RECENT CASE LAWS A SAVIOUR

EXPLANATORY NOTES:
1. The students should answer the Case laws w.r.t following 4 issues:
   a. Issue involved.
   b. Provisions applicable.
   c. Analysis.
   d. Conclusion.
   Preferably write the header in the exam and then inside that explain the aforementioned aspects.

2. Write answer as per this booklet if you really want to score at least 3 and half in each case out of 4.
   Avoid writing judgments as per your own whims and fancies.

3. Try to use some legal language in the exam as follows:

<table>
<thead>
<tr>
<th>Sr No.</th>
<th>Jargons</th>
<th>Simple Meaning</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>Supra</td>
<td>Above.</td>
</tr>
<tr>
<td>b</td>
<td>Ratio decendi</td>
<td>Principle.</td>
</tr>
<tr>
<td>c</td>
<td>Mensrea</td>
<td>Guilty mind.</td>
</tr>
<tr>
<td>d</td>
<td>Inter alia</td>
<td>Among other things. You can use this when there are many things in the provision but it is not required to state all of them in a particular case.</td>
</tr>
<tr>
<td>e</td>
<td>Audi Alteram Partem</td>
<td>Opportunity of being heard.</td>
</tr>
<tr>
<td>f</td>
<td>Sine Qua Non</td>
<td>Absolutely Mandatory.</td>
</tr>
<tr>
<td>g</td>
<td>Suo motu</td>
<td>On own motion.</td>
</tr>
<tr>
<td>h</td>
<td>Tenable</td>
<td>Valid in law.</td>
</tr>
<tr>
<td>i</td>
<td>Prima Facie</td>
<td>On its face.</td>
</tr>
<tr>
<td>j</td>
<td>So far as may be</td>
<td>To the extent it is possible.</td>
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<tr>
<td>k</td>
<td>Impugned</td>
<td>Disputed.</td>
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<tr>
<td>l</td>
<td>Reckoned</td>
<td>Recognised, counted, calculated.</td>
</tr>
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<td>m</td>
<td>Purview</td>
<td>Scope.</td>
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<td>n</td>
<td>Bonafide</td>
<td>Genuine.</td>
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<td>o</td>
<td>Nexus</td>
<td>Close connection.</td>
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<td>p</td>
<td>“It was held by lordship………….”</td>
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<td>q</td>
<td>“The lordship had an occasion to consider the supra issue in the case of ………..”</td>
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<tr>
<td>r</td>
<td>Not withstanding clause can be used wherever applicable.</td>
<td></td>
</tr>
</tbody>
</table>
“MAY” may be treated as “SHALL” but “SHALL” shall not be treated as “MAY”.

Principle of Ejusdem Generis means wherever multiple examples are given and later on etc is put then colour of subsequent word shall be interpreted from the preceding words.

All THE CASE LAWS WILL COME FROM THIS BOOKLET ONLY.
DO NOT IGNORE IT. Reading 90 sides up to the mark is a fair deal in a mammoth subject like Direct Tax.

4. Try to remember the names of the case. Writing the name will always put great impression on the evaluator. At the same time do not make a wrong citation of the case in the exam. Citing wrong case is a Cardinal SIN in the eyes of the evaluator.

5. I have tried my best to make this booklet. If you find some mistakes, omission or errors please forgive that. This book is one of last tangible thing that I could have done for you all on behalf of AJ Education Next. Thank you all of you for being a part of my batch. I really enjoyed teaching you all. I hope you all have also enjoyed learning Direct Tax from me. God Bless you all.

6. For Introduction to Case Law Lectures see below:
Whether technical fee paid under a technical collaboration agreement for setting up a joint venture company in India is to be treated as revenue or capital expenditure, where, upon termination of the agreement, the joint venture would come to an end?

**HONDA SIEL CARS INDIA LTD. V. CIT [2017] (SC)**

**Facts of the case:** The assessee, Honda Siel Cars India Ltd., is a joint venture company between Honda Motors, a Japanese company and Siel Ltd., an Indian company. The assessee and Honda Motors entered into a technical collaboration agreement (TCA) on May 21, 1996 under which a technical fee of 30.5 million USD was payable by the assessee in five equal instalments on a yearly basis. Under the agreement, TCA Honda Motors had to provide manufacturing facilities, know-how, technical information, information regarding intellectual property rights to the assessee which the assessee was entitled to exploit only as a licensee, without any proprietary rights. The assessee treated the technical fees as revenue while the Revenue authorities contended that it is capital in nature.

**Issue:** Whether the technical fee of 30.5 million USD payable by the assessee is in the nature of revenue expenditure or capital expenditure?

**Supreme Court’s Observations:**

1. The Court observed that if a limited right to use technical know-how is obtained for a limited period for improvising existing business, the expenditure is revenue in nature. However, if technical know-how is obtained for setting up a new business, the position may be different. There is no single principle or test for determining the nature of expenditure; it is a question to be answered based on the circumstances in each case.

2. In the given facts, the very purpose of the TCA was to set up the Joint Venture. The collaboration included not only transfer of technical information, but, complete assistance, actual, factual and on the spot, for establishment of plant, machinery, etc. so as to set up a manufacturing unit. Upon termination of TCA, the joint venture itself would come to an end. Though the TCA is framed in a manner to look like a licence for a limited period having no enduring nature but a close scrutiny into the said agreement shows otherwise.

**Supreme Court’s Decision:** The Supreme Court held that, in this case, technical fee is capital in nature since upon termination of TCA, the joint venture itself would come to an end.

**Note** – In this case, since the amount paid for obtaining limited right to use technical know-how for a limited period is held to be capital in nature, it would be an intangible asset eligible for depreciation@25%.
CASE LAW - 2

What is the nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time – a capital receipt or a revenue receipt?

CIT V. SAURASHTRA CEMENT LTD. (2010) (SC)

Supreme Court’s Decision:
1. The Apex Court held that the damages were directly and intimately linked with the procurement of a capital asset i.e., the cement plant, which lead to delay in coming into existence of the profit-making apparatus.
2. It was not a receipt in the course of profit earning process.
3. Therefore, the amount received by the assessee towards compensation for sterilization of the profit earning source, is not in the ordinary course of business, hence it is a capital receipt in the hands of the assessee.

CASE LAW - 3

Can capital contribution of the individual partners credited to their accounts in the books of the firm be taxed as cash credit in the hands of the firm, where the partners have admitted their capital contribution but failed to explain satisfactorily the source of receipt in their individual hands?

CIT V. M. VENKATESWARA RAO (2015)(T & AP)

Issue under consideration: The issue before the High Court was whether the Assessing Officer was justified in treating the capital contribution of partners as income of the firm by invoking section 68?

High Court’s Opinion:
1. Section 68 directs that if an assessee fails to explain the nature and source of credit entered in the books of account of any previous year, the same can be treated as income.
2. Where the firm explains that the partners have contributed capital, section 68 cannot be pressed into service.
3. At the most, the Assessing Officer can make an enquiry against the individual partners and not the firm when the partners have also admitted their capital contribution in the firm.
High Court’s Decision:
The High Court, accordingly, held that the view taken by the Assessing Officer that the partnership firm has to explain the source of income of the partners as regards the amount contributed by them towards capital of the firm, in the absence of which the same would be treated as the income of the firm, was not tenable (means not valid in law).

EXEMPT INCOME
CASE LAW – 3A
Whether section 14A is applicable in respect of deductions, which are permissible and allowed under Chapter VI-A?

CIT V. KRIBHCO (2012) (DELHI)
Refer page-______ of Book______.

SALARY
CASE LAW - 4
Can notional interest on security deposit given to the landlord in respect of residential premises taken on rent by the employer and provided to the employee, be included in the perquisite value of rent-free accommodation given to the employee?

CIT V. SHANKAR KRISHNAN (2012) (BOM.)

Facts of the case: The assessee, a salaried employee, was provided with rent-free accommodation, being a flat in Mumbai, by his employer company. The monthly rent paid by the employer in respect of the said flat was Rs. 10,000 per month. The employer had given an interest-free refundable security deposit of Rs. 30 lacs to the landlord for renting out the said premises. The assessee-employee computed the perquisite value on the basis of rent of Rs. 10,000 paid by his employer to the landlord, since the same was lower than 10% (now, 15%) of salary.

Assessing Officer’s contention: The Assessing Officer, however, contended that since the employer had given interest-free deposit of Rs. 30,00,000 to the landlord, interest @12% on the said deposit is required to be taken into consideration for estimating the fair rental value of the flat given to the assessee and accordingly, he enhanced the perquisite value of the residential accommodation provided to the employee by such notional interest. The Commissioner (Appeals) upheld the decision of the Assessing Officer.

High Court’s Decision:
1. On appeal by the Revenue, the Bombay High Court held that the Assessing Officer is not right in adding the notional interest on the security deposit given by the employer to the landlord in valuing the perquisite of rent-free accommodation, since the perquisite value
has to be computed as per Rule 3 and Rule 3 does not require addition of such notional interest.

2. Thus, the perquisite value of the residential accommodation provided by the employer would be the actual amount of lease rental paid or payable by the employer, since the same was lower than 10% (now 15%) of salary.

CASE LAW - 5

Can the limit of Rs. 1,000 per month per child be allowed as standard deduction, while computing the perquisite value of free or concessional education facility provided to the employee by the employer?

CIT (TDS) V. DIRECTOR, DELHI PUBLIC SCHOOL (2011) (PUNJ. & HAR.)

As per the provisions of Rule 3(5) of the Income-tax Rules, 1962, in case an educational institution is maintained and owned by the employer and free or concessional education facility is provided to the employees’ household in such institution, then, the cost of education in a similar institution in or near the locality shall be taken to be the value of perquisite in the hands of the employee. In case the cost of such education or the value of benefit does not exceed Rs. 1,000 per month per child, the perquisite value shall be taken to be Nil.

Assessee’s contention: In the present case, the cost of education was more than Rs. 1,000 per month per child, therefore, while determining the perquisite value on the above basis, the assessee claimed a deduction of Rs. 1,000 per month per child.

High Court’s Decision:

1. The Punjab and Haryana High Court, in the above case, held that on a plain reading of Rule 3(5), it shows that, in case the value of perquisite for free/concessional educational facility arising to an employee exceeds Rs. 1,000 per month per child, the whole perquisite shall be taxable in the hands of the employee and no standard deduction of Rs. 1,000 per month per child can be provided from the same.

2. It is only in case the perquisite value is less than Rs. 1,000 per month per child, the perquisite value shall be nil. Therefore, Rs. 1,000 per month per child is not a standard deduction to be provided while calculating such a perquisite.

3. It is only in case the perquisite value is less than Rs. 1,000 per month per child, the perquisite value shall be nil.
Whether rental income earned from letting out of premises is to be treated as business income or as income from house property?

RAJ DADARKAR AND ASSOCIATES V. ASSISTANT COMMISSIONER OF INCOME TAX [2017] 394 ITR 592 (SC)

Facts of the case: The assessee had acquired the right to conduct a market on certain land from Municipal Corporation, Greater Bombay under an auction on May 28, 1993. The premises allotted to the appellant was a bare structure and it was for the appellant to make the premises fit to be used as a market. The appellant spent substantial sums to construct 95 shops and 30 stalls. From the years 1999 to 2004, the assessee treated income from sub-letting of such shops and stalls as business income. The return of the assessee for assessment year 2000-2001 was reopened by Assessing Officer by issuing notice under section 148.

Issue: Whether the income earned by the appellant is to be taxed under the head 'Income from house property' or 'Profits and gains from the business or profession'?

Supreme Court’s Observations:
1. The Supreme Court held that wherever there is an income from leasing out of premises, it is to be treated as income from house property. However, it can be treated as business income if letting out of the premises itself is the business of the assessee. The question has to be decided based on the facts of each case.

2. The only evidence available for proving that letting out and earning rents is the main business activity of the appellant was the object clause of the partnership deed. The clause provided that "The Partnership shall take the premises on rent to sub-let or do any other business as may be mutually agreed by the parties from time to time."

3. The Supreme Court held the clause to be inconclusive and observed that the assessee had failed to produce sufficient material to show that its entire or substantial income was from letting out of the property.

Supreme Court’s Decision: The Supreme Court, accordingly, held that, in this case, the income is to be assessed as “Income from house property” and not as business income, on account of lack of sufficient material to prove that the substantial income of the assessee was from letting out of the property.
CASE LAW - 7

Would income from letting out of properties by a company, whose main object as per its memorandum of association is to acquire and let out properties, be taxable as its business income or income from house property, considering the fact that the entire income of the company as per its return of income was only from letting out of properties?

CHENNAI PROPERTIES AND INVESTMENTS LTD. V. CIT (2015) (SC)

Supreme Court’s Decision:
1. The Supreme Court held that the main objective of the company as per its memorandum of association is to acquire and hold properties in Chennai and let out these properties. Therefore, holding of the properties and earning income by letting out these properties is the main objective of the company.
2. Further, in the return of income filed by the company and accepted by the Assessing Officer, the entire income of the company comprised of income from letting out of such properties. The Supreme Court, accordingly, held that the assessee had rightly disclosed the income derived from letting out of such properties under the head "Profits and gains of business or profession".
3. In support of the aforesaid proposition, a number of judgments of other jurisdictions, i.e., Privy Council, House of Lords in England and the US Courts were taken note of.

After applying the supra ratio-decendi to the facts, the Apex Court had arrived at the conclusion that such income had to be treated as income from business and not as income from house property.

CASE LAW - 8

Would rental income from the business of leasing out properties be taxable under the head “Income from house property” or “Profits and gains from business or profession”?

RAYALA CORPORATION (P) LTD. V. ASSTT. CIT (2016) (SC)

Supreme Court’s Observations:
1. The Apex Court took note of the specific finding by the authorities that the assessee had stopped its other business activities and continued only the business of leasing out its properties and earning rent therefrom. Thus, it noted that the assessee was engaged only in the business of renting its properties and earning rental income.
2. It made reference to law laid down by it in *Chennai Properties & Investments Ltd v. CIT (2015) 373 ITR 673 (SC)* that if an assesse is engaged in the business of letting out house property on rent, then, the income from such property, even though in the nature of rent, should be treated as business income.

3. The Court held that the *judgment in Chennai Properties & Investment Ltd.’s* case would *squarely apply in this case also*, since the company is engaged in the business of letting out properties and earning rental income therefrom.

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**Supreme Court’s decision:** The Apex Court, thus, held that since the business of the company is to lease out its property and earn rent therefrom, the rental income earned by the company is chargeable to tax as its business income and not income from house property.

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**CASE LAW - 9**

Whether the rental income derived from the unsold flats which are shown as stock-in-trade in the books of the assessee would be taxable under the head ‘Profits and gains from business or profession’ or under the head ‘Income from house property’, in a case where the actual rent receipts formed the basis of computation of income?

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**NEW DELHI HOTELS LTD. V. ACIT (2014) (DELHI)**

**High Court’s Decision:** In this case, the Delhi High Court followed its own decision in the case of *CIT vs. Discovery Estates Pvt. Ltd* , wherein it was held that rental income derived from unsold flats which were shown as stock-in-trade in the books of the assessee should be assessed under the head “Income from house property” and not under the head “Profits and gains from business or profession”.

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**Amendment made by Finance Act 2017:** Refer Page of Book 3.

Note – This has been further substantiated by insertion of new sub-section (5) of section 23, according to which income from house property held as stock-in-trade would be exempt for a period of one year from the end of the financial year in which certificate of completion was obtained from the competent authority. However, for availing such exemption, the property should not be let out during the said period. Insertion of sub-section (5) in section 23 providing for exemption in respect of house property held as stock-in-trade for a certain period subject to fulfilment of the condition stated therein implies that income from house property held as stock-in-trade –

(i) beyond the said period; or

(ii) not eligible for such exemption even during the said period due to non-fulfilment of the stated condition,
would be taxable under the same head of income i.e., “Income from house property”.

In effect, where exemption provisions are provided under a particular head of income, it can be inferred that the income, but for such exemption, would be taxable only under that head of income.

**CASE LAW - 10**

Under what head of income should income from letting out of godowns and provision of warehousing services be subject to tax - “Income from house property” or “profits and gains of business or profession”?

**CIT V. NDR WAREHOUSING P LTD (2015) (MAD)**

**High Court’s Decision:** The High Court observed that the Commissioner (Appeals) as well as the Tribunal had not only gone into the **objects clause** of the memorandum of the assessee but also individual aspects of the business to come to the conclusion that it was a case of warehousing business, and, therefore, the income would fall under the head “Profits and gains of business or profession”.

Accordingly, the High Court held that the income earned by the assessee from letting out of godowns and provision of warehousing services is chargeable to tax under the head “Profits and gains of business or profession” and not under the head “Income from house property”.

**CASE LAW - 11**

Can benefit of self-occupation of house property under section 23(2) be denied to a HUF on the ground that it, being a fictional entity, cannot occupy a house property?

**CIT V. HARIPRASAD BHOJNAGARWALA (2012) (GUJ.) (FULL BENCH)**

**High Court’s Observations & Decision:**

1. HUF is a **group of individuals** related to each other i.e., a family comprising of a group of natural persons.
2. The said family can reside in the house, which belongs to the HUF. Since a HUF **cannot consist of artificial persons**, it cannot be said to be a fictional entity.
3. Also, it was observed that since **singular includes plural**, the word "owner" would include "owners" and the words "his own" used in section 23(2) would include "their own".
4. Therefore, the Court held that the HUF is **entitled to claim benefit** of self-occupation of house property under section 23(2).
CASE LAW - 12
Can notional interest on interest-free deposit received by an assessee in respect of a shop let out on rent be brought to tax as business income or income from house property?

CIT V. ASIAN HOTELS LTD. (2010) (DEL.)

High Court’s Observations & Decision: The High Court observed that section 28(iv) is concerned with business income and brings to tax the value of any benefit or perquisite, arising from business or the exercise of a profession. **Section 28(iv) can be invoked only where the benefit or amenity or perquisite is otherwise than by way of cash.** In the instant case, the Assessing Officer has determined the monetary value of the benefit stated to have accrued to the assessee by adding a sum that constituted 18% simple interest on the deposit. Hence, section 28(iv) is not applicable.

**Section 23(1)** deals with the determination of the expected rent of a let out property for computing the income from house property. It provides that the expected rent is deemed to be the sum for which the property might reasonably be expected to be let out from year to year. This contemplates the possible rent that the property might fetch and certainly not the interest on fixed deposit that may be placed by the tenant with the landlord in connection with the letting out of such property.

**Conclusion:**
Thus, the notional interest is neither assessable as business income nor as income from house property.

PROFITS & GAINS FROM BUSINESS & PROFESSION

CASE LAW – 12A
Whether section 40(a)(ia) is attracted when amount is not ‘payable’ to a sub-contractor but has been actually paid?

PALAM GAS SERVICE V. CIT (SC) { REFER BOOK 1 }

CASE LAW - 13
Whether “premium” on subscribed share capital is “capital employed in the business of the company” under section 35D to be eligible for a deduction?
BERGER PAINTS INDIA LTD V. CIT [2017] 393 ITR 113 (SC)

Facts of the case: The assessee is a company engaged in the manufacture of paints. For the relevant assessment years, the assessee claimed deduction under section 35D of a sum representing share premium as being a part of the capital employed. The said deduction was disallowed by the Assessing Officer.

Issue: Whether “premium” on subscribed share capital is “capital employed in the business of the company” under section 35D to be eligible for a deduction?

Supreme Court’s Observations:
1. The Supreme Court observed that the share premium collected by the assessee on its subscribed issued share capital could not be part of “capital employed in the business of the company” for the purpose of section 35D(3)(b).

2. If it were the intention of the legislature to treat share premium as being “capital employed in the business of the company”, it would have been explicitly mentioned. Moreover, column III of the form of the annual return in Part II of Schedule V to the Companies Act, 1956 under Section 159 dealing with capital structure of the company provides the break-up of “issued share capital” which does not include share premium at the time of subscription.

3. Hence, in the absence of the reference in section 35D, share premium is not a part of the capital employed. Also, section 78 of the Companies Act, 1956 requires a company to transfer the premium amount to be kept in a separate account called “securities premium account”.

Supreme Court’s Decision: Affirming the decision of the High Court, the Supreme Court held that the assessee is not entitled to claim deduction in relation to the premium amount received from shareholders at the time of share subscription.

Note – Under the Companies Act, 2013, Serial No. IV(i) of Form MGT-7 (Annual Return) read with section 92 relates to the capital structure of a company, including break-up of issued share capital and section 52 deals with securities premium. Thus, the rationale of the Supreme Court ruling in the above case would hold good in the Companies Act, 2013 regime.
CASE LAW - 14
K&CO. (DELHI H.C) (2014)

**Facts of the case:**

- Assessee running a lottery

Interest income is **inextricably** linked to the business; can’t be treated as IFOS.

(+) This Bank Guarantee is necessary to obtain contract from state Gvt.

**CASE LAW – 14A**
Can depreciation on leased vehicles be denied to the lessor on the ground that the vehicles are registered in the name of the lessee and that the lessor is not the actual user of the vehicles?

I.C.D.S. Ltd. v. CIT (2013) (SC)
Refer page——— of Book———.

**CASE LAW – 14B**
CIT V/S BSES YAMUNA POWERS LTD. (2013) (DELHI H.C.)

<table>
<thead>
<tr>
<th>Issue?</th>
<th>Judgement:</th>
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<tr>
<td>Rate of Depreciation in case of computer Accessories &amp; Peripherals?</td>
<td>Rate = 60%, as printer, scanners etc. form integral part of computers.</td>
</tr>
</tbody>
</table>

*Note:* The CBDT has, vide Notification No. 103/2016, dated 7-11-2016, with effect from A.Y. 2018-19 reduced the higher rate of normal depreciation of 50%, 60%, 80% or 100%, as the case may be to 40%.

Accordingly, with effect from A.Y. 2018-19, the applicable rate of normal depreciation for computers would be 40% and hence, the eligible rate of depreciation on computer accessories and peripherals such as printers, scanners and server etc. or **UPS would be 40%**.
CASE LAW – 14C
Can business contracts, business information, etc., acquired by the assessee as part of the slump sale and described as 'goodwill', be classified as an intangible asset to be entitled for depreciation under section 32(1)(ii)?

AREVA T AND D INDIA LTD. V. DCIT (2012) (DELHI)
SAME AS SMIFS SECURITIES LTD.

CASE LAW – 14D
Is the assessee entitled to depreciation on the value of goodwill considering it as an asset within the meaning of Explanation 3(b) to Section 32(1)?

CIT V. SMIFS SECURITIES LTD. (2012) (SC)
Refer page_______ of Book ____.

CASE LAW – 14E
Can EPABX and mobile phones be treated as computers to be entitled to higher depreciation?

FEDERAL BANK LTD. V. ACIT (2011) (KERALA)

**High Court’s Decision:** On this issue, the High Court held that the rate of depreciation of 60% is available to computers and there is no ground to treat the communication equipment as computers. Hence, EPABX and mobile phones are not computers and therefore, are not entitled to higher depreciation at 60%.

The CBDT has, vide Notification No. 103/2016, dated 7-11-2016, with effect from A.Y. 2018-19 reduced the higher rate of normal depreciation of 50%, 60%, 80% or 100%, as the case may be to 40%.

Accordingly, with effect from A.Y. 2018-19, the applicable rate of normal depreciation for computers would be 40%.

CASE LAW - 15
CIT V/S SMT. A. SIVAKAMI & ANOTHER (2010) (MAD.)

- **Facts of the case:**
  - Assessee claimed depn\(^a\) on 3 buses, but she was not registered owner.
  - Assessee furnished (+) (1) (2) (3) (4)
    - Loan Doc.
    - Road Tax
    - Obtained
    - Buses were

1.15
CASE LAWS/FA 2019- MAY/NOV 2020

(-) Repayment of loans from bus. receipts

(+)

Insurance
undertaking from legal owner
shown in B/s & its income was offered for tax.

- **Judgement**:
  It was held since the assessee has made available all the documents & also established that she is the beneficial owner assessee was entitle for depreciation.

### CASE LAW - 16

**CIT V/S GUJARAT STATE ROAD TRANSPORT CORPORATION (2014)(GUJ.)**

- **Issue under consideration**:
  Is employees contribution to PF & ESIC allowed as deduction, where the employer had not remitted the same on or before the “due date” under the relevant Act, but remitted the same on or before the due date for filing of ROI u/s 139(1)?

- **Judgement**:
  No. [Contradictory decision is given in case of AIMIL Ltd. (Delhi)]

  **Note**: A contrary view was expressed by Uttarakhand High Court in the case of CIT v. Kichha Sugar Co. Ltd. (2013) & Delhi High Court in case of Aimil Ltd holding that the employees' contribution to provident fund, deducted from the salaries of the employees of the assessee, shall be allowed as deduction from the income of the employer-assessee, if the same is deposited by the employer-assessee with the provident fund authority on or before the due date of filing the return for the relevant previous year.

### CASE LAW – 16A

What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue?

