets) (i.e., Rs. 3,60,000 – Rs. 1,50,000)  2,10,000
- Income from Agriculture  75,000
- Brought forward business loss or unabsorbed depreciation as per books of account, whichever is less, taken on cumulative basis  6,00,000

<table>
<thead>
<tr>
<th></th>
<th>8,85,000</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>8,85,000</strong></td>
<td></td>
</tr>
</tbody>
</table>

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>10,75,000</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Book Profit</strong></td>
<td>1,61,250</td>
</tr>
<tr>
<td>15% of book profit</td>
<td>6,450</td>
</tr>
<tr>
<td>Add: Health and Education cess @ 4%</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>1,67,700</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1,67,700</strong></td>
<td></td>
</tr>
</tbody>
</table>

In case of a company, it has been provided that where income-tax payable on total income computed as per the provisions of the Act is less than 15% of book profit, the book profit shall be deemed as the total income and the tax payable on such total income shall be 15% thereof plus health and education cess @4%.

Accordingly, in this case, since income-tax payable on total income computed as per the provisions of the Act is less than 15% of book profit, the book profit of Rs. 10,75,000 is deemed to be the total income and income-tax is payable @ 15% thereof plus health and education cess @4%. The tax liability, therefore, works out to be Rs. 1,67,700.

Section 115JAA provides that where tax is paid in any assessment year in relation to the deemed income under section 115JB(1), the excess of tax so paid, over and above the tax payable under the other provisions of the Income-tax Act, 1961, will be allowed as tax credit in the subsequent years.

The tax credit is, therefore, the difference between the tax paid under section 115JB(1) and the tax payable on the total income computed in accordance with the other provisions of the Act. This tax credit is allowed to be carried forward for 15 assessment years succeeding the assessment year in which the credit became allowable.

Such credit is allowed to be set off against the tax payable on the total income in an assessment year in which the tax is computed in accordance with the provisions of the Act,
other than section 115JB, to the extent of excess of such tax payable over the tax payable on book profits in that year.

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax on book profit under section 115JB</td>
<td>1,67,700</td>
</tr>
<tr>
<td><em>Less: Tax on total income computed as per the other provisions of the Act</em></td>
<td>98,800</td>
</tr>
<tr>
<td><strong>Tax credit to be carried forward under section 115JAA</strong></td>
<td>68,900</td>
</tr>
</tbody>
</table>
CHAPTER 22. ALTERNATE MINIMUM TAX (AMT) ON ALL ASSESSEES EXCEPT COMPANIES

INTRODUCTION
Alternate Minimum Tax (AMT) is applicable to all assessees except companies. In Minimum alternate tax on Companies, the book profits are computed. However, in Alternate Minimum tax, book profit has no relevance. The Alternate Minimum Tax is computed after making some adjustment in taxable income.

SECTION 115JC: SPECIAL PROVISIONS FOR PAYMENT OF TAX BY CERTAIN ASSESSEES
(1) Notwithstanding anything contained in this Act where the regular income-tax payable for a previous year by a person, other than a Company, is less than the alternate minimum tax payable for such previous year, the adjusted total income shall be deemed to be the total income of that person for such previous year and it shall be liable to pay income-tax on such total income at the rate of 18.5%.

(2) Adjusted total income referred to in sub-section (1) shall be the total income before giving effect to this Chapter as increased by-

(i) deductions claimed, if any, under any section (other than section 80P) included in (Chapter VI-A under the heading "C—Deductions in respect of certain incomes";

(ii) deduction claimed, if any, under section 10AA; and

(iii) deduction claimed, if any, under section 35AD as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction under section 35AD was allowed in respect of the assets on which the deduction under that section is claimed.

AMENDMENT MADE BY FINANCE ACT 2018:
Under section 115JC, alternate minimum tax in the case of a non-corporate assessees is 18.5 per cent of adjusted total income. In order to promote the development of world class financial infrastructure in India, section 115JC has been amended (with effect from the assessment year 2019-20) so as to provide that in case of a unit located in an International Financial Service Center, the alternate minimum tax shall be calculated at the rate of 9 per cent.

Key Notes:
(i) "Alternate Minimum Tax" means the amount of tax computed on "Adjusted Total Income" @ 18.5% plus surcharge if applicable and Health & Education Cess.
(ii) “Adjusted Total Income” means:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Income as Computed under normal provisions of Income tax Act</td>
<td>XXX</td>
</tr>
<tr>
<td>Add: Deductions under section 80-IA to 80RRB except section 80P.</td>
<td>XXX</td>
</tr>
<tr>
<td>Add: Deduction under section 10AA</td>
<td>XXX</td>
</tr>
<tr>
<td>Add: Deduction claimed under section 35AD</td>
<td>XXX</td>
</tr>
<tr>
<td>Less: Depreciation allowable as per section 32 assuming that deduction under section 35AD was not allowed on the assets on which deduction under section 35AD is claimed</td>
<td>XXX</td>
</tr>
<tr>
<td>Adjusted total Income</td>
<td>XXX</td>
</tr>
</tbody>
</table>

(iii) "Regular Income Tax" means the income tax payable by a person on his total income in accordance with the normal provisions of the Income tax Act.

(iv) AMT is not payable by:
- Individual
- HUF
- AOP/ BOI
- Artificial Juridical person

IF ADJUSTED TOTAL INCOME OF SUCH PERSON DOES NOT EXCEED Rs. 20 LAKHS.

(3) Every person to whom this section applies shall obtain a report, before the specified date referred to in section 44AB, in such form as may be prescribed, from an accountant referred to in the Explanation below sub-section (2) of section 288, certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report by that date. (Amended by Finance Act 2020)

(4) As per Sec 115JC(5) the provisions of this section shall not apply to a person who has exercised the option referred to in section 115BAC or section 115BAD. (Added by Finance Act 2020).

Example:

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total income</td>
<td>Rs. 60</td>
</tr>
<tr>
<td>Deduction claimed under Chapter VI-A</td>
<td>Rs. 40</td>
</tr>
<tr>
<td>Deduction claimed under section 35AD on a capital asset</td>
<td>Rs.100</td>
</tr>
</tbody>
</table>

**Computation of adjusted total income for the purposes of AMT**

| Total income                     | Rs. 60 |

**Addition:**

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) deduction under Chapter VI-A (on non-specified business)</td>
<td>Rs. 40</td>
</tr>
<tr>
<td>(ii) deduction under section 35AD (on specified business)</td>
<td>Rs. 100</td>
</tr>
<tr>
<td>Less: depreciation under section 32</td>
<td>Rs. 15</td>
</tr>
<tr>
<td></td>
<td>Rs. 85</td>
</tr>
</tbody>
</table>
Adjusted total income under section 115JC  Rs. 185

SECTION 115JD: TAX CREDIT FOR ALTERNATE MINIMUM TAX

(1) The credit for tax paid by a person under section 115JC shall be allowed to him in accordance with the provisions of this section.

(2) The tax credit of an assessment year to be allowed under sub-section (1) shall be the excess of alternate minimum tax paid over the regular income-tax payable of that year.

(3) No interest shall be payable on tax credit allowed under sub-section (1).

(4) The amount of tax credit determined under sub-section (2) shall be carried forward and, set off in accordance with the provisions of sub-section (5) but such carry forward shall be not be allowed beyond the fifteenth assessment year immediately succeeding the assessment year for which tax credit becomes allowable under sub-section (1). *(Amended by Finance Act 2017)*

(5) In any assessment year in which the regular income-tax exceeds the alternate minimum tax, the tax credit shall be allowed to be set off to the extent of the excess of regular income-tax over the alternate minimum tax and the balance of the tax credit, if any, shall be carried forward.

(6) *The provisions of this section shall not apply to a person who has exercised the option referred to in section 115BAC or section 115BAD (Finance Act 2020)*

SECTION 115JE: APPLICATION OF OTHER PROVISIONS OF THIS ACT

Save as otherwise provided in this Chapter, all other provisions of this Act shall apply to a person referred to in this Chapter.

SECTION 115JEE: APPLICATION OF THIS CHAPTER TO CERTAIN PERSONS

(1) The provisions of this Chapter shall apply to a person who has claimed any deduction under—

(a) any section (other than section 80P) included in Chapter VI-A under the heading "C— Deductions in respect of certain incomes"; or  

(b) section 10AA; or  

(c) section 35AD.

(2) The provisions of this Chapter shall not apply to an individual or a Hindu undivided family or an association of persons or a body of individuals, whether incorporated or not, or an artificial juridical person, if the adjusted total income of such person does not exceed twenty lakh rupees.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the credit for tax paid under section 115JC shall be allowed in accordance with the provisions of section 115JD.
Illustration:
An individual for Previous Year 31-3-2021 has business income of Rs. 30,00,000. For Previous Year 31-3-2020 he was subject to AMT as he was claiming deduction under section 80-IE. He has an AMT credit of Rs. 4,00,000. During Previous Year 31-3-2021, he is not entitled to deductions under Chapter VI-A/10AA/35AD.

Answer:
Although AMT is not applicable to the assessee, yet he can claim AMT credit as per amendment made by Finance Act, 2014 in section 115JEE.

<table>
<thead>
<tr>
<th>Description</th>
<th>Taxable Amount</th>
<th>Tax Rate</th>
<th>Tax Liability</th>
</tr>
</thead>
<tbody>
<tr>
<td>Normal tax on Rs. 30,00,000</td>
<td></td>
<td></td>
<td>Rs. ______</td>
</tr>
<tr>
<td>Alternate Minimum Tax @ ______% on Rs. 30,00,000</td>
<td></td>
<td></td>
<td>Rs. ______</td>
</tr>
<tr>
<td>AMT credit available for set-off</td>
<td></td>
<td></td>
<td>Rs. ______</td>
</tr>
</tbody>
</table>

Therefore, tax payable by assessee shall be Rs. ______ after taking credit of AMT of Rs.__________. Assessee will carry forward balance AMT of Rs.__________

**ILLUSTRATIONS**

**Illustration 1:**
XYZ LLP submits the following information for Assessment Year 2021-2022:

(i) Profit as per P & L A/c 8,50,000
(ii) Depreciation as per books of Account 20,000
(iii) Depreciation as per Income-Tax Act (Current Year) on assets other than covered by 35AD 40,000
(iv) Brought forward Depreciation 3,50,000
(v) Bought forward loss 13,000
(vi) Expenditure not allowable as per Income-tax Act debited in P & L A/c 30,000
(vii) Interest paid to the partners debited in P & L A/c Partner A (24%) 10,000 Partner B (24%) 16,000
(viii) Remuneration paid to the partners debited in P & L A/c Partner A 1,40,000 Partner B 1,10,000
(ix) XYZ LLP is eligible to claim deduction under section 35AD @ 100% 5,00,000
(x) Contribution to Electoral trust eligible for deduction u/s 80GGC 10,000

The Partners A & B share profits and losses equally. Asset eligible for deduction under section 35AD is Plant & Machinery acquired and put to use on 30-6-2020. This is eligible for 15% depreciation and is also eligible for additional depreciation. Compute the tax liability of the LLP.
Answer:

**Computation of Book Profit under section 40(b)**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Profit as per P &amp; L A/c</td>
<td>8,50,000</td>
</tr>
<tr>
<td>Add: Depreciation as per books</td>
<td>20,000</td>
</tr>
<tr>
<td>Add: Expenditure not allowable as per I. T. Act</td>
<td>30,000</td>
</tr>
<tr>
<td>Add: Interest to partners disallowed u/s 40(b)</td>
<td>13,000</td>
</tr>
<tr>
<td>Add: Remuneration to partners</td>
<td>2,50,000</td>
</tr>
<tr>
<td>Add: Contribution to electoral trust eligible for 80GGC</td>
<td>10,000</td>
</tr>
<tr>
<td><strong>Less:</strong> Deduction under section 35AD</td>
<td>5,00,000</td>
</tr>
<tr>
<td><strong>Less:</strong> C/Y Depreciation as per I. T. Act</td>
<td>40,000</td>
</tr>
<tr>
<td><strong>Less:</strong> B/f Depreciation</td>
<td>3,50,000</td>
</tr>
<tr>
<td><strong>Book Profits</strong></td>
<td>2,83,000</td>
</tr>
</tbody>
</table>

Therefore, allowable remuneration as per section 40(b) is Rs. 2,54,700. Since remuneration paid is Rs. 2,50,000, Rs. 2,50,000 is allowed as deduction under section 40(b).

---

**Computation of the Total Income of the LLP**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net Profit as per P &amp; L A/c</td>
<td>8,50,000</td>
</tr>
<tr>
<td>Add: Depreciation as per books</td>
<td>20,000</td>
</tr>
<tr>
<td>Add: Expenditure not allowable as per I. T. Act</td>
<td>30,000</td>
</tr>
<tr>
<td>Add: Contribution to electoral trust eligible for 80GGC</td>
<td>10,000</td>
</tr>
<tr>
<td>Add: Interest to partners disallowed u/s 40(b)</td>
<td>13,000</td>
</tr>
<tr>
<td><strong>Less:</strong> Deduction under section 35AD</td>
<td>5,00,000</td>
</tr>
<tr>
<td><strong>Less:</strong> C/Y Depreciation as per I. T. Act</td>
<td>40,000</td>
</tr>
<tr>
<td><strong>Less:</strong> B/f Losses</td>
<td>13,000</td>
</tr>
<tr>
<td><strong>Less:</strong> B/f Depreciation</td>
<td>3,50,000</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td>20,000</td>
</tr>
<tr>
<td><strong>Less:</strong> Deduction under section 80GGC</td>
<td>10,000</td>
</tr>
<tr>
<td><strong>Total taxable Income</strong></td>
<td>10,000</td>
</tr>
</tbody>
</table>

**Tax liability under the normal provision of tax**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax @ 31.2% on Rs. 10,000</td>
<td>3,120</td>
</tr>
</tbody>
</table>

**Adjusted Total Income is as under:**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total taxable income</td>
<td>10,000</td>
</tr>
<tr>
<td>Add: Deduction claimed under section 35AD</td>
<td>5,00,000</td>
</tr>
</tbody>
</table>

---
Less: Normal Depreciation @ 15%  
75,000  

Less: Additional Depreciation @ 20%  
1,00,000  
3,25,000  

Adjusted Total Income  
3,35,000  

Tax liability under AMT  

Tax @ _______% on Rs. 3,35,000  

Therefore, Tax payable is Rs._________. The LLP will carry forward AMT credit of Rs.__________

Illustration 2:
M/s XYZ, an AOP, is engaged in the business of manufacture of chemical goods (value of plant and machinery owned by the assessee is Rs. 55 lakhs). One member of AOP has income exceeding Rs. 5,00,000. The following information for the financial year 2020-2021 is given:

| PROFIT AND LOSS ACCOUNT | Rs.
|-------------------------|-----
| Sale proceeds of goods (domestic sale) | 32,23,900
| Sale proceeds of goods (export sale) | 7,76,100
| Total | 40,00,000
| Less: Expenses | 
| - Salary & wages | 2,10,000
| - Depreciation | 7,16,000
| - Entertainment expenditure | 12,500
| - Donations to political party | 2,500
| - Travelling expenditure | 36,000
| - Income-tax | 3,50,000
| - Wealth-tax | 8,000
| - Outstanding custom duty | 17,500
| - Provision for unascertained liabilities | 70,000
| - Paid to Mafia Don | 90,000
| - Consultation fees paid to a tax expert | 21,000
| - Manufacturing expenses | 1,80,000
| Net profit | 22,86,500

For tax purposes the assessee wants to claim the following:

1. Deduction under section 80-IB (25% of Rs. 22,86,500).
2. Excise duty pertaining 2006-2007 paid during previous year 2020-2021 (amount actually paid is Rs. 75,500).
3. Depreciation under section 32 (Rs. 5,36,000).
4. Customs duty of Rs. 17,500 has been paid after due date of filing of ROI of Assessment Year 2021-2022.
5. Depreciation of Rs. 7,16,000 includes depreciation of Rs. 3,00,000 on account of revaluation of assets.