**CIT V. ORIENT CERAMICS AND INDUSTRIES LTD. (2013) (DELHI)**

Refer Page ____ Book _____

### CASE LAW - 17

Would the expenditure incurred on issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure?

---

1.16
CIT V. ITC HOTELS LTD. (2011) (KAR.)

**High Court’s Decision:** On this issue, the Karnataka High Court held that the expenditure incurred on the issue and collection of debentures shall be treated as revenue expenditure even in case of convertible debentures, i.e., the debentures which had to be converted into shares at a later date.

CASE LAW - 18
CIT V/S PRIYA VILLAGE ROADSHOWS LTD. (2011) (DELHI)

**Facts of the case:**

1. Assessee engaged in the business of running cinema.
2. Incurs expenses on architect fees for examining tech viability of proposal for takeover of cinema theatre for conversion into multiplex.
3. The project was dropped due to lack of financial & tech. viability.

**Issue:** whether expenses would be allowable?

**Judgement**

1. The H.C. observed in such cases whether or not a new Business / Asset comes into existence would become a relevant factor. If there is no creation of new asset, then it would be Revenue.
2. ∴ H.C. held since the feasibility studies were Conducted by the assessee for existing business & venture was abandoned without creating a new asset, the expenses are of Revenue nature.

CASE LAW – 18A
Can expenditure incurred on alteration of a dam to ensure adequate supply of Water for the smelter plant owned by the assessee be allowed as revenue expenditure?
CASE LAWS - 19
CONFEDERATION OF INDIA PHARMACEUTICAL INDUSTRY V/S CBDT (2013) (H.P.)

**Issue under consideration**
Is circular 5/2012 dated 1.8.2012 disallowing the expenditure incurred on freebies provided by pharma Companies to Medical Practitioners, in line with Expln to 37(1), which disallows exp. Which is prohibited by law?

1. The HC opined that the contentions of the assessee that the circular goes beyond 37(1) is not acceptable.
2. Explanation to sec 37(1) clearly prohibited any expense which is in violation of any law.
3. Therefore the circular is in line with explanation to sec 37(1).

However if the assessee satisfies the authority that expenditure incurred is not in violation of regulations framed by the medical councils, then it may claim the deductions.

CASE LAWS - 20
CIT V/S KAP SCAN & DIAGNOSTIC CENTRE P. LTD (2012) (P&H)

**Issue under Consideration**
Can Commission paid to directors by diagnostic centre for referring patients be allowed as business expenditure (or) would it be treated as illegal & against public policy to attract disallowance?

**Judgement:**
1. The demanding as well as paying commission is incorrect in law.
2. It is not a fair practice & is opposed to public policy and should be discouraged.
3. Thus, HC held such commission paid to doctors for referring patients is not allowable as business expenditure.
CASE LAW - 21
ECHJAY FORGINGS LTD V/S ACIT (2010)

Issue under Consideration:

Can expenditure incurred by a company on higher studies of directors son abroad be claimed as B/E u/s - 37(1) on the contention that he was appointed as a trainee in the Co. under “apprentice training Scheme” where there was no proof of existence of such scheme?

Yes it can claimed as deduction so long as it was incurred for the purpose of Business or Profession.

CASE LAW – 21A
Can the expenditure incurred on heart surgery of an assessee, being a lawyer by profession, be allowed as business expenditure under section 31, by treating it as current repairs considering heart as plant and machinery, or under section 37, by treating it as expenditure incurred wholly and exclusively for the purpose of business or profession?

SHANTI BHUSHAN V. CIT (2011) (DELHI)
Refer page-_____ of Book_____.

CASE LAW – 21B
Can payment to police personnel and gundas to keep away from the cinema theatres run by the assessee be allowed as deduction?

CIT V. NEELAVATHI & OTHERS (2010) (KARN)
Refer page-_____ of Book_____.

CASE LAW – 21C
Is the amount paid by a construction company as regularization fee for violating building bye-laws allowable as deduction?

MILLENNIA DEVELOPERS (P) LTD. V. DCIT (2010) (KARN.)
Refer page-_____ of Book_____.

CASE LAW – 21D
Can remuneration paid to working partners as per the partnership deed be considered as unreasonable and excessive for attracting disallowance under section 40A(2)(a) even though the same is within the statutory limit prescribed under section 40(b)(v)?

1.19
CIT V. GREAT CITY MANUFACTURING CO. (2013) (ALL)
Refer page-_____ of Book

CASE LAW - 22
In a case where payment of bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, would the same be allowable under section 36(1)(ii) while computing business income?

SHASUN CHEMICALS & DRUGS LTD V. CIT (2016) (SC)

Facts of the case: The assessee-company and its employees union had a dispute as regard the quantum of bonus which led to labour unrest. Due to this reason, the workers refused to accept the bonus offered to them. However, in order to comply with the requirement of section 43B (i.e., deduction in respect of bonus would be allowable only if actual payment is made) the assessee made payment to a trust. The dispute with the workers was settled well in time and the bonus was paid to the workers on the very next day of deposit of the said amount in the trust that too, before the ‘due date’ by which such payment is supposed to be made in order to claim deduction under section 36. The Assessing Officer, however, took a view that since the payment was made from the trust and not made by the assessee directly to the employees, it is not allowable in view of the provisions of section 40A(9) of the Act.

Appellate Authorities views: The Commissioner(Appeals) and the Appellate Tribunal did not accept the Assessing Officer’s view but the High Court concurred with the Assessing Officer’s view and denied deduction under section 36(1)(ii) to the assessee.

Supreme Court’s decision:
1. The Apex Court held that section 36(1) contains various kinds of expenses which are allowable as deduction while computing the business income. The amount paid by way of bonus is one such expenditure which is allowable as deduction under section 36(1)(ii).
2. It also held that the embargo contained in section 43B(b) or section 40A(9) does not come in the way of the assessee’s claim, since the bonus was ultimately paid to the employees before the due date as per the statutory requirement. Therefore, the payment in respect of bonus is allowable as deduction, as there is no dispute that the amount was paid by the assessee to its employees before the due date by which such payment is supposed to be made in order to claim deduction under section 36(1)(ii).

Note – In this case, the Supreme Court has held that the bonus was allowable as deduction under section 36(1)(ii), even though it was initially remitted to the trust created for this purpose, from which the payment was ultimately made to the employees before the due date.

The Supreme Court has applied the concept of “substance over form” in allowing the
deduction of bonus paid under section 36(1)(ii) by considering that the payment of bonus was ultimately made to employees before the stipulated due date. Applying the same concept, the intermittent process of creation of trust for remittance of bonus and subsequent payment therefrom to the employees, which formed the basis of disallowance of bonus by the Assessing Officer on the basis of the provisions of section 40A(9) has been ignored. However, had the payment to employees not been made before the stipulated due date, deduction under section 36(1)(ii) would not be allowable merely because the amount was remitted to the trust before the stipulated due date. It may be noted that as per section 43B(c), actual payment before the due date of filing of return of income under section 139(1) is a pre-requisite for claiming deduction under section 36(1)(ii).

**CAPITAL GAINS
CASE LAW - 23**

Whether receipt of higher compensation after notification of compulsory acquisition would change the character of transaction into a voluntary sale?

**BALAKRISHNAN V. UNION OF INDIA & OTHERS (2017) (SC)**

**Facts of the case:** The assessee owned vast area of agricultural land. The State Government acquired the property for development of a techno park. The assessee was awarded compensation of Rs.14.37 lakhs. Aggrieved by the amount, the assessee initiated negotiations with the Collector, further to which compensation was increased to Rs.38.42 lakhs. The assessee claimed exemption from capital gains under section 10(37)(iii) stating that the transfer of agricultural land was on account of compulsory acquisition. The Revenue authorities contended that the exemption should be denied as it was not a compulsory acquisition but a voluntary sale.

**Issue:** Whether receipt of higher compensation on account of negotiations transforms the character of compulsory acquisition into a voluntary sale, so as to deny exemption under section 10(37)(iii)?

**Supreme Court’s Observations:**

1. The Supreme Court observed that the acquisition process was initiated under the Land Acquisition Act, 1894. The assessee entered into negotiations only for securing the market value of the land without having to go to the Court.
2. Merely because the compensation amount is agreed upon, the character of acquisition will not change from compulsory acquisition to a voluntary sale.
3. The Court also drew attention to a recently enacted legislation titled, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, which empowers the Collector to pass an award with the consent of the parties. Despite the provision for consent, the acquisition would continue to be compulsory.
Supreme Court’s Decision:

4. The Supreme Court held that when proceedings were initiated under the Land Acquisition Act, 1894, even if the compensation is negotiated and fixed, it would continue to remain as compulsory acquisition. The claim of exemption from capital gains under section 10(37)(iii) is, therefore, tenable in law.

CASE LAW - 24

Whether the Assessing Officer is bound to consider the report of Departmental Valuation Officer (DVO) when it is available on record?

PRINCIPAL CIT V. RAVJIBHAI NAGJIBHAI THESIA (2016) (GUJ)

Facts of the case: The assessee sold his property for Rs.16 lakhs. The State stamp valuation authority valued the property at Rs.233.71 lakhs. During the course of assessment proceedings, at the request of the assessee, the Assessing Officer referred the matter of valuation to the DVO who valued the property at Rs.24.15 lakhs. The Assessing Officer passed the order before the receipt of the report of the DVO by treating Rs.217.71 lakhs (difference between Rs.233.71 lakhs and Rs.16 lakhs) as undisclosed income. The report of the DVO was received by the Assessing Officer after the date of assessment order but before the order was received by the assessee.

Appellate Authorities’ Views: The Commissioner (Appeals) directed the Assessing Officer to compute the capital gain by taking the value given by the DVO. The Revenue carried the matter before Tribunal. The Tribunal agreed with the view of the CIT (Appeals) and dismissed the appeal. The Tribunal relied on CIT v. Dr. Indra Swaroop Bhatnagar (2012) 349 ITR 210 (All) which held that the DVO’s valuation under section 50C(2) is binding on the Assessing Officer.

Issue: Whether the Assessing Officer having made reference to the DVO must consider the report of the DVO for the purpose of assessment?

High Court’s Observations:

1. The High Court observed that when the Assessing Officer has referred the matter to DVO, the assessment has to be completed in conformity with the estimate given by the DVO.

2. As the DVO has estimated the value of the capital asset at an amount lower than the value assessed by the stamp valuation authority, as per 50C(2), it is such valuation which is required to be taken into consideration for the purposes of assessment.

High Court’s Decision: The High Court held that capital gains has to be computed in conformity with the value so determined by the DVO.
CASE LAW – 24A

Whether indexation benefit in respect of the gifted asset shall apply from the year in which the asset was first held by the assessee or from the year in which the same was first acquired by the previous owner?

CIT V. MANJULA J. SHAH (2013) (BOM.)

Refer page______ of Book______.

CASE LAW - 25

Where a building, comprising of several floors, has been developed and re-constructed, would exemption under section 54/54F be available in respect of the cost of construction of -

(i) the new residential house (i.e., all independent floors handed over to the assessee); or
(ii) a single residential unit (i.e., only one independent floor)?

CIT V. GITA DUGGAL (2013) (DELHI)

Facts of the case: In the present case, the assessee was the owner of property comprising the basement, ground floor, first floor and second floor. In the year 2006, she entered into a collaboration agreement with a builder for developing the property. According to the terms of the agreement, the builder was to demolish the existing structure on the plot of land and develop, construct, and/or put up a building consisting of basement, ground floor, first floor, second floor and third floor with terrace at its own costs and expenses. The assessee handed over to the builder, the physical possession of the entire property, along with 22.5% undivided interest over the land. The handing over of the entire property was, however, only for the limited purpose of development. The builder was to get the third floor plus the undivided interest in the land to the extent of 22.5% for his exclusive enjoyment. In addition to the cost of construction incurred by the builder on development of the property, a further amount of Rs. 4 crores was payable by the builder to the assessee as consideration against the rights of the assessee.

Assessee’s contention vis-à-vis Assessing Officer’s contention: The assessee, in her return of income, showed only Rs. 4 crores as sales consideration. The Assessing Officer, however, took the view that the sale consideration for the transfer should include not only the amount of Rs. 4 crores received by the assessee in cash, but also the cost of construction amounting to Rs. 3.44 crore incurred by the developer in respect of the other floors, which were handed over to the assessee.
The assessee contended that if the cost of construction incurred by the builder is to be added to the sale price, then, the same should also correspondingly be considered as re-investment in the residential house for exemption under section 54.

However, the Assessing Officer rejected the claim for exemption under section 54 on the ground that the floors obtained by the assessee contained separate residential units having separate entrances and cannot qualify as a single residential unit. He contended that deduction under section 54F was allowable, and that too only in respect of cost of construction incurred in respect of one unit i.e., one floor.


High Court’s Observations: The High Court observed that sections 54 and 54F use the expression “residential house” and not “residential unit” and it is the Assessing Officer who has introduced a new concept of “residential unit” into these sections. Sections 54 and 54F require the assessee to acquire a "residential house" and so long as the assessee acquires a building, which may be constructed, for the sake of convenience, in such a manner as to consist of several units which can, if the need arises, be conveniently and independently used as an independent residence, the requirement of the section should be taken to have been satisfied. There is nothing in these sections which requires the residential house to be constructed in a particular manner. The only requirement is that it should be for residential use and not for commercial use. The physical structuring of the new building, whether lateral or vertical, should not come in the way of considering the building as a residential house.

High Court’s Decision: The High Court held that the fact that the residential house consists of several independent units cannot be permitted to act as an impediment to the allowance of the deduction under section 54 or section 54F. It is neither expressly nor by necessary implication prohibited. Therefore, the assessee is entitled to exemption of capital gains in respect of investment in the residential house, comprising of independent residential units handed over to the assessee.

Note – The Department’s Special Leave Petition against the Delhi High Court’s judgment was dismissed on 29th August, 2014.

CASE LAW -26

Would an assessee be entitled to exemption under section 54 in respect of purchase of two flats, adjacent to each other and having a common meeting point?

CIT V. SYED ALI ADIL (2013) (A.P.)
(Already discussed in class)

High Court’s Observations:
1. On appeal by the Revenue, the High Court referred to the Karnataka High Court decision in CIT v. Ananda Basappa (2009) 309 ITR 329, wherein it was observed
that where the flats are situated **side by side** and the builder had effected the necessary modification to **make it as one unit**, the assesse would be entitled to exemption under section 54 in respect of investment in both the flats, despite the fact that they were purchased by separate sale deeds.

2. The above ruling was also followed by the Karnataka High Court in *CIT v. K.G. Rukminiamma* (2011) 331 ITR 211, wherein it was held that where a residential house was transferred and four flats in a single residential complex were purchased by the assesse, all the four residential flats constituted “a residential house” for the purpose of section 54.

**High Court’s Decision:** The Andhra Pradesh High Court, on the basis of the above rulings of the Karnataka High Court, held that in this case, the assesse was entitled to investment in both the flats purchased by him, since they were adjacent to each other and had a common meeting point, thus, making it a single residential unit.

### CASE LAW - 27

**Can exemption under section 54B be denied solely on the ground that the new agricultural land purchased is not wholly owned by the assesse, as the assesse’s son is a co-owner as per the sale deed?**

**CIT V. GURNAM SINGH (2010) (P&H)**

**High Court’s Decision:**

1. In this case, the High Court concurred with the Tribunal’s view that merely because the assesse’s **son was shown in the sale deed as co-owner**, it did not make any difference.

2. It was not the case of the Revenue that the land in question was exclusively used by the son. Therefore, the assesse was entitled to deduction under section 54B.

### CASE LAW – 27A

**Can exemption under section 54F be denied solely on the ground that the new residential house is purchased by the assesse exclusively in the name of his wife?**

**CIT V. KAMAL WAHAL (2013) (DELHI)**

Refer page-_____ of Book _____.

### CASE LAW - 28

In case of a house property registered in joint names, whether the exemption under section 54F can be allowed fully to the co-owner who has paid whole of the purchase consideration of the house property or will it be restricted to his share in the house property?
CIT V. RAVINDER KUMAR ARORA (2012) (DELHI)

High Court’s Decision:
1. Considering the above mentioned facts, the Delhi High Court held that the assessee was the real owner of the residential house in question and merely inclusion of his wife’s name in the sale deed would not make any difference.
2. The High Court also observed that section 54F mandates that the house should be purchased by the assessee but it does not stipulate that the house should be purchased only in the name of the assessee.
3. In this case, the house was purchased by the assessee in his name and his wife's name was also included additionally. Therefore, the conditions stipulated in section 54F stand fulfilled and the entire exemption claimed in respect of the purchase price of the house property shall be allowed to the assessee.

CASE LAW - 29

Can exemption under section 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the construction was not completed within three years after the date on which transfer took place, on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter, etc?

CIT V. SAMBANDAM UDAYKUMAR (2012) (KAR.)

High Court’s Observations:
1. The Karnataka High Court observed that the condition precedent for claiming the benefit under section 54F is that capital gains realized from sale of capital asset should have been invested either in purchasing a residential house or in constructing a residential house within the stipulated period.
2. If he has invested the money in the construction of a residential house, merely because the construction was not completed in all respects and possession could not be taken within the stipulated period, would not disentitle the assessee from claiming exemption under section 54F.
3. In fact, in this case, the assessee has taken the possession of the residential building and is living in the said premises despite the pendency of flooring work, electricity work, fitting of door and window shutters.

High Court’s Decision: The Court held that in this case the assessee would be entitled to exemption under section 54F in respect of the amount invested in construction within the prescribed period.
CASE LAW - 30

In a case where a depreciable asset held for more than 36 months is transferred, can benefit of exemption under section 54EC be claimed, if the capital gains on sale of such asset are reinvested in long-term specified assets within the specified time?

CIT V. V.S. DEMPO COMPANY LTD (2016) (SC)
(Already discussed in class)

High Court’s Observations:
1. The High Court referred the decision of the Bombay High Court in the case of CIT v. ACE Builders (P) Ltd (2006) 281 ITR 210 (Bom), wherein it was analysed that the assessee cannot be denied exemption under section 54EC, because firstly, there is nothing in section 50 which states that exemption under section 54EC shall not be available.
2. Secondly, fiction created by the legislature in sec 50 has to be confined for the purpose for which is created.
3. Thirdly, section 54EC does not make any distinction between depreciable and non-depreciable asset for the purpose of re-investment of capital gains in long term specified assets for availing the exemption thereunder.
4. Further, section 54EC specifically provides that when the capital gain arising on the transfer a long-term capital asset is invested or deposited in long-term specified assets, the assessee shall not be subject to capital gains to that extent. Therefore, the exemption under section 54EC cannot be denied to the assessee on account of the fiction created in section 50.

Supreme Court’s Decision: The Apex Court, concurred with the view of the High Court holding that since the depreciable asset is held for more than 36 months and the capital gains are re-invested in long-term specified assets within the specified period, exemption under section 54EC cannot be denied.

CASE LAW - 31

Where the stamp duty value under section 50C has been adopted as the full value of consideration, can the reinvestment made in acquiring a residential property, which is in excess of the actual net sale consideration, be considered for the purpose of computation of exemption under section 54F, irrespective of the source of funds for such reinvestment?
GOULI MAHADEVAPPA V. ITO (2013) (KAR.)

Facts of the case: In the present case, the assessee sold a plot of land for Rs. 20 lakhs and reinvested the sale consideration of Rs. 20 lakhs together with agricultural income of Rs. 4 lakhs, in construction of a residential house. The assessee claimed capital gains exemption under section 54F, taking into consideration the entire investment of Rs. 24 lakhs. The Assessing Officer, applying the provisions of section 50C, deemed the stamp duty value of Rs. 36 lakhs as the full value of consideration since the consideration received or accruing as a result of transfer of capital asset (i.e. Rs. 20 lakhs) was less than the value adopted by the stamp valuation authority (i.e., Rs. 36 lakhs). The same was not disputed by the assessee before the Assessing Officer.

Assessing Officer’s contention vis-a-vis Assessee’s contention: The Assessing Officer allowed exemption under section 54F, taking into consideration investment in construction of residential house, to the extent of actual net consideration of Rs. 20 lakhs. He did not consider the balance amount of Rs. 4 lakhs, invested in the construction of residential house, out of agricultural income, for computation of exemption under section 54F, even though the sale consideration adopted for the purpose of computation of capital gains i.e., stamp duty value of Rs. 36 lakhs, was more than the amount of Rs. 24 lakhs invested in the new house.

The assessee contended that the entire investment of Rs. 24 lakhs made in construction of the residential house should be considered for computation of exemption under section 54F, irrespective of the source of funds for such reinvestment. Further, the assessee also contended before the High Court that the registration value adopted under section 50C was excessive and disproportionate to the market value of the property.

High Court’s Observations:
1. On the issue of applicability of section 50C, the Karnataka High Court observed that section 50C(2) allows an opportunity to the assessee to contend, before the Assessing Officer, the correctness of the registration value fixed by the State Government.
2. Had he done so, the assessing authority would have invoked the power of appointing a Valuation Officer for assessing the fair market value of the property.
3. The High Court held that when the assessee had not disputed the registration value at that point of time, it is not permissible for the assessee to now contend, at this stage, that the registration value does not correspond to the market value. Hence, the value of Rs. 36 lakhs adopted under section 50C has to be deemed as the full value of consideration.

High Court’s Decision: On the issue of exemption under section 54F, the High Court held that when capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value of Rs. 36 lakhs under section 50C has been adopted as the full value of consideration, the entire amount of Rs. 24 lakhs reinvested in the residential house within the prescribed period should be considered for the purpose of exemption under section 54F, irrespective of the source of funds for such reinvestment.
CASE LAW - 32
Can exemption under section 54EC be denied on account of the bonds being issued after six months of the date of transfer even though the payment for the bonds was made by the assessee within the six month period?

HINDUSTAN UNILEVER LTD. V. DCIT (2010) (BOM.)

High Court’s Decision: For the purpose of the provisions of section 54EC, the date of investment by the assessee must be regarded as the date on which payment is made. The High Court, therefore, held that if such payment is within a period of six months from the date of transfer, the assessee would be eligible to claim exemption under section 54EC.

CASE LAW - 33
Can advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption under section 54G?

FIBRE BOARDS (P) LTD V. CIT (2015) (SC)
1. Section 54G gives a time limit of 3 years after the date of transfer of capital asset in the case of shifting of industrial undertaking from urban area to any area other than urban area. The expression used in section 54G(2) is that the amount “which is not utilized by him for all or any of the purposes aforesaid has to be deposited in the capital gain account scheme”.
2. For the purpose of availing exemption, all that was required for the assessee is to “utilize” the amount of capital gain for purchase and acquisition of new machinery or plant and building or land. Since the entire amount of capital gain, in this case, was utilized by the assessee by way of advance for acquisition of land, building, plant and machinery, the assessee was entitled to avail exemption/deduction under section 54G.

Supreme Court’s Decision: To avail exemption under section 54G in respect of capital gain arising from transfer of capital assets in the case of shifting of industrial undertaking from urban area to non-urban area, the requirement is satisfied if the capital gain is given as advance for acquisition of capital assets such as land, building and/or plant and machinery.
INCOME FROM OTHER SOURCES

CASE LAW - 34

Is loan to HUF who is a shareholder in a closely held company chargeable to tax as deemed dividend?

GOPAL & SONS (HUF) V. CIT (2017) (SC)

Supreme Court’s Observations:

1. When a loan is given by a closely held company, it is chargeable to tax as deemed dividend if the loan was given to a shareholder (having more than 10% shares in the company) or to a concern in which the shareholder has substantial interest (having more than 20% share in the concern). ‘Concern’ includes HUF.

2. In the instant case, loans were given to the HUF. There was some dispute as to who the shareholder was - the Karta or the HUF as share certificates were issued in the name of the former but the annual return mentioned the latter.

3. The Court observed that in either scenario, section 2(22)(e) would be attracted. If the HUF was the shareholder, as it held more than 10% shares, situation was covered. If the Karta was the shareholder, the HUF would be the concern in which the Karta has substantial interest.

4. Further, on the issue whether a HUF can be a shareholder or not, it was observed that on account of Explanation 3 to section 2(22)(e), a concern includes a HUF.

Supreme Court’s Decision: The Supreme Court, accordingly, held that the loan amount is to be assessed as deemed dividend under section 2(22)(e).

CASE LAW - 35

Is interest on enhanced compensation under section 28 of the Land Acquisition Act, 1894 assessable as capital gains or as income from other sources?

MOVALIYA BHIKHUBHAI BALABHAI V. ITO (TDS) (2016) (GUJ)

Facts of the case: The petitioner’s agricultural lands were compulsorily acquired for undertaking an irrigation project. The petitioner challenged the compensation awarded by the Collector which led to award of additional compensation of Rs.5,01,846 and interest amounting to Rs.20.74 lakhs under section 28 of the Land Acquisition Act, 1894. The petitioner filed an application in the prescribed form to the Assessing Officer for issuance of a certificate with ‘nil’ tax deduction at source.
The application was rejected by the Assessing Officer on the ground that the interest amount is taxable at source as per section 57(iv) read with sections 56(2)(viii) and 145B(1). Aggrieved with the rejection of application, the assessee filed a writ before the High Court.

**High Court’s Observations:**

1. The High Court observed that the assessee has received interest under section 28 of the Land Acquisition Act, 1894 which represents enhanced value of land and thus, partakes the character of compensation and not interest. Hence, the interest under section 28 is liable to be taxed under the head of ‘Capital Gains’ and not under ‘Income from Other Sources’.

2. On the other hand, interest under section 34 of the Land Acquisition Act, 1894 is for the delay in making payment after the compensation amount is determined. Such amount is liable to be taxed under the head ‘Income from Other Sources’.

**High Court’s Decision:** The High Court held that the interest awarded under section 28 of the Land Acquisition Act, 1894 was not liable to tax under the head of ‘Income from other sources’ and thus, was not deductible at source. The Revenue authority had erred in refusing to grant a certificate under section 197 to the petitioner for non-deduction of tax at source.

**Note:** The Land Acquisition Act, 1894 has now been repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Section 72 and Section 80 of the new legislation have similar provisions regarding award of interest.

**CASE LAW - 36**

What are the tests for determining “substantial part of business” of lending company for the purpose of application of exclusion provision under section 2(22)?

**CIT V. PARLE PLASTICS LTD. (2011) (BOM.)**

**High Court’s Observations:**

1. Under section 2(22), “dividend” does not include, inter alia, any advance or loan made to a shareholder by a company in the ordinary course of its business, where the lending of money is a “substantial part of the business” of the company.

2. Sometimes a portion which contributes a substantial part of the turnover, sometimes a portion that generates relatively higher profits can amount to substantial part, sometimes even percentage of manpower used for a particular part of the business in relation to the total manpower, so sometime capital employed for a specific division of a company in comparison to total capital employed would also be relevant to determine whether the part of the business constitutes a substantial part.

3. In this case, 42% of the total assets of the lending company were deployed by it by way of loans and advances. Further, if the income earned by way of interest is excluded, the other business had resulted in a net loss. These factors were considered
in concluding that lending of money was a substantial part of the business of the company.

**High Court's Decision:** Since lending of money was a substantial part of the business of the lending company, the money given by it by way of advance or loan to the assessee could not be regarded as a dividend, as it had to be excluded from the definition of "dividend" by virtue of the specific exclusion in section 2(22).

**CASE LAW - 37**

Can repair and renovation expenses incurred by a company in respect of premises leased out by a shareholder having substantial interest in the company, be treated as deemed dividend?

**CIT V. VIR VIKRAM VAID (2014) (BOM)**

**High Court's Observations:**

1. The High Court observed that no money had been paid by way of advance or loan to the shareholder who has substantial interest in the company.

2. The High Court observed that the expenditure incurred by virtue of repairs and renovation on the premises cannot be brought within the definition of advance or loan given to the shareholder having substantial interest in the company, though he is the owner of the premises.

3. It cannot be treated as payment by the company on behalf of the shareholder or for the individual benefit of such shareholder. If held in such manner, it is a mere assumption not tenable in law.

**High Court’s Decision:** The High Court, accordingly, held that the repair and renovation expenses in respect of premises occupied by the company cannot be treated as deemed dividend in the hands of shareholder being the owner of the building.

**CASE LAW - 38**

Can the loan or advance given to a shareholder by the company, in return for an advantage conferred on the company by the shareholder, be deemed as dividend under section 2(22)(e) in the hands of the shareholder?

**PRADIP KUMAR MALHOTRA V. CIT (2011) (CAL.)**

**Facts of the case:** In the present case, the assessee, a shareholder holding substantial voting power in the company, permitted his property to be mortgaged to the bank for
enabling the company to take the benefit of loan. The shareholder requested the company to release the property from the mortgage. On failing to do so and for retaining the benefit of loan availed from bank, the company gave advance to the assessee, which was authorized by a resolution passed by its Board of Directors.

**High Court’s Observations:**
1. The phrase "by way of advance or loan" appearing in section 2(22)(e) must be construed to mean those advances or loans which a shareholder enjoys simply on account of being a person who is the beneficial owner of shares holding not less than 10% of the voting power.
2. **Gratuitous (done without good reason) loan** or advance given by a company to a shareholder, who is the beneficial owner of shares holding not less than 10% of the voting power, would come within the purview of section 2(22)(e) but not to the cases where the loan or advance is given in return to an advantage conferred upon the company by such shareholder.

**High Court’s Decision:** In the present case, the advance given to the assessee by the company was not in the nature of a gratuitous advance; instead it was given to protect the interest of the company. Therefore, the said advance cannot be treated as deemed dividend in the hands of the shareholder under section 2(22)(e).

**CASE LAW – 38A**
Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed under section 115BB?

**CIT V. MANJOO AND CO. (2011) (KERALA)**
Refer page-_______ of Book ______.

**CASE LAW – 38B**
Can the loss suffered by an erstwhile partnership firm, which was dissolved, be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance?

**PRAMOD MITTAL V. CIT (2013) (DELHI)**
Refer page-_______ of Book ______.
DEDUCTIONS UNDER CH VIA

CASE LAW - 39

Is the increase in gross total income consequent to disallowance under section 40(a)(ia) eligible for profit-linked deduction under Chapter VI-A?

CIT V. SUNIL VISHWAMBHARNATH TIWARI (2016) (BOM)

Facts of the case: The assessee engaged in development of housing projects filed his return of income for the relevant assessment year after claiming deduction of Rs.16.82 lakhs under section 80-IB(10) [now, section 80-IBA]. The return was selected for scrutiny. In the assessment, a sum of Rs.83 lakhs towards sub-contract payment; Rs.1.75 lakh as commission payment and Rs.7.96 lakhs towards advertisement expenses were disallowed for non-deduction of tax at source by invoking section 40(a)(ia). While based on the assessment, the total income was fixed at Rs.92.71 lakhs, the Revenue authority limited the deduction under section 80-IB(10) to the original amount claimed by the assessee.

Issue: Whether the increase in gross total income on account of disallowance of expenditure under section 40(a)(ia) must be considered for the purpose of deduction under section 80-IB in the absence of any explicit restriction therein?

High Court’s Observations:
1. The High Court observed that the fact that the assessee had not deducted tax at source was undisputed. On account of such non-deduction, expenses had been disallowed under section 40(a)(ia) which goes on to increase the income chargeable under the head ‘Profits and gains of business or profession’.
2. As deduction under section 80-IB(10) is with reference to the assessee’s gross total income, such enhanced income becomes eligible for deduction. Disallowance under section 40(a)(ia) would, thus, be tax neutral for the assessee, on account of the enhanced profit-linked deduction available to him.

High Court’s Decision: The High Court held that the assessee is entitled to claim deduction under section 80-IB(10) in respect of the enhanced gross total income as a consequence of disallowance of expenditure under section 40(a)(ia).

Notes:
(1) Section 80-IB(10) allows deduction at 100% of the profits in respect of housing projects approved before 31.03.2008. Students may note that, presently, section 80-IBA provides for such deduction @100% of the profits and gains from housing project subject to satisfaction of the conditions mentioned therein.
(2) The CBDT has, in its Circular No.37/2016 dated 2.11.2016, mentioned that the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Thus, the settled position is that the disallowances made...
under sections 32, 40(a)(ia), 40A(3), 43B, etc. and other specific disallowances, relating to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced on account of such disallowance.

CASE LAW - 40
Can the Commissioner reject an application for grant of approval under section 80G(5) on the ground that the trust has failed to apply 85% of its income for charitable purposes?

CIT V. SHREE GOVINDBHAI JETHALAL NATHAVANI CHARITABLE TRUST (2015) (GUJ)
1. **It** was held that at the **time of granting approval** under section 80G, **only the objects** of the trust are required to be **examined** and the aspect of **application of funds** can be **examined** by the Assessing Officer at the time of framing the **assessment**.

2. The scope of **enquiry cannot include** an enquiry as to whether, at the close of the previous year, the donee-trust will actually be **able to apply 85%** of its income. The question of whether the trust will be able to apply 85% of its income can be determined only from the facts existing at the close of the assessment year.

**High Court’s Decision:** The High Court, thus, concurred with the decision of the Tribunal setting aside the order passed by the Commissioner refusing to grant registration under section 80G(5) to the assessee-trust due to the reason that it has not applied 85% of its income for charitable purposes.

CASE LAW - 41
Can unabsorbed depreciation/loss of a business of an industrial undertaking eligible for deduction under section 80-IA be set off against income of another non-eligible business of the assessee?

CIT V. SWARNAGIRI WIRE INSULATIONS PVT. LTD. (2012) (KAR.)

**High Court’s Observations and Decision:**
1. The High Court observed that it is a generally accepted principle that **deeming provision** of a particular section **cannot be breathed into another section**. Therefore, the deeming provision contained in section 80-IA(5) cannot override the provisions of section 70(1).
2. The assessee had incurred loss in eligible business after claiming depreciation. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed. It is thereafter that section 70(1) comes into play, whereby the assessee is entitled to set off the losses from one source against income from another source under the same head of income.

3. The Court, therefore, held that the assessee was entitled to the benefit of set off of loss of eligible business against the profits of non-eligible business. However, once set-off is allowed under section 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under section 70(1) has to be first deducted while computing profits eligible for deduction under section 80-IA in the subsequent year.

**CASE LAW - 42**

Can transport subsidy, interest subsidy and power subsidy received from the Government be treated as profits “derived from” business or undertaking to qualify for deduction under section 80-IB?

**QR CODE NOT AVAILABLE. LECTURE WILL BE UPLOADED SOON. THIS JUDGEMENT IS REVERSED BY SUPREME COURT. THE JUDGEMENT OF HIGH COURT IS AVAILABLE ON AJ NEXT YOUTUBE CHANNEL. BUT THAT IS NOT RELEVANT NOW FOR MAY/NOV 2020.**

**CIT V. MEGHALAYA STEELS LTD (2016) 383 ITR 217 (SC)**

**Facts of the case:** The assessee-company, engaged in the business of manufacture of steel and ferro silicon, claimed deduction under section 80-IB on the profits and gains of the business/undertaking which included transport subsidy, interest subsidy and power subsidy received from Government.

**Revenue’s Contentions:** The Assessing Officer was of the view that these subsidies were not eligible for deduction under section 80-IB(4) and hence, disallowed the same, contending that the source of the subsidies was the Government and not the business of the assessee, these subsidies have a close and direct nexus with the grants of the Government and not the business of the assessee. Hence, these subsidies, included in the profits, were “attributable to the business” but not “derived from” business to qualify for deduction under section 80-IB. The Commissioner (Appeals) upheld the view of the Assessing Officer. However, the Appellate Tribunal and High Court allowed the deduction in respect of such subsidies.
**Supreme Court’s Decision:**

1. The Supreme Court held that transport subsidy, interest subsidy and power subsidy from Government were revenue receipts which were reimbursed to the assessee for elements of cost relating to manufacture or sale of their products.

2. Therefore, there is a direct nexus between profits and gains of the undertaking or business, and reimbursement of such subsidies.

3. The subsidies were only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products. Accordingly, these subsidies qualify for deduction under section 80-IB.

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**CASE LAW – 42A**

Can Duty Drawback be treated as profit derived from the business of the industrial undertaking to be eligible for deduction under section 80-IB?

**CIT V. ORCHEV PHARMA P. LTD. (2013) (SC)**

Refer page-_____ of Book _____.

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**CASE LAW - 43**

Does the period of exemption under section 80-IB commence from the year of trial production or year of commercial production? Would it make a difference if sale was effected from out of the trial production?

**CIT V. NESTOR PHARMACEUTICALS LTD. / SIDWAL REFRIGERATIONS IND LTD. V. DCIT (2010) (DELHI)**

**High Court’s Observations & Decision:**

1. The High Court observed that with mere trial production, the manufacture for the purpose of marketing the goods had not started which starts only with commercial production, namely, when the final product to the satisfaction of the manufacturer has been brought into existence and is fit for marketing.

2. However, in this case, since the assessee had effected sale in March 1998, it had crossed the stage of trial production and the final saleable product had been manufactured and sold.

3. The quantum of commercial sale and the purpose of sale (namely, to obtain registration of excise / sales-tax) is not material.

4. With the sale of those articles, marketable quality was established. Therefore, the conditions stipulated in section 80-IB were fulfilled with the commercial sale of the two items in that assessment year, and hence the five year period has to be reckoned from A.Y.1998-99.

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CASE LAW - 44
Can an assessee who has not claimed deduction under section 80-IB in the initial years, start claiming deduction thereunder for the remaining years during the period of eligibility, if the conditions are satisfied?

PRAVEEN SONI V. CIT (2011) (DELHI)

High Court’s Decision:
1. On the above issue, the Delhi High Court held that the provisions of section 80-IB nowhere stipulated a condition that the claim for deduction under this section had to be made from the first year of qualification of deduction failing which the claim will not be allowed in the remaining years of eligibility.
2. Therefore, the deduction under section 80-IB should be allowed to the assessee for the remaining years up to the period for which his entitlement would accrue, provided the conditions mentioned under section 80-IB are fulfilled.

ASSESSMENT OF VARIOUS ENTITIES
CASE LAW - 45
Can dividend distribution tax under Section 115-O of Income-tax Act, 1961 be levied in respect of the dividend declared out of agricultural income?

UNION OF INDIA V. TATA TEA AND OTHERS [2017] (SC)

Facts of the case: The petitioner is a tea company engaged in cultivating and processing tea in its factory for marketing. The cultivation of tea is an agricultural process while the processing of tea in the factory is an industrial process. The petitioners contend that when the company distributes dividend, it is taxed under Section 115-O. The tax on dividend declared by it in this case is nothing but a tax on agricultural income. The legislative competence for taxing agricultural income lies with the State Government and not the Central Government.

Issue: Can dividend distribution tax be levied on dividend income of a tea company under section 115-O?

Supreme Court’s Observations:
1. Dividend is not ‘revenue derived from land’ and hence cannot be termed as agricultural income in the hands of a shareholder. Hence, despite the petitioner’s company being involved in agricultural activities, in the shareholder’s hands, the income is only dividend and not agricultural income.
**Supreme Court’s Decision:** When dividend is declared to be distributed and paid to a company’s shareholders, it is not impressed with character of the source of its income. Section 115-O is within the competence of the Union Parliament and therefore dividend distribution tax can be levied in respect of the entire dividend declared and distributed by a tea company.

**CASE LAW - 46**

Whether certain receipts by co-operative societies from its members (non-occupancy charges, transfer charges, common amenity fund charges) are exempt based on the doctrine of mutuality?

**INCOME-TAX OFFICER V. VENKATESH PREMISES CO-OPERATIVE SOCIETY LTD. [2018] (SC)**

**Supreme Court’s observations:** The doctrine of mutuality is based on the common law principle that a person cannot make a profit from himself. The income of a co-operative society from business is taxable under section 2(24)(vii) and will stand excluded based on the principle of mutuality. The essence of the principle of mutuality lies in the commonality of the contributors and the participants who are also the beneficiaries. The contributors to the common fund must be entitled to participate in the surplus and the participants in the surplus are contributors to the common fund. Any surplus in the common fund shall, therefore, not constitute income but will only be an increase in the common fund meant to meet sudden eventualities.

The Supreme Court made the following observations:

1. If for convenience, part of the transfer charges were paid by the transferee, they would not partake of the nature of profit. The amount is appropriated only after the transferee was inducted as a member. In the event of non-admission, the amount was returned. The moment the transferee was inducted as a member the principles of mutuality would apply.

2. Non-occupancy charges were levied by the society and were payable by a member who did not himself occupy the premises but let them out to a third person. The charges were utilised only for common benefit of facilities and amenities to the members.

3. Contribution to the common amenity fund taken from a member disposing of property was utilized for meeting heavy repairs to ensure hazard-free maintenance of the properties of the society which ultimately benefitted the members. Membership forming a class, the identity of the individual member not being relevant, induction into membership automatically attracted the doctrine of mutuality.

4. If a society had surplus floor space index available, it was entitled to utilise it by making fresh construction in accordance with law. Naturally, such additional construction would entail extra maintenance charges. If the society first inducted new members who were required to contribute to the common fund for availing of the common facilities, and then granted only occupancy rights to them by draw
of lots, the ownership remaining with the society, the receipts could not be
divided into two segments of receipt and costs, so as to hold the former to be
outside the purview of mutuality classifying it as income of the society with
commerciality.

**Supreme Court’s Decision:** The doctrine of mutuality, is based on the common law
principle that a person cannot make a profit from himself. Accordingly, the transfer
charges, non- occupancy charges common amenity fund charges and other charges are
exempt owing to application of the doctrine of mutuality.

### CASE LAW - 47

Where land inherited by three brothers is compulsorily acquired by the State
government, whether the resultant capital gain would be assessed in the status of
“Association of Persons” (AOP) or in their individual status?

**CIT V. GOVINDBHAI MAMAIYA (2014) (SC)**

**Supreme Court’s Observations:**

1. The Apex Court noted that “Association of Persons” means an association in which
two or more persons join in a common purpose or common action.
2. The Supreme Court held that an association of persons could be formed only when
two or more persons voluntarily combined together for certain purposes.
3. In this case, the property in question came to the assessee’s possession through
inheritance i.e., by operation of law. It is not a case where any ‘association of
persons” was formed by volition of the parties.
4. Further, even the income earned in the form of interest is not because of any
business venture of the three assessees, but is the result of the act of the
Government in compulsorily acquiring the said land. Thus, the basic test to be
satisfied for making an assessment in the status of AOP is absent in this case.

**Apex Court’s Decision:** The Apex Court, accordingly, held that the income from asset
inherited by the legal heirs is taxable in their individual hands and not in the status of
AOP.

### CASE LAW - 48

Would the ancestral property received by the assessee after the death of his father, be
considered as HUF property or as his individual property, where the assessee’s father
had received such property as his share when he went out of the joint family under a
release deed?
COMMISSIONER OF INCOME-TAX V. D. L. NANDAGOPALA REDDY
(INDIVIDUAL) (2014) (KAR)

High Court's Observations:
1. The High Court observed that the property originally belonged to Hindu Undivided Family (HUF). One of the members of the family (i.e., the assessee’s father) went out of the joint family under a release deed and the remaining members continued to be the members of joint family.
2. After the death of assessee’s father and mother, the assessee, being the adopted son, became the sole surviving co-partner. When such property came to the hands of the assessee it was not his individual property; it was the property of his Hindu Undivided Family.

High Court’s Decision: The High Court held that that when the property came to the hands of the assessee, it was not his self-acquired property; it was property belonging to his HUF. The assessee had given a portion of the property to his wife without a registered document, which is possible only if the property is a HUF property. If such property is treated as a self-acquired property, then assessee would have been able to give the portion of the property to his wife only by registered document.

CASE LAW - 49
Under which head of income is rental income from plinths inherited by individual co-owners from their ancestors taxable - “Income from house property” or “Income from other sources”? Further, would such income be assessable in the hands of the individual co-owners or in the hands of the Association of Persons?

SUDHIR NAGPAL V. INCOME-TAX OFFICER (2012) (P & H)
First Issue: The first issue relates to the head of income under which rental income from plinths, inherited by individual co-owners from their ancestors, is taxable – whether “Income from house property” or “Income from other sources”?

High Court’s Observations: As regards the head of income under which rental income from plinths is assessable, the High Court referred to the Division Bench judgment in Gowardhan Das and Sons v. CIT (2007) 288 ITR 481, wherein it was observed that it is the income from property consisting of any building or land appurtenant thereto which is assessed under section 22 and not the income from renting out of open land or some kutcha plinth only.

High Court’s Decision: Therefore, the Court held that the income from letting out the plinths is assessable under section 56 as “Income from other sources” and not under the head “Income from house property”.

1.41
Second Issue: The second issue relates to whether such rental income is assessable in the hands of the individual co-owners or in the hands of the Association of Persons. To appreciate this issue, it is necessary to understand the complete facts of the case.

Facts of the case: In the present case, five persons of the Nagpal family were co-owners of the agricultural land “Nagpal farms” inherited from their forefathers. The co-owners executed a power of attorney in favour of Mr. Sudhir Nagpal, one of the co-owners, appointing him to construct plinths on the agricultural land and to further lease out such open plinths to any party on their behalf. The co-owners had, therefore, not purchased the land for the said purpose but had inherited the land. They were owners not in their joint capacity but in their individual capacity with a definite/defined proportion of share. The co-owners filed their individual returns of income disclosing their rental income and also paid tax on such income.

The Assessing Officer, however, issued notice under section 148 to all the co-owners of the property in the name of Mr. Sudhir Nagpal on the ground that there is an association of persons formed by the co-owners and therefore, income had escaped assessment in the hands of association of persons. The assessee contended that since no land was purchased, therefore, the status of the co-owners cannot be treated as association of persons. The Assessing Officer did not agree with the contention of the assessee and assessed the entire rental income from the plinths as income from other sources in the hands of the association of persons and determined the tax payable by applying section 167B(2). The Commissioner (Appeals) and the Tribunal confirmed the action of the Assessing Officer.

High Court’s Observations:
1. On appeal, the High Court observed that in order to assess individuals as “association of persons”, the individual co-owners should have joined their resources and thereafter, acquired property in the name of association of persons and the property should have been commonly managed.
2. It is only in such a case that income could be assessed in the hands of “association of persons”.
3. Mere accruing of income jointly to more persons than one would not constitute them an association of persons in respect of such income. In other words, unless the associates have done some acts or performed some operations together, which have helped to produce the income in question, they cannot be termed as an association of persons. Unless the members combine or join in a common purpose, it cannot be held that they have formed themselves into an association of persons.

High Court’s Decision: In this case, the co-owners had inherited the property from their ancestors and there was nothing to show that they had acted as an association of persons. Thus, the High Court held that the rental income from the plinths has to be assessed in the status of individual and not association of persons and consequently, section 167B would not be attracted in this case.
**CASE LAW - 50**

Would the interest earned on surplus funds of a club deposited with institutional members satisfy the principle of mutuality to escape taxability?

**MADRAS GYMKHANA CLUB V. DCIT (2010) (MAD.)**

**Facts of the case:** The assessee-club providing facilities like gym, library, etc, to its members earned interest from fixed deposits which it had made by investment of its surplus funds with its corporate members.

**High Court’s Decision:** The High Court held that interest earned from investment of surplus funds in the form of fixed deposits with institutional members does not satisfy the principle of mutuality and hence cannot be claimed as exempt on this ground. The interest earned is, therefore, taxable.

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**CASE LAW - 50A**

Can transfer fees received by a co-operative housing society from its incoming and outgoing members be exempt on the ground of principle of mutuality?

**SIND CO-OPERATIVE HOUSING SOCIETY V. ITO (2009) (BOM)**

Refer page-______ of Book ______.

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**CASE LAW - 51**

In a case where the partnership deed does not specify the remuneration payable to each individual working partner but lays down the manner of fixing the remuneration, would the assessee-firm be entitled to deduction in respect of remuneration paid to partners?

**CIT V. ANIL HARDWARE STORE (2010) (HP)**

**High Court’s Decision:**
1. The High Court held that the manner of fixing the remuneration of the partners has been specified in the partnership deed.
2. In a given year, the partners may decide to invest certain amounts of the profits into other ventures and receive less remuneration which is permissible under the partnership deed, but there is nothing which debars them from claiming the maximum amount of remuneration payable in terms of the partnership deed.
3. The method of remuneration having been laid down, the assessee-firm is entitled to
deduct the remuneration paid to the partners under section 40(b)(v).

**CASE LAW - 52**

Can interest under sections 234B and 234C be levied where a company is assessed on the basis of book profits under section 115JB?

**JOINT CIT V. ROLTA INDIA LTD. (2011) (SC)**

**Supreme Court’s Observations:** On this issue, the Supreme Court observed that there is a specific provision in section 115JB(5) providing that all other provisions of the Income-tax Act, 1961 shall apply to every assessee, being a company, mentioned in that section.

**Supreme Court’s Decision:** The Supreme Court, therefore, held that interest under sections 234B and 234C shall be payable on failure of the company to pay advance tax in respect of tax payable under section 115JB.

**CASE LAW – 52A**

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

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

Refer Text Book of MAT.

**TAXATION OF TRUST**

**CASE LAW - 53**

Where an institution engaged in imparting education incidentally makes profit, would it lead to an inference that it ceases to exist solely for educational purposes?

**QUEEN’S EDUCATIONAL SOCIETY V. CIT (2015) (SC)**

The Apex Court, after analyzing the legal provisions and precedents, summed up the law common to section 10(23C):

(a) Where an educational institution carries on the activity of education primarily for educating persons, **the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes** and becomes an institution for the purpose of making profit;

(b) The **predominant object test must be applied** – the purpose of education should not be submerged by a profit making motive;

1.44
(c) A **distinction must be drawn** between the making of surplus and an institution being carried on “for profit”. Merely because imparting of education results in making a profit, it cannot be inferred that it becomes an activity for profit;

(d) **If after meeting expenditure, surplus arises** incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes; and

(e) The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons.