6. The assessee wants to set off the following losses/allowances:

<table>
<thead>
<tr>
<th>Loss/Allowance</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brought forward loss of 2014-2015</td>
<td>11,80,000</td>
</tr>
<tr>
<td>Unabsorbed depreciation</td>
<td>NIL</td>
</tr>
</tbody>
</table>

Compute the total income of the assessee. You are given that assessee has AMT credit of Rs. 8,00,000 carried forward from Assessment Year 2020-2021.

**Answer:**

**COMPUTATION OF TAXABLE INCOME**

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net profit as per profit and loss account</td>
<td>22,86,500</td>
</tr>
<tr>
<td><strong>Add:</strong></td>
<td></td>
</tr>
<tr>
<td>Depreciation as per books</td>
<td>7,16,000</td>
</tr>
<tr>
<td>Donations to political party</td>
<td>2,500</td>
</tr>
<tr>
<td>Income-tax</td>
<td>3,50,000</td>
</tr>
<tr>
<td>Wealth-tax</td>
<td>8,000</td>
</tr>
<tr>
<td>Outstanding custom duty</td>
<td>17,500</td>
</tr>
<tr>
<td>Provision for unascertained liability</td>
<td>70,000</td>
</tr>
<tr>
<td>Paid to Mafia Don</td>
<td>90,000</td>
</tr>
<tr>
<td></td>
<td>35,40,500</td>
</tr>
<tr>
<td><strong>Less:</strong></td>
<td></td>
</tr>
<tr>
<td>Depreciation [as per IT. Act]</td>
<td>5,36,000</td>
</tr>
<tr>
<td>Excise duty of 2006-2007</td>
<td>75,500</td>
</tr>
<tr>
<td></td>
<td>6,11,500</td>
</tr>
<tr>
<td></td>
<td>29,29,000</td>
</tr>
<tr>
<td><strong>Less:</strong></td>
<td></td>
</tr>
<tr>
<td>Brought forward business loss</td>
<td>11,80,000</td>
</tr>
<tr>
<td><strong>Gross total income</strong></td>
<td>17,49,000</td>
</tr>
<tr>
<td><strong>Less: Deductions</strong></td>
<td></td>
</tr>
<tr>
<td>Under section 80IB [i.e. 25% of Rs. 17,49,000]</td>
<td>4,37,250</td>
</tr>
<tr>
<td>Under section 80GGB for donation to Political Party</td>
<td>2,500</td>
</tr>
<tr>
<td><strong>Net Income</strong></td>
<td>13,09,250</td>
</tr>
<tr>
<td><strong>Tax on Rs. 13,09,250 @ ___________</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Or say</strong></td>
<td></td>
</tr>
</tbody>
</table>
**COMPUTATION OF ADJUSTED TOTAL INCOME**

<table>
<thead>
<tr>
<th></th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxable Income</td>
<td>13,09,250</td>
</tr>
<tr>
<td>Add: Deduction under section 80- IB</td>
<td>4,37,250</td>
</tr>
<tr>
<td>Adjusted Total Income</td>
<td>17,46,500</td>
</tr>
</tbody>
</table>

**AMT is not applicable since the Adjusted total Income does not exceed Rs. 20,00,000.**

AMT is not applicable. However, as per sub-section (3) inserted in section 115JEE by Finance Act, 2014, AMT credit shall be allowed to the assessee.

Tax as per normal provisions

Less: Tax @ _______ on the Adjusted Total Income of Rs. _________ _________

**AMT credit available for set-off**

The assessee shall pay tax of Rs. _________ after taking the AMT credit of Rs. _________.

The assessee shall carry forward AMT credit of Rs. _________.

---

**SPECIAL PROVISIONS GOVERNING ASSESSMENT OF FIRMS AND ASSOCIATION OF PERSONS OR BODY OF INDIVIDUALS, LIMITED LIABILITY PARTNERSHIP (LLP) AND ALTERNATE MINIMUM TAX (AMT) (QUESTIONS FROM PAST EXAMINATIONS)**

**Question 1:**

XYZ, a firm consists of four partners namely, X, Y, Z and A. They shared profits and losses equally during the year ending March 31, 2020. The assessed business loss of the firm for the assessment year 2020-2021 which it is entitled to carry forward amounts to Rs. 3,60,000. A new deed of partnership was executed among X, Y, Z and A on April 1, 2020 in terms of which they agreed to share profits and losses in the ratio of 15:15:20:50 respectively.

Compute the amount of business loss relating to assessment year 2020-2021, which the firm is entitled to set off against its business income for the assessment year 2021-2022. The business income of the firm for the assessment year 2021-2022 is Rs. 3,30,000. Your answer should be supported by reasons.

**Answer:**

**SECTION 78(1): CARRY FORWARD AND SET OFF OF LOSSES IN CASE OF CHANGE IN CONSTITUTION OF FIRM.**

Where a change has occurred in the constitution of a firm, then nothing shall entitle the firm to have carried 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.

Section 78(1) applies when there is a change in constitution of firm on **account of death or retirement of a partner**. Section 78(1) does not apply if a partner is admitted to partnership for or there is change in profit sharing ratio.
In the given Question, as only the profit sharing ratio of the existing partner's is changed, section 78 is not applicable. Thus, the whole of the business loss of Rs. 3,60,000 shall be available for set off against the business income for the assessment year 2021-2022. Consequently, resultant business loss of Rs. 30,000 at the end of the assessment year 2021-2022 shall be carried forward to the next assessment year.

Question 2:
M/s. HIG, a firm, consisting of three partners namely, H, I and G, carried on the business of purchase and sale of television sets in wholesale and manufacture and sale of pens under a deed of partnership executed on 1.4.2015. H, I and G were partners in their individual capacity. The deed of partnership provided for payment of salary amounting to Rs. 1,50,000 each to H and G, who were the working Partners. A new deed of partnership was executed on 1.10.2020 which, apart from providing for payment of salary to the two working partners as mentioned in the deed of partnership executed on 1.4.2015, for the first time provided for payment of simple interest @ 12% per annum on the balances standing to the credit of the capital accounts of partners from 1.4.2020. The Firm was dissolved on 31.3.2021 and the capital assets of the firm were distributed among the partners on 20.4.2021.

The net profit of the firm for the year ending 31.3.2021 after payment of salary to the working partners and debit/credit of the following items to the Profit and Loss Account was Rs.10,000:

(i) Interest amounting to Rs. 1,00,000 paid to the partners on the balances standing to the credit of their capital accounts from 1.4.2020 to 31.3.2021.

(ii) Interest amounting to Rs. 50,000 paid to the partners on the balances standing to the credit of their Current Accounts from 1.4.2020 to 31.3.2021.

(iii) Interest amounting to Rs. 20,000 paid to the Hindu undivided family of partner H @ 18% per annum.

(iv) Payment of Rs. 5,000 towards bribe.

(v) Rs. 30,000 being the value of gold Jewellery received as gift from a manufacturer for achieving sales target.

(vi) Depreciation amounting to Rs. 15,000 on motor car bought and used exclusively for business purposes, but not registered in the name of the firm.

(vii) Depreciation under section 32(1)(ii) amounting to Rs. 37,500 of new machinery bought and installed for manufacture of pens on 1.11.2020 at a cost of Rs. 5,00,000. There was no increase in the installed capacity as a result of the installation of the new machinery.

(viii) Interest amounting to Rs. 25,000 received from bank on fixed deposits made out of surplus funds.
The firm furnishes the following information relating to it:

(a) Closing stock-in-trade was valued at Rs. 60,000 as per the method of lower of cost or market value consistently followed by it. The market value of the closing stock-in-trade was Rs. 65,000. *(Do after Capital Gains)*

(b) Brought forward business loss relating to the assessment year 2020-2021 was Rs. 40,000.

(c) The fair market value of the capital assets as on 31.3.2021 was Rs. 20,00,000 and the cost of their acquisition was Rs. 15,00,000. *(Do after Capital Gains)*

Compute the total income of M/s. HIG for the assessment year 2021-2022. You are required to furnish explanations for the treatment of the various items given above.

**Answer:**

**Computation of Total Income of M/S HIG for the Assessment Year 2021-2022**

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net profit as per Profit &amp; Loss A/c</td>
<td>10,000</td>
</tr>
<tr>
<td>Interest to partners on capital account balance for April 1, 2020 to September 30, 2020</td>
<td>(+) 50,000</td>
</tr>
<tr>
<td>Interest to partners on current account balances [Not allowable since there is no provision in the partnership deed to pay interest on Current Account]</td>
<td>(+) 50,000</td>
</tr>
<tr>
<td>Interest to HUF of partner H [Allowable]</td>
<td>-</td>
</tr>
<tr>
<td>Payment of Bribe [Disallowed under section 37(1)]</td>
<td>(+) 5,000</td>
</tr>
<tr>
<td>Gift from manufacturer [Taxable as business income]</td>
<td>-</td>
</tr>
<tr>
<td>Depreciation on motor car (not registered in firm name) used for business purposes [Allowable as per landmark case of Mysore Minerals Ltd. vs. CIT]</td>
<td>-</td>
</tr>
<tr>
<td>Additional depreciation on new machinery [50% of 20% of Rs. 5 lakh]</td>
<td>(-) 50,000</td>
</tr>
<tr>
<td>Interest from bank on fixed deposits</td>
<td>(-) 25,000</td>
</tr>
<tr>
<td>Valuation of closing stock (ALA Firm)</td>
<td>(+) 5,000</td>
</tr>
<tr>
<td>Remuneration to working partners [Taken separately]</td>
<td>(+) 3,00,000</td>
</tr>
<tr>
<td><strong>BOOK PROFIT</strong></td>
<td><strong>3,45,000</strong></td>
</tr>
<tr>
<td>Less: Remuneration to working partners [On first Rs. 3,00,000 of book profit @ 90%, on balance Rs. 45,000 of book profit @ 60%]</td>
<td>(-) 2,97,000</td>
</tr>
<tr>
<td></td>
<td>48,000</td>
</tr>
<tr>
<td><strong>Less: Brought forward Business loss</strong></td>
<td>(-) 40,000</td>
</tr>
<tr>
<td><strong>BUSINESS INCOME</strong></td>
<td><strong>8,000</strong></td>
</tr>
<tr>
<td>Income From Other Sources</td>
<td>25,000</td>
</tr>
<tr>
<td><strong>NET INCOME</strong></td>
<td><strong>33,000</strong></td>
</tr>
</tbody>
</table>
Note: Section 45(4) shall be attracted in previous year when assets have been distributed to partners.

Question 3:
HSP, a partnership firm engaged in the business of running a heritage hotel approved by the competent authority furnishes the following information relating to the year ended on 31.3.2021:

(a) Net profit as per P & L account of Rs. 200 lakhs was arrived at after charge of the following:
   (i) Depreciation on hotel building having W.D.V. on 1.4.2020 of Rs. 500 lakhs was charged by treating the same as Plant and Machinery.
   (ii) Expenses of Rs. 1,00,000 incurred for the purpose of promoting family planning among its employees.
   (iii) Payment of Rs. 50,000 for an advertisement published in the souvenir released on 15th August by Bhartiya Janta Party.
   (iv) Compensation of Rs. 1,00,000 paid to the suppliers of automatic kitchen appliances because of termination of the contract after receipt of 50% of appliances.
   (v) Wines and liquor imported in F.Y. 2019-2020 for Rs. 20 lakhs and were available in the stocks on 1.4.2020 for Rs. 5 lakhs were confiscated by the Govt. authority and therefore were written off.
   (vi) Expenses of Rs. 20 lakhs incurred on replacement of carpets in the foyer, lounge and bar.

(b) Amount paid to underworld for protection of hotel of Rs. 15 Lakhs.
(c) Amount of Rs. 4 lakhs equal to U.K £5000 was remitted and paid to a travel agent resident of U.K as commission for the booking of international tourists in the hotel. Tax at source was not deducted out of such payment.
(d) Amount of Rs. 40,000 each was paid in cash to the suppliers of vegetables, milk products and eggs on 11.2.2021 because of suspension of banking operations due to strike of bank employees.
(e) Amount of Rs. 5 lakhs written off in the F.Y.2016-2017 as irrecoverable from a travel agent; an amount of Rs. 2 lakhs out of it was recovered on 13.3.2021 and credited to a reserve account.