**Apex Court’s Decision:** Based on the aforementioned ratio-decendi the Apex Court upheld the Tribunal’s view that the assessee was engaged in **impacting education and the profit was only incidental** to the main object of spreading education. Hence, it satisfies the conditions laid down in section 10(23C) for claim of exemption thereunder.

Note: Write at least 2 to 3 points from the supra points.

### CASE LAW - 54

**Would imparting education/training in specialized field like communication, advertising etc. and awarding diplomas/certificates constitute an “educational purpose” for grant of exemption under section 10(23C)(vi)?**

**CIT V. ST. PETER’S EDUCATIONAL SOCIETY (2016) (SC)**

**Supreme Court’s Observations:** The Apex Court took note of the observations of the High Court and made reference to its own precedent in the case of *Queen’s Educational Society v. CIT (2015) 372 ITR 699 (SC)* where it had summarized the legal position as under:

“The law common to sections 10(23C)(iiiad) and (vi) may be summed up as follows:

(i) Where an educational institution carries on the activity of education primarily for educating persons, the fact that it makes a surplus does not lead to the conclusion that it ceases to exist solely for educational purposes and becomes an institution for the purpose of making profit;

(ii) The predominant object test must be applied – the purpose of education should not be submerged by a profit making motive;

(iii) A distinction must be drawn between making of a surplus and the institution being carried on ‘for profit’. No inference arises that merely because imparting education results in making a profit, it becomes an activity for profit;

(iv) If after meeting the expenditure, a surplus arises incidentally from the activity carried on by the educational institution, it will not cease to be one existing solely for educational purposes;

(v) The ultimate test is whether on an overall view of the matter in the concerned assessment year, the object is to make profit as opposed to educating persons”.
1. It observed that the Thirteenth proviso to section 10(23C) is of great importance to the assessing authorities who must continuously monitor from assessment year to assessment year to know whether such institutions continues to apply their income and invest or deposit their funds in accordance with the law laid down.

2. The activities of such institutions must be looked at carefully. If they are not genuine or are not being carried out in accordance with all or any of the conditions subject to which approval was given earlier, such approval and exemption must forthwith be withdrawn.

**Supreme Court’s Decision:** Applying the rationale of the Supreme Court ruling in Queen’s Educational Society’s case, the Apex Court, in this case, held that the institution is established for the sole purpose of imparting education in a specialized field. The Supreme Court, thus, allowed the petition and set aside the order of the Chief Commissioner of Income-tax refusing exemption under section 10(23C)(vi).

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**CASE LAW - 55**

In a case where the charitable trust is deemed to be registered under section 12A due to non-disposal of application within the period of 6 months, as stipulated under section 12AA(2), from when would such deemed registration take effect?

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**CIT V. SOCIETY FOR THE PROMOTION OF EDUCATION (2016) (SC)**

**Facts of the case:**

1. In the present case, the Allahabad High Court held that once an application for registration of the trust is made under section 12A and in case the same is not responded to within six months, the trust would be deemed to be registered under section 12AA.

2. The High Court opined that non-consideration of the application for registration within the time fixed by the legal provision would lead to deemed grant of registration and there is no reason to make the assessee suffer merely because the Income Tax Department is not able to keep its officers under check and control so as to take timely decisions on the matter.

3. The Revenue appealed against this decision and raised an apprehension that since the date of application was February 24, 2003, the deemed registration would operate only after six months from the date of application.

**Supreme Court's Decision:** The Apex Court clarified that deemed registration would commence only after 6 months from the date of application. Therefore, the registration of the application under section 12AA of the Income-tax Act, in the case of the assessee trust shall take effect from August 24, 2003.

**Note:** There was already a Madras High Court Judgement which is contradictory to the above ruling in the case of Karimangalam Onriya Pengal Semipu Amaipu Ltd.

In the exams write the Supreme Court. However chances of coming in exams are negligible as this case was asked in Nov 2017.
CASE LAW – 55A

Where a charitable trust applied for issuance of registration under section 12A 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?

DIT (EXEMPTIONS) V. MEENAKSHI AMMA ENDOwMENT TRUST (2013) (KAR.)

Refer text Book or summary of Trust Income (Already discussed in class)

CASE LAW - 56

Is the approval of Civil Court mandatory for amendment of trust deed, even in a case where the settler has given power to the trustees to alter the trust deed?

DIT (EXEMPTIONS) V. RAMOJI FOUNDATION (2014) (AP)

High Court’s Observations:
1. The High Court observed when the power has been specifically given to the trustees by the settler, no further power from the Civil Court is required.

2. The High Court made reference to the Kamla Town Trust’s case and observed that it has not been stated anywhere in the Supreme Court’s decision that in spite of the power given to them by settler to amend the trust deed, the trustees have to approach the Civil Court to get the trust deed rectified.

High Court's Decision: Accordingly, in this case, the High Court held that the Tribunal has correctly dealt with the matter and the trust deed amended by the trustees can be relied upon by the Revenue authorities for the purpose of granting registration under section 12AA.

CASE LAW - 57

In a case where properties bequeathed to a trust could not be transferred to it due to ongoing court litigation and pendency of probate proceedings, can violation of the provisions of section 11(5) be attracted?

DIT (EXEMPTION) V. KHETRI TRUST (2014) 367 ITR 723 (DEL)

Facts of the case: As per the ‘will’ of Late Raja Bahadur Sardar Singh, the entire property, including immovable property and shares in foreign companies, were bequeathed to the trust. However, the properties could not be transferred to or acquired by the trust.
because of ongoing litigation in the Court. In the probate proceedings, the ‘will’ was challenged and the probate proceedings are still pending.
The trustees paid Rs. 1,10,000 for raising a memorial for late Raja Bahadur Sardar Singh and the said amount was given to a business entity for this purpose, but due to the ongoing dispute, such project was not completed. The business entity, however, paid interest on the said amount. The Assessing Officer denied the benefit of exemption under section 11, on the ground that the asset held in the form of shares of foreign company and the advance given to business entity were contrary to the mandate of section 11(5) and thus, the condition specified in section 13(1)(d) has been violated.

**Appellate Authorities’ views:** The Commissioner (Appeals) observed that the validity of the will has been challenged in the probate proceedings; therefore, till the ‘will’ is probated and affirmed as genuine, the trust would not acquire the legal right on the property for the purpose of Income-tax Act, 1961. In case the probate is denied, the properties would not devolve on the trust. The shares in foreign company were still in the name of the donor, Late Raja Bahadur Sardar Singh, and its acquisition by the trust is dependent upon the adjudication of the probate.

Further, with regard to the advance given to the business entity, the Commissioner (Appeals) found that the said amount cannot be treated as an investment which was covered and regulated by section 11(5), since the intent and purpose behind the payment was not investment.

These views of the Commissioner (Appeals) were confirmed by the Tribunal.

**High Court’s Decision:** Based on the above factual findings, elucidated and affirmed by the Commissioner (Appeals) and the Tribunal, the High Court held that there was no violation of section 11(5) in this case.

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### TDS/TCS & ADVANCE TAX

**CASE LAW – 57A**

Whether “tips” received by the hotel-company from its customers (who made payment through credit card) and distributed to the employees would fall within the meaning of “Salaries” to attract tax deduction at source under section 192?

**ITC LTD V. CIT (2016) (SC)**

Refer TDS Chapter in Book__________

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### CASE LAW - 58

Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of High Court?
UCO BANK V. DY. CIT (2014) (DEL)

High Court's Opinion and Decision:

1. The High Court observed that in the absence of a payee, the machinery provisions for deduction of tax to his credit are ineffective.
2. The expression “payee” under section 194A would mean the recipient of income whose account is maintained by the person paying interest.
3. The Registrar General is neither recipient of the amount credited to his account nor to interest accruing thereon.
4. Therefore, he cannot be considered as a ‘payee’ for the purposes of section 194A.
5. The credit by the bank in the name of the Registrar General would, thus, not attract the provisions of section 194A.

Note - The CBDT has accepted the aforesaid judgment and accordingly, vide Circular No.23/2015 dated 28.12.2015, clarified that interest on FDRs made in the name of Registrar General or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.

CASE LAW - 59

Where the assessee fails to deduct tax at source under section 194B in respect of the winnings, which are wholly in kind, can he be deemed as an assessee-in-default under section 201?

CIT V. HINDUSTAN LEVER LTD. (2014) (KAR.)

High Court’s view:

1. From a bare perusal of section 194B, it is clear that the person responsible for paying to any person any income by way of winnings from any lottery in an amount exceeding ten thousand rupees shall, at the time of payment thereof, deduct income-tax thereon at the rates in force.
2. A combined reading of sections 194B and 201 shows that if any such person fails to "deduct" the whole or any part of the tax or after deducting, fails to pay the tax as required by or under the Act, then such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax.
3. The provisions contained in these sections do not cast any duty to deduct tax at source where the winnings are wholly in kind. If the winnings are wholly in kind, as a matter of fact, there cannot be any deduction of tax at source.
4. The word "deduction" employed in this provision postulates a reduction or subtraction of an amount from a gross sum to be paid and payment of the net amount thereafter.
5. Where the winnings are **wholly in kind** the question of deduction of any sum therefrom does not arise and in that eventuality, the **only responsibility**, as cast under section 194B, is to **ensure that tax is paid** by the winner of the prize before the prize or winnings is or are released in his favour.

**High Court’s Decision:** The High Court observed that if the assessee fails to ensure that tax is paid before the winnings are released in favour of the winner, then, section 271C empowers the Joint Commissioner to levy penalty equivalent to the amount of tax not paid, and under section 276B, such non-payment of tax is an offence attracting rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine. However, the High Court held that proceedings under section 201 cannot be initiated against the assessee.

**CASE LAW - 60**

Can the transmission, wheeling and SLDC charges paid by a company engaged in distribution and supply of electricity, under a service contract, to the transmission company be treated as fees for technical services so as to attract TDS provisions under section 194J or in the alternative, under 194C?

**AJMER VIDYUT VITRAN NIGAM LTD., IN RE (2013) (AAR)**

**AAR’s Decision:**

1. The AAR, considering the definition of fees for technical services under section 9(1)(vii) and the process involved in proper transmission of electrical energy, held that transmission and wheeling charges paid by the applicant to the transmission company are in the nature of fees for technical services, in respect of which the applicant has to withhold tax thereon under section 194J.

2. As regards SLDC charges, the AAR opined that the main duty of the SLDC is to ensure integrated operation of the power system in the State for optimum scheduling and dispatch of electricity within the State. The SLDC charges paid appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the State as a whole. Therefore, such services were not in the nature of technical service to the applicant; Resultantly, it does not attract TDS provisions under section 194J or under section 194C.

**Note:**

The transmission of electricity from the point of generation to the point of distribution of the applicant is termed as “wheeling”. The applicant pays transmission and wheeling charges for this wheeling, which it contends are statutory charges. The transmission company also functions as a State Load Dispatch Centre (SLDC), which is responsible for the general co-ordination of production and transmission of electricity to ensure uniform distribution in the State. The applicant pays to the transmission company, SLDC charges, which it claims as statutory in nature, since the levy is in terms of the Electricity Act, 2003.
CASE LAW - 61
Can discount given to stamp vendors on purchase of stamp papers be treated as ‘commission or brokerage’ to attract the provisions for tax deduction under section 194H?

CIT V. AHMEDABAD STAMP VENDORS ASSOCIATION (2012) (SC)
Issue: The principal issue in this case is whether stamp vendors are agents of the State Government who are being paid commission or brokerage or whether the sale of stamp papers by the Government to the licensed vendors is on “principal-to-principal” basis involving a “contract of sale”.

1. The Government has imposed a number of restrictions on the licensed stamp vendors regarding the manner of carrying on the business, the stamp vendors are required to purchase the stamp papers on payment of price less discount on “principal to principal” basis and there is no “contract of agency” at any point of time.

2. The definition of “commission or brokerage” under section 194H indicates that the payment should be received, directly or indirectly, by a person acting on behalf of another person, inter alia, for services in the course of buying or selling goods. Therefore, the element of agency is required in case of all services and transactions contemplated by the definition of “commission or brokerage” under section 194H.

3. When the licensed stamp vendors take delivery of stamp papers on payment of full price less discount and they sell such stamp papers to the retail customers, neither of the two activities (namely, buying from the Government and selling to the customers) can be termed as service in the course of buying and selling of goods. The High Court, therefore, held that discount on purchase of stamp papers does not fall within the expression “commission or brokerage” to attract the provisions of tax deduction at source under section 194H.

Supreme Court's Decision: The Supreme Court affirmed the above decision of the High Court holding that the given transaction is a sale and the discount given to stamp vendors for purchasing stamps in bulk quantity is in the nature of cash discount and consequently, section 194H has no application in this case.

CASE LAW - 62
Can incentives given to stockists and distributors by a manufacturing company be treated as “commission” to attract –
(i) the provisions for tax deduction at source under section 194H; and
(ii) consequent disallowance under section 40(a)(ia) for failure to deduct tax at source?
CIT V. INTERVET INDIA P LTD (2014) (BOM)

**High Court’s Observations:**

1. The High Court observed that the assessee had undertaken sales promotion by way of product discount scheme under which it offered incentive to the stockists / distributors and dealers.
2. The relationship between the assessee and the distributors / stockists was that of principal to principal.
3. The products were firstly sold to distributors / stockists who in turn resold the goods in the market.
4. No service was offered by the assessee to them except a discount under the product discount scheme/product campaign scheme to buy the assessee’s product.

**High Court’s Decision:** The High Court, accordingly, held that the stockists and distributors were not acting on behalf of the assessee and most of the credit was by way of goods on meeting the sales target which could not be said to be a commission within the meaning of the Explanation (i) to section 194H. Accordingly, the High Court affirmed the order of the Tribunal which held that such payment does not attract deduction of tax at source. Consequently, disallowance under section 40(a)(ia) would not be attracted.

**CASE LAW - 63**

Can discount given on supply of SIM cards and pre-paid cards by a telecom company to its franchisee be treated as commission to attract the TDS provisions under section 194H?

**BHARTI CELLULAR LTD. V. ACIT (2013) (CAL.)**

**High Court’s Observations:**

The High Court, on perusal of the agreement between the assessee-telecom company and the franchisees, observed that –

1. the property in the start-up pack and pre-paid coupons, even after transfer and delivery to the franchisee, remained with the assessee-telecom company;
2. the franchisee really acted as a facilitator and/or instrument of providing services by the assessee-telecom company to the ultimate subscriber;
3. the franchisee had no free choice to sell the pre-paid coupons and sim cards and everything including the selling price was regulated by the assessee-telecom company;
The rate at which the franchisee sells to the retailers is also regulated and fixed by the assessee-telecom company. In the real sense, the franchisee acted on behalf of the assessee-telecom company for selling start-up pack, prepaid recharge coupons to the customer. Therefore, the relationship between the assessee and the franchisee is essentially that of principal and agent, though the nomenclature used is “franchisee”. The franchisees were, thus, agents of the assessee, getting a fixed percentage of commission, in the form of discount.

**High Court’s Decision:** Considering the above, the High Court held that there is an indirect payment of commission, in the form of discount, by the assessee-telecom company to the franchisee. Therefore, the assessee is liable to deduct tax at source on such commission as per the provisions of section 194H.

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**CASE LAW - 64**

Can the difference between the published price and the minimum fixed commercial price be treated as additional special commission in the hands of the agents of an airline company to attract TDS provisions under section 194H, where the airline company has no information about the exact rate at which tickets are ultimately sold by the agents?

**CIT V. QATAR AIRWAYS (2011) (BOM.)**

**High Court’s Observations:**

1. On this issue, the Bombay High Court observed that the difference between the published price and minimum fixed commercial price cannot be taken as additional special commission in the hands of the agents, since the published price was the maximum price and airline company had granted permission to the agents to sell the tickets at a price lower than the published price.
2. In order to deduct tax at source, the exact income in the hands of the agents must necessarily be ascertainable by the airline company.
3. However, the airline company would have no information about the exact rate at which the tickets were ultimately sold by its agents, since the agents had been given discretion to sell the tickets at any rate between the minimum fixed commercial price and the published price.
4. It would be impracticable and unreasonable to expect the airline company to get a feedback from its numerous agents in respect of each ticket sold.

**High Court’s Decision:** Thus, tax at source was not deductible on the difference between the actual sale price and the minimum fixed commercial price, even though the amount earned by the agent over and above minimum fixed commercial price would be taxable as income in his hands.

**Note:** It may be noted that in the case of CIT v. Singapore Airlines Ltd. (2009) 319 ITR 29, the billing analysis statement clearly indicated the extra commission in the form of special or supplementary commission that was paid to the travel agent with reference to
the deal code. Therefore, in that case, the Delhi High Court, held that the supplementary commission in the hands of the agent was ascertainable by the airline company and hence the airline company was liable to deduct tax at source on the same under section 194H.

CASE LAW – 64A
Are landing and parking charges paid by an airline company to Airports Authority of India in the nature of rent to attract tax deduction at source under section 194-I? JAPAN AIRLINES CO. LTD. V. CIT / CIT V. SINGAPORE AIRLINES LTD. (2015) (SC)
Refer TDS Chapter.

CASE LAW - 65
Is payment made for use of passive infrastructure facility such as mobile towers subject to tax deduction under section 194C or section 194-I?

INDUS TOWERS LTD V. CIT (2014) (DEL)
High Court’s Observations:

High Court’s Decision:
1. The High Court held that the submission of the assessee that the transaction is not “renting” is incorrect.
2. Also, the Revenue’s contention that the transaction is primarily “renting of land” is also incorrect.
3. The underlying object of the arrangement was the use of machinery, plant or equipment i.e., the passive infrastructure and it is incidental that it was necessary to house the equipment in some premises.
4. It directed that tax deduction be made at 2% as per section 194-I(a), the rate applicable for payment made for use of plant and machinery.

CASE LAW - 66
In respect of a co-owned property, would the threshold limit mentioned in section 194-I for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract liability to deduct tax at source?
**CIT V. SENIOR MANAGER, SBI (2012) (ALL.)**

**High Court’s Decision:**
1. The Allahabad High Court held that, since the share of each co-owner is **definite and ascertainable**, they cannot be assessed as an association of persons. The income from such property is to be **assessed in the individual hands of the co-owners**. Therefore, it is not necessary that there should be a physical division of the property by metes and bounds.
2. Therefore, in the present case, **since the payment** of rent is made to each co-owner by way of **separate cheque** and their share is definite, the threshold limit mentioned in section 194-I has to be seen separately for each co-owner. Hence, the assessee would not be liable to deduct tax on the same and no interest under section 201 is leviable.

**CASE LAW - 67**

Can the payment made by an assessee engaged in transportation of building material and transportation of goods to contractors for hiring dumpers, be treated as rent for machinery or equipment to attract provisions of tax deduction at source under section 194-I?

**CIT (TDS) V. SHREE MAHALAXMI TRANSPORT CO. (2011) (GUJ.)**

**High Court’s Observations:**
1. The High Court observed that the assessee had **given contracts** to the parties for the **transportation of goods** and had **not taken machinery and equipment on rent**.
2. The Court observed that the transactions being in the **nature of contracts for shifting** of goods from one place to another would be covered as **works contracts**, thereby attracting the provisions of section 194C.

**High Court’s Decision:** Since the assessee had **given sub-contracts** for transportation of goods and **not for the renting** out of machinery or equipment, such payments could not be termed as rent paid for the use of machinery and the provisions of section 194-I would, therefore, not be applicable.

**CASE LAW - 68**

Would transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source under section 194J?
CIT V. KOTAK SECURITIES LTD (2016) (SC)

Supreme Court’s Observations: The Apex Court made the following observations:

- The services provided by the stock exchange are available to all members in respect of every transaction that is entered into. There is nothing special, exclusive or customized in the service that is rendered by the stock exchange.
- A member who wants to conduct his daily business in the stock exchange has no option but to avail such services. Each and every transaction by a member involves the use of such services provided by the stock exchange for which the member is required to pay transaction charge based on the transaction value besides charges for the membership of the stock exchange.
- Technical services like managerial and consultancy service are in the nature of specialised services made available by the service provider to cater to the special needs of the customer-user as may be felt necessary. It is the above feature that would distinguish or identify a service provider from a facility offered.
- However, there is no exclusivity in the services rendered by the stock exchange and each and every member has to avail such service in the normal course of trading in securities in the stock exchange.

Supreme Court’s Decision: The Apex Court, accordingly, held that the service provided by the BSE for which transaction charges are paid failed to satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service. Therefore, the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.

CASE LAW - 69

Is tax is required to be deducted under section 195 on the demurrage charges paid to a foreign shipping company which is governed by section 172 for the purpose of levy and recovery of tax?

CIT V. V.S. DEMPO & CO P LTD (2016) (BOM)

High Court’s Decision:
1. The High Court, accordingly, held that since section 172 dealing with shipping business of non-residents contains a non-obstante clause and applies both for the purpose of the levy and recovery of tax in the case of any ship carrying passengers etc., belonging to or chartered by a non-resident and shipping at a port in India, there would be no obligation on the payer-assessee to deduct the tax at source under section 195 on payment of demurrage charges to the non-resident shipping company.
2. The High Court also held that section 172 is a complete code that applies to
non-resident and section 195 is part of recovery provision under the Income-tax Act, 1961. Thus, the provisions contained thereunder would take care of the manner of determination of income from shipping business of non-residents as well as the levy and recovery of tax thereon.

CASE LAW - 70

Is payment made to an overseas agent, who did not perform any service in India, liable for tax deduction at source?

DIT (INTERNATIONAL TAXATION) V. WIZCRAFT INTERNATIONAL ENTERTAINMENT (P) LTD (2014) (BOM)

Facts of the case: The assessee, an event management company, engaged the services of an agent to bring artistes to India. The assessee-company (i) paid commission to overseas agent; (ii) reimbursed the expenses in connection with the visit of the artistes in India; and (iii) paid fees to the artistes in India. The assessee-company deducted tax at source on the fees paid to the international artistes in India but did not deduct tax at source on the commission paid to the agent and on the reimbursement of expenses incurred in India by the artistes.

High Court’s Observations:

1. The High Court observed that the assessee has deducted tax on the payments made to artistes for the services rendered in India. In so far as reimbursement of expenses is concerned, it has been verified with supporting documents that it was towards their air travel on which no tax was required to be deducted.

2. With regard to the payment of commission, the agent did not act as a performing artist or entertainer.

3. He was concerned only with the services rendered outside India. Thus, the Tribunal had recorded the finding of fact that the income of the agent did not arise from the personal activities in the contracting status of an entertainer or artist. He only contacted the artistes and negotiated with them for performance in India in terms of the authority given by the assessee. Hence, the commission paid to the overseas agent was not liable to tax in India. Consequently, there was no obligation for deducting tax at source at the time of making payment to the overseas agent.

High Court’s Decision: The High Court, therefore, affirmed the decision of the Tribunal and Commissioner (Appeals) holding that the service rendered by the agent was outside India and hence, was not chargeable to tax in India. Thus, the requirement for deducting tax at source under section 195 on such payment does not arise.

CASE LAW - 71

Can items of finished products from ship breaking activity which are usable as such be treated as “Scrap” to attract provisions for tax collection at source under section 206C?
CIT V. PRIYA BLUE INDUSTRIES (P) LTD (2016) (GUJ)

1. The Tribunal firstly recorded a list of items sold by the assessee from the ship breaking activity. It found that the assessee collected and paid tax, for seven items, but did not collect tax at source on certain items viz. old and used plates; non-excisable (exempted) goods like wood etc.

2. It observed that the ‘waste and scrap’ must be from manufacture or mechanical working of material which is definitely not usable as such because of breakage, cutting up, wear and other reasons. Since the assessee is engaged in ship breaking activity, these items/products are finished products obtained from such activity which are usable as such and hence, are not ‘waste and scrap’ though commercially known as scrap. Accordingly, the Tribunal also decided the issue in favour of the assessee.

**High Court’s Decision:** The High Court concurred with the views of the Tribunal and held that any material which is usable as such would not fall within the ambit of the expression ‘scrap’ as defined in clause (b) of the Explanation to section 206C.

**CASE LAW - 72**

Is levy of interest under section 234B attracted in a case where the assessment order does not contain any specific direction for payment of interest, but is accompanied by form ITNS 150 containing a calculation of interest payable on tax assessed?

**CIT V. BHAGAT CONSTRUCTION CO (P) LTD (2016) (SC)**

**Facts of the case:** The assessment order passed did not contain any direction for the payment of interest under section 234B. The appellate order also simply stated that interest is payable under section 234B, without any further substantiation. The amount of interest payable under section 234B was contained in the Income-tax Computation Form or ‘Form for Assessment of Tax/Refund (I.T.N.S 150)’.