Compute the income chargeable to tax for Assessment Year 2021-2022 and give reason in brief for treatment given to each of the items.
### Computation of Total Income of HSP for Assessment Year 2021-2022

<table>
<thead>
<tr>
<th>Description</th>
<th>Rs. In Lakhs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Net Profit as Per Profit &amp; Loss A/c</strong></td>
<td>200.00</td>
</tr>
<tr>
<td>Add: Depreciation charged on building as Plant &amp; Machinery (500 Lakhs × 15%)</td>
<td>75.00</td>
</tr>
<tr>
<td>Less: Depreciation allowable on building as per I.T. Act. (500 Lakhs × 10%)</td>
<td>(50.00)</td>
</tr>
<tr>
<td>Add: Expenditure for promoting family planning among employees (Under section 36(1)(ix) deduction on account of expenditure for promoting family planning among employees is available to a company only)</td>
<td>1.00</td>
</tr>
<tr>
<td>Add: Payment for advertisement published in souvenir of Bhartiya Janta Party (As per provisions of section 37(2B), no allowance shall be made in respect of expenditure incurred on advertisement in any souvenir, brochure, pamphlet or the like published by a Political Party)</td>
<td>0.50</td>
</tr>
<tr>
<td>Add: Compensation paid to supplier for termination of contract. (Allowable expenditure since it is the damages paid for breach of contract - CIT vs. R.D Sharma &amp; Co.)</td>
<td>-</td>
</tr>
<tr>
<td>Add: Loss written off on wines and liquor held as stock confiscated by the Govt. Authority (As per Supreme Court in Dr. T. A. Qureshi Vs. CIT, loss on confiscation of stock in trade is an allowable expenditure)</td>
<td>-</td>
</tr>
<tr>
<td>Add: Expenses incurred on replacement of carpets. (As per Sec.37 (1) it is a revenue expenditure)</td>
<td>-</td>
</tr>
<tr>
<td>Add: Amount paid to underworld disallowed as per explanation to section 37(1)</td>
<td>15.00</td>
</tr>
<tr>
<td>Add: Commission paid to travel agent in U.K. (Not allowed as deduction under section 40(a)(i) since TDS was not deducted on such payment)</td>
<td>4.00</td>
</tr>
<tr>
<td>Add: Payment of Rs. 40,000 made in cash to the supplier of vegetables, Milk products and eggs. (As per exception provided in Rule 6DD such expenditure is allowed as deduction)</td>
<td>-</td>
</tr>
<tr>
<td>Add: Bad Debts Recovered (As per provision of section 41(4), where a deduction has been allowed in respect of a bad debt and the bad debt is subsequently recovered, then the amount so recovered shall be deemed to be the income of the previous year in which the amount is so recovered.)</td>
<td>2.00</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
<td>247.50</td>
</tr>
</tbody>
</table>
**CHAPTER 15**
**RECTIFICATION OF APPARENT MISTAKES**

Sec 154:- Rectification of mistake
To Rectify a (*)“Mistake Apparent from Record” an ITA may amend:

- Any order Passed by it
- Any Intimation u/s 143(1)
- Any TDS Intimation u/s 200A(1)
- Any TCS Intimation u/s 206CB(1)

(*) “MAR” means about which no two views are possible & there could be no arguments.

1. **ITAT** is not an ITA. It can't rectify mistake u/s 154. However, it can rectify its Mistake Apparent from Record u/s 254(2).

2. The rectification is made by passing rectification order u/s 154.

3. Remedy against such order
   - CIT(A)
   - Rectification
   - Revision u/s 264

4. Supreme Court Judgement is considered as “MAR” (But Not H.C.)

5. Rectification can be made by
   - ITA suo-motu
   - Where mistake is brought to notice by Assessee.
   - Where mistake is brought to notice by A.O. to CIT (A)

6. If rectification leads to enhancing the liability, then give O.O.B.H.
**Rectification of Apparent Mistakes**

**Sec 154(7)/(8) :- Time limit for passing Rectification order**

<table>
<thead>
<tr>
<th>By ITA, suo-moto 154(7)</th>
<th>By Application by Assessee 154(8)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Within 4 years</strong> from end of F.Y. in which order sought to be amended was passed.</td>
<td><strong>Within 6 months</strong> from end of the month in which application is received by it. Otherwise deemed to be in favour.</td>
</tr>
</tbody>
</table>

**What is the time limit to file Rectification Application?**

At least **file application within 4yrs** from the end of FY in which order sought to be amended was passed. Then ITA **can rectify** order to the **advantage of assesse.** *(Sec 154(8) NA)*

---

**Hind Wire Industries Ltd (SC)**

The Supreme Court held that **Sec 154** provides that Rectification can be made before expiry of 4 years from the end of F.Y. in which order sought to be amended was passed.

This order will **not necessarily mean the original order** but also rectified order. The **Rectified order itself has a mistake.** Therefore, the period of 4 years shall be counted from Rectified Order and not Original Order.

---

**Doctrine of partial merger**

**Any matter** of an Order which is **subject matter of Appeals or Revision** cannot be rectified **u/s 154.** ITA can rectify other matters which have not gone in appeal or revision.

**Note:** DPM earlier came in **sec 147** and it will again come in **sec 263.** However, in **sec 264** Doctrine of Complete Merger will come.

---

**ALL THE BEST**
Sec 131(1): Powers of Issuing Summons

I.T.A may issue a summon for following matters

<table>
<thead>
<tr>
<th>(a) Discovery &amp; Inspection.</th>
<th>(b) Enforcing attendance of any person &amp; examining both.</th>
<th>(c) Compelling production of BOA &amp; Documents.</th>
</tr>
</thead>
</table>

(1) All the above powers are vested in civil court.

(2) These powers can be exercised **even if no proceedings are pending.**

As per sec 131(2) an ITA not below the rank of Assistant commissioner of IT for the purpose of making any inquiry / investigation in respect of any person in relation to an agreement referred to in Sec 90,90A can exercise powers u/s 131(1).
Sec 131(3):- Impounding of Books and Documents

(1) ITA may impound and retain any BOA & DOC in its custody for such period as it thinks fit.

(2) A.O shall not

| (i) Impound any BOA / Documents without recording his reasons. | OR | (ii) Retain for more than 15 days without obtaining approval of Chief CIT or CIT. |

Sec 133: Power to Call for Information

A.O. OR CIT (A) may require :-

(a) Any firm to furnish names, addresses of partners and their shares.
(b) Any HUF to furnish names & addresses of members of family.
(c) Any trustee, guardian/agent to give details of its trusts, etc.
(d) Any Assessee to furnish names & addresses of all persons to whom he has paid any Rent, commission, Interest, etc.

Sec 133B:- Power to Collect Information

ITA may (+) Enter any Building/place in its jurisdiction

At which Business/Profession is carried on

AND

Require proprietor / Employees / other persons to help providing prescribed information.

- The I.T.A. can't remove from Building / place where in he has entered any BOA or other documents or any cash, stock or other valuable articles.
Sec 133C: Powers to call for Information by prescribed Authority

To verify information in its possession

(*)

I.T.A. may issue notice to such person to furnish information or documents within the time prescribed, which may be useful for any inquiry or proceedings under this Act.

Sec 133A: Power of Survey

The Power of Survey is with the Income Tax Authority subject to following

Proviso:

No action shall be taken by an Assistant Director or a Deputy Director or an AO or a TRO or an Inspector of Income-tax without prior approval of the Joint Director or the Joint Commissioner, as the case may.

Amendment made by Finance Act 2020:

It is proposed to substitute the existing proviso of sec 133A to provide that,-

(A) in a case where the information has been received from such authority, as may be prescribed, no action under sub-sec (1) shall be taken by an Assistant Director or a Deputy Director or an AO or a TRO or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner, as the case may be

(B) in any other case, no action under sub-sec (1) shall be taken by a Joint Director or a Joint Commissioner or an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Director or the Commissioner, as the case may be.

(*)

Enter any Business/Profession place/ Charitable activity place in its jurisdiction Only after sunrise but before sunset. (However, if the Business hours is in night then ITA may enter even after Sunset)

(*)

At which Business / profession is carried on or where charitable activity (if the BOA or other documents are kept at home, then Survey can be done even at
home) is carried on & require any proprietor / employee or any other person to help:

(i) Inspect BOA / other documents
(ii) Checking cash / stock / other value Article
(iii) To furnish such info as useful

Also for checking compliance of TDS/TCS.
An I.T.A. under this Sec

(i) may place marks of identification on BOA or other Documents & make copies of it
(ii) Impound & Retain in his custody BOA for such period as he thinks fit.
(iii) make list of any cash, stock or other Valuable Articles verified by him
(iv) Record the statement of any person which may be relevant under this Act.

An I.T.A. Can't remove from the place

Any cash / stock / valuable article (other than BOA / Other Documents).

Survey in case of Events, Ceremony etc:
Considering Nature and scale of expenditure

in connection with any function, ceremony or event, the ITA is of the opinion that it is necessary to get info from person who incurred such expenditure or any other person which may be useful

Such statement so recorded may be used as evidence in any proceeding under this Act.
→ If a person don’t co-operate under this Sec, then I.T.A. shall have all the powers u/s 131(1) for enforcing compliance with the requirement.

Non-compliance with Sec 131(1) results in Authorisation of search & seizure.

### Sec 281B: Provisional Attachment of any property

1. During **pendency** of proceedings
   1. A.O. is of the opinion
   1. He may be order in writing, provisionally attach any property in the Interest of the Revenue.

2. A.O. should take prior **approval of C.C/comm.**

2. After **six months** from the date of passing order such Attachment would be ceased to be effective.

⇒ Note: Also Refer Provisional Attachment Provisions for Search & Seizure on Page_____
1. Appeal to CIT(A)

CIT(A)

(1) Order passed by only ITA below the rank of CIT
(2) Assessee Aggrieved
(3) Appeal to CIT (A)
Form no 35 within 30 days (+) Extension (+)
Grounds of Appeal

e.g
(1) Assmt Order 143 144 147 153A
(2) Penalty Order 143
(4) Pre-deposit of tax & penalty. Hearing Adjournment
Stay of Demand. can be Made.

From FA 2012 even intimation u/s 143(1) 200A(1), 206CB (1) can be Appealed.

(5) Additional Grounds
Sec 250 (Note 2)

Additional Evidences (Rule 46A) (Under any of the 4 situations) (Note 2 & 3)
(6)

<table>
<thead>
<tr>
<th>Scope</th>
<th>Time Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Order</td>
<td>1 year from end of P.Y in which appeal is filed.</td>
</tr>
</tbody>
</table>

**Confirming**  
**Annulling**  
**Modifying**

(cancelling) *

Decreasing liability of Assessee

Increase liability of Assessee

Notice of demand for tax / Penalty.

Refund, if tax or penalty is paid

*CIT(A) cannot cancel and remand back the case to AO for fresh assessment. This power is there with ITAT, CIT u/s 263 and 264.

**Note 1: Stay of Demand**

Stay implies an extension towards payment of tax **beyond 30 days** till the time extension is applicable. Therefore, once the time limit expires, the assessee shall be liable towards payment on the basis of notice of demand.

**Note 2: Additional Grounds v/s Additional Evidence**

<table>
<thead>
<tr>
<th>Additional Grounds (Sec 250)</th>
<th>Additional Evidence (Rule 46A)</th>
</tr>
</thead>
<tbody>
<tr>
<td>It means a new subject matter, which was not raised in original grounds of appeal.</td>
<td></td>
</tr>
<tr>
<td>Addnl Grounds may be heard, when CIT(A) is being satisfied that omission of that ground was not willful or unreasonable.</td>
<td></td>
</tr>
<tr>
<td>It means new evidence or explanations, which was not put forth, before the A.O whose order, has been made subject matter of appeals</td>
<td></td>
</tr>
<tr>
<td>4 situations</td>
<td></td>
</tr>
</tbody>
</table>
**Note 3: 4 situations (Also there in IDT)**

<table>
<thead>
<tr>
<th>Situation (1)</th>
<th>Situation (2)</th>
<th>Situation (3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where A.O has to Admit the additional Evidence eg: CBDT Circular.</td>
<td>Where the Asst. has been made without giving sufficient opportunity to the appellant to produce evidence.</td>
<td>- Where the appellant was prevented by sufficient cause from producing the additional evidence called upon by the A.O</td>
</tr>
<tr>
<td></td>
<td>eg: The asst was done u/s 143(3) requiring the assessee to file evidence of purchases, towards which assessee made an application for providing him 15 days to furnish the same. But AO did not provide such time.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>eg: The evidence w.r.t. purchase could not be furnished by assessee as records were impounded by excise dept. The assessee was prevented from producing evidence called upon by the A.O.</td>
<td></td>
</tr>
</tbody>
</table>

**Situation (4)**
- Where the appellant was prevented by sufficient cause from producing before AO
- any evidence relevant to any ground of Appeals.

**Example:** The B.O.A were not regularly maintained by the assessee & AO made asst. u/s 144 without calling for any evidence. Evidences can be furnished to CIT (A) relevant to any ground of appeal.
### Appeal to Tribunal (ITAT)

1) **Order**

- **Assessee Aggrieved**
- **Order of CIT(A) u/s 250**

   - **Passed by CIT u/s 263**
   - **u/s 270A, 271J, 12AB etc**

2) **Order of CIT(A) u/s 250**

   - **Appelant**
   - **Pre-deposit within 60 days**
   - **Appeal Fees (+)**

---

**Note:** The above time limits of 30/60 days can be extended by ITAT, if there is a sufficient cause.

<table>
<thead>
<tr>
<th>ITAT</th>
<th>Additional grounds</th>
<th>HEARING</th>
<th>Additional Evidence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(not mentioned in Appeal)</td>
<td></td>
<td>No specific provision.</td>
</tr>
<tr>
<td></td>
<td>But Sec 254 read with rule 11 of Appellate</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Tribunal rules, allows Additional Grounds with the permission of ITAT  
It can only accept if it finds it necessary.

| ORDER |
|---|---|

### Time Limit

<table>
<thead>
<tr>
<th>1)</th>
<th>2)</th>
<th>3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>4 yrs from end of F.Y in which appeal is filed</td>
<td>If stay is granted then decide within 180 days.</td>
<td>Stay can be extended if delay is not because of assessee, but the total period of stay shall not go beyond 365 days. After 365 days, it cannot be extended. (Second Proviso)</td>
</tr>
<tr>
<td><a href="#">FA 2020 Amendment</a></td>
<td><em>(First Proviso)</em></td>
<td></td>
</tr>
</tbody>
</table>

### Disposal at his own end

- Confirming order
- Modifying order
- Annulling order

Remand back of case to A.O to pass fresh order. *(This power not available to CIT(A))*
Amendment made by Finance Act 2020

It is proposed to provide that ITAT may grant stay under the first proviso subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof. It is also proposed to substitute second proviso to provide that no extension of stay shall be granted by ITAT, where such appeal is not so disposed of which the said period of stay as specified in the order of stay. However, on an application made by the assessee, a further stay can be granted, if the delay in not disposing of the appeal is not attributable to the assessee and the assessee has deposited not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnish security of equal amount in respect thereof. The total stay granted by ITAT cannot exceed 365 days.

Provided also that if such appeal is not so disposed of within the period allowed under the first proviso or the period or periods extended or allowed under the second proviso, which shall not, in any case, exceed three hundred and sixty-five days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee. (This Proviso is not an amendment made by Finance Act 2020)

Issue 1: Where the ITAT has remanded an Asst order to the A.O for making fresh asst, can AO deal with the issue not before ITAT?

Ans: No, once the issue is remanded back to the A.O with specific direction of Asst, the jurisdiction of A.O. is confined only on the direction given by the ITAT.

Issue 2: Can ITAT direct to re-open a completed asst. for a year which is not under appeal before it?

Ans: The ITAT can’t direct to re-open a completed asst not being subject matter of appeals.

Such power of re-opening a completed asst. is with ITA u/s 147, 154, 263, Also the assessee can re-open the case u/s 154 & 264.
Issue 3: Can ITAT review its own order?

Ans: The ITAT cannot review its own order i.e. it cannot change its opinion. [1st view should be the last view and there should be no review]

However, if there is a mistake apparent from record in the order of ITAT then it can rectify such mistake u/s 254(2) [ITAT cannot rectify its mistake u/s 154 as it is not an income tax authority]

Suo Motu Rectification by ITAT:

Rectify the mistake u/s 254(2) within 6 months from the end of the month in which the order sought to be rectified was passed by ITAT.

Rectification on Application by Assessee or AO:

Where the application for rectification is made by the Assessing Officer or the assessee within 6 months from the end of the month in which the order sought to be rectified was passed, the Appellate Tribunal is bound to decide the application on merits and not on the ground of limitation i.e. order can be passed after expiry of 6 months from the end of the month in which the order sought to be rectified was passed. However, the application for rectification cannot be filed belatedly after 6 months from the end of the month in which the order sought to be rectified was passed.

Note: However, a High Court has an inherent power to review its own order subject to some conditions (Refer the Case of Meghalaya Steels Ltd)

Issue 4: Appeal to ITAT is heard by a bench of 2 members i.e. 1 judicial Member and 1 accountant member.

However, if the total income of the assessee as per the order of the AO is up to Rs. 50,00,000 then, appeal is heard by a single member bench.

Issue 5: An appeal by ITAT cannot be decided in the event of difference of opinions between the judicial & the accountant member. Comment.

Ans: The statement is incorrect. As per Sec 255, both the members shall state the point or points of difference & the case shall be referred by the president of the tribunal for hearing on such points by one or more of the other members of the tribunal. Such points shall be decided according to the majority of members’ opinion, of the Tribunal who heard the case including those who has 1st head it.
Issue 6: Does Tribunal has the Power to allow the assessee to urge any ground of appeal which was not raised by him before the Commissioner (Appeals).

Comment:
The ITAT has the power to entertain question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals).

It has the power to allow the assessee to urge any ground not raised before the Commissioner (Appeals). However, the relevant facts in respect of such ground should be on record. The decision of the Supreme Court in the case of National Thermal Power Company Limited vs. CIT (1998) (SC) supports this view.

This Power was not available to AO as it was held by Supreme Court in the case of Goetze India Ltd (Refer Sec 143(3))

Issue 7: Can the Appellate Tribunal, while hearing an appeal under sec 254(1), in a matter where registration under sec 12AA has been denied by the Commissioner, itself pass an order directing the Commissioner to grant registration?

_CIT v. Reham Foundation (2019) (ALL)_

1. The High Court held that the Appellate Tribunal while hearing an appeal under sec 254(1) in a matter where registration under sec 12AA has been denied by the CIT, can itself pass an order directing the CIT to grant registration, only in case the Tribunal disagrees with the opinion of the CIT as regards the genuineness of the activities and object(s) of the trust, on the basis of material already on record before the CIT.

2. However, the said power is not to be exercised by the Appellate Tribunal as a matter of course and remand to the CIT is to be made where the Appellate Tribunal records a divergent view on the basis of the material which has been filed before the Appellate Tribunal for the first time.

Issue 8: Can the Appellate Tribunal dismiss an appeal, without deciding the case on its merits, solely on the ground that the assessee had not appeared on the appointed date of hearing?
SMT Ritha Sabapathy v. DCIT (2019) (MAD)

1. The High Court opined that even if the assessee could not appear, the Tribunal could have decided the appeal only on merits, *ex parte*, after hearing the Revenue's contentions.

2. It reiterates that the fact-finding Appellate Tribunal should not shirk its responsibility to decide a case on its merits.

3. Cryptic orders, not touching the merits of the case, would not give rise to any substantial question of law for consideration by the High Court under *sec 260A*.

4. The assessee's valuable right of getting the issues decided on merits by the final fact-finding body, viz., the Tribunal cannot be given short shrift in this manner.

5. A legal and binding responsibility, therefore, lies upon the Tribunal to decide the appeal on merits, irrespective of the appearance or otherwise of the assessee or his counsel before it.

6. In view of the decided case laws and the clear provisions the High Court set aside the impugned order of the Tribunal dismissing the assessee's appeal due to non-appearance and directed it to decide the appeal on merits afresh in accordance with law

**Conclusion:**

ITAT is the *last fact-finding* authority and if the assessee or dept wants to further appeal in High Court or Supreme Court then, it has to be a 'SUBSTANTIAL QUESTION OF LAW'. A 'substantial question of law' means an issue which is *debatable* in nature. It is a question for which there is NO CLARITY in law and no authentic previous judgements.

If assessee's application is accepted in HC then it is regulated by *Code of Civil Procedure, 1908*.

An Appeal to High Court is to made within 120 days and appeal to Supreme Court is to be made within 90 days.

*Refer Case Law of Spinacom India (P) Ltd on Page_____ of Text Book*
**SEC 158A: Special Provision for Avoidance of REPETITIVE APPEALS.**

1) The assessee can claim that a QOL pending before AO, CIT (A) or ITAT for a particular year [Present year] is identical with QOL pending before HC or SC for another year [Past years] then in such case the assessee can furnish a declaration in 'Form 8' to A.O, CIT (A) or ITAT stating that, if the AO, CIT (A) or ITAT agrees to apply the judgement of HC or Supreme Court in his current case then assessee shall not file an appeal.

2) The A.O, CIT (A) or ITAT may admit or reject the claim of assessee.

3) If the claim is admitted the AO, CIT (A) or ITAT shall pass the order in the current case and whenever the judgement of HC or SC becomes final this order will be amended accordingly.

**Sec 268A: Special Provision for Appeals by Dept.**

1) This Sec empowers CBDT to fix monetary limits for regulating appeals by department. The underlying objective is to reduce litigation in small cases.

2) In the exercise of this power CBDT has notified following limits i.e. Dept should file appeal only if the 'TAX EFFECT' is more than the following amounts:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Tax Effect</th>
</tr>
</thead>
<tbody>
<tr>
<td>For Appeal to ITAT</td>
<td>&gt; 50 lacs</td>
</tr>
<tr>
<td></td>
<td>HC</td>
</tr>
<tr>
<td></td>
<td>SC</td>
</tr>
</tbody>
</table>

*Tax Effect Means the "Current Tax (MINUS) Estimated Tax if Dept wins"*

3) If Dept did not filed an appeal on a particular issue in case of a particular assessee in a particular year then, it shall not stop the dept from filling an appeal of the same issue in case of same assessee in another year or of the same issue in case of another assessee in any year.

(4) The assessee cannot claim that the dept has agreed on a particular issue by not filing appeal on such issue.
### COLLECTION & RECOVERY OF TAX

<table>
<thead>
<tr>
<th>Notice of Demand Served u/s 156</th>
<th>pay demand</th>
<th>After 30 days Of Non-Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Within 30 days 'Assessee in default'</td>
</tr>
<tr>
<td></td>
<td></td>
<td>*4 consequences</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Extended</th>
<th>Reduced (Reason to Believe)</th>
</tr>
</thead>
<tbody>
<tr>
<td>- On Application by assessee</td>
<td>- Suo - motu by A.O</td>
</tr>
<tr>
<td>- Installment facility (with interest)</td>
<td>{RTB that giving 30 days is detrimental to the Interest of Revenue.}</td>
</tr>
</tbody>
</table>

**TRO** - Tax Recovery officer.  
**COA** - Certificate of Action

<table>
<thead>
<tr>
<th>4 Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
</tr>
<tr>
<td>Sec 220</td>
</tr>
<tr>
<td>Int @ 1% p.m or part there of</td>
</tr>
<tr>
<td>Waiver of Int u/s 220 (2)*</td>
</tr>
<tr>
<td>H - undue Hardship (+)</td>
</tr>
</tbody>
</table>

*Note: The order for waiver of interest, either in full or part, shall be passed within 12 months from the end of the month in which application is received.
4 MODES:

<table>
<thead>
<tr>
<th>S [226(2)]</th>
<th>D [226(3)]</th>
<th>C [226(4)]</th>
<th>D [226(5)]</th>
</tr>
</thead>
<tbody>
<tr>
<td>From salary due to Assessee</td>
<td>Garnishee order to Debtors of Assessee.</td>
<td>Application to release the property in the Court custody in favour of Department.</td>
<td>Distraining sale.</td>
</tr>
<tr>
<td>Employer shall pay salary to Govt of India.</td>
<td>If Drs pay to assessee instead of GOI, the Drs shall be “Deemed to be Assessee in Default”.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Sec 263: Revision of Orders by CIT
(Prejudicial to Revenue)

CIT may call for & examine the record

If he considers that any order passed by A.O. is

- Erroneous
- AND
- Prejudicial to int of Revenue

Then

He may after giving O.O.B.H # pass such order as he deems fit.

# if O.O.B.H is not given then order by CIT is void ab initio

Scope of order passed by CIT

- Enhance i.e. can increase the income
- OR
- Modify
- OR
- Cancel & direct fresh Assessment. This power is not there with CIT (A).

Explanation to Sec 263:
An order passed by A.O. is deemed to be erroneous (+) prejudicial to Int of Revenue if CIT is of the opinion that:

| | | | |
| | | | |
| Order is passed without making inquiries or rectification | • Order is passed allowing relief without inquiry | • Order is not made in accordance with Sec 119 i.e. powers of CBDT | • Order not passed in accordance with any decision of jurisdictional HC or SC |

Key Points:
1) CIT can only revise order of A.O.
2) Intimation / Deemed Intimation cannot be revised.
   (Intimation can be rectified & appealed)
3) An appeal to ITAT can be filed against order of CIT u/s 263.
4) After getting OOBH if assessee proves his point correct then the proceedings u/s 263 shall be dropped.
5) There is no need to give any specific SCN. Only OOBH should be given.

Time limit to pass an order
Within 2 years from end of F.Y in which order sought to be revised was passed.

Exception to Time Limit
Order can be passed at any time to give effect to finding or direction of H.C. or S.C.

CIT v/s ICICI Bank Ltd. [Bombay HC]
It was held that period of limitation i.e T/L for revising an order in respect of a matter which does not form part of the subject matter of reassessment shall be reckoned from the date of original order u/s 143(3) & not 147.

Sec 264: Revision of other Orders (Prejudicial to Assessee)

| Any order other than to which Sec 263 applies | Then CIT | On his own motion OR | CIT may call for records Of any proceedings under this Act in which such |
Note: After revision u/s 263 revision u/s 264 is not possible. However after revision u/s 264, revision u/s 263 is possible

Key Notes:
1) Under sec 264 only the order of AO can be revised.
2) Intimation / Deemed Intimation cannot be revised u/s 264.
3) CIT can cancel /set aside the order of AO and direct him to make fresh assessment and such directions shall not be prejudicial to the assessee. {This power is not available to CIT(A). It is available with ITAT, CIT u/s 263 & 264}

TIME LIMITS:

<table>
<thead>
<tr>
<th>T/L to pass an order: CIT on his own shall not revise any order after 1 year from date of passing.</th>
<th>T/L for application for Revision by assessee: An application for revision by assessee must be made within 1 year from the date of communication of order to him (If CIT is satisfied that there was sufficient cause for delay, then he may admit application beyond 1 yr.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>T/L to pass an order:</td>
<td>T/L to pass an order: Within 1 yr from end of FY in which application is made by assessee.</td>
</tr>
</tbody>
</table>

Under what circumstances revision u/s 264 is not possible?

1) Where an assessee has filed an appeal on any matter, then revision u/s 264 is not possible [Doctrines of complete merger]
2) However, revision u/s 264 is possible when time limit to file an appeal to CIT (A) has not expired and the assessee has waived the right to appeal.
3) Revision u/s 264 is possible if time limit to appeal is expired.
What is the remedy against order passed u/s 264?

No appeal is possible against the above order; however, such order can be challenged in the High court through a WRIT petition.

However, if there is a “MAR” in such order than it can be rectified u/s 154.

**Comparison of Sec 263 and Sec 264**

**Similarities**

1. Revision by CIT
2. Revision of order of AO
3. Revision can be suo motu
4. Assessment can be cancelled / set aside, and a direction be given to A.O to make fresh assessment
5. Can be rectified u/s 154.

**Distinctions**

<table>
<thead>
<tr>
<th>S.N</th>
<th>Sec 263</th>
<th>Sec 264</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Revision of order prejudicial to Revenue.</td>
<td>Revision of order prejudicial to Assessee.</td>
</tr>
<tr>
<td>2.</td>
<td>An appeal can be filed to ITAT against order passed u/s 263</td>
<td>No Appeal can be filed against the order passed u/s 264</td>
</tr>
<tr>
<td>3.</td>
<td>Doctrine of partial Merger.</td>
<td>Doctrine of complete Merger</td>
</tr>
<tr>
<td>4.</td>
<td>Revision u/s 263 is possible after 264</td>
<td>Revision u/s 264 is not possible after 263</td>
</tr>
<tr>
<td>5.</td>
<td>Order u/s 263 must be passed within 2 years from end of FY in which order sought to be revised was passed [ICICI Bank Ltd]</td>
<td>Suo-motu 1 yr from date of passing the order.</td>
</tr>
<tr>
<td></td>
<td>Application by Assessee. 1 yr from end of FY in which application was filed</td>
<td>Application can be filed within 1 yr from the date of communication of order.</td>
</tr>
</tbody>
</table>

**ALL THE BEST**
CHAPTER 18
SEARCH & SEIZURE

SEC 132

1. Who can authorise search and seizure i.e. issue search warrants?

By Director General (DG) / Director (D) / Chief Commissioner (CC) / CIT.
Additional Director (AD) / Additional Commissioner (AC) /Joint Director (JD) / Joint Commissioner (JC).

The above 8 authorities will authorise "Assessing officer".

If these people are empowered by CBDT.

2. When can search and seizure be authorised?

If ITA (+) on the basis of information in possession (+) has Reason to Believe that:

| (a) person has failed to comply u/s 131 or u/s 142 (1) | OR | (b) a person might fail to comply u/s 131 or u/s 142(1) | (c) a person is in possession of any article or things inc. money, bullion or jewelry etc. and these assets represents income not disclosed. |

Amendment made by Finance Act, 2017

'Reason to believe' or 'reason to suspect', as the case may be, shall not be disclosed to any person or any authority or the Appellate Tribunal.

3. Powers of "Authorised Officer"

An "Authorised Officer" (A.O) is authorised to :-

| (i) Enter & search any building, place, vessel, vehicle or aircraft where he has reason to suspect that BOA, other doc, | (ii) break open the lock of any door, box, lockers, etc where keys are not available | (iii) Search any person who has got out of or is about to get in to or is in building, etc. |
**SEARCH & SEIZURE**

Money, bullion, etc are kept.

| (iv) | 
|---|---|
| require any person who is found to be in electronic form to afford “A.O” the necessary facility to inspect such BOA, etc. |

<table>
<thead>
<tr>
<th>(v)</th>
<th>(vi)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Seize any BOA etc (+) However, stock in trade shall not be seized but can make a note of it.</td>
<td></td>
</tr>
<tr>
<td>place marks of identification on BOA etc (+) make copies of it.</td>
<td></td>
</tr>
</tbody>
</table>

### Deemed / Constructive Seizure :-

| Proviso to Sec 132(1) | 
|---|---|
| Where it is not possible or practicable to take physical possession & remove it to safe place. |

<table>
<thead>
<tr>
<th>Due to</th>
<th>then</th>
</tr>
</thead>
<tbody>
<tr>
<td>its volume, weight, or other physical characteristics or due to its dangerous nature.</td>
<td></td>
</tr>
</tbody>
</table>

| A.O. may serve an order on owner or person in immediate possession that he shall not remove or otherwise deal except with prev. approval of such “A.O” & it will be a deemed seizure. |

**Note:-** The above proviso shall not apply to stock-In-trade.

### Sec 132(3):- Order of Restraint

<table>
<thead>
<tr>
<th>(+)</th>
<th>(+)</th>
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<tbody>
<tr>
<td>Where it is not practicable to seize any BOA, etc for the reasons other than above proviso.</td>
<td></td>
</tr>
</tbody>
</table>

| Then ‘A.O’ may serve an order that he shall not remove except with prev. approval of ‘A.O’. |

| Such order shall not be in force beyond 60 days. |
Jurisdiction of CIT

Where Bldg, place etc in which search is conducted is within the area of jurisdiction of Chief CIT or CIT.