**Apex Court’s Observations:**

1. The Apex Court observed that the facts of the present case are squarely covered by the three judges’ bench decision of this court in the case of Kalyankumar Ray v. CIT (1991) 191 ITR 634, wherein it was held that the Form I.T.N.S 150 is also a form for determination of tax payable and when it is signed or initialled by the Assessing Officer, it is certainly an order in writing by the Assessing Officer determining the tax payable within the meaning of section 143(3). The said form also contains the calculation of interest payable on the tax assessed. This form must, therefore, be treated as part of the assessment order.

2. The Supreme Court further observed that the provisions of section 234B are attracted the moment an assessee liable to pay advance tax has failed to pay such tax or
the advance tax paid by him is less than 90% of the assessed tax. The assessee, thus, becomes liable to pay simple interest at 1% for every month or part of the month.

**Supreme Court’s Decision:** The Apex Court, accordingly, held that the levy of interest under section 234B is automatic when the conditions specified therein are satisfied and the assessment order is accompanied by the prescribed form containing the calculation of interest payable.

**INCOME TAX AUTHORITIES**

CASE LAW - 73

Does the Central Board of Direct Taxes (CBDT) have the power to amend legislative provisions through a Circular?

**COMMISSIONER OF INCOME-TAX V. SV GOPALA AND OTHERS [2017](SC)**


The issue under consideration is whether the CBDT has the power to amend legislative provisions through a Circular.

**Supreme Court’s Decision:**

1. The Supreme Court observed that the CBDT does not have the power to amend legislative provisions in exercise of its powers under section 119 of the Income-tax Act, 1961 by issuing a Circular.
2. The High Court had held so on similar grounds.
3. The Supreme Court, accordingly, upheld the decision of the High Court quashing the circular for being ultra vires.

**CASE LAW - 74**

Can the assessee’s application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?

**HEMANT KUMAR SINDHI & ANOTHER V. CIT (2014) (ALL)**

Facts of the case: Consequent to a search in the premises of the assessee, some gold bars were seized from the locker. The assessee voluntarily disclosed some income during the course of search. The assessee filed an application for sale of the gold bars and adjustment of tax liability on undisclosed income out of the sale proceeds. This would obviate his
liability to pay interest under sections 234B and 234C. The Assessing Officer dismissed
the application on the reasoning that only when the assessment is completed and tax
demand is crystallized, can recovery be initiated by the sale of gold bars. The assessee
filed a writ contesting the dismissal of application by the Assessing Officer.

**High Court’s Observations:**

1. The High Court observed that section 132B(1)(i) uses the expression “the amount
   of any existing liability” and “the amount of the liability determined”. The words “existing
   liability” postulates a liability that is crystallized by adjudication; Likewise, “a liability
   is determined” only on completion of the assessment. **Until the assessment is complete, it
   cannot be postulated that a liability has been crystallized.**

2. As per the first proviso to section 132B(1)(i), the assessee may make an
   application to the Assessing Officer for release of the assets seized. However, he has to
   explain the nature and source of acquisition of the asset to the satisfaction of the Assessing
   Officer.

3. It is not the ipse dixit of the assessee but the satisfaction of the Assessing Officer
   on the basis of the explanation tendered by the assessee which is material.

**High Court’s Decision:** The High Court, accordingly, held that the Assessing Officer
was justified in his conclusion that it is only when the liability is determined on the
completion of assessment that it would stand crystallized and in pursuance of which a
demand can be raised and recovery can be initiated. Therefore, in the present case, the
first proviso to section 132B(1)(i) would not be attracted. The High Court, thus, dismissed
the writ petition.

**CASE LAW - 75**

Where no proceeding is pending against a person, can the Assessing Officer call for
information under section 133(6), which is useful or relevant to any enquiry, with
the permission of Director or Commissioner?

**KATHIROID SERVICE CO-OPERATIVE BANK LTD. V. CIT (2014) (SC)**

**Facts of the case:** The Assessing Officer, with the prior approval of the Commissioner,
issued notice under section 133(6) to the assessee, a co-operative society engaged in
banking business, calling for general information regarding details of all persons (whether
resident or non-resident) who had made (a) cash transactions of Rs. 1 lakh and above in any
account, and/or (b) time deposits of Rs. 1 lakh or above, for the period of three years
between April 1, 2005, and March 31, 2008, expressly stating therein that failure to furnish
the information would attract penal consequences.

The assessee objected to the said notice, *inter alia*, on the ground that such notice seeking
for information which is unrelated to any existing or pending proceeding against the
assessee could not be issued under the provisions of the Act.
Supreme Court’s Observations:

1. The Supreme Court observed that the Assessing Officer has been empowered to requisition information which will be useful for or relevant to any enquiry or proceeding under the Income-tax Act, 1961 in the case of any person. However, an income-tax authority below the rank of the Director or Commissioner can exercise this power in respect of an enquiry in a case where no proceeding is pending, only with the prior approval of the Director or the Commissioner.

Supreme Court’s Decision: The Supreme Court held that information of general nature could be called for from banks. In this case, since notices have been issued after obtaining approval of the Commissioner, the assessing authority had not erred in issuing the notices to assessee’s requiring them to furnish information regarding account holders with cash transactions or deposits of more than Rs. 1 lakh. The Supreme Court, therefore, held that for such enquiry under section 133(6), the notices could be validly issued by the assessing authority.

Note – The Finance Act, 2017 has amended the second proviso to section 133 to provide that the power in respect of an inquiry, in a case where no proceeding is pending, can be exercised by the Joint Director, Deputy Director and Assistant Director, without the prior approval of the Principal Director/Director/Principal Commissioner/Commissioner.

Is the requirement to grant a reasonable opportunity of being heard, stipulated under section 127(1), mandatory in nature?

CASE LAW - 76
SAHARA HOSPITALITY LTD. V. CIT (2013) (BOM.)

High Court’s Observations: On this issue, the Bombay High Court observed that the provisions of section 127(1) stipulate, inter alia, that the income tax authority mentioned therein may give an opportunity of being heard to the assessee, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him to any other Assessing Officer or officers subordinate to him.

High Court’s Decision:

1. The Bombay High Court held that the word “may” used in this section should be read as “shall” and such income-tax authority has to mandatorily give a reasonable opportunity of being heard to the assessee, wherever possible to do so, and thereafter, record the reasons for taking any action under the said section.

2. The discretion of the authority is only to consider as to what is a reasonable opportunity in a given case and whether it is possible to give such an opportunity to the assessee or not. The authority cannot deny a reasonable opportunity of being heard to the assessee, wherever it is possible to do so.
CASE LAW - 77

Does the Central Board of Direct Taxes (CBDT) have the power under section 119(2)(b) to condone the delay in filing return of income?

LODHI PROPERTY COMPANY LTD. V. DEPARTMENT OF REVENUE (2010)

High Court’s Decision:
1. The High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made.
2. The delay was only one day and the assessee had shown sufficient reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the petitioner.
3. Therefore, the Court held that the delay of one day in filing the return has to be condoned.

Note – Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of a loss return is relatable to a claim arising under the category of any other relief available under the Act. Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.

Also Refer Circular in Book 2. Chapter- Return of Income.

ASSESSMENT PROCEDURE

CASE LAW - 78

Whether the nature of an expenditure can be considered debatable for not invoking prima facie adjustment under section 143(1)(a), where the jurisdictional High Court has taken a view that the expenditure is capital in nature even though some other High Courts have held that the same is revenue in nature?

DCIT V RAGHUVIR SYNTHETICS LTD. [2017] (SC)

Facts of the case: The assessee is a public limited company. For the relevant assessment year, it had filed its return claiming revenue expenditure of Rs.65,47,448 on advertisement and public issue. The company claimed that if the sum cannot be considered as revenue expenditure, then, alternatively, the said expenditure may be allowed under section 35D
by way treating such expenditure as preliminary expenses. The Assessing Officer issued an intimation under section 143(1)(a) disallowing a sum of Rs.58,92,700 incurred on public issue.

**Supreme Court’s Observations:**
1. The Supreme Court noted that there was divergence of opinion amongst the various High Courts on the nature of the expenses incurred on raising share capital. While the High Courts of Madras, Andhra Pradesh and Karnataka had held the preliminary expenses to be revenue in nature, High Courts of Allahabad, Himachal Pradesh, Delhi, Calcutta, Bombay, Punjab and Haryana, Gujarat and Rajasthan had held the expenses to be capital in nature.

**Supreme Court’s Decision:**
2. The Supreme Court held that, in the case of the assessee, the issue was not debatable. Since the registered office of the assessee is in Gujarat, the law laid down by the Gujarat High Court is binding on the assessee.

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**CASE LAW - 79**

**Can unabsorbed depreciation be allowed to be carried forward in case the return of income is not filed within the due date?**

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**CIT V. GOVIND NAGAR SUGAR LTD. (2011) (DELHI)**

**High Court’s Observations:**
1. On this issue, the Delhi High Court observed that, the provisions of section 80 and section 139(3), requiring the return of income claiming loss to be filed within the due date, applies to, *inter alia*, carry forward of business loss and not for the carrying forward of unabsorbed depreciation.

**High Court’s Decision:**
2. Therefore, in the present case, the High Court held that the unabsorbed depreciation will be allowed to be carried forward to subsequent year even though the return of income of the current assessment year was not filed within the due date.

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**CASE LAW - 80**

**Can an assessee revise the particulars filed in the original return of income by filing a revised statement of income?**
ORISSA RURAL HOUSING DEVELOPMENT CORPN. LTD. V. ACIT (2012) (ORISSA)

High Court’s Decision:
1. Filing of revised statement of income is of no value and will not be considered by the Assessing Officer for assessment purposes.
2. The High Court, relying on the judgement of the Supreme Court in Goetze (India) Ltd. v. CIT (2006) ITR 323, held that the Assessing Officer has no power to entertain a fresh claim made by the assessee after filing of the original return except by way of filing a revised return.

CASE LAW - 81
Is a person having income below taxable limit, required to furnish his PAN to the deductor as per the provisions of section 206AA, even though he is not required to hold a PAN as per the provisions of section 139A?

SMT. A. KOWSALYA BAI V. UOI (2012) (KAR.)

High Court’s Decision:
1. In order to avoid undue hardship caused to such persons, the Karnataka High Court, in the present case, held that it may not be necessary for such persons whose income is below the maximum amount not chargeable to income-tax to obtain PAN and in view of the specific provision of section 139A, section 206AA is not applicable to such persons.
2. Therefore, the banking and financial institutions shall not insist upon such persons to furnish PAN while filing declaration under section 197A. However, section 206AA would continue to be applicable to persons whose income is above the maximum amount not chargeable to income-tax.

CASE LAW - 82
Can the Assessing Officer reopen an assessment on the basis of merely a change of opinion?

AVENTIS PHARMA LTD. V. ACIT (2010) (BOM.)
Refer Book 2 Chapter Income Escaping Assessment.

The power to reopen an assessment is conditional on the formation of a reason to believe that income chargeable to tax has escaped assessment. The existence of tangible material is essential to safeguard against an arbitrary exercise of this power.

High Court’s Observations and Decision: In this case, the High Court observed that there was no tangible material before the Assessing Officer to hold that income had
escaped assessment within the meaning of section 147 and the reasons recorded for reopening the assessment constituted a mere change of opinion. Therefore, the reassessment was not valid.

CASE LAW - 83
Is it permissible under section 147 to reopen the assessment of the assessee on the ground that income has escaped assessment, after a change of opinion as to a loss being a speculative loss and not a normal business loss, consequent to a mere re-look of accounts which were earlier furnished by the assessee during assessment under section 143(3)?

ACIT V. ICICI SECURITIES PRIMARY DEALERSHIP LTD. (2012) (SC)
Facts of the case: In the above case, the Assessing Officer had completed the assessment of assessee under section 143(3) after taking into consideration the accounts furnished by assessee. After the lapse of four years from relevant assessment year, the Assessing Officer had reopened the assessment of assessee under section 147 on the ground that after re-look of the accounts of the relevant previous year, it was noticed that the assessee company had incurred a loss in trading in share, which was a speculative one. Therefore, such loss can only be set off against speculative income. Consequently, the loss represents income which has escaped assessment. Accordingly, the Assessing Officer came to a conclusion that income had escaped assessment and passed an order under section 147.

Supreme Court’s Decision: The Supreme Court observed that the assessee had disclosed full details in the return of income in the matter of its dealing in stocks and shares. There was no failure on the part of assessee to disclose material facts as mentioned in proviso to section 147. Further, there is nothing new which has come to the notice of the Assessing Officer. The accounts had been furnished by the assessee when called upon. Therefore, re-opening of the assessment by the Assessing Officer is clearly a change of opinion and therefore, the order of re-opening the assessment is not valid.

CASE LAW - 84
Can a notice under section 148 for a particular assessment year be issued solely on the ground that survey under section 133A was carried on at the business premises of the assessee, where nothing had been found therein which would indicate escapement of income chargeable to tax for the said assessment year?
HEMANT TRADERS V. ITO (2015) (BOM)

High Court’s Observations:
1. Neither the survey report nor any other material indicated escapement of income chargeable to tax for A.Y.2010-11. The Assessing Officer had nothing before him to record his belief or satisfaction that escapement of income had taken place.
2. Merely because survey had taken place cannot be a ground for reopening the assessment without valid material or evidence at the time of issue of notice.
3. Where nothing has been found during the survey operations to indicate that income chargeable to tax has escaped assessment, then the survey report ought not to be the basis for reopening of assessment.
4. Something more was required in law for the Assessing Officer to exercise his powers.

High Court Decision: The High Court, accordingly, held that since there is absolutely no material to indicate escapement of income for the relevant assessment year, the issue of notice to initiate reassessment proceedings under section 148 on the basis of survey which had taken place is not valid. Therefore, the proceedings initiated under section 148 are quashed at the threshold itself.

CASE LAW - 85
Will the subsequent amendment of law with retrospective effect validate a reassessment notice issued on a different ground before the retrospective amendment was made?

GODREJ INDUSTRIES LTD V. B.S. SINGH DY.CIT (2015) (BOM)

Facts of the case: The assessee-company filed its return of income for the assessment year 2000-01 declaring total income as ‘Nil’ and a book profit of Rs. 52.70 crores. This resulted in ‘book profit’ being assessed to income-tax. Later, the Assessing Officer issued notice under section 148 for the reason that income chargeable to tax had escaped assessment on the ground that the provision for doubtful debts and provision for depletion of long-term investment debited to the profit and loss account were unascertained liabilities and, hence, in terms of clause (c) of the Explanation to section 115JB, i.e., they were to be added back to the net profit for arriving at the book profits.

The assessee preferred a writ challenging the maintainability of the notice issued under section 148.

Revenue’s Contention: The Revenue contended that at the time of issuing the impugned notice on March 29, 2007, the position was not clear. The position became clear only when Parliament introduced/added clause (g) to the Explanation to section 115JB of the Act with retrospective effect from April 1, 2001, and which reads as under:
"(g) the amount or amounts set aside as provision for diminution in the value of any asset."

Thus, the Revenue submitted that the impugned notice is sustainable on the basis of above clause (g) of the Explanation to section 115JB, inserted by the Finance (No.2) Act, 2009 retrospectively with effect from 1st April, 2001.
1. **High Court’s Decision:**
   1. **The position of law on the date of issue of notice under section 148** must be looked into and the retrospective amendment subsequent to issue of notice could not validate a notice issued earlier.
   2. It could only amount to change of opinion and the notice for reopening of assessment would become unsustainable.
   3. The High Court, accordingly, allowed the writ and held that the reason for reopening the assessment cannot get validated by the retrospective amendment of law.

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**CASE LAW - 86**

Can the Assessing Officer reassess issues other than the issues in respect of which proceedings were initiated under section 147 when the original “reason to believe” on the basis of which the notice was issued ceased to exist?

I. **Delhi High Court ruling in Ranbaxy Laboratories Ltd. v. CIT (2011)**
   Refer Book 2, Income Escaping Assessment.

II. **Punjab & Haryana High Court ruling in CIT v. Mehak Finvest P Ltd (2014) 3: (Contradictory to above judgement)**

**High Court’s Decision:** The High Court, accordingly, held that even though no addition is made on the original grounds which formed the basis of initiation of reassessment proceedings, the Assessing Officer is empowered to make additions on another ground for which reassessment notice might not have been issued but which came to his notice subsequently during the course of proceedings for reassessment.

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**CASE LAW - 87**

Would the reassessment proceedings initiated under section 147 against the legal heirs of the deceased assessee be valid if notice of reassessment was sent to the legal heirs after the limitation period, though a notice addressed to the deceased assessee was sent prior to the limitation period?

**VIPIN WALIA V. ITO (2016) DEL**

**High Court’s Observations:**

1. The Assessing Officer initiated proceedings under section 147 against the deceased for the assessment year 2008-09. The time limit for issue of notice was 31.03.2015, since the income escaping assessment exceeded Rs. 1 lakh. On March 27, 2015 when the notice
was issued, the assessee was already dead. **If the Department intended to proceed** under section 147, it could have **done so prior to 31.03.2015** by issuing a notice to the legal representatives of the deceased. **Beyond that date, it could not have proceeded** in the matter even by issuing notice to the legal representatives of the assessee.

**High Court’s Decision:**
The High Court, accordingly, held that issue of **notice** on the legal representatives beyond the limitation time would render the reassessment proceedings **invalid**.

**CASE LAW - 88**

Does the finding or direction in an appellate order that income relates to a different assessment year empower reopening of assessment for that assessment year, irrespective of the expiry of the six year time limit?

**CIT V. PP ENGINEERING WORK (2014) (DEL)**

**Facts of the case:** The Tribunal, in its order, directed that the cash credit of Rs. 32 lakhs found credited in the books of the assessee in the financial year 1999-2000 is chargeable to tax in the assessment year 2000-01 as against the assessment made by taxing the said amount in the assessment year 2001-02. In short, the Tribunal gave a finding that the cash credit under section 68 was assessable in a different assessment year than the assessment year in respect of which it heard the appeal. This prompted the Assessing Officer to issue a notice under section 148 in February, 2009 for reopening the proceedings for the A.Y. 2000-01. The issue is validity of notice issued after a lapse of 6 years from the end of the relevant assessment year.

The Commissioner (Appeals) held that the reassessment is barred by time limitation and the Tribunal also upheld the order of the Commissioner (Appeals) without making reference to section 150 read with *Explanation* 2 to section 153.

**High Court’s Opinion:** The High Court made reference to section 150 which overrides the time limitation specified in section 149. Also, *Explanation* 2 to section 153 makes it clear that when an order in appeal, revision or reference is made whereby any income is excluded from the total income of an assessee for an assessment year, an assessment of such income for another assessment year shall be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order for the purposes of section 150 and section 153.

The High Court made reference to the Delhi High Court ruling in the case of *Rural Electrification Corporation Ltd v. CIT* (2013) 355 ITR 345 and opined that the findings of Commissioner (Appeals) and Tribunal on the question of limitation as legally untenable and incorrect.

**High Court’s Decision:** The High Court observed that in view of the order of the Tribunal that the credit entries related to the earlier assessment year i.e., A.Y.2000-01, the Assessing Officer initiated reassessment proceedings under section 147 by issue of notice under section 148 for the year and passed an order dated 29/12/2009 making an addition of Rs. 32 lakhs. The High Court held that by virtue of section 150 read with *Explanation* 2 to
section 153, the said order was not barred by limitation.

**Note** – Under section 149(1)(b), the time limit for issue for notice under section 148 is six years from the end of the relevant assessment year, where the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rs. 1 lakh or more for that year.

Section 150(1) states that notwithstanding anything contained in section 149, notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an appellate or revisionary order.

Explanation 2 to section 153 provides that where by an order referred to in section 250, 254, 260, 262, 263 or 264, any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and section 153, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.

**CASE LAW - 89**

Is initiation of reassessment beyond a period of 4 years on the basis of subsequent Tribunal and High Court ruling valid, if there is no failure on the part of the assessee to disclose fully and truly all materials facts?

**ALLANASONS LTD V. DY. CIT (2014) (BOM)**

**Facts of the case:** The assessee-company filed its return of income in which a claim for deduction under Chapter VI-A was made. The case was subjected to scrutiny assessment and order under section 143(3) was passed reducing the claim for deduction under Chapter VI-A. After 4 years from the end of the assessment year, a notice under section 148 was issued ascribing reasons such as subsequent tribunal and other court decisions which show that the deduction was excessively allowed in this case. The assessee challenged the reassessment proceedings by means of a writ before the court, contending that it is a settled position in law that the decision rendered by court subsequent to the assessment order does not by itself amount to failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment.

**High Court’s Opinion:**

1. The High Court observed that it is well settled in terms of the proviso to section 147, that where any assessment is sought to be opened beyond a period of four years from the end of the relevant assessment year, two conditions have to be fulfilled cumulatively. The first condition is that there must be reason to believe that income chargeable to tax has escaped assessment. The second condition is that such escapement of income should have arisen due to failure on the assessee’s part to fully and truly disclose all material facts required for the assessment.

2. Thus, escapement of income prompting reopening of assessment beyond the period of 4 years from the end of the assessment year is not possible unless it is due to
the failure of the assessee to disclose fully and truly all material facts necessary for assessment.

3. Even a subsequent change of law cannot be taken as income escaping assessment for triggering reassessment provisions beyond 4 years from the end of the assessment year unless there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. The High Court observed that in this case, the reasons recorded, when read as a whole did not indicate even remotely any failure on the part of the assessee to disclose fully and truly any material fact necessary for assessment.

**High Court’s Decision:** The High Court, accordingly, held that a subsequent decision of Tribunal or High Court by itself is not adequate for reopening the assessment completed earlier under section 143(3) unless there is a failure on the part of the assessee to disclose complete facts.

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**CASE LAW - 90**

Is recording of satisfaction and quantification of escaped income a pre-condition for issuing notice under section 148 after 4 years from the end of the relevant assessment year?

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**AMARNATH AGRAWAL V. CIT (2015) (ALL)**

**Facts of the case:** The assessee along with four others had obtained a lease of land and was in possession of the same from 1953. Subsequently, the State Government introduced a policy for conversion of lease-hold to free-hold. The assessee applied for conversion before the District Magistrate in 1997 and a sale deed was executed. The assessee deposited the necessary charges as demanded by the State Government and a freehold sale deed dated 25th March, 1998 was executed. The assessee sold a portion of the land during the F.Y. 1999-2000 and admitted the same as long-term capital gain taking into account the lease hold period also. In the assessment, the admission of income as long-term capital gain was accepted. However, after the expiry of four years from the end of the relevant assessment year, proceeding for reassessment of such income as short-term capital gains was resorted to by the Revenue on the ground that the lease hold period should not be considered for determining the period of holding of freehold land transferred. The assessee filed a writ challenging the validity of notice issued under section 148 stating that the requirements of section 149 read with section 151 were not considered by the Revenue.

**High Court’s Opinion and Decision:**

1. The High Court observed that **two distinct conditions** must be satisfied for assuming jurisdiction to issue a notice under section 148 after a period of 4 years viz. (i) **escapement** of income; and (ii) omission or **failure on the part of the assessee to disclose** fully and truly all material facts necessary for his assessment.

2. Under section 149(1)(b), it is **imperative for the Assessing Officer**, in his reasons, to state that the escaped **income is likely to be Rs. 1 lakh or more**. This is an essential ingredient for seeking approval and the basis on which satisfaction is to be
recorded by the competent authority under section 151. If the condition precedent to substantiate the satisfaction of escapement of income is not made, the issuance of notice would be invalid.

3. In this case, since **no reasons were recorded that the escaped income is likely to be Rs. 1 lakh or more** so that the Chief Commissioner or Commissioner may record his satisfaction under section 151, the initiation of reassessment proceedings after four years was barred by time.

4. The reasons recorded by the Assessing Officer were that the assessee had computed long-term capital gains tax liability, whereas he was liable to pay short-term capital gains tax, since he had sold a portion of the property within 3 years from the date of conversion of leasehold land into a freehold land.

5. The High Court observed that the property was held for more than 3 years and the conversion from leasehold to freehold being an improvement of the title did not have any effect on the taxability of profits. The **reasons recorded by the Assessing Officer did not indicate any failure on the part of the assessee to disclose fully and truly all material facts at the time of assessment; it also did not indicate that the quantum of escapement of income exceeds Rs. 1 lakh. Accordingly, the High Court held that, in this case, the issue of notice under section 148 after the four year time period was not valid.**

**CASE LAW – 90A**

In case of change of incumbent of an office, can the successor Assessing Officer initiate reassessment proceedings on the ground of change of opinion in relation to an issue, which the predecessor Assessing Officer who framed the original assessment had already applied his mind and come to a conclusion?

**H. K. BUILDCON LTD. V. INCOME-TAX OFFICER (2011) (GUJ.)**

(Refer text book chapter – Income Escaping assessment)

**CASE LAW - 91**

Would the doctrine of merger apply for calculating the period of limitation under section 154(7)?

**CIT V. TONY ELECTRONICS LIMITED (2010) (DEL.)**

**Issue:** The issue under consideration is whether the time limit of 4 years as per section 154(7) would apply from the date of original assessment order or the order of the Appellate Authority.
**High Court’s Decision:**

1. The High Court held that *once an appeal* against the order passed by an authority is *preferred* and is decided by the appellate authority, the order of the Assessing Officer merges with the order of the appellate authority. *After merger,* the *order* of the *original authority ceases* to exist and the order of the appellate authority prevails.