BUT

Chief CIT or CIT has no jurisdiction over the person

Such CIT etc has RTB that delay in getting authorization over such person may be prejudicial to int of Revenue then he is competent to authorize the ‘A.O.’

Key Notes:-

(1) The ‘A.O’. may **requisition** the services of **any police** or any **officer** of **C.G.** or both to assist him in search and seizure.

(2) Examination of Oath:-

“AO” may **examine an oath on any person** who is found to be in possession of any BOA, etc and any statement made by such person thereafter be **used in evidence** in any proceeding under the Act.

Presumptions in course of Search and Seizure :-

Where any BOA etc are found in possession of any person, it may be presumed :-

| that it belongs to such person. | that contents of such BOA etc are true. | All documents, sign etc are in handwriting of such person and any stamp, attestation etc is done by such person. |

Two amendments made by Finance Act 2017:

Valuation during Search:

The authorised Officer may for the purpose of estimation of FMV of property obtained during search, make a reference to a VO referred to in sec 142A. VO shall furnish such report within 60 days of receipt of such reference. (Refer Sec 142A)

Provisional attachment during search:

During the course of search or with in 60 days, the “AO” for protecting the Interest of Revenue may provisionally attach with prior approval of
PDG/DG/PD/D. It will have effect for 6 months. (Refer Sec 281B)

**Period of Retention of B.O.A. and other Documents:**

1. BOA etc seized shall **not be retained** for a period exceeding 30 days from the date of order of assessment u/s 153A unless the reasons for retaining the same are recorded by him in writing and approval of C.C./C for retention is obtained. C.C./C shall **not authorise retention** of BOA for a period exceeding 30 days after all proceedings are completed [i.e. Penalty Proceedings]

2. The person from whose custody any BOA, etc are seized, may make copies, etc in the presence of 'A.O'. at such place and time as the 'A.O'. may appoint.

3. **Sec 132(9A):-** Where the 'A.O'. has **no jurisdiction** over the person searched by him then he **shall handover** such documents etc to Assessing officer having jurisdiction over such person within a period of 60 days from the date on which search is completed.

**Sec 132A :- Power to Requisition BOA, etc.**

If any BOA, docs, money, bullion etc are under custody of any officer under any other law. then D.G/D etc may authorise any Assessing officer (R.O) to require the officer under other laws to deliver such BOA etc to “R.O”.

Henceforth, the officer under respective law shall deliver BOA, etc to “R.O”. if it is no longer necessary to retain the same.

**Sec 132B :- Application of seized or Requisitioned assets**

1. Assets seized etc may be **dealt in foll manner** [i.e. foll things can be recovered].
   2. Liability determined u/s 153A and also from the A.Y. in which search was initiated.
   3. **Penalty and Interest**
(2) **Proviso:-**

<table>
<thead>
<tr>
<th>Event</th>
<th>Requirement</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 30 days from end of the month in which asset was seized.</td>
<td>The person concerned makes an application for release of assets and explains nature and source of such assets to A.O.</td>
<td>Then Amount of Existing liability will be Recovered, and Remaining portion may be Released with prior approval of C.C/C.</td>
</tr>
</tbody>
</table>

**Note:** Such remaining assets shall be released within 120 days from the date of completion of search.

(3) **How liabilities will be discharged?**

- If assets consist of money, then it will be discharged to the extent of money.
- If the assets consist of other than money, then it will be discharged by sale of such assets.

**Note:-**

Any assets or proceeds thereof, remain after discharging liabilities then it should be returned back, or else C.G. shall pay simple interest @ 0.5% p.m. or part of the month.

**ALL THE BEST**
Sec 153A:- Assessment in the Course of Search & Seizure

(1) As per Sec 153A(1)

(1) Where a search is initiated u/s 132 then A.O. shall

(2) Issue a notice to such person to file ROI within time specified in Notice for 6/10 A.Y.s.

(3) Then A.O. shall assess or re-assess the T.I. of 6/10 A.Y.'s immediately preceding the A.Y. relevant to P.Y. in which such search is conducted [i.e. for all 6/10 AY's].

Key Notes:-

(1) ROI is required to be filed, even if the Assessee is not obligated.

(2) ROI is required to furnished even if:-
   - ROI has already been filed (or)
   - Asst / Re-Asset have been completed (or)
   - Asst / Re-Asst for any A.Y. is still pending

(3) The Assessment shall be made separately for all 6/10 years.

(4) Any assessment which is pending on date of initiation of search shall abate. However, appeal, revision or rectification proceedings shall NOT abate.

(5) All provisions of Income Tax Act shall apply to sec 153A.
   - Penalties for concealment of Income/ defaults like non-filing of return.
   - Interest u/s 234 A/B/C.
   - Prosecution.

(6) Tax Rate = Rate applicable to such A.Y.'s.

(7) Appeal to CIT (A) can be filed against order u/s 153A.

Amendment made by Finance Act 2017:

If the search is initiated on or after 01/04/17, then the AO can issue notice u/s 153A for 6 preceding AY's & "for relevant AY or AY's".
For this purpose, relevant AY or AY's shall mean the AY which falls beyond the 6th year but not later than 10th year.

Suppose, the search is conducted on 10/10/2020, then 6 AY's will be AY 15-16 to AY 20-21 and 4 relevant AY’s will be AY 11-12 to AY 14-15.

A notice can be issued for relevant AY's only if the following 4 conditions are fulfilled:

1) The AO has in his possession the books of A/c’s which reveal that the income which has escaped assessment amounts to or is likely to amount to Rs. 50 L or more in one year or in aggregate of the 4 relevant AY’s.

2) Such income escaping assessment is represented in the form of asset (For this purpose assets shall include loans & advances, shares & securities, land or building)

3) The income escaping assessment or part thereof relates to such years

4) The search is initiated on or after 01/04/2017.

<table>
<thead>
<tr>
<th>Time limit for Completion of Assessment u/s 153A: - Sec 153B</th>
<th>Normal period of Asst/Re-Asst u/s 153B</th>
<th>Where case is referred to TPO u/s 92CA</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) For 6/10 A.Y.S’ immediately preceding the A.Y. Relevant to P.Y. in which search is conducted.</td>
<td>12 months from the end of F.Y. in which search is completed (and not initiated).</td>
<td>24 months from the end of F.Y. in which search is completed (and not initiated).</td>
</tr>
<tr>
<td>(2) For A.Y. Relevant to P.Y. in which search is started.</td>
<td>Same as Above.</td>
<td>Same as Above.</td>
</tr>
</tbody>
</table>

Sec 153C :- Assessment of Income of “Any Other Person”.

<table>
<thead>
<tr>
<th>Where A.O. is satisfied</th>
<th>(+) any money, bullion, jewellery, BOA, etc seized.</th>
<th>(+) belongs to / pertains to a person other</th>
<th>(+) then it shall be handed over to A.O. having</th>
</tr>
</thead>
</table>
Note:- Subsequently, A.O. will initiate proceedings u/s 153A for 6/10 years if he is satisfied that BOA / documents etc seized have a bearing on total income of such other person.

**Sec 153B** :- Time limit for completing Assessment in case of OTHER PERSON.

<table>
<thead>
<tr>
<th>Normal period of Assessment/Re-Assessment u/s 153C.</th>
<th>If Referred to TPO</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) For 6 A.Y's immediately preceding the A.Y. relevant to P.Y. in which search is conducted.</td>
<td>12 months from end of F.Y. in which search is completed. (OR) 12 months from end of P.Y. in which BOA, etc are handed over u/s 153C to A.O. having jurisdiction over such other person. Whichever is later</td>
</tr>
<tr>
<td>(2) For A.Y. relevant to P.Y. in which search is started.</td>
<td>Same As above.</td>
</tr>
</tbody>
</table>

**Analysis of Sec 153A and Sec 153C:-**

Search is initiated on Mr. A (Assessee) on 30th June, 2020 and completed on 4th July, 2020 Mr. A proves to the satisfaction of his A.O. i.e. Mr. X (Assessing officer) that certain BOA, money, etc belongs to Mr. B. The A.O. of Mr. A i.e. Mr X hands over the BOA documents, etc belonging to Mr. B to the A.O. Mr. Y having jurisdiction over Mr. B on 10th August, 2020.

Now the assessment / re-assessment u/s 153A shall be made on Mr. A and Mr. B for AY 2015 – 16 to AY 2020 – 21 (4 years extra also subject to conditions).
For AY 21 - 22 i.e. current AY the Assessment shall be made on Mr. A and Mr. B u/s 143(3) or 144.

As per sec 153B the time limit for completion of Assessment / Re-assessment of Mr. A is as under:-

(1) For AY 15 - 16 to AY 2020 - 21:-
Assessment / Re-assessment should be completed u/s 153A upto 31.03.22

(2) For AY 2021 - 22:-
Assessment u/s 143(3) or 144 should be completed upto 31.03.22

The A.O. Mr. Y of Mr. B will issue notice u/s 153A and make assessment or re-assessment of Mr. B u/s 153A only if he is satisfied that BOA, documents, assets seized have bearing on total income of Mr. B for R.A.Y. referred in sec 153A(1). It means that if on the basis of such BOA, etc seized it is found that Mr. B has concealed income of any one or more AY’s referred to Sec 153A then A.O. of Mr B will proceed u/s 153A for all the A.Y.’s. But if A.O. finds that Mr. B has not concealed any income in any A.Y. referred to sec 153A, A.O. shall not proceed against Mr. B.

Prior to amendment, A.O. of Mr. B was bound to proceed against Mr. B and issue him notice u/s 153A and make assessment / re-assessment u/s 153A even if no concealed income was found in case of Mr. B in any of the A.Y.’s referred to in sec 153A on the basis of documents, accounts handed over to him.

Now as per the amendment if concealed income is not found then he shall not proceed against Mr. B.

**Time limit for the completion of asst / re-asst on Mr. B will be as under :-**

(1) For AY 2015 -16 to AY 2020 - 21 :-
Asst / Re-assessment u/s 153A should be completed upto 31.03.22 or 31.3.2022, whichever is later. (i.e. 31/03/2022) u/s 153A.

(2) For AY 2021- 22 [same as above]

➤ Note:
In case of Mr. A the asst / re-asst pending on 30.06.2020 for AY 2015 - 16 to AY 2020 - 21 shall come to an end.

In case of Mr. B the asst/ reasst pending on 10.08.2020 for AY 2015-16 to AY 2020-21 shall come to an end (i.e. date of recevving BOA).
The assessment u/s 143(3) or 144 shall be completed by 31.03.22.

S.R. Batliboi & Co.

1. It was held by Delhi HC that granting absolute access to the Department of all the data even pertaining to the other clients having no dealings with assessee group would tantamount to grave professional misconduct and would be contrary to code of Ethics applicable upon the petitioner.

2. Further, it was held u/s 153C, that department act as a post office i.e. it sends the seized material to concerned A.O.

3. Therefore, the materials which are not connected with raid must be ignored.

Sec 153A(2) :- Revival of Assessment Abated earlier.

Search is conducted on 30.06.2020 and completed on 04.07.2020.

(1) Now A.Y. 2015 - 16 to AY 2020 - 21 Asst / Re-asst can be made under u/s 153A.

(2) Suppose for AY 2016 - 17 notice u/s 148 was issued and served on 20/02/2020 and Re-asst u/s 147 is pending on 30/06/2020. Therefore, Re-asst u/s 147 shall come to an end.

(3) Suppose for A.Y. 2019 - 20, the asst is pending u/s 143(3) on 30/6/2020. Asst u/s 143(3) shall come to an end.

(4) Now let us say that A.O. made Re-asst u/s 153A for A.Y. 2015 - 16 to AY 2020 - 21 on 31.03.22.

(5) Now let us say that assesse files appeal to CIT(A) & then ITAT.

(6) Now let us say that ITAT on 30/06/2025, annulled re-asst u/s 153A for AY 2015 - 16 to AY 2020 - 21 on the ground that search was illegal.

(7) The order of ITAT is received by CIT on 01/08/2025.

∴ Now on 01/08/2025, the Re-asst u/s 147 for AY 2016 - 17 and Asst u/s 143(3) for AY 19 - 20, will revive as per Sec 153A(2).

Sec 153(8): T/L for completion of Revived Assessment/ Re-Assessment

(1) within 1 year from the end of the month of such revival or

(2) within Time specified u/s 153B.

Whichever is later.

ALL THE BEST
# Important Time Limits of Assessments

## Chapter 20

### Important Time Limits of Assessments

<table>
<thead>
<tr>
<th></th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1)</td>
<td>139(1) : 31/7 / 31/10 / 30/11</td>
</tr>
<tr>
<td>2)</td>
<td>139(3) : Same as above</td>
</tr>
<tr>
<td>3)</td>
<td>139(4) : Before end of RAY OR Completion of Assessment whichever is earlier</td>
</tr>
<tr>
<td>4)</td>
<td>139(5) : Before end of RAY OR whichever is earlier Completion of assessment</td>
</tr>
<tr>
<td>5)</td>
<td>139(9) : Within 15 days OR as extended</td>
</tr>
<tr>
<td>6)</td>
<td>142(1)(i) : As specified in Notice</td>
</tr>
<tr>
<td>7)</td>
<td>142(2A) : As specified in direction (+) Extension (Total 180 days)</td>
</tr>
<tr>
<td>8)</td>
<td>142A : within 6 months from end of month in which reference was made to valuation officer</td>
</tr>
<tr>
<td>9)</td>
<td>143(1) : send within 1 yr from end of FY in which ROI was furnished.</td>
</tr>
</tbody>
</table>

10) **143(3)**

- **143(2) Scrutiny Notice**
  - Serve a notice within 6 months from end of FY in which ROI was filed

- **153(1) Order**
  - Pass within 12mths from end RAY
  - If Referred to TPO +12 m

11) **144**

- **Show cause Notice**
  - Time limit= As specified in Notice

- **153(1) Order**
  - Same as **143(3)**
  - If Referred to TPO +12 m
IMPORTANT TIME LIMITS OF ASSESSMENTS

12) 147

Order 153(2)

148 149

ROI 4AY if E/I < 1lac 12 mths from end of FY in which notice u/s 148 is served
6AY if E/I ≥ 1lac
As Specified 16 AY if Foreign Asset * If Referred to TPO +12 m
in notice.

13) 153A [Search & Seizure Asst]

153A 153B

ROI Notice for which yrs. 12 months from end of FY in which search was completed.
As specified in All 6 AY's or 10 AY's If Referred to TPO +12 m
notice

14) 153C [In case of Other Person]

153A Order 153B

ROI Notice for which yrs. which search was completed.
As specified above. All 6 AY's or 10 AY's 12 months from end of FY in which BOA etc is handed over to AO having jurisdiction one such person.

OR

If Referred to TPO +12 m
15) Rectification u/s 154

Suo moto by Dept.  
Application by Assessee

Within 4 yrs from end of FY in which order sought to be amended was passed  
Within 6 months from end of month in which application was received by Dept.

16) 263 Revision by CIT

Within 2 years from end of FY in which order sought to be revised was passed.

17) 264 Revision CIT

Suo moto  
Application by Assessee

Within 1 yr from the date of passing if order.  
Within one year from the date order was communicated to assessee

T/L for Order.  
Within one year from end of FY in which application was made.

ALL THE BEST
To claim exemption under IT Act in relation to a trust, a trust should be formed for a **lawful purpose** which can be either charitable or religious purpose. The term **religious purpose** is not defined under IT Law. However, the term Charitable Purpose is defined u/s 2(15) to include:-

(i) Relief of **poor**.  
(ii) Education.  
(iii) **Medical** Relief.  
(iv) **Yoga**.  
(v) Preservation of **Monuments**.  
(vi) Preservation of **Environment**.  
(vii) **Any other object of General Public Utility**.

The first 6 categories of purposes are specified categories who will **enjoy exemption** irrespective of amount of **Commercial receipt (Fees)** from that activity in a P.Y.

» **Example:** - If a school which is registered as trust will **enjoy exemption** even if it will receive fees of Rs. 100 crores in a P.Y. (i.e. even if it crosses 20% of Total Receipts).

However, if trust is covered under general category, then it would be treated as charitable trust only if it receives Commercial receipt (fees) from that activity up to 20% of total receipts.

» **Eg:**- XY charitable trust with a main object of promotion of sports receives corpus donation of Rs. 40L, voluntary donation of Rs. 40L and fees from activity is Rs. 50L.

Since the fees from the activity of promoting sports exceeds 20% of total receipts.

XY can't enjoy exemption. In case if the fees received from the activity is Rs. 10L, then it can enjoy exemption as the fees of Rs. 10L is less than 20% of total receipts.

### Treatment of Donations:

<table>
<thead>
<tr>
<th>(1) Where Identity of Donor is known</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) Corpus</td>
</tr>
<tr>
<td>Not an income</td>
</tr>
</tbody>
</table>

**TAXATION OF TRUST**
(2) Where identity is not known – Anonymous Donation Taxable u/s 115BBC

<table>
<thead>
<tr>
<th>Computation of Income of Trust</th>
</tr>
</thead>
<tbody>
<tr>
<td>Income from trust (Gross Fees - Expenses)</td>
</tr>
<tr>
<td>(+) Voluntary Donation</td>
</tr>
<tr>
<td>(-) Adhoc Exemption u/s 11(1) @ 15%</td>
</tr>
<tr>
<td>(-) Application for charitable / Religious purpose</td>
</tr>
<tr>
<td><strong>Total Income</strong></td>
</tr>
</tbody>
</table>

What amounts to application for Charitable or Religious Purpose?

→ The word application is quite wider as compared to the word expenditure.

The following amounts to application of income:- (Illustrative list)

(1) Repayment of loans taken to fulfill the objective of the trust amounts to application of income provided that the expenditure incurred for which loans were taken was not treated as application.

(2) Expenditure on Purchase of Capital Assets:-

Sec 11(6) provides that where any capital asset has been allowed as application of income, then no depreciation can be claimed on such assets.

(3) Payment of taxes whether of current year or last year’s amount to application of income.

(4) Advancing education loans to students would also amount to application of income.

(5) Loss due to excess application of earlier years can be allowed as application in the current Financial Year.

The above list is just illustrative in nature and it would include many other activities in relation to a trust.

**Amendment made by Finance Act 2018**

A new explanation has been inserted in Sec 11 which provides that for the purpose of determination of application of income, the provisions of Sec 40(a)(ia) & 40A(3)/(3A) shall, mutadis mutandis, apply.
Various Tax Planning Measures:

(1) Donation to another Trust:

A trust can claim exemption by donating another trust who is registered under Sec 12AA and Sec 10(23C) of IT Act. Further, the objects of the donor and the donee may or may not match.

Example: A school can give donation to another school or even to hospital who is registered under respective Secs.

Amendment made by Finance Act 2017:

1. Any donations made by a trust registered u/s 12AA, to another trust registered u/s 12AA or 10(23C), is considered as application of income.
2. Donations received with specific direction is not an income of recipient trust. However, at the same time, it is allowed as application of income to donor trust.
3. Therefore FA, 2017 has made an amendment to provide that any donation made with a specific direction to a trust registered u/s 12AA will not be considered as application of income.

Amendment made by Finance Act 2020:

From FY 2020-21, Any amount credited or paid, out of income to any university or other educational institution or any hospital or other medical institution referred to in sec 10(23C)(iv)(v)(vi)(via) being contribution with a specific direction that it shall form part of the corpus, shall not be treated as application of income for charitable or religious purposes. Therefore, now NO deduction if Corpus donation is given to both, trust u/s 12AA and Institutions etc u/s 10(23C).

(2) Non-Application due to Non-Receipt:

Where a trust has not received any amount during any P.Y, then it can claim exemption in the current year in which the income is earned but not received by making an application in writing on or before the due date of filing of return. However, whenever such amount is received it must be applied in the year of receipt or year following the receipt. In case of non-application such amount will become deemed income of the year following the receipt.
Accumulation for the Specified Purpose:

If an assessee do not wish to apply the income in the current year, then it can take benefits specified u/s 11(2) provided it wants to accumulate for specified purpose.

For this purpose, a trust has to file a statement in prescribed form and manner in writing to A.O. specifying the purpose and the period of accumulation. In no case the period of accumulation should exceed 5 years.

The assessee is supposed to file the statement before the due date mentioned u/s 139(1).

The amount accumulated must be deposited in the modes specified u/s 11(5).

(Mainly Government Securities)

Deemed Income:

If such amount is withdrawn and not used for specified purpose, then it will become deemed income of the year of withdrawal. (Sec 11(3))

If such amount is withdrawn and donated to another trust, then it is deemed income of the year of withdrawal.

If such amount ceases to be invested in the mode specified u/s 11(5), then also it will be deemed income of the year in which it ceases to remain invested in modes specified u/s 11(5).

If such amount is not withdrawn and applied within 6 years, then unutilized amount will become deemed income of 6th year. (i.e it should be accumulated for 5 years and applied till 6th year)

Any Other Reason

A trust can make application under any other reason whereby it can claim exemption in current year without applying the money. However, it must be applied in immediate next year. In case of any default, it will become deemed income of next year.

Amendment made by FA 2014:-

Sec 11(7) provide that where a trust has been granted registration u/s 12AA/12AB and registration is in force in P.Y, then trust can't claim exemption u/s 10 except Sec 10(1), Sec 10(23C) or Sec 10(46).
By making this amendment, the Govt. is forcing the assessee to apply such income for the objects of the trust which was earlier not applied.

Amendment made by Finance Act 2020

Sec 12A:- Conditions for Applicability of Sec 11 & 12.

(1) An Assessee to be registered as trust has to make an application in prescribed form & manner to the commissioner and such trust would be registered u/s 12AA.

Amendment made by Finance Act 2020
The exemption u/s 11 & 12 will be available to the assessee from the P.Y. in which the application is made e.g. if an application is made on 20-11-19, then exemption will be available from P.Y. 2019-20 and for future years. However, earlier the assessee could not use to enjoy the exemption for preceding years under any circumstances.

Proviso's u/s 12A:-
Amendment made by Finance Act 2020

Second Proviso:- A trust can enjoy exemption for preceding years if on the date of registration the assessment for preceding years are pending in front of the A.O. and the objects on the date of registration and preceding years are similar.

Third Proviso:- It is further provided that no action u/s 147 shall be taken by A.O. in case of trusts for any preceding years only for grounds of non-registration.

Fourth Proviso:- It is also provided that benefit contained in 1st and 2nd proviso shall not be available if the registration was refused or it was cancelled earlier.

**Sec 12AA:- Procedure for Registration Trust**

<table>
<thead>
<tr>
<th>(1)</th>
<th>TRUST</th>
<th>Application</th>
<th>CIT</th>
<th>Call for such documents and information as he thinks necessary in order to satisfy himself about the genuiness of activities of trust.</th>
</tr>
</thead>
</table>
(2) **After Satisfying:**

| Pass an order in writing registering the Trust. | OR | If he not satisfied, then pass an order in writing refusing* the registration. |

(*) Before refusing an opportunity of being heard must be given to the applicant.

(3) **Time Limit for Granting or Refusing Registration:**

Every order refusing / granting registration shall be passed before **expiry of 6 months** from the end of the month in which application was received. If no order is passed within 6 months, then it shall be deemed that trust is registered.

---

**Meenakshi Amma Endowment Trust (Karnataka HC)**

a) The H.C observed that with the funds available with the trust, it can’t be **expected to carry out activity of charity immediately** after its formation. Therefore, it can’t be concluded that the trust has not intended to do any activity of charity.

b) In such a situation, the objects of the trust mentioned in the trust deed have to be taken into consideration for satisfying themselves.

c) Later on, if it is found the CIT is open to cancel registration.

d) The registration **can’t be cancelled** on the grounds that the trust has not carried out any activity of charitable Nature in **short span of time** after its formation.

(4) **It was held in the case of U.P. Distillers Association** that cancellation of the trust’s registration under sec 12AA on the basis of search conducted in the premises of the Secretary General and the statement recorded under sec 132(4) from him, **is valid.**

(5) The CIT may pass an order in writing to **cancel** the registration subsequently, if he is satisfied that activities of the trust are not genuine or are not being carried out in accordance with the objects of the trust. {12AA(3)}

(6) The CIT may also **cancel registration** if he is satisfied that assessee was engaged in activities mentioned in Sec 13(1). {12AA(4)} (Refer TB for Detail)
While granting registration as well as cancelling the registration the CIT shall consider fulfillment of conditions of other Laws applicable to trust.

What is to be done if there are changes in the objects of the trust?

1. In order to provide clarity, Sec 12AA has been amended which provides that in case of modifications/adoption in the objects, the trust is required to obtain fresh registration by making an application within 30 days from the date of such adoption/ modification of objects in the prescribed form and manner.

SEC 12AA IS NOT APPLICABLE FROM 1ST JUNE 2020.
Sec 11(1A):- Exemption for CG in case of Trust

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>FVC</td>
<td>9,30,000</td>
</tr>
<tr>
<td>(-) Exp on transfer</td>
<td>(30,000)</td>
</tr>
<tr>
<td>N.S.C</td>
<td>9,00,000</td>
</tr>
<tr>
<td>(-) C.O.A.</td>
<td>(6,00,000)</td>
</tr>
<tr>
<td>Capital Gains</td>
<td>3,00,000</td>
</tr>
</tbody>
</table>

(1) If the trust invests in new capital asset of an amount equivalent to the NSC or > NSC, then entire CG of the trust will be exempt u/s 11(1A).

(2) If the trust invests in a new capital asset for an amount < NSC, then exemption u/s 11(1A) will be as follows:

Cost of New Asset – Cost of Old Asset transferred.

Sec 13(8):-

This Sec provides that if the trust has the object of any other activity of general public utility & trust has been granted registration u/s 12AA & if the commercial receipts of the trust goes beyond 20% of total receipts, then exemption u/s 11 & 12 will be denied, but CIT will not cancel the registration.

[Also refer Proviso to sec 143(3)] {Different from 1st & 2nd Proviso to 143(3)}
Anonymous Donation → Taxable u/s 115BBC @ 31.2%.

(1) When Sec 115BBC is applicable?

If

A.D. > 5% of T.D. AND A.D. > 1 lakh.

(2) How Anonymous Donations are taxable?

<table>
<thead>
<tr>
<th>T.D. = 100L</th>
<th>Anonymous Donation</th>
<th>XX</th>
<th>10L</th>
</tr>
</thead>
<tbody>
<tr>
<td>(-) Exemption :</td>
<td></td>
<td>(XX)*</td>
<td>(5L)*</td>
</tr>
<tr>
<td>A.D. Other</td>
<td>• 5% of T.D.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>10L 90L</td>
<td>• Rs. 1 Lakh</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Taxable A.D. u/s 115BBC @ 31.2% | XX | 5 L

Notes:

1. No exemption u/s 11 shall be allowed from Anonymous donation taxable u/s 115BBC.
2. (* ) It will be added to Normal Income Statement before 15% and then apply for Charitable & Religious purpose and claim exemption u/s 11.

(3) Non-Applicability of Sec 115BBC :-

(i) A trust which is wholly registered as Religious trust.

Note 1:- However, from F.A. 2014 onwards a trust which is partly charitable & partly religious, then it has to keep 2 donation boxes :-

→ Amount Received in school → Sec 115BBC will be applicable.
→ Amount Received in temple → Sec 115BBC Not applicable.
(Add to Normal Statement).

Note 2:- Sec 115BBC is applicable to a trust who is wholly charitable in nature.

All the Best
(SUNSET PROVISIONS)

Sec 80-IB: Deduction in respect of P & G from Industrial undertaking.

(1) Available to:-

(i) assessee engaged in Industrial Undertaking [Begins up to 31.03.04]
(ii) Construction & development of Housing Project.
(iii) Commercial production or refining of mineral oil in any part of India.
(iv) Undertaking engaged in business of handling, storage and transportation of food grains.
(v) Undertaking engaged in processing, preservation & packaging of fruits and vegetables or meat or meat products or poultry or marine or dairy products.
(vi) Undertaking engaged in operating & maintaining hospital of at least 100 beds anywhere in India other than excluded areas.

(2) Quantum & period:-

(a) For Initial 5 years → 100% of P & G derived from such undertaking.
(b) For Next 5 years → 25% of P & G derived from such undertaking.

[30% for Company].

* In case of an Industrial undertaking should employ 10 or more workers in a manufacturing process carried on with the aid of power or 20 or more workers in a manufacturing process without the aid of power.

Sec 80-IA:-

(1) Any undertaking which starts providing telecommunication services and internet services on or after 1st April 1995 but before 31st March 2005.
(2) Any undertaking which develops, develops & operates or maintains and operates an industrial park or SEZ notified by C.G.
(3) An undertaking which is setup in any part of India for generation or generation & distribution of power.
**PROFIT LINKED DEDUCTIONS**

* Period & Quantum:-
  - Period = 10 A.Y.
  - Quantum = 100% of P & G derived from eligible business.