2. Thus, the period of limitation of 4 years for the purpose of section 154(7) has to be counted *from the date of the order of the Appellate Authority.*

**Note** - In this case, the Delhi High Court has followed the decision of the Supreme Court in *case of Hind Wire Industries v. CIT (1995) 212 ITR 639.*

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**APPEALS & REVISION**

**CASE LAW - 92**

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”.

**High Court’s Observations:**

1. 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.

2. 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.

3. 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.

**High Court’s Decision:** 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.
CASE LAW - 93

Can an assessee make an additional/new claim before an appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income?

**CIT V. PRUTHVI BROKERS & SHAREHOLDERS (2012) (BOM.)**

High Court’s Observations:
1. The **appellate authorities** have jurisdiction to **permit additional claims** before them, however, the exercise of such jurisdiction is **entirely the authorities’ discretion**. 
2. It was held that in case an **additional ground was raised before the appellate authority** which **could not have been raised** at the stage when the return was filed or when the assessment order was made, or the ground became available on account of change of circumstances or law, the appellate authority can allow the same. 
3. The Supreme Court, in the case of *Goetze (India) Ltd* held that the additional claim before the Assessing Officer can be made **only by way of filing revised return of income**. 
4. The decision in the **above mentioned case**, however, **does not apply** in this case, since the Assessing Officer is not an Appellate Authority.

**High Court’s Decision:** Therefore, in the present case, the Bombay High Court, held that additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income.

CASE LAW - 94

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:
1. 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. 
2. 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).
CASE LAW - 95

Can the Tribunal exercise its power of rectification under section 254(2) to recall its order in entirety, where there is a mistake apparent from record?

LACHMAN DASS BHATIA HINGWALA (P) LTD. V. ACIT (2011) (DELHI)

High Court’s Decision:
1. While the Tribunal does not have the inherent power to review its order on merits, it can recall its order for the purpose of correcting a mistake apparent from the record.

2. The Delhi High Court held that while exercising the power of rectification under section 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal’s mistake, error or omission and the error committed is apparent.

CASE LAW - 96

Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier order passed on merits?

CIT V. MEGHALAYA STEELS LTD. (2015) (SC)

Supreme Court’s Observations:
1. The Supreme Court concurred with the assessee’s submission that High Courts being courts of record under article 215 of the Constitution of India, the power of review would inhere in them.

2. Further, it noted that in another case, in a slightly different context while dealing with power of review of writ petitions filed under article 226, the Supreme Court had observed that there is nothing in article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it.

3. In that case, the High Court had entertained the second petition since the interested parties were not given an effective opportunity of being heard, before passing the judgement; therefore, keeping in mind the requirement of the principles of natural justice, the High Court had exercised its inherent power of review.
Can High Court exercise its inherent power to recall its order by exercising jurisdiction under section 260A(7) read with the relevant Rule of the Code of Civil Procedure, 1908 even if that order is not an ex-parte order?

CIT V. SUBRATA ROY (2016) (SC)

Facts of the case: In the present case, the High Court of Allahabad has recalled its final order dated August 27, 2013 by exercising jurisdiction under section 260A(7) read with the relevant rule of the Code of Civil Procedure, 1908. The High Court, while recalling its order, took note that section 260A(7) inserted by the Finance Act, 1999 provides that the provisions of the Code of Civil Procedure, 1908 relating to appeals to the High Court shall apply in the case of appeal under section 260A of the Income-tax Act, 1961. The relevant rule of the Code of Civil Procedure, 1908 provides that where an appeal is heard ex-parte and the judgment is pronounced against the respondent, he may apply to the court to re-hear the appeal. Also, where the notice is not served or the defendant was prevented by the sufficient cause from appearing, the court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

The High Court contended that it is empowered to exercise this inherent power. Therefore, vide order dated 21.2.2014, the High Court had recalled its order dated August 27, 2013, on the ground that it had passed its order rejecting the request of the assessee for a day’s adjournment since the senior advocate on behalf of the assessee, was to come from Mumbai next day and thus, the applicant could not advance any argument.

Supreme Court’s Observations and Decision: The Apex Court noted that the assessee had participated in the hearing of the appeals before High Court which is apparent from the various parts of the order dated 27.08.2013.

1. The Apex Court held that the order passed by the High Court is not an ex-parte order for invoking the provisions of the Code of Civil Procedure, 1908.
2. Therefore, the High Court did not have the jurisdiction to recall the order passed by it previously. The inherent power under the Code of Civil Procedure, 1908 is hedged by certain pre-conditions and unless the pre-conditions are satisfied the power thereof under cannot be exercised. Accordingly, the Supreme Court set aside the order dated 21.2.2014 of the High Court.

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?
CIT V. AMITABH BACHCHAN (2016) (SC)

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).

**CASE LAW - 99**

Can mere non-mention or non-discussion of enquiry made by the Assessing Officer in the assessment order justify invoking revisionary jurisdiction under section 263?

**CIT V. KRISHNA CAPBOX (P) LTD (2015) (ALL)**

**Facts of the case:** The assessee filed its return of income declaring total income of Rs. 8.15 lakhs. The return was processed under section 143(1) and later, the case was selected for scrutiny and statutory notice under section 143(2) was issued. During the course of scrutiny, the Assessing Officer raised certain queries which were answered by the assessee. The Assessing Officer, after being satisfied with the replies given, completed the assessment by accepting the declared income. Subsequently, the Commissioner invoked revisionary jurisdiction under section 263 by holding that the Assessing Officer had not made enquiry on certain aspects.
Assessee’s contention vis-a-vis Revenue’s Contention: The assessee contended that all the aspects contested by the Commissioner were enquired by the Assessing Officer. The Revenue took the defence that no enquiry was made by the Assessing Officer in respect of the issues set out in the notice issued under section 263 and hence, revisionary jurisdiction was correctly assumed.

Tribunal’s view: The Tribunal noted that all necessary enquiries were made and all the requisite documents were placed in the paper book. Once enquiry was made, mere non-discussion or non-mention in the assessment order cannot lead to the assumption that the Assessing Officer did not apply his mind or that he had not made any enquiry on the subject for invoking section 263.

High Court’s Observations: The High Court noted the Bombay’s High Court’s view in Cellular Ltd. v. DCIT (2008) 301 ITR 407 that if a query is raised during the assessment proceedings and responded to by the assessee, the mere fact that it is not dealt with in the assessment order would not lead to a conclusion that no mind had been applied to it.

High Court’s Decision: The High Court concurred with the decision of the Tribunal and held that since the relevant enquiries and replies are available on ‘record’ (i.e., the paper book), the Commissioner cannot invoke revisionary jurisdiction merely because there was no mention of such enquiry and verification in the assessment order.

CASE LAW - 100

Can the Commissioner invoke revisionary jurisdiction under section 263, when the subject matter of revision has been decided by the Commissioner (Appeals) and the same is pending before the Tribunal?

CIT V. FORTALEZA DEVELOPERS (2015) (BOM)

High Court’s Decision:
1. When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the Commissioner is precluded from invoking section 263 for revision of the very same matter decided by the first appellate authority since clause (c) of the Explanation 1 to section 263 debars the same.
2. Accordingly, the High Court held that the order passed by the Assessing Officer got merged with the order of the first appellate authority. The very same issue cannot be revised by invoking revisionary jurisdiction under section 263.

CASE LAW - 101

Can an assessee, objecting to the reassessment notice issued under section 148, directly approach the High Court in the normal course contending that such reassessment proceedings are apparently unjustified and illegal?
SAMSUNG INDIA ELECTRONICS P. LTD. V. DCIT (2014) (DEL.)

Facts of the case: In the present case, Samsung Electronics Co. Ltd., the Korean Company was subjected to regular assessment for the assessment year 2006-07. The assessment order was passed, pursuant to the directions under section 144C(5) made by the Disputes Resolution Panel. For the same assessment year, i.e., A.Y.2006-07, assessee was issued a reassessment notice dated March 30, 2013 under section 148. Against this reassessment notice, assessee filed a writ petition before the High Court.

High Court’s Observations:
1. The High Court observed the Apex court ruling in the case of GKN Driveshafts (India) Ltd. v. ITO [2003] 259 ITR 19 (SC), wherein, it was laid down that when a notice under section 148 is issued, the proper course of action for the notice is to file a return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of the reasons, the notice is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the objections by passing a speaking order.
2. The High Court noted that the assessee has not filed objections before the Assessing Officer and has directly approached the court by way of the writ petition. On this issue, the assessee contended that they were justified in approaching the High Court directly as the reassessment proceedings ex facie were unjustified and illegal.

High Court’s Decision: The High Court, thus, held that it will not be appropriate and proper in the facts of the present case to permit and allow the petitioner to bypass and forgo the procedure laid down by the Supreme Court in GKN Driveshafts (India) Ltd. (supra), since the said procedure has been almost universally followed and has helped cut down litigation and crystallise the issues, if and when the question comes up before the Court.

CASE LAW – 101A
Should time limit under section 263 to be reckoned with reference to the date of assessment order or the date of reassessment order, where the revision is in relation to an item which was not the subject matter of reassessment?

BOMBAY HIGH COURT RULING IN CIT V. ICICI BANK LTD. (2012)
Refer Book 2, Chapter- Appeals & Revision.

CASE LAW - 102
Can the original assessment order under section 143(3), which was subsequently modified to give effect to the revision order under section 264, be later on subjected to revision under section 263?
CIT V. NEW MANGALORE PORT TRUST (2016) (KARN)

Facts of the case: The assessee-trust, a government undertaking carrying on commercial activities in one of the major ports was enjoying exemption under section 10(20) since its inception. On March 27, 2006, the assessee applied for registration under section 12A. However, the said application for registration was rejected by the Commissioner. On appeal before the Appellate Tribunal, the Commissioner was directed to grant registration under section 12AA to the assessee w.e.f. 1 April, 2003. To give effect to the order of the Tribunal, the Commissioner granted registration on July 27, 2009. Subsequent to the registration, an assessment order was passed by the Assessing Officer under section 143(3) on December 27, 2009. The assessee filed a revision petition under section 264 which was allowed and the matter was remanded to the Assessing Officer to compute the income of the assessee in terms of the order of revision under section 264. The Assessing Officer gave effect to the revision order vide order dated May 27, 2011. Thereafter, the original order passed under section 143(3), dated December 27, 2009 was revised by the Commissioner under section 263 on March 22, 2012.

The revision order under section 263 passed by Commissioner was challenged by the assessee before the Appellate Tribunal. The Tribunal set aside the revision order of the Commissioner passed under section 263.

Assessee’s Contentions: The assessee contended before the High Court that the order passed by the Assessing Officer under section 143(3) on December 27, 2009 does not exist subsequent to the order of Commissioner passed under section 264, being given effect to by the Assessing Officer vide order dated May 27, 2011. The said order dated December 27, 2009 which no longer subsists, was revised by the Commissioner under section 263. In this case, invoking of suo motu revision powers by the Commissioner under section 263 is not justifiable.

High Court’s Observations: The High Court took note of the sequence of events and undisputed facts that the assessment order dated 27 December 2009 passed by the Assessing Officer was no longer in existence. The High Court concluded that the Tribunal arrived at the conclusion only after considering the factual position that Commissioner had no jurisdiction to revise the order which was not in existence.

High Court’s Decision: The High Court, accordingly, held that the order passed by the Commissioner under section 263, revising the non-existing order is void ab initio and is a nullity in the eyes of law

CASE LAW - 103

Can an assessee file a revision petition under section 264, if the revised return to correct an inadvertent error apparent from record in the original return, is filed after the time limit specified under section 139(5) on account of the error coming to the notice of the assessee after the specified time limit?
SANCHIT SOFTWARE AND SOLUTIONS PVT. LTD. V. CIT (2012) (BOM.)

Facts of the case: The assessee-company had electronically filed its return of income. It committed a mistake by including dividend income [exempt under section 10(34)] and long term capital gains on sale of shares [exempt under section 10(38)] in its return of income, though the same was correctly disclosed in the Schedule containing details of exempt income. The return was processed under section 143(1) denying the exemptions under section 10(38) and 10(34) and therefore, intimation under section 143(1) was served on the assessee raising a demand of tax. The assessee, on receiving the intimation, noticed the error committed and filed a revised return rectifying the error. However, the revised return was not sustainable as the same was filed beyond the period of limitation as provided under section 139(5). Later, the assessee filed an application for rectification under section 154 and also a revision petition under section 264.

Commissioner’s contention: The Commissioner of income-tax, while considering the revision petition, contended that the intimation under section 143(1) was based on the return of the assessee, in which the claims under section 10(34) and under section 10(38) were not made by the assessee. Hence, it cannot be said that the intimation under section 143(1) was erroneous, since the same was squarely based on the return filed by the assessee. Secondly, the power of Commissioner under section 264 is only restricted to the record available before the Assessing Officer which can be examined by the Commissioner. In the circumstances, the other evidence sought to be brought on record to establish the mistake committed by the assessee cannot be considered by the Commissioner under section 264. The revision petition under section 264 was rejected by the Commissioner on the above grounds.

High Court’s Observations:
1. The High Court observed that the entire object of administration of tax is to secure the revenue for the development of the country and not to charge the assessee more tax than which is due and payable by the assessee.
2. In this context, the High Court referred to the CBDT Circular issued as far back as 11th April, 1955 directing the Assessing Officer not to take advantage of the assessee’s mistake.
3. The High Court opined that the said Circular should always be borne in mind by the officers of the Revenue while administering the Act.

The High Court observed that, in this case, the Commissioner of income-tax had committed a fundamental error in proceeding on the basis that no deduction on account of dividend income and long-term capital gains under section 10 was claimed from the total income, without considering that the assessee had specifically sought to exclude the same as is evident from the entries in the relevant Schedule. Therefore, this was an error on the face of the order and hence, the same was not sustainable.
High Court’s Decision: The High Court, accordingly, set aside the order of Commissioner and remanded the matter for fresh consideration.

The High Court further directed the Assessing Officer to consider the rectification application filed by the assessee under section 154 as a fresh application received on the date of service of this order and dispose of the rectification application on its own merits, without awaiting the result of the revision proceedings before the Commissioner of Income-tax on remand, at the earliest.

PENALTIES
CASE LAW - 104

Is penalty under section 271D imposable for cash loans/deposits received from partners?

CIT V. MUTHOOT FINANCIERS (2015) (DEL)

Facts of the case: The assessee-firm, engaged in business of banking and money lending, had received huge amounts from the partners in the assessment years 1996-97 and 1998-99 by way of cash. The Assessing Officer levied penalty under section 271D. The Commissioner (Appeals) upheld the levy of penalty. The Tribunal observed that the advance made to the firm by the partners cannot be regarded as loan accepted by the firm. It held that the amount advanced and accepted is capital of the firm and not loans which cannot be subjected to penalty under section 271D. The Revenue filed an appeal before High Court.

The assessee contended before the High Court that the amount advanced by the partners cannot be regarded as loan but is a capital of the firm. As the partnership firm has no separate legal entity, nor is there a separate identification between the firm and the partners, there is no violation of section 269SS in this case.

High Court’s Opinion & Decision: The High Court referred to the case CIT v. R.M. Chidambaram Pillai (1977) 106 ITR 292, where the Apex Court was of the view that the firm is not a legal person even though it has some of the attributes of a personality. It held that the ‘firm’ is a collective noun, a compendious expression to designate an entity not a person. It also referred to CIT v. Sivakumar. V (2013) 354 ITR 9 (Mad), where the High Court upheld the conclusion of the Tribunal to hold that there is no separate legal entity for the partnership firm and the partner is entitled to use the funds of the firm. In CIT v. Lokhpat Film Exchange (Cinema) (2008) 304 ITR 172 (Raj), it was held that a partnership firm not being a juristic person, the inter se transaction between the firm and partners are not governed by the provisions of sections 269SS and 269T.

The High Court also noted the different view expressed by the Supreme Court in CIT v. A.W. Figgies & Co. (1953) 24 ITR 405, where it was held that the partners of the firm are distinct as civil entities while the firm as such is a separate and distinct unit for the purpose of assessment.
The High Court observed that the position that emerges is that there are three different Courts, which have held that section 269SS would not be violative when money is exchanged *inter se* between the partners and the firm.

1. The High Court further observed that, in this case, there was no dispute as regards the money brought in by the partners of the assessee-firm.
2. The source of money was also not doubted.
3. The transaction was *bona fide* and not aimed to avoid any tax liability.
4. The credit worthiness of the partners and genuineness of the transactions coupled with relationship between the ‘two persons’ and two different legal interpretations put forward, could constitute a reasonable cause in a given case for not invoking sections 271D/271E read with section 273B.
5. The High Court held that the issue being a debatable one, there was reasonable cause for not levying penalty.

**CASE LAW - 105**

Can loan, exceeding the specified limit, advanced by a partnership firm to the sole-proprietorship concern of its partner be viewed as a violation of section 269SS to attract levy of penalty?

**CIT V. SIVAKUMAR (2013) (MAD.)**

**High Court's Decision:**
1. The High Court, relying upon the various court decisions, upheld the decision of the Tribunal holding that there is no separate identity for the partnership firm and that the partner is entitled to use the funds of the firm.
2. In the present case, the assessee has acted *bona fide* and that there was a reasonable cause within the meaning of section 273B. Therefore, the transaction cannot be said to be in violation of section 269SS and no penalty is attracted in this case.

**CASE LAW - 106**

Where an assessee repays a loan merely by passing adjustment entries in its books of account, can such repayment of loan by the assessee be taken as a contravention of the provisions of section 269T to attract penalty under section 271E?

**CIT V. TRIUMPH INTERNATIONAL FINANCE (I.) LTD. (2012) (BOM.)**

**Facts of the case:** In the present case, the assessee is a public limited company, registered as category-I merchant banker with SEBI, engaged in the business of stock broking, investment and trading in shares and securities. The assessee had taken a loan from the Investment Trust of India. During the previous year in question, the assessee had
transferred shares of a company held by it to the Investment Trust of India. Therefore, in the current assessment year, the assessee was liable to pay the loan amount to the Investment Trust of India and had a right to receive the sale price of the shares transferred to Investment Trust of India. In order to avoid the unnecessary circular transfer of shares, both the parties agreed to set-off the amount payable and receivable by way of passing journal entries and the balance loan amount was paid by the assessee by way of an account payee cheque. The amount of loan settled by way of passing journal entries exceeds Rs. 20,000.

High Court’s Decision:
1. It would have been mere formality to repay the loan amount by account payee cheque/draft and receive back almost the same amount towards the sale price of the shares.
2. Also, neither the genuineness of the receipt of loan nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment.
3. There is nothing on record to suggest that the amounts advanced by Investment Trust of India to the assessee represented the unaccounted money of the Investment Trust of India or the assessee and also it cannot be said that the whole transaction was entered into to avoid tax.
4. In effect, the assessee has violated the provisions of section 269T by repaying the loan amount by way of passing book entries because section 269ST specifically speaks about making payment by way of account payee crossed cheque/ Bank Draft/ ECS and therefore, penalty under section 271E is applicable. However, since the transaction is bona fide in nature being a normal business transaction and has not been made with a view to avoid tax, it was held that the assessee has shown reasonable cause for the failure under section 269T, and therefore, as per the provisions of section 273B, no penalty under section 271E could be imposed on the assessee for contravening the provisions of section 269T.

Note: In order to mitigate the hardship caused by certain penalty provisions in case of genuine business transactions, section 273B provides that no penalty under, inter alia, section 271E shall be imposed on a person for any failure referred to in the said section, if such person proves that there was reasonable cause for such failure.

SETTLEMENT COMMISSION
CASE LAW - 107

Is an assessee receiving refund consequent to waiver of interest under sections 234A to 234C of the Income-tax Act, 1961 by the Settlement Commission, also entitled to interest on such refund under section 244A?

K. LAKSHMANSA AND CO. V. CIT [2017] (SC)

Facts of the case: The assessee had approached the Settlement Commission for waiver of interest under sections 234A to 234C of the Income-tax Act, 1961. The Settlement
Commission partially waived the interest but refused to grant interest on refund on the grounds that section 244A does not provide for payment of interest in such cases. Further, the Settlement Commission’s power to waive interest does not enable the Commission to provide for payment of interest under section 244A.

The High Court held that since waiver of interest was at the discretion of the Settlement Commission, no right flowed to the assessee to claim refund as a matter of right under law.

**Issue:** When refund is awarded by the Settlement Commission at its discretion under section 244A, is there a right to receive interest on the same?

**Supreme Court’s observations:**
1. The Supreme Court observed that the right to claim refund is automatic once the statutory provisions have been complied with. The statutory obligation to refund, being non-discretionary, carries with it the right to interest. Section 244A is clear and plain – it grants a substantive right of interest and is not procedural.
2. Under section 244A, it is enough if the refund becomes due under the Income-tax Act, 1961 in which case the assessee shall, subject to the provisions of that section, be entitled to receive simple interest.
3. The expression “due” only means that a refund becomes due pursuant to an order under the Act which either reduces or waives tax or interest. It does not matter that the interest being waived is discretionary in nature; the moment that discretion is exercised and refund becomes due consequently, a concomitant right to claim interest springs into being in favour of the assessee.
4. The Supreme Court, thus, did not agree with the High Court opinion that when discretionary power has been exercised, no concomitant right to claim interest on refund arises in favour of the assessee.

**Supreme Court’s Decision:** Overruling the High Court Decision, the Supreme Court held that the assessee has a right to interest on refund under section 244A.

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**OFFENCES & PROSECUTION**

**CASE LAW - 108**

Whether payment of sums due, after the deadline stipulated by the Settlement Commission, would save the petitioner from withdrawal of immunity from prosecution?

**SANDEEP SINGH V UNION OF INDIA [2017] (SC)**

**Facts of the case:** The petitioner is a dealer in real estate at Amritsar. A search was conducted on August 21, 2009 at his business and residential premises under section 132(1) subsequent to which the assessee filed an application before the Settlement Commission under section 245C(1). The case was settled before the Settlement Commission on December 12, 2014. Pursuant to the assessment after settlement, the petitioner was unable to pay the amount due by the stipulated date. He sought an extension for 14 months but was only given time until July 31, 2015.
The assessee filed a writ petition before the High Court seeking quashing/ modification of the Settlement Commission’s order granting partial extension of time. By the time the matter was heard by the Supreme Court, he had paid off all pending amounts.

**Supreme Court’s Observations:**

1. The Supreme Court explained that in case payments are not made within the time granted by the Settlement Commission or in case the person fails to comply with any other condition, subject to which the immunity was granted, the immunity shall stand withdrawn.

2. It is not in dispute that all payments were made by the assessee on January 20, 2016 before approaching the Supreme Court. Though the time originally granted was only up to July 31, 2015, all sums having been paid now, there is no need to relegate the assessee to the Settlement Commission. Settlement Commission has the power to extend the timelines. Hence, in the instant case, it shall be taken that the assessee has made the payments within the time granted under section 245H(1A).

**Supreme Court’s Decision:** The Supreme Court held that the assessee having cleared all taxes due vide order of Settlement Commission, albeit after stipulated deadline, is immune from prosecution.

**CASE LAW - 109**

Would prosecution proceedings under section 276CC be attracted where the failure to furnish return in time was not willful?

**UNION OF INDIA V. BHAVECHA MACHINERY AND OTHERS (2010) (MP)**

**High Court’s Observation and Decision:**

1. In this case, the High Court observed that for the provisions of section 276CC to get attracted, there should be a **willful delay** in filing return and not merely a failure to file return in time.

2. There should be **clear, cogent and reliable evidence** that the failure to file return in time was ‘willful’ and there should be no possible doubt of its being ‘wilful’.

3. The failure must be **intentional, deliberate, calculated and conscious** with complete knowledge of legal consequences flowing from them.

In this case, it was observed that there were sufficient grounds for delay in filing the return of income and such delay was not willful. Therefore, prosecution proceedings under section 276CC are not attracted in such a case.

**MISCELLANEOUS PROVISIONS**

**CASE LAW - 110**

Whether omission to issue notice under section 143(2) is a defect not curable in spite of section 292BB?
TRAVANCORE DIAGNOSTICS (P) LTD V. ACIT (2017) (KER)

Facts of the case: The assessee had a diagnostic laboratory in Kollam and a branch at Kottarakara. A survey under Section 133A was conducted, consequent to which the assessee filed its return of income. On the basis of certain incriminating documents and materials unearthed during the survey, a notice under section 148 was issued. Subsequently, the incomes were assessed for assessment years 2009-10 and 2010-11 under section 143(3) read with section 147.

The assessee raised additional jurisdictional grounds before the Appellate Tribunal. The assessee contended that for the assessment year 2009-10, the assessment was completed under section 143(3) read with section 147. However, a notice under section 143(2) was not issued. The Tribunal held that in view of section 292BB, the assessee’s participation in the reassessment proceedings would condone the omission to issue a notice.

Issue: Whether failure to issue notice under section 143(2) would vitiate the assessment notwithstanding the assessee’s participation in the proceedings? Would section 292BB come to the rescue of the Revenue authority if they omit to issue notice under section 143(2)?

High Court’s Decision:
1. The Apex Court had, in Asstt. CIT v. Hotel Blue Moon (2010) 321 ITR 362, held that without the statutory notice under section 143(2), the Assessing Officer could not assume jurisdiction. Here, Assessing Officer recorded his inability to generate a notice as the return was not filed electronically. Such defect cannot be cured subsequently, since it is not procedural but one that goes to the root of the jurisdiction. Even though the assessee had participated in the proceedings, in the absence of mandatory notice, section 292BB cannot help the Revenue officers who have no jurisdiction, to begin with. Section 292BB helps Revenue in countering claims of assesseees who have participated in proceedings once a due notice has been issued.

CASE LAW - 111

Can expenditure incurred in foreign exchange for provision of technical services outside India, which is deductible for computing export turnover, be excluded from total turnover also for the purpose of computing deduction under section 10AA?

CIT V. HCL TECHNOLOGIES LIMITED [2018] (SC)

Facts of the case: The assessee-company was engaged in the business of development and export of computer software and rendering technical services. For the relevant assessment year, the assessee claimed deduction under section 10AA as per certificates filed in the prescribed form.
Issue: The issue under consideration is whether software development charges incurred in foreign exchange attributable to the delivery of technical services outside India, deductible from export turnover, be excluded from total turnover also for computing deduction under section 10AA.

Supreme Court’s Observations:
1. The term “total turnover” has not been defined in section 10AA under which the deduction is sought.
2. Clause (i) of Explanation 1 to section 10AA defines “export turnover” which specifically seeks to exclude these three categories of expenditure for delivering the export of articles/things or expenses incurred in foreign exchange in rendering of services outside India.
3. The Court observed that when a particular word such as “total turnover” is not defined by the legislature, ordinary meaning is to be attributed in conformity with the context in which it is used.
4. Section 10AA deduction depends on arriving at the profit from export business, thus, expenses excluded from “export turnover” must also be excluded from “total turnover”, since one of the components of “total turnover” is export turnover. Expenses incurred in foreign exchange for providing the technical services outside are thus, to be excluded from total turnover also.

Supreme Court’s Decision: If deductions in respect of freight, telecommunication charges and insurance attributable to delivery of articles, things etc. or expenditure incurred in foreign exchange in rendering of services outside India are allowed only against export turnover but not from the total turnover for computing deduction under section 10AA, then, it would give rise to inadvertent, unlawful, meaningless and illogical results causing grave injustice, which could have never have been the intent of the Legislature. Hence, such expenditure incurred in foreign exchange for providing technical services outside India are deductible from total turnover also.

CASE LAW - 112

Where the waiver is in respect of loan taken for purchase of plant and machinery and tooling equipment, would the same be subject to tax in the hands of the recipient by virtue of the provisions contained in either section 28(iv) or section 41(1)?

CIT V. MAHINDRA AND MAHINDRA LTD. [2018] (SC)

Issue: The issue under consideration is whether the sum due by the assessee-company to K, which has been waived off later on by AMC (which took over K), constitutes taxable income in the hands of the company.

Supreme Court’s Observations:
1. The Supreme Court observed that for applicability of section 28(iv), income must arise from business or profession and the benefit received has to be in non monetary form.
The amount of Rs.57,74,064, being a cash receipt, therefore, does not fall under section 28(iv).

2. For being covered under section 41(1), the assessee-company should have claimed an allowance or deduction in any assessment for any year in respect of a trading liability incurred by the assessee. Subsequently, during any previous year, if the creditor waives such liability, the assessee-company would be liable to pay tax under section 41. In this case, the loan was taken for procurement of capital assets, namely, plant, machinery and tooling equipment. The purchase amount had not been debited to the trading account or to the profit and loss account in any of the assessment years. Hence, waiver of such loan would not tantamount to cessation of a trading liability.

**Supreme Court’s Decision:** The Supreme Court, accordingly, held that the amount of loan waived would not be taxable either under section 41(1) or under section 28(iv).

**Note** – As per section 2(24)(xviii), assistance in the form of waiver by the Central Government or State Government or any authority or body or agency in cash or kind to the assessee would be included in the definition of “income”. In this case, the waiver is by a foreign company, and hence, is not included within the scope of definition of “income” under section 2(24).

Further, it may be noted that as per Explanation 10 to section 43(1), deduction on account of, subsidy or grant or reimbursement, by whatever name called, received from any person has to be made while computing actual cost. Since waiver has not been expressly included in the said Explanation, it is possible to take a view that the same is not deductible while computing the actual cost. However, if a view is taken that “waiver” is included within the scope of the phrase “by whatever name called” in the said Explanation, then, the same has to be deducted while computing actual cost.

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**CASE LAW - 113**

Is interest income from share application money deposited in bank eligible for set-off against public issue expenses or should such interest be subject to tax under the head ‘Income from Other Sources’?

**CIT V. SREE RAMA MULTI TECH LTD. [2018] (SC)**

**Issue:** The issue under consideration is whether the interest income from share application money is taxable under the head ‘Income from Other Sources’, or can the same be set-off against public issue expenses.

**Supreme Court’s Observations:**

1. The Supreme Court observed that the assessee-company was statutorily required to keep share application money in a separate account till the allotment of shares was completed.
2. The interest earned was inextricably linked with the requirement of raising share capital.
3. Any surplus money deposited in the bank for the purpose of earning interest is liable to be taxed as “Income from Other Sources”. Here, the share application money was deposited with the bank not to make additional income but to comply with the statute.
4. The interest accrued on such deposit is merely incidental. Moreover, the issue of shares relates to capital structure of the company and hence, expenses incurred in connection with the issue of shares are to be capitalized. Accordingly, the accrued interest is not liable to be taxed as “Income from Other Sources”; the same is eligible to be set-off against public issue expenses.

**Supreme Court’s Decision:** The Supreme Court concurred with the High Court’s view that the interest accrued on deposit of share application money with bank is eligible for set off against the public issue expenses; such interest is, hence, not taxable as “Income from Other Sources”.

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**CASE LAW - 114**

**Can Inland Container Depots (ICDs) be treated as infrastructure facility, for profits derived therefrom to be eligible for deduction under section 80-IA?**

**CIT V. CONTAINER CORPORATION OF INDIA LIMITED [2018] (SC)**

**Facts of the case:** M/s. Container Corporation of India Ltd. (CONCOR) is a Government company engaged in the business of handling and transportation of containerized cargo. Its operating activities are mainly carried out at its Inland Container Depots, Container Freight Stations and Port Side Container Terminals. CONCOR filed its income-tax returns for the relevant assessment years and claimed deduction under various heads including deduction under section 80-IA for profits derived from inland container depots. The claim for deduction on the profits earned from inland container depots was, however, rejected by the Assessing Officer.

**Issue:** The issue under consideration is whether profits derived from inland container depots can be treated as an infrastructure facility eligible for deduction under section 80-IA.

**Supreme Court’s Observations:**
1. Inland Container Depots function for the benefit of exporters and importers located in industrial centres which are situated at distance from sea ports.
2. The purpose of establishing them was to promote the export and import in the country as these depots acts as a facilitator and reduce inconvenience to the exporter or importer.
3. The Finance Act, 2001 substituted section 80-IA(4), consequent to which the definition of “infrastructure facility” in Explanation to section 80-IA(4)(i) included an inland port.
4. The Supreme Court observed that, considering the nature of work such as custom clearance carried out at inland container depots, it can be considered as an inland port within the meaning of section 80IA(4). Thus, deduction under section 80-IA can be claimed in respect of income earned therefrom.
**Supreme Court’s Decision:** The Supreme Court, accordingly, upheld the decision of the division bench of the High Court and held that CONCOR can claim for deduction under Section 80-IA in respect of profits derived from Inland Container Depots.

Note: Now Infrastructure facility is covered under section 35AD.

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CASE LAW - 115

Can payment of interest by Canara Bank to NOIDA be exempted from the requirement of tax deduction at source under section 194A on the ground that the same is a corporation established by or under the Uttar Pradesh Industrial Area Development Act, 1976?

CIT (TDS) AND ANR V. CANARA BANK [2018] (SC)

**Facts of the case:** The assessee, New Okhla Industrial Development Authority (NOIDA), was constituted by a notification dated April 17, 1976 issued under section 3 of the Uttar Pradesh Industrial Development Act, 1976. Canara Bank, the respondent, made a payment of Rs. 20.10 crores as interest on deposits to the assessee (NOIDA) for the relevant financial year. The Commissioner of Income-tax (TDS) issued notices to the respondent, Canara Bank, asking for information pertaining to interest paid and for showing cause for not deducting tax at source under section 194A.

Section 194A imposes an obligation on persons such as the respondent to deduct tax at source while making interest payments. However, under section 194A(3)(iii)(f), the Central Government is empowered to notify payments made to a specified class institution(s) for exemption from this requirement. A notification dated October 20, 1970 under section 194A(3)(iii)(f) was issued by the Central Government exempting payments made to “any corporation established by a Central, State or Provincial Act” from the requirement of tax deduction at source.

**Issue:** The issue under consideration is whether NOIDA is a Corporation established by or under the Uttar Pradesh Industrial Area Development Act, 1976, consequent to which it is eligible for exemption from requirement of tax deduction at source in respect of payment of interest made to it by Canara Bank.

**Supreme Court’s Observations:**

1. There was no dispute about NOIDA being a corporation and a statutory corporation. The only question was whether it was established by a State legislation and thus covered under the notification dated October 20, 1970.

2. The revenue authorities argued that NOIDA would not be covered by the notification as it was established **under** the 1976 Act.

3. The respondents argued that NOIDA was established **by** the 1976 Act and thus, covered under the notification. Relying on the ratio of Dalco Engineering Pvt. Ltd. v. Shree Satish Prabhakar Padhiye [2011] 164 Comp Cas 275 (SC), the Court held that the phrase “established by or under” is used to denote a statutory corporation established or brought into existence by or under a statute. The establishment of Corporation is by a notification issued...
by State Government. In the present case, notification has been issued by the State Government in exercise of power of section 3 and the Authority has been constituted.

**Supreme Court's Decision:**

4. The Supreme Court observed that the Preamble to the 1976 Act itself provides for constitution of an authority. NOIDA has, thus, been established by the 1976 Act and is clearly covered under the Notification dated October 22, 1970. Hence, it is eligible for exemption from tax deduction at source provided under section 194A(3)(iii)(f).

**CASE LAW - 116**

Are the provisions of tax deduction at source under section 194H attracted in respect of amount retained by accredited advertising agencies out of remittance of sale proceeds of “airtime” purchased from Doordarshan and sold to customers?

**DIRECTOR, PRASAR BHARATI V. CIT [2018] (SC)**

**Issue:** The issue under consideration is whether the amount retained by the accredited agencies is in the nature of commission to attract the provisions of section 194H.

**Supreme Court’s Observations:**

1. The Supreme Court observed that the definition of “commission or brokerage” under section 194H is inclusive and covers any payment received or receivable directly or indirectly by a person acting on behalf of another person for the services rendered.
2. The agreement itself uses the expression “commission” in all relevant clauses. The terms of the agreement indicate that both parties intended that the amount to be paid/retained is in the nature of commission.
3. It is for this reason that the parties used the expression “commission” in the agreement. The relationship in question was a pure agency arrangement because the agency acted on behalf of the assessee and the actions of the agency were binding on the assessee. Moreover, the agreement itself contained a clause for deduction of tax at source on trade discount.

**Supreme Court’s Decision:**

4. The Supreme Court, thus, held that the amount retained by the accredited advertising agencies is commission and consequently, the provisions of tax deduction at source under Section 194H are attracted. Consequently, for failure to deduct tax at source under section 194H, the assessee would be treated as an assessee-in-default.

**Note** - It may be noted that the CBDT has, vide Circular No.5/2016 dated 29.2.2016, clarified that TDS under section 194H is not attracted on retentions by an advertising agency (for booking or procuring of or canvassing for advertisements) from payments remitted to television channels/newspaper companies. The CBDT has issued this clarification on the basis of the Allahabad High Court ruling in Jagran Prakashan Ltd.’s case and Delhi High Court ruling in Living Media Ltd.’s case that the relationship between the media company
and advertising agency is that of a “principal to principal”. However, the Supreme Court, in this case, has distinguished from the Allahabad High Court ruling, on the basis of the fact that an agreement has been entered into by Doordarshan with the accredited agencies specifically appointing them as agents; and the agreement also contains a specific clause for deduction of tax at source on trade discount, which is in the nature of commission. Accordingly, the Supreme Court held that the relationship between Doordarshan and its accredited agencies is that of a principal and agent, consequent to which TDS provisions under section 194H would get attracted in respect of retentions by accredited advertising agencies from payments remitted to Doordarshan. Therefore, the applicability or otherwise of the CBDT Circular will depend on the facts of the specific case.

CASE LAW - 117

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?

SPINACOM INDIA (P.) LTD. V. CIT [2018] (SC)

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.
CASE LAWS

CASE LAW - 118

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?

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

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.

CASE LAW - 119

Is the notice for reassessment issued under section 148 on the basis of tax evasion report received from the Investigation Unit of the Income-tax department valid, if such notice

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has been issued erroneously in the name of the erstwhile company which has now been converted into an LLP?

SKY LIGHT HOSPITALITY LLP V. ASSISTANT CIT [2018] (DEL)

Facts of the Case: Sky Light Hospitality (SH) LLP, a Limited Liability Partnership, had acquired the rights and liabilities of Sky Light Hospitality Private Limited (SHPL) upon conversion under the Limited Liability Partnership Act, 2008. The return for the relevant assessment year filed by SHPL was processed under section 143(1) and was not subjected to scrutiny assessment. However, upon further receipt of a tax evasion report, a reassessment notice had been issued under section 148. The petitioner-LLP has filed a writ petition to quash the notice and the reassessment proceedings.

Issue: The issue under consideration is whether a notice for reassessment issued under section 148 on the basis of tax evasion report received from the Investigation Unit of the Income-tax department can be treated as valid, if such notice has been issued erroneously in the name of the erstwhile company which has now been converted into an LLP.

Delhi High Court’s Observations:
1. The High Court dismissed the contentions of the petitioner. Firstly, as long as there is “reason to believe” and not mere “reason to suspect”, Courts should not interject to stop the adjudication process.
2. Secondly, there is clear evidence that the notice was erroneously addressed to SHPL instead of SH LLP. The error or mistake was that the notice did not record the conversion of SHPL into SH LLP. However, it is clearly evident that the notice was meant for the assessee-LLP and no one else.

Delhi High Court’s decision:
3. The Delhi High Court held that the notice issued under section 148 on the basis of tax evasion report received from the Investigation unit of the Income-tax department is valid, since there was reason to believe on the basis of the said report that income had escaped assessment, even though the notice was erroneously issued in the name of the erstwhile company which has now been converted into LLP.
4. The Court clarifies that it has passed no opinion on the merits of the case which will be duly dealt with, by the Assessing Officer. The petitioner-LLP is required to appear before the Assessing Officer to deal with the merits of the issues pertaining to the notice.

Note - The special leave petition filed against the aforementioned decision of the Delhi High Court was dismissed by the Supreme Court.

CASE LAW - 120

Can an assessee who has set up a new industrial undertaking and availed deduction@100% of profits under section 80-IC(3) for the five years, once again claim deduction@100% of profits on the basis of having undertaken substantial expansion thereafter?
**CASE LAWS - 121**

**CIT V. CLASSIC BINDING INDUSTRIES [2018] (SC)**

**Issue**: The issue under consideration is whether an assessee who has set up a new industrial undertaking and availed deduction@100% of profits under section 80-IC(3) for the first five years, can once again claim deduction@100% of profits on the basis of having undertaken substantial expansion thereafter in a subsequent year.

**Supreme Court’s Observations:**
1. The Supreme Court observed that upon a pragmatic and reasonable interpretation, once the assessee satisfies the eligibility conditions under section 80-IC and the initial assessment year commences from a certain assessment year for claim of deduction@100% of profits for a certain period, five years in this case, there cannot be another “initial assessment year”, commencing after the expiry of the said period on the basis of substantial expansion.

**Supreme Court’s Decision:**
2. The Supreme Court held that within the period of ten years, having claimed deduction@100% of profits for the first five years, the assessee cannot once again claim deduction@100% of profits for a fresh period of five years thereafter on the basis of substantial expansion as section 80-IC (3), in no uncertain terms, provides for deduction only at 25% of profits in respect of the next five year period.

**CASE LAW - 121**

Can the CBDT refuse to condone delay in filing the tax return, where such delay was caused by circumstances beyond the control of the assessee?

**REGEN POWERTECH PRIVATE LIMITED V. CBDT AND ANOTHER [2019] (MAD)**

**High Court’s Observations:**
1. The High Court opined that the assessee could not be blamed for the delay in carrying out its audit, as it was beyond its control.
2. Since there was some misunderstanding between the erstwhile auditor and the assessee, the return of income could not be presented before the due date.

**High Court’s Decision:**
The High Court held that application for condonation of delay could not have been rejected by the CBDT as the circumstances causing delay were beyond the control of
the assessee. The High Court opined that the CBDT should have exercised its discretion in a proper manner and condoned the delay.

CASE LAW - 122

Is the assessee-company engaged in refining, distribution and sale of petroleum products, liable to deduct tax under section 194C or under section 194-I, in respect of payment made to the carrier engaged for road transport of bulk petroleum products?

CIT V. INDIAN OIL CORPORATION [2019] 410 ITR 106 (UTTARAKHAND)

High Court’s Observations:
1. Upon perusing the terms of the contract, the High Court observed that the parties understood the agreement as one where the carrier would be paid transport charges, and that too, for the shortest route travelled by it in the course of transporting the goods of the assessee.
2. The contract did not require payment of idle charges and it was clear that there was no entitlement to any payment other than the actual transportation of the goods. Hence, the carrier was not being hired for full time.
3. The carrier under the contract was undoubtedly obliged to maintain the requisite number of trucks of a particular type subject to various restrictions and conditions. However, the carrier was under the obligation to operate the trucks for the specific purpose of transporting the goods belonging to the assessee.

High Court’s Decision:
The High Court held that, even after amendment to the Explanation under section 194-I to include within its scope, payment for use of plant, the case could not fall within its ambit. The contract is one for transportation of goods and, therefore, is a contract of work within the meaning of section 194C and not section 194-I.

CASE LAW - 123

Can an assessee setting up a hotel claim deduction under section 35AD for the relevant previous year, on the basis that it had commenced its operations and made an application for three-star category classification in beginning of the said previous year, even though the same was granted by the authority only in the next year due to the requirement of completion of inspection?

CIT V. CEEBROS HOTELS PRIVATE LIMITED [2018] (MAD)
**High Court’s Observations:**

1. The assessee had made an application for classification as early as in the month of April of the relevant previous year. Thereafter, an inspection was required to be conducted for such purpose.
2. The manner in which the inspection was conducted and the time frame taken by the competent authority were factors beyond the control of the assessee.
3. The Department had not disputed the operation of the new hotel from the relevant previous year as it had accepted the income, which was offered to tax.
4. Under section 35AD, deduction is available from the previous year in which the assessee commences operation of the specified business i.e., hotel business, in this case.
5. Section 35AD does not mandate that the date of the certificate has to be with effect from a particular date.

**High Court’s Decision:**

The High Court upheld the Tribunal’s view that the assessee is entitled to claim the deduction under section 35AD for the relevant previous year, opining that the provision which was introduced to encourage the establishment of hotels of a particular category is a beneficial provision, and hence, should be read and interpreted liberally.

**CASE LAW - 124**

Can part of the interest paid by the assessee on unsecured loans taken be disallowed due to the reason that, out of the said loans, the assessee had advanced certain sum of money to third parties without charging any interest?

**PRINCIPAL CIT V. REEBOK INDIA COMPANY [2018] (DEL)**

**High Court’s Observations:**

1. The High Court relied upon the Supreme Court ruling in *S. A. Builders Ltd. v. CIT (Appeals) [2007] 288 ITR 1,* which interpreted the expression “for purposes of business or profession” in section 36(1)(iii) as being wider in scope than the expression “for the purpose of earning income, profits or gains”.
2. Accordingly, expenditure voluntarily incurred and meeting the “commercial expediency” test is to be allowed as a deduction. The expression “commercial expediency” is of wide import and is satisfied once it is established that there was a connection and nexus between the interest paid (claimed as expenditure) and the assessee’s business.
3. The High Court observed that merely because non-interest bearing advances were given to third parties, that would not justify a finding that the test of "commercial expediency" was not satisfied. Interest-free advances were advanced to the parties connected with the business of the assessee.
4. Money taken on loan was not diverted for non-business purpose. The unsecured loans were not used for personal purpose. Therefore, according to section 36(1)(iii),
interest paid on capital borrowed for the purpose of business had to be allowed as a deduction.

5. Further, the High Court opined that the Revenue cannot assume the role and occupy the armchair of a businessman to decide whether expenditure was reasonable. The Revenue cannot look at the matter from its own standpoint, but the opinion and decision of a businessman on “business expediency” matters.

High Court’s Decision:
The High Court, accordingly, held that deduction for interest paid on unsecured loans has to be allowed under section 36(1)(iii), where the commercial expediency test is satisfied, even though part of the unsecured loan was advanced to third parties without charging interest.

CASE LAW - 125
Would sale of fertilizer bonds (issued in lieu of government subsidy) at loss be treated as a business loss or a loss under the head “Capital gains”?

PRINCIPAL CIT V. GUJARAT STATE FERTILIZERS AND CHEMICALS LIMITED [2018] (GUJ)

Facts of the Case: The assessee is engaged in manufacturing of fertilizers. The sale price of fertilizers is fixed by the Government of India and many a times, such price is even lower than the cost of production. Therefore, to compensate the manufacturer for the difference between the retention price of individual unit and sale price, fertilizer subsidy is given by the Government. Due to cash crunch, sometimes the Government of India discharges its dues of paying the subsidy by issue of fertilizer bonds. These bonds are saleable in the open market and the prices of such bonds are varying. In this case, when such bonds were sold in the open market, the assessee incurred a loss of Rs. 91,45,000 which it treated as a business loss. The Assessing Officer disallowed the same treating it as a loss under the head “Capital Gains”. The Tribunal, however, allowed the same.

Issue: The issue under consideration is whether sale of fertilizer bonds (issued in lieu of government subsidy) at a loss should be treated as a business loss or a loss under the head “Capital gains”.

High Court’s Observations:
1. The High Court observed that there is no dispute that fertilizer subsidy given to an assessee to compensate the loss on sale of fertilisers should be treated as business income of the assessee.
2. Due to cash crunch, the Government of India had discharged its dues of paying the subsidy by issue of fertilizer bonds. These bonds are saleable in the open market and the prices of such bonds are varying.
3. In this case also, the assessee received fertilizer bonds (in lieu of subsidy) which were sold at a loss in the open market.

**High Court’s Decision:**
The High Court, accordingly, held that since the subsidy would have been treated as business income, loss on sale of fertilizer bonds issued is to be allowed as business loss.

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**CASE LAW - 126**

Would an assessee who enters into an agreement with the Gujarat State Road Development Corporation for an infrastructure development project be entitled to deduction under section 80-IA(4), even though as per the requirement contained therein, the agreement has to be entered into with the Central Government or State Government or a local authority or any other statutory body?

**CIT V. RANJIT PROJECTS PRIVATE LIMITED [2018] (GUJ)**

**Relevant provision of the Income-tax Act, 1961:**
One of the conditions to be fulfilled for claiming deduction is that the assessee should have entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing or operating and maintaining or developing a new infrastructure facility.

**High Court’s Observations:**
1. The High Court observed that GSRDC is a wholly Government owned company incorporated pursuant to the State Government’s resolution dated February 28, 1999.
2. The memorandum of association shows that the Government enjoys total control over GSRDC. GSRDC was constituted by the State Government as a nodal agency for the purpose of executing road development projects through private participation. Hence, GSRDC is a Government agency as defined in section 2(e) of the Gujarat Infrastructure Development Act, 1999.

**High Court’s Decision:**
The High Court held that since the assessee has entered into an agreement with GSRDC, a government agency constituted by the State Government for the purposes of executing road development projects, it is entitled to deduction under Section 80-IA.

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**CASE LAW - 127**

Can the amount incurred by the assessee towards perfecting title of property acquired through will, for making further sale, be included in the cost of acquisition for computing capital gains?
CIT V. ADITYA KUMAR JAJODIA [2018] 407 ITR 107 (CAL)

**High Court’s Observations:**

1. The High Court observed that the assessee had inherited the immovable property under a will and the costs incurred by him for perfection of the title from perpetual leasehold rights to the complete ownership had to be regarded as a cost of acquisition within the meaning of sections 48 and 55, as the assessee was transferring the complete ownership rights to the transferee, and not the leasehold rights.