**Exception:- In case of telecommunication services :-**

For 1st 5 A.Y. = 100%

For next 5 A.Y. = 30%

---

**Sec 80-IC:- Special provisions in respect of certain undertaking in certain**

**Special category States:**

<table>
<thead>
<tr>
<th>Any undertaking which manufactures or produces any article or thing &amp; undertakes “Substantial Expansion” in the state of Himachal Pradesh or Uttarakhand on or before 31.03.2012.</th>
<th>Any undertaking which begins to manufacture or produce any article in H.P. or Uttarakhand on or before 31.03.2012.</th>
</tr>
</thead>
</table>

* “Substantial Expansion”:- It means increase in the investment in the P & M by at least 50% of the book value of P & M.

* Quantum & period:-
  - Period = 10 years
  - For Initial 5 A.Y. = 100% of P & G derived from such undertaking
  - For Next 5 A.Y. = 25% of P & G derived from such undertaking.

  *(30% for Company)*

Can an assessee who has set up a new industrial undertaking and availed deduction @100% of profits under sec 80-IC(3) for the first 5 years, be eligible to claim deduction@100% of profits once again on having undertaken “substantial expansion” thereof, for the period remaining out of 10 years?

**PCIT v. Aarham Softronics [2019] (SC)**

1. The Apex Court held that an undertaking or an enterprise which had set up a new unit of the nature mentioned in sec 80-IC(2)(a)(ii), would be entitled to deduction at the rate of 100% of the profits and gains for five assessment years commencing with the “initial assessment year”.
2. For the next five years, the admissible deduction would be 25% or 30%, as
the case may be, of the profits and gains.

3. However, in case substantial expansion is carried out as defined in **sec 80-IC(8)(ix)** by such an undertaking or enterprise, within the aforesaid period of 10 years, the said previous year in which the substantial expansion is undertaken would become "initial assessment year", and from that assessment year the assessee shall be entitled to 100% deductions of the profits and gains. Such deduction, however, would be for the period remaining out of 10 years, as provided in **sec 80-IC(6)**.

---

**Sec 80-ID:- Deduction in respect of P & G from business of Hotels & Convention Centers in specified Areas:**

| (1) engaged in business of **hotels in "Specified areas"** & started between 01.04.07 to 31.07.2010 At least 2 stars. | (2) engaged in building, owning and operating a **Convention center in "Specified area"** between 01.04.07 to 31.07.2010. | (3) engaged in the business of the **hotel located in the specified district having a "World Heritage Site" between 01.04.08 & 31.03.2013. "22 districts covered here". |

* **Quantum & Period:-**
  
(1) **Period - 5 A.Y.**
  
(2) **Quantum - 100% of P & G derived from eligible business.**
Sec 80-IE:- Special provisions in respect of certain undertaking in North-Eastern States [AP, Assam, Manipur, Meghalaya, Sikkim, Tripura, Mizoram, Nagaland]

Available to

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) to manufacture or produce any eligible article or thing other than:</td>
<td>(2) to undertake substantial expansion to mfg or produce any article or thing.</td>
</tr>
</tbody>
</table>
| • tobacco or tobacco substitutes. | • Pan masala
| • Plastic carry bags | |
| Ineligible goods. | |

To carry any eligible business
(a) Hotel (not below * 2);
(b) adventure or leisure sports including ropeway.
(c) providing medical & health services in the nature of nursing homes with minimum capacity of 25 bed.
(d) running an old age Home.
(e) operating vocational training.
(f) running information technology related training centre.
(g) manufacturing of information technology hardware.
(h) bio-technology.

Period & Quantum:-
(1) Period = 10 years.
(2) Quantum = 100% of P & G derived from eligible business.
### Sec 80-IAC: Deduction in respect of Eligible Startups

<table>
<thead>
<tr>
<th>Conditions</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Company OR LLP engaged in &quot;Eligible Business&quot;</td>
</tr>
<tr>
<td>(2) is incorporated on or after 1st April 2016 but before 1st April 2021.</td>
</tr>
<tr>
<td>(3) T/O does not exceed Rs. 100cr in any of the PY beginning from the year in which it is incorporated. (Amended by Finance Act 2020).</td>
</tr>
</tbody>
</table>

- **(4)** It holds a certificate of eligible business from the inter ministerial board of certification as notified in official Gazette by Central Government.
- **(5)** The above Company or LLP is not formed by splitting up or reconstruction of business already in existence. *(Same as 35AD) (Also Refer Sec 115BAB).*
- **(6)** It is not formed by transfer to a new business, a plant & machinery which was previously used. *(2 exceptions Same as 35AD) (Also Refer Sec 115BAB).*

### Amount of Deduction:

1) If above conditions are satisfied, 100% of Profits & Gains derived from eligible business is deductible for 3 consecutive AY's.

However, this deduction may at the option of the assessee be claimed by it for any 3 consecutive AY's out of 10 years beginning from the previous year in which eligible startup is incorporated. *(Amended by Finance Act 2020)*

2) BOA should be audited, and audit report should be remitted along with ROI.

### Sec 80-IBA: Deduction for Certain Housing Projects

**Conditions:**

Deduction under this Sec is available to an assessee (may be an individual, HUF, AOP/BOI, company, firm or any other person) if following conditions are satisfied:

1) The assessee has profits derived from business of developing and building a housing project i.e. a project consisting predominantly of residential units with such other facilities and amenities as the competent authority may specify.
2) The competent authority has approved the project on or after 1st June 2016 but on or before 31st March 2021. (Amended by Finance Act 2020)

3) The assessee completes the project within a period of 5 yrs from date of 1st Approval from competent authority.

4) The project shall be deemed to have completed when a certificate of completion as a whole is obtained in writing from the competent authority.

5) Where a residential unit in the housing project is allotted to an individual no other residential unit in the housing project shall be allotted to such individual or spouse or minor child of such individual.

6) The carpet area of shops and other commercial establishment does not exceed 3% of aggregate carpet area.

7) The size of plot, area of residential units and minimum utilisation of FAR (Floor area Ratio) should satisfy the criteria given below.

<table>
<thead>
<tr>
<th>Location of Project</th>
<th>Area of plot of land</th>
<th>Carpet Area of Residential unit</th>
<th>Utilization of MINIMUM FAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within Chennai, Delhi, Kolkata, Bengaluru, Hyderabad or Mumbai</td>
<td>Not less than 1000 sq metres</td>
<td>Not exceeding 60 sq metres</td>
<td>Not less than 90%</td>
</tr>
<tr>
<td>Any other place</td>
<td>Not less than 2000 sq metres</td>
<td>Not exceeding 90 sq metres</td>
<td>Not less than 80%</td>
</tr>
</tbody>
</table>

8) The assessee should maintain separate BOA in respect of Housing project.

**Amount of Deduction**

If the above conditions are satisfied, then 100% of the profits derived from above business is deductible u/s 80-IBA.

**Reversal of Deduction if project not completed within stipulated time:**

Where a housing project is not completed within 5 years from the date of 1st Approval and in respect of which deduction has been allowed under this Sec, the total amount of deduction allowed shall be deemed to be the Business Income of the assessee of the previous year in which the period for completion so expires.
Amendment made by Finance Act (No.2) 2019

The stamp duty value of such residential unit in the housing project shall not exceed forty-five lakh rupees.

Amendment made by Finance Act 2018

Deduction in respect of certain income of producer companies [Sec 80PA]

- **Conditions** - In order to avail of deduction under Sec 80PA, the following conditions should be satisfied -
  1. The assessee is a producer company under Sec 581A(1) of the Companies Act, 1956.
  2. The total turnover of the producer company is less than Rs. 100 crore in any previous year.
  3. The gross total income of the producer company includes any profits and gains derived from "eligible business".

**Amount of Deduction** - If the above conditions are satisfied, 100% of the Profit and gain attributable to "eligible business" is deductible for the assessment years 2019-20 to 2024-25. If the assessee is also entitled to deduction under any other provision or provisions of Chapter VI-A (ie., Secs 80C to 80U), the deduction under sec 80PA shall be allowed from the gross total income as reduced by the deductions under such other provisions.

"Eligible Business" - Only income from eligible business (not from all activities given under sec 581B of the Companies Act) is qualified for deduction under sec 80PA. "Eligible business" for the purpose of sec 80PA means -

- a. the **marketing** of agricultural produce grown by the members; or
- b. the **purchase** of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or
- c. the **processing** of the agricultural produce of the members.

{The above 3 points are similar to Businesses mentioned in Sec 80P}

ALL THE BEST
**Sec 115JB(1): Charging Section**

Notwithstanding anything contained in any other provisions of IT Act, if IT Payable as per I.T. Act < 15% of “Book Profits”, then such Book Profits shall be deemed to be Total Income and Tax = 15% (x) Book Profits. *(The MAT rate is changed on 20th Sept 2019 through an ordinance)*

**Note:**- MAT is applicable to all companies including Foreign companies *(Refer amendment made by Finance Act 2016)*

<table>
<thead>
<tr>
<th>Company</th>
<th>PY 19 - 20</th>
<th>PY 20- 21</th>
</tr>
</thead>
<tbody>
<tr>
<td>Where the Total T/O or G/R does not exceed 400 Cr in PY 17 - 18. <em>(Domestic Co.)</em></td>
<td>25%</td>
<td>NA</td>
</tr>
<tr>
<td>Where its Total T/O or G/R does not exceed 400 Cr during PY 18 - 19.* <em>(Domestic Co.)</em></td>
<td>NA</td>
<td>25%</td>
</tr>
<tr>
<td>Other Domestic Co.</td>
<td>30%</td>
<td>30%</td>
</tr>
<tr>
<td>Foreign Co.</td>
<td>40%</td>
<td>40%</td>
</tr>
</tbody>
</table>

**SURCHARGE**

<table>
<thead>
<tr>
<th>Domestic</th>
<th>Foreign</th>
</tr>
</thead>
<tbody>
<tr>
<td>If TI is &gt; 1 Cr but upto Rs. 10 cr</td>
<td>7%</td>
</tr>
<tr>
<td>If TI is more than Rs.10 Cr</td>
<td>12%</td>
</tr>
</tbody>
</table>

then Add: 4% Health & Education Cess

**MAT Rate for all Assessee = 15%**

*(+) Surcharge = Same as above*(

**(+) Health & Education Cess @ 4 %)
**Sec 115JB(2): Applicability of MAT:**

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(a)</td>
<td>Applicable for companies who are covered under Companies Act 2013.</td>
</tr>
<tr>
<td>(+)</td>
<td>(b) Applicable for Other companies also who are not covered by companies Act like Insurance, Banking &amp; Electricity Companies</td>
</tr>
</tbody>
</table>

**Key Notes:**

1. While preparing the profit & loss account, the accounting policies, accounting standards, the method & rates adopted for depreciation should be the same as adopted for preparing the annual accounts to be laid down in front of shareholders in AGM.

2. Where a company follows a different Financial Year as compared to Previous Year mentioned in Income Tax Law, then the company has to redraft its accounting P&L according to the Income Tax Previous year.

**Explanation 1 to Sec 115JB:- Computation of Book Profits.**

"Book Profits" = NP as per P & L A/c (+) Few Additions (-) Few Deletions

**Additions:-**

(a) **Income Tax paid or payable and provision there of :-**

Income tax includes:- **DDT, Interest** on Income Tax, Surcharge Health & Education Cess.

**Note:-** Wealth Tax & penalties under IT Act are not added back to compute Book profits u/s 115JB – However, the same are added to arrive at Total Income under IT Act, 1961.

(b) The amounts transferred to any Reserves {Also Refer reduction clause (i)}

(c) Provisions for Unascertained Liabilities.

(d) Provision for losses of subsidiary.

(e) Amount of dividend paid / proposed.

(f) Any expenditure relating to any income to which Sec 10, Sec 11 & Sec 12. (Also refer point (ii) of deletion]
Notes:

(a) Further Income & Expenditure in respect of Sec 10AA shall be not reduced or added to Book Profit. It means Income referred u/s 10AA is liable to MAT.

(b) Even Incomes referred u/s 80-IA, 80-IB, 80-IC, 80-ID, 80-IE, 80-IAC, 80-IBA etc are also liable for MAT.

(fd) the expenditure relatable to income by way of royalty of patent taxable u/s 115BBF. (Refer discussion ahead in this chapter)

(g) Amount of depreciation [Refer point (iia) of Reduction].

(h) Amount of Deferred Tax & provisions thereof (Also Refer Reduction)

(i) Provision for Diminution in the value of any asset must be added back to N.P. to arrive at Book Profits. (Inserted by FA 2009 w.r.e.f from A.Y. 2001-02).

Example: RDD, Prov for Impairment of Assets etc.

(j) Amount standing in revaluation reserve relating to revalued asset on the disposal of such asset:-

EARLIER TAX PLANNING

Eg:- A Co. has an asset whose actual cost = Rs. 100 L and it is to be sold during the P.Y. 31.03.2020 for Rs. 2000 L.

When asset is sold the Co. passes the following journal entry:-

Bank A/c Dr. Rs. 2,000 L
To Asset A/c Rs. 100 L
To P & L A/c Rs. 1,900 L

Now Rs. 1,900 L will form part of N.P. & Co. will have to pay MAT on Rs. 1900L.

Now, the Co. does the following tax planning:-

(1) The Co. revalues the asset by Rs. 1,890L & passes the J.E.:-

Asset A/c Dr. Rs. 1,890 L
To Revaluation A/c Rs. 1,890 L

(2) Company sells the asset and passes the J.E.:-

Bank A/c Dr. Rs. 2,000 L
To Asset A/c Rs. 1,890 L
To P & L A/c Rs. 10 L

Therefore, the government introduced clause (j) as above.
Deductions:-

(i) Profit from manufacturing Activity - Rs. 5 L.
Profits from sale of Investment - Rs. 6 L → Transferred to XYZ Reserve.

(ii) Any amount of income to which any provision of Sec 10, Sec 11 and Sec 12 applies must be reduced (also refer clause (f) of addition).

(iia) Amount of depreciation debited to P & L (excluding on account of revaluation) (Also refer clause (g) of addition).

(iiib) Cost of Asset = 100
Revaluing Asset by 200
Net profit xx
Asset (after Revaluation) = 300
(+ ) Depreciation 30
(-) Depreciation (10)
Book Profit 20 = P & L A/c.

Amount withdrawn from R/R which is credited to P & L A/c is reduced from Net profit to arrive at Book profit. However, such withdrawal from R/R cannot exceed the amount of depreciation on account of Revaluation. If the Co. withdraws Rs. 50 from R/R and credit to P & L A/c, then by virtue of clause (iib) company would be allowed to reduce Rs. 20 only because depreciation on account of revaluation is Rs. 20 only.

Suppose, if Co. withdraws Rs. 10 only then entire Rs. 10 would be allowed for deduction.
(iii) Amount of Brought Forward Loss or Unabsorbed depreciation whichever is less as per BOA:-

Amendment made by Finance Act 2018

It is provided that the aggregate of UAD & loss shall be allowed to be reduced from book profit if Co’s application for insolvency resolution process under IBC, 2016 has been admitted by the adjudicating authority.

Also Refer Sec 79 later on for amendment made by Finance Act (No.2) 2019.

(iv) Profit of Sick Industrial Company :-

Eg:- Suppose a Co. becomes sick on 31.03.2014 as its paid up Equity Share Cap (+)

Free reserves = Rs. 100L & Accumulated loss = Rs. 150L.

<table>
<thead>
<tr>
<th>P.Y.</th>
<th>Profits</th>
<th>Accumulated Losses</th>
</tr>
</thead>
<tbody>
<tr>
<td>31.03.2015</td>
<td>10L</td>
<td>140L</td>
</tr>
<tr>
<td>31.03.2016</td>
<td>15L</td>
<td>125L</td>
</tr>
<tr>
<td>31.03.2017</td>
<td>10L</td>
<td>115L</td>
</tr>
<tr>
<td>31.03.2018</td>
<td>12L</td>
<td>103L</td>
</tr>
<tr>
<td>31.03.2019</td>
<td>10L</td>
<td>93L</td>
</tr>
<tr>
<td>31.03.2020</td>
<td>13L</td>
<td>80L</td>
</tr>
</tbody>
</table>

The Co. will not be liable to MAT from P.Y. 2015 to P.Y. 2017. The year in which Net worth exceeds accumulated losses, MAT will not be liable for that year also. For subsequent years i.e. P.Y. 2018, MAT will be liable.

(v) Amount of deferred tax, if such amount is credited to P & L A/c (Also refer clause (h)).

FA 2015 Amendment:-

Analysis of clause (fa) of Addition & clause (iic) of deletion :-

Sec 86 provides that no income tax is payable on the share of the member of AOP/BOI in the certain circumstances. However, same is liable for MAT as it is not excluded from Book Profit.

In case of partnership Firm, share of profits of a firm is exempt u/s 10(2A) and no MAT is payable on it by partners.
In the view of the above Sec 115JB has been amended from A.Y. 2016-17 so as to provide that share of the member of AOP/BOI on which no income tax is payable by virtue of Sec 86 shall be excluded while computing MAT liability of members u/s 115JB. Also add the expenditure.

**Analysis of clause (fb) of Addition & clause (iid) of deletion:-**

(Do after International Taxation)

(1) In case of foreign companies, CG on transaction of securities are taxable at a lower rate than 15% in same cases:

(a) STCG on Listed Equity shares / units of Equity oriented MF/units of Business Trust taxable @ 15% u/s 111A.

(b) LTCG on Equity shares / units of Equity oriented MF/units of Business Trust are Chargeable @ 10% if STT is paid, etc.

The major investors in the Indian markets are foreign co. and lot of foreign exchange flows in India, because of investments made by these companies. The lower rates on STCG and LTCG attracts foreign Co. to invest in Indian market. But as per Finance Minister, the MAT liability of 15% on these CG, which are otherwise taxable at lower rate hampers the investment to be made by these Companies.

As a result Central Government has exempted these CG from MAT liability from A.Y. 2016-17.

Consequential amendment is made by introducing clause (fb) which provides that any expenditure relatable to the above C.G if debited to P & L A/c, in case of foreign Co. shall be added to net profit to arrive at book profit.

(2) In case of Foreign Co., royalty and fees for technical services are taxable at 10% u/s 115A of chapter XII. The lower rate of 10% was introduced so that foreign Co. transfers their know how or technical Service to Indian Co. to enjoy tax rate of 10%. But imposition of MAT liability of 15% on such incomes hampers the purpose.

The Central Govt exempted such royalty and fees from technical Service from MAT in case of foreign Co.

In case of foreign Co., certain interest referred u/s 194LB, 194LC are taxable at 5% u/s 115A of chapter XII.
The lower rate of tax on interest on certain bonds encourages to get certain necessary foreign exchange in India. But 15% of MAT discourages such purpose. Such interest are also excluded from MAT.

**As per 115JB(5A): No Mat on Life Insurance Business u/s 115B & Business mentioned u/s 115BAA & 115BAB. (Refer Ordinance Later on)**

### Sec 115JAA: Mat Credit

<table>
<thead>
<tr>
<th>(1)</th>
<th><strong>MAT credit Available</strong> = Tax paid under Sec 115JB (TM) (-) Tax payable under Normal provisions.</th>
</tr>
</thead>
<tbody>
<tr>
<td>(2)</td>
<td><strong>MAT credit shall be allowed</strong> in the A.Y. in which :- Tax payable under Normal provision &gt; Tax payable under Sec 115JB</td>
</tr>
<tr>
<td>(3)</td>
<td><strong>MAT credit to be allowed</strong> shall be Tax payable under 115JB (-) Tax payable under Normal provision</td>
</tr>
</tbody>
</table>

Eg: - MAT credit = 2,00,000 c/f from last year

<table>
<thead>
<tr>
<th>I.T. Normal</th>
<th>115JB</th>
</tr>
</thead>
<tbody>
<tr>
<td>T.I. / B.P.</td>
<td>5,00,000</td>
</tr>
</tbody>
</table>

**Normal Tax @**

**MAT @**

Tax payable

(-) Tax credit

Final Tax

(-) MAT credit c/f

**MAT Credit can be carried forward for 15 years.**

Also Refer the discussion of Foreign Tax Credit later on.

### Apollo Tyres Ltd v/s CIT :-

It was held that **A.O. has limited power** of making certain additions and deletions to Net Profit to arrive at Book profit.

→ He has **no power** to doubt the BOA which is certified by auditors, laid in the general meeting and filed with ROC.
Sec 115JB does not empower the A.O. to embark upon a fresh enquiry in regard to the entries made in BOA.

It was held that while determining Book profit, A.O. can't recompute P & L by excluding arrears of depreciation.

N.J Jose & Co. (P) Ltd (Kerala)

- Can capital gains exempted by virtue of Sec 54EC be included in Book profit u/s 115JB?

→ YES.

Note: Alternate Judgement:

However as per the Madras High Court in the case of Metal & Chromium Plater(P) Ltd such capital gains should not be taken into account while computing Book Profit.

Certain Amendments made by FA 2016.

Analysis of Sec 115BBF:

- The new sec 115BBF provides that where the total income of the eligible assessee includes any income by way of royalty in respect of a patent developed and registered in India, then such royalty shall be taxable at the rate of 10%.

- An eligible assessee would mean a person resident in India, who is the true and first inventor of the invention and whose name is entered in the patent register as the patentee.

- Deduction of any expenses from the royalty income is not allowed.

- The eligible assessee can opt for the concessional rate and has to exercise the option in the prescribed manner on or before due date of filing the return of income for the relevant previous year.

- Once the option is exercised, he does not has a choice of opting out of the Sec. If he does so, in any of the five assessment years succeeding the relevant assessment year of exercising the option, he would not be eligible to opt for concessional rate for five assessment years subsequent to the assessment year in which he opted out. (Same as sec 44AD)
• The Benefit u/s 115BBF is available if 75% of the expenditure i.r.t. R&D is incurred in India.
• Provisions of sec 115JB (MAT) are not applicable on such royalty income from patent. Therefore, add Income & Reduce Expenses to Net Profit.

2) Whether MAT is applicable to Foreign Company?

In line with the recommendation of justice AP Shah committee, FA 2016 has inserted explanation 4 to Sec 115JB which states that MAT shall not be applicable to a foreign Co, in respect of following cases:

a) If the assessee is a resident of a country or specified territory with which India has an agreement as per Sec 90(1) or 90A(1) and the assessee does not has permanent establishment in India.

b) The assessee is a resident of a country with which India does not have an agreement under the above referred Secs and is not required to seek registration under any law for the time being in force.

This amendment is from retrospective effect i.e. from 1.4. 2001

3) Concessional MAT Rate to International Financial Services Centre:

As per Sec 115JB(7) in case of a company being a unit located in International financial service centre and deriving its income solely in convertible foreign Exchange. The MAT shall be chargeable at rate of 9% instead of 15%. (Also there in AMT)

Amendment made by Finance Act 2020

Every company to which this sec applies shall furnish a report from a Chartered Accountant in the prescribed form (29B) certifying that the book profit has been computed in accordance with the provisions of sec 115JB and such report shall be furnished before the specified date referred to in sec 44AB.

SUMMARY FOR LAST DAY REVISION:

<table>
<thead>
<tr>
<th>Particulars</th>
<th>115JB</th>
<th>Normal provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Income Tax (Sur, cess)</td>
<td>Add</td>
<td>Add (40(a)(ii))</td>
</tr>
<tr>
<td>2) Interest on I.T</td>
<td>Add</td>
<td>Add (37(1))</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>3) Penalty on I.T</td>
<td>Ignore (Allowed)</td>
<td>Add (Penal)</td>
</tr>
<tr>
<td>4) Wealth Tax</td>
<td>Ignore (Allowed)</td>
<td>Add (40(a)(iiia))</td>
</tr>
<tr>
<td>5) DDT u/s 115-0/115R</td>
<td>Add</td>
<td>Add</td>
</tr>
<tr>
<td>6) Transfer to Reserves</td>
<td>Add</td>
<td>Add (Except 36(1)(viii), etc)</td>
</tr>
<tr>
<td>7) STT, CTT</td>
<td>Ignore (Allowed)</td>
<td>Allowed if Income is PGBP</td>
</tr>
<tr>
<td>8) Prov for unascertained liabilities</td>
<td>Add</td>
<td>Add</td>
</tr>
<tr>
<td>9) Prov for losses of subsidiary</td>
<td>Add</td>
<td>Add</td>
</tr>
<tr>
<td>10) Dividend paid</td>
<td>Add</td>
<td>Add</td>
</tr>
<tr>
<td>11) Expenses in relation to Sec 10</td>
<td>Add</td>
<td>Add (Sec 14A)</td>
</tr>
</tbody>
</table>

### Income in relation to Sec 10

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>LTCG</td>
<td>Ignore</td>
<td>Add/Less LTCG in PGBP and show under Cop Gains.</td>
</tr>
<tr>
<td>STCG 10AA / 80IA / 80IB / 80IAC / 80IAB, etc</td>
<td>Ignore</td>
<td>Add/Less STCG in PGBP and show under Cop Gains. 80IA etc Include in GTI etc Less from Ch VIA</td>
</tr>
<tr>
<td>Share of profit from partnership firm</td>
<td>Less</td>
<td>Exempt u/s 10(2A)</td>
</tr>
<tr>
<td>Share of profit from AOP / BOI</td>
<td>Less</td>
<td>Exempt u/s 86</td>
</tr>
</tbody>
</table>

### Foreign Company

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1) LTCG on securities</td>
<td>Less</td>
<td>Taxable @ applicable Rates</td>
</tr>
<tr>
<td>2) STCG on securities</td>
<td>Less</td>
<td>Taxable @ applicable Rates</td>
</tr>
</tbody>
</table>
3) Interest, royalty, fees from Technical services | Less | 115A, 194LB, LC, LD, etc. Taxable at concessional rates.

13) Depreciation | Add Dep\textsuperscript{n} Dr to P & L Less Dep\textsuperscript{n} other than reval | Add Dep\textsuperscript{n} Dr to P & L Less Dep\textsuperscript{n} u/s 32.

14) Deferred Tax | Add/Less | Add/Less

15) Prov\textsuperscript{n} for Diminution | Add 1) Eg: Prov\textsuperscript{n} for RDD | Add 1) {exception is Banks/NBFC}

16) Royalty income u/s 115BF | Add / Less | Taxable @ 10%

17) Amount withdraw from Reserves & Cr to P & L | Less if Added earlier | Less

18) Withdrawn from Revaluation Reserve | Less to the extent of Revaluation Depreciation | Less

19) Losses & UAD But in case of IBC | Lower of 2 as per (BOA) Both shall be allowed | Both as per priority as per IT.

20) Sick Co Profits | No MAT till the year in which Net worth > Acc Losses | No tax generally as Company can set off Losses

21) GST not paid | Ignore: No Disallowance u/s 43B can be made for MAT | Add : 43B

22) Amt in cash > 10000 | Ignore | Add (40A(3))

23) Penalty in compensatory nature | Ignore | Allowed

24) TDS not deducted | Ignore | Disallowed u/s 40(a)

25) Equalisation Levy not paid | Ignore | Disallow u/s 40(a)(ib)

**ALL THE BEST**
### CHAPTER 24
### ALTERNATE MINIMUM TAX

#### (1) 115JC: Alternate Minimum Tax (Other than Companies)

<table>
<thead>
<tr>
<th>Higher of</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tax as per Normal Provision of I.T. Act</td>
</tr>
<tr>
<td>OR 18.5% of “Adjusted Total Income”</td>
</tr>
</tbody>
</table>

#### (2) Adjusted Total Income:-

| Total Income as per Normal Provisions of IT Act | XXX |
| (+) Deductions u/s 80-IA to 80RRB except 80P (Profit Linked) | XXX |
| (+) Deductions u/s 10AA | XXX |
| (+) Deductions u/s 35AD | XXX |
| (-) Depreciation u/s 32(1)(ii)/(iia) assuming dedn u/s 35AD was not allowed | (XXX) |

**Adjusted Total Income**

| XXX |

**Rate of AMT for IFSC Unit:**

Sec 115JC has been amended to provide that in case of a unit located in IFSC, the AMT shall be calculated at 9% if the consideration is payable in Foreign Currency (Same as in MAT)

**Key Notes:-**

1. **Deduction u/s 80C to 80GGC & 80U are not to be added back.**
2. **AMT is not payable by Individual, HUF, AOP/BOI, every Artificial Judicial person if adjusted total income of such person does not exceed to Rs. 20,00,000.**
3. **The provisions of AMT are applicable to Partnership Firm including LLP even if Adjusted Total Income is less than Rs. 20,00,000 as partnership firm can't be called as artificial judicial person.**
4. **As per Sec 115JD if AMT paid is greater than tax as per normal provisions, then it can be carried forward for 15 A.Y. (Same as MAT)**
(5) Even if AMT is not applicable in a particular Financial year, still find out AMT for computing AMT Credit. However, tax will be paid as per Normal Provisions only.

(6) Rest all provisions are same as MAT.

(7) If a question is on Partnership Firm, LLP, AOP/BOI etc other than Companies then always search for AMT implications.

(8) The provision of AMT is not applicable to persons who have exercised option u/s 115BAC & 115BAD. (Finance Act 2020)

(9) Every person to whom this section applies shall obtain a report, before the specified date referred to in sec 44AB, in such form as may be prescribed, from an accountant certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report by that date. (Amended by Finance Act 2020)

ALL THE BEST