2. Further, the High Court took note of the Supreme Court’s ruling in *RM. Arunachalam v. CIT [1997]* holding that the amount incurred in discharging the mortgage created by the predessor-in-interest of the assessee has to be regarded as cost of acquisition of the assessee.

The High Court, accordingly, observed that, in this case, the encumbrances were got rid of by the assessee by making certain payment, consequent to which a better title to the property was acquired by the assessee and transferred to the assessee's transferee. The cost of getting rid of such encumbrances in any immovable property had to be accepted as a part of the cost of acquisition of the property, subject, however, to the assessment as to the genuineness and validity of such encumbrances.

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**High Court’s Decision:**

The High Court, accordingly, held that, the assessee is entitled to deduction of amount incurred towards perfecting title of property acquired under will and the amount incurred towards making payments to the trust and the third party in whose favour rights were created, as cost of acquisition under section 55.

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**CASE LAW - 128**

**Would the cost of purchase of land and cost of construction of residential house thereon incurred by the assessee prior to transfer of previously owned residential house property, qualify for exemption under section 54?**

**C ARYAMA SUNDARAM V. CIT [2018] (MAD)**

**Facts of the Case:** The assessee sold a residential house property for a consideration of Rs.12.5 crores on January 15th, 2010. Long-term capital gains arising to the assessee on sale of such property was Rs.10.48 crore. In May, 2007, the assessee had purchased a property with a superstructure thereon for a total consideration of Rs.15.96 crores.
crores and after demolishing the existing superstructure, the assessee constructed a residential house at a cost of Rs.18.74 crores. For the A.Y.2010-11, the assessee had claimed exemption of the entire long-term capital gains of Rs.10.48 crore under section 54, since it was lower than the cost of construction of Rs.34.70 crores.

**Assessing Officer’s view:** The Assessing Officer opined that only that part of the construction expenditure incurred after the sale of the original asset was eligible for exemption under section 54. Based on records, the Assessing Officer calculated the cost of construction incurred after the sale of the original asset, amounting to Rs.1.15 crores and accordingly, allowed exemption only to that extent. The Commissioner (Appeals) upheld the view of the Assessing Officer.

**High Court's Observations:**
1. According to section 54, capital gains exemption is available in respect of the cost of new residential house purchased or constructed. Section 54(1) is specific and clear in that it mentions cost of new residential house and not just the cost of construction of the new residential house.
2. The cost of the new residential house would necessarily include the cost of the land, materials used in the construction, labour and any other cost relatable to the acquisition or construction of the residential house. Also, in this case, the assessee’s construction of new house is within the timeline stipulated in section 54(1).
3. Section 54 does not lay down that construction could not have commenced prior to the date of transfer of the asset that resulted in capital gains. Also, section 54(1) does not contemplate that the same money received from the sale of a residential house should be used in the acquisition of new residential house.
4. This is apparent as section 54 also provides exemption in respect of property purchased one year prior to the transfer of residential house property, which gave rise to the capital gains.

**High Court’s Decision:**
The High Court, accordingly, held that, in this case, the cost of land and cost of construction incurred thereon prior to transfer of residential house property also have to be considered for the purpose of capital gains exemption under section 54. As capital gains arising on transfer of previously owned house property of the assessee is less than the cost of the new residential house in this case, the entire capital gains would be exempt under section 54.

**CASE LAW - 129**
Can payments made by an assessee to a non-resident agent who does not have any income assessable in India be disallowed under section 40(a)(i) for non-deduction of tax at source on the ground that no application was made by the assessee under section 195(2) for making deduction of tax at source at nil rate?
CIT V. MARUTI SUZUKI INDIA LIMITED [2018] (DEL)

High Court’s Observations:
1. The High Court observed that the non-resident agent who operated outside India did not have any income arising in India.
2. In order to come to this conclusion, the High Court relied on CIT v Model Exims [2013] 358 ITR 72 (All) where it was held that there was no obligation to deduct tax under section 195 from commission paid to a non-resident recipient who was not liable to tax in India. Further, in CIT v. Gujarat Reclalm & Rubber Products Ltd. [2016] 383 ITR 236 (Bom), it was held that the commission earned by a non-resident agent who was in the business of selling Indian goods abroad, did not accrue or arise in India, and hence no tax was deductible on such commission payment to a non-resident agent.

High Court’s Decision:
The High Court, accordingly, held that where the assessee has made payment to a non-resident agent where such income is not chargeable to tax in India, section 40(a)(i) could not be invoked to disallow deduction of such payment for non-deduction of tax at source, while computing the business income of the assessee.

CASE LAW - 130
Is interest under section 201(1A) attracted even in a case where non-deduction of tax at source was under a bona fide belief that tax was not deductible and the default was not willful?

SUN OUTSOURCING SOLUTIONS PRIVATE LIMITED V. CIT (APPEALS) [2018] (T&AP)

High Court’s Observations:
1. The High Court observed that section 201(1A) was automatically attracted for failure to deduct tax at source on the payments made.
2. Only in case of penalty under section 221, there is a provision for non-levy where the assessee proves that the default was for good and sufficient reasons. Unlike section 221, section 201(1A) does not require proof of willful default.
3. Even if the assessee was bona fide in not making such deduction, interest was nevertheless payable. Therefore, for levying interest under section 201(1A), mens rea or willful conduct is wholly irrelevant.

High Court’s Decision:
The High Court, accordingly, held that since the company had failed to deduct tax on the payments made to its employees, being Indian residents deputed to work in the U.K., section 201(1A) is automatically attracted; even if such non-deduction was due to the bona fide belief that tax is not deductible in such case, the company is, nevertheless, liable to pay interest under section 201(1A).
IMPORTANT NOTE:

It is pertinent to note that this book covers all the Case Laws from ICAI Study Material relevant for May & Nov 2020. FURTHER ICAI WILL ADD FEW MORE CASE LAWS IN THE MONTH OF FEB FOR MAY 2020 & JULY/AUGUST FOR NOV 2020. AS SOON AS IT COMES I WILL UPLOAD THE VIDEO FOR THE SAME. FURTHER CONCISE NOTES WILL ALSO BE UPLOADED ON TELEGRAM CHANNEL.

GOD BLESS YOU ALL.
PREFACE

It gives me a great pleasure to present this compilation of all the amendments made by Finance Act (No 1 & 2) 2019 relevant for CA Final Direct Tax & International Tax – Paper 7. {Already done in class}

Further while discussing the amendments in classroom I will be also addressing the amendments made by Income Tax Amendment Ordinance 2019 passed on 20th September 2019.

All the amendments are explained in this booklet after explaining the existing position of the law. Further wherever necessary practical questions have been put for better understanding of the amendments.

I hope this booklet along with lecture will help you all to a great extent.

Thanks for coming for the lecture.
God bless you all.
CA AARISH KHAN.

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<td>7</td>
<td>Borrowal by IFSC Unit from Non-Residents</td>
<td>10(15)</td>
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<td>8</td>
<td>Conditions governing certain exemptions</td>
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<td>9</td>
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<td>11</td>
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<td>13A &amp; Many other Sections</td>
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<td>12</td>
<td>Disallowance of business expenditure on account of non-deduction of tax on payment to Non-Resident</td>
<td>40(a)(i)</td>
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<td>13</td>
<td>Section 43B extended to Non-banking Finance Companies</td>
<td>43B</td>
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<td>Incentives to Non-banking Finance Companies</td>
<td>43D</td>
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<td>15</td>
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<td>47(viia)</td>
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<td>Benefits in Angel Taxation</td>
<td>56(2)(viib)</td>
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<td>Amendment to resolution of distressed companies</td>
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<td>80C</td>
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<td>22</td>
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<td>80CCD</td>
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<td>23</td>
<td>Deduction in respect of interest on Loan taken for certain House Property</td>
<td>80EEA</td>
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<td>25</td>
<td>Tax incentive for construction of Affordable Housing Projects</td>
<td>80-IBA</td>
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<td>26</td>
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<td>80LA</td>
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<td>27</td>
<td>Power of AO in respect of Modified Return of income filed</td>
<td>92CD</td>
</tr>
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</table>

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<table>
<thead>
<tr>
<th>No.</th>
<th>Description</th>
<th>Code</th>
</tr>
</thead>
<tbody>
<tr>
<td>28</td>
<td>in pursuance to signing of APA Clarifications pertaining to Secondary Adjustment and option to assessee to make one-time payment</td>
<td>92CE</td>
</tr>
<tr>
<td>29</td>
<td>Amendment to Sec 111A</td>
<td>111A</td>
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<tr>
<td>30</td>
<td>Amendment to section 115A w.r.t Royalty &amp; FTS</td>
<td>115A</td>
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<tr>
<td>31</td>
<td>Book Profit under section 115JB (Both Loss &amp; UAD)</td>
<td>115JB</td>
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<tr>
<td>32</td>
<td>Tax on income distributed by way of dividend by a unit of International Financial Services Centre</td>
<td>115-O</td>
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<td>33</td>
<td>Tax on income distributed by way of buy-back of Listed shares</td>
<td>115QA</td>
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<td>115R</td>
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<td>35</td>
<td>Investment Fund (AIF I &amp; II) &amp; its Unit Holders</td>
<td>115UB</td>
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<tr>
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<td>139(1)</td>
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<tr>
<td>37</td>
<td>Amendment w.r.t Interpretation of Gross Total Income u/s 139(1)</td>
<td>139(1)</td>
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<tr>
<td>38</td>
<td>Provision of credit of relief provided under section 89</td>
<td>140A, 143, 234A, 234B and 234C</td>
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<tr>
<td>39</td>
<td>TDS on Non-exempt portion of Life Insurance pay-out on Net Basis</td>
<td>194DA</td>
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<tr>
<td>40</td>
<td>Definition of the term “Consideration”</td>
<td>194-1A</td>
</tr>
<tr>
<td>41</td>
<td>TDS on certain payments by Individual/HUF</td>
<td>194M</td>
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<tr>
<td>42</td>
<td>TDS on payment of certain amounts in Cash</td>
<td>194N</td>
</tr>
<tr>
<td>43</td>
<td>Online filing of application seeking determination of tax to be deducted at source on payment to non residents</td>
<td>195(2)</td>
</tr>
<tr>
<td>44</td>
<td>Amendment to section 197</td>
<td>197</td>
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<tr>
<td>45</td>
<td>Recovery of tax in pursuance of agreements with Foreign Countries</td>
<td>228A</td>
</tr>
<tr>
<td>46</td>
<td>Mandating Acceptance of payments through prescribed Electronic modes</td>
<td>269SU</td>
</tr>
<tr>
<td>47</td>
<td>Provisions relating to Under-Reporting of Income</td>
<td>270A</td>
</tr>
<tr>
<td>48</td>
<td>Amendment to section 271FAA</td>
<td>271FAA</td>
</tr>
<tr>
<td>49</td>
<td>Amendment to section 272B</td>
<td>272B</td>
</tr>
<tr>
<td>50</td>
<td>Rationalisation of the provisions of section 276CC</td>
<td>276CC</td>
</tr>
<tr>
<td>51</td>
<td>Standard deduction to Salaried Employees</td>
<td>16(ia)</td>
</tr>
<tr>
<td>52</td>
<td>Notional rent on Second Self-occupied property exempt from tax</td>
<td>23 &amp; 24</td>
</tr>
<tr>
<td>53</td>
<td>No Notional income up to 2 years for house property held</td>
<td>23(5)</td>
</tr>
<tr>
<td></td>
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<tr>
<td><strong>as Stock-in-Trade</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>54</strong></td>
<td>Exemption under section 54 extended to purchase/construction of two residential houses</td>
<td></td>
</tr>
<tr>
<td><strong>55</strong></td>
<td>Amendment to Sec 80-IBA</td>
<td></td>
</tr>
<tr>
<td><strong>56</strong></td>
<td>Increase in threshold limit for TDS from interest other than interest on Securities</td>
<td></td>
</tr>
<tr>
<td><strong>57</strong></td>
<td>Increase in threshold limit for TDS from rent under section 194-I</td>
<td></td>
</tr>
<tr>
<td><strong>58</strong></td>
<td>Tax Rates</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Finance Act 2019</strong></td>
<td></td>
</tr>
</tbody>
</table>

**CA AARISH KHAN**
PART A- EFFECTED BY THE FINANCE ACT (NO. 2) 2019

AMENDMENT NO -1
AMENDMENT TO SECTION 2(19AA)
Section 2(19AA) provides for the definition of the expression “demerger for the purpose of providing tax neutrality where assets and liabilities of an undertaking are transferred pursuant to the demerger. One of the existing conditions for tax-neutral demergers is that the resulting company should record the property and the liabilities of the undertaking at the value appearing in the books of account of the demerged company.

AMENDMENT - Indian Accounting Standards (Ind-AS) compliant companies are required to record the property and the liabilities of the undertaking at a value different from the book value of the demerged company. In order to accommodate such companies, section 2(19AA) has been amended with effect from the assessment year 2020-21. The amended provisions provide that the requirement of recording property and liabilities at book value by the resulting company shall not be applicable in a case where the property and liabilities of the undertakings received by it, are recorded at a value different from the value appearing in the books of account of the demerged company immediately before the demerger in compliance of the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015.

AMENDMENT NO -2
DEEMED ACCRUAL OF GIFT OF MONEY TO A NON -RESIDENT/FOREIGN COMPANY [Sec 9(1)(viii)]
A person (who is non-resident in India) is taxable in India in respect of income that accrues or arises in India or is received in India or is deemed to accrue or arise in India or is deemed to be received in India. A gift of money is chargeable to tax in the hands of recipient, except for certain exceptions provided in section 56(2)(x).

AMENDMENT - In a few cases, gift received by a non-resident/ foreign company from a resident person, is not taxable in India [even if it is not covered by exceptions specified in section 56(2)(x)]. There is no deeming provision under section 9 for this purpose. To plug in this loophole, clause(viii) has been inserted in section 9(1) with effect from the assessment year 2020-21. This clause is applicable if the following conditions are satisfied

1. Payer is resident in India. Payer may be resident and ordinarily resident in India or resident but not ordinarily resident in India. Payer may be an individual, HUF, AOP, BOI, artificial juridical person, firm, LLP, company or any other person.
2. Recipient is non-resident/foreign company.
3. A sum of money is received by non-resident/ foreign company on or after July 5, 2019.
4. Income arises outside India. The transaction is not covered by any of the exceptions specified by section 56(2)(x).
If these conditions are satisfied, money received by a non-resident/foreign company, shall be deemed to accrue or arise in India.

**Illustration:**
X is resident in India. He transfers the following assets to his friend Y (a non-resident Indian or foreign citizen currently located in USA) or to Y Ltd. (a foreign company) –

1. Gift of Rs. 9 lakhs by NEFT transfer from X's bank account (SBI, Mumbai) to Y's bank account in California.
2. Gift of Rs. 10 lakhs to Y (this money is gifted to Y in India by an account-payee cheque when Y visited India on a short trip).
3. Gift of Rs. 11 lakhs to Y (X has a bank account in Citibank, New York. Permission of RBI has taken for this purpose. This gift is transferred from Citibank, New York account of X to the account of Y in Deutsche Bank, New Jersey).
4. Gift of house property situated in Pune (stamp duty value: Rs. 45 lakh).
5. Gift of house property situated in New Jersey (market value: Rs. 2.70 crore).
6. Shares in Reliance Industries Ltd. (market value as per stock exchange quotation: Rs. 20 lakh).
7. Shares in a US company, not having any tangible/intangible assets in India (market value: Rs. 18 lakh).
8. Shares in Malaysian company (net worth of the company: Rs. 900 crore, more than 95 per cent assets located in India) (market value of shares gifted: Rs. 10.5 crore).
9. Jewellery (market value: Rs. 30 lakh) (it is given as gift to Y when he visited India).
10. Diamonds (market value: Rs. 10 lakh) (given as gift outside India from X’s locker in a foreign bank).
11. Tagore painting (market value: Rs. 6 crore) (it is given as gift to Y when he visited India).
12. Raja Ravi Verma painting (market value: Rs. 2 crore) (taken from India by X when he visited USA and given as a gift on birthday of Y in California).
13. Computer and car (market value: Rs. 8 lakh) (given as gift to Y when he visited India).
14. Gift of Rs. 11 lakhs by electronic transfer from Indian bank account of X to Y’s bank account in USA (gift given on the occasion of marriage of Y).
15. Transfer of a plot of land in Nagpur to Y (stamp duty value: Rs. 62.8 lakh, sale consideration: Rs.60 lakh).

In these cases, amount taxable in India in the hands of Y will be as follows -

<table>
<thead>
<tr>
<th>Assets</th>
<th>If transfer takes place before July 5, 2019</th>
<th>If transfer takes place on or after July 5, 2019</th>
<th>Sections</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gift of Rs. 9 lakhs by way of NEFT to foreign bank</td>
<td>Not taxable</td>
<td>Taxable</td>
<td>9(1)(viii), 56(2)(x)</td>
</tr>
<tr>
<td>Gift of Rs. 10 lakhs in India</td>
<td>Taxable</td>
<td>Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Gift of Rs. 11 lakhs by bank transfer in New Jersey</td>
<td>Not taxable</td>
<td>Taxable</td>
<td>9(1)(viii), 56(2)(x)</td>
</tr>
<tr>
<td>Description</td>
<td>Taxable Status</td>
<td>Taxable Status</td>
<td>Section</td>
</tr>
<tr>
<td>-----------------------------------------</td>
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</tr>
<tr>
<td>Pune property</td>
<td>Taxable</td>
<td>Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>New Jersey property</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5</td>
</tr>
<tr>
<td>Shares in Reliance</td>
<td>Taxable</td>
<td>Taxable</td>
<td>9(1)(i), 56(2)(x)</td>
</tr>
<tr>
<td>Shares in US company</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>9(1)(i), 56(2)(x)</td>
</tr>
<tr>
<td>Shares in a Malaysian company</td>
<td>Taxable</td>
<td>Taxable</td>
<td>9(1)(i), 56(2)(x)</td>
</tr>
<tr>
<td>Jewellery</td>
<td>Taxable</td>
<td>Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Diamonds</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Tagore painting</td>
<td>Taxable</td>
<td>Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Raja Ravi Verma painting</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Computer and car</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Marriage gift</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>Transfer of Nagpur land (stamp duty</td>
<td>Not Taxable</td>
<td>Not Taxable</td>
<td>5,56(2)(x)</td>
</tr>
<tr>
<td>value does not exceed 10% of sale</td>
<td></td>
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<td></td>
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<tr>
<td>consideration)</td>
<td></td>
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</tbody>
</table>

Subject to provisions of relevant Double Taxation Avoidance agreement.

**AMENDMENT NO -3**

**AMENDMENT TO SECTION 9A**

In order to facilitate location of fund managers of off-shore Funds in India, section 9A provides a specific tax regime for this purpose with the following objectives -

a. the tax liability in respect of income arising to the Fund from investment in India would be neutral to the fact as to whether the investment is made directly by the fund or through engagement of Fund manager located in India; and

b. that income of the fund from the investments outside India would not be taxable in India solely on the basis that the Fund management activity in respect of such investments have been undertaken through a fund manager located in India.

In the case of an "eligible investment fund", the fund management activity carried out through an "eligible fund manager" acting on behalf of such fund, shall not constitute business connection in India of the said fund. Further, an "eligible investment fund" shall not be said to be resident in India merely because the "eligible fund manager" undertaking fund management activities on its behalf, is located in India.

These benefits of section 9A are available subject to the conditions provided in sub-section (3)/(4)/(5) of the said section. These provisions, inter-alia, are related to residence of fund, corpus, size, investor broad basing, investment diversification and payment of remuneration to fund manager at arm's length.

**AMENDMENT** - Section 9A(3)(j) provides that the monthly average of the corpus of the fund shall not be less than Rs. 100 crore. Where the fund has been established or incorporated in the previous year, the corpus of fund shall not be less than Rs. 100 crore at the end of such previous year. This condition has been amended with effect from the assessment year 2019-20 to provide that where the fund has been established or incorporated in the previous year, the fund shall be required to fulfil the condition of maintaining the
Corpus of Rs. 100 crore within a period of 6 months from the last day of the month of its establishment or incorporation, or at the end of such previous year, whichever is later. Further, section 9A(3)(m) provides that the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the arm's length price of the said activity. This condition has been amended to provide that the remuneration paid by the fund to an eligible fund manager in respect of fund management activity undertaken by him on its behalf is not less than the amount calculated in such manner as may be prescribed (instead of the arm's length price of the said activity).

AMENDMENT NO -4
EXEMPTION OF INTEREST INCOME OF RUPEE DENOMINATED BONDS
[SEC. 10(4C)]
Clause (4C) has been inserted in section 10 with effect from the assessment year 2019-20. It is applicable if the following conditions are satisfied -
1. Interest is payable to a non-resident or a foreign company.
2. It is payable by an Indian company or a business trust.
3. It is payable in respect of money borrowed from a source outside India by way of issue of rupee denominated bonds [as referred to in section 194LC(2)(ia)].
4. The aforesaid bonds are issued during September 17, 2018 and March 31, 2019.
If these conditions are satisfied, interest income will be exempt under section 10(4C)

AMENDMENT NO -5
EXEMPTION OF CERTAIN INCOME RECEIVED BY A SPECIFIED FUND
[SEC. 10(4D)]
Clause (4D) has been inserted with effect from the assessment year 2020-21. It is applicable if the following conditions are satisfied –
1. Income is accrued or arises to or received by a specified fund. For this purpose, "specified fund" means a fund which satisfies the following conditions -
   - It is a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate.
   - It has a certificate of registration as a Category III Alternative Investment Fund and is regulated under SEBI (Alternative Investment Fund) Regulations, 2012.
   - It is located in any International Financial Services Centre.
   - All units of fund are held by non-residents.
2. Income arises as a result of transfer of capital asset referred to in section 47(viia).
3. Income arises as a result of transfer of a capital asset on a recognised foreign exchange located in any International Financial Services Centre.
4. Consideration for transfer is paid or payable in convertible foreign exchange.
If the above conditions are satisfied, exemption will be available under section 10(4D) to the extent such income is accrued or arises or received in respect of units held by non-resident.
**AMENDMENT NO -6**

**AMENDMENT TO SECTION 10(12A)**

Section 10(12A) provides that any payment from the National Pension System (NPS) Trust to an employee on closure of account or his opting out of the pension scheme referred to in section 80CCD, to the extent it does not exceed 40 per cent of the total amount payable to him at the time of closure or at the time of his opting out of the scheme, shall be exempt from tax.

**AMENDMENT** - With a view to enable the pensioner to have more disposable funds, the aforesaid exemption has been increased from 40 per cent to 60 per cent. After this amendment (which is applicable from the assessment year 2020-21) 60 percent of the total amount payable to the person at the time of closure m at the time of his opting out of NPS, shall be exempt from tax under section 10(12A).

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**AMENDMENT NO -7**

**AMENDMENT TO SECTION 10(15)**

With a view to facilitate external borrowing by the units located in International Financial Services Centre, sub-clause (ix) has been inserted in section 10(15) with effect from the assessment year 2021. It is applicable if the following conditions are satisfied –

1. Recipient of interest is a non-resident.
2. Interest is payable by a unit located in an International Financial Service Centre.
3. Interest pertains to money borrowed by it on or after September 1, 2019.

If the aforesaid conditions are satisfied, interest income will be exempt under section 10(15)(ix).

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**AMENDMENT NO -8**

**CONDITIONS GOVERNING EXEMPTION UNDER SECTION 10(23C)(iv)/(v)/(vi)/(via)**

For availing of the exemption under the aforesaid sub-clauses of section 10(23C), the trust/institution is required to make an online application to the prescribed authority. The prescribed authority before approving of the fund/institution, may call for such documents (including audited annual account or information, which it may consider necessary in order to satisfy himself about the genuineness of the activities of the fund or trust or institution.

**AMENDMENT** - The above provisions have been amended with effect from September 1, 2019 on the following lines –

**Enquiry at the time of approval** - Under the amended version, the prescribed authority has been empower, to 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.

**Enquiry at the time of rescinding of notification** - Where a trust or an institution has been granted approval under the aforesaid provisions and, subsequently, it is noticed that the trust or institution has violates requirements of any other law which was material for the purpose of achieving its objects, and the order (or direction or decree), holding that such violation has occurred, has not been disputed (or has attained finality), the prescribed authority/Central
Government may, rescind the notification or withdraw the approval and forward a copy of the order rescinding the notification or withdrawing the approval to Such fund or institution or trust or university, etc., and to the Assessing Officer.

**AMENDMENT NO -9**

**AMENDMENT TO SECTION 10(34A)**

Any income arising to a shareholder (on account of buy-back of shares) is exempt from tax under section 10(34A). However, tax is payable by the company (which buys-back its own shares) under section 115QA. These two provisions are applicable only in the case of buy-back of unlisted shares.

**AMENDMENT -** The aforesaid provisions will be applicable (on or after July 5, 2019) even in the case of buy-back of listed shares. Consequently, in the case of buy-back of shares (listed or unlisted) on or after July 5, 2019 -

a. income of shareholder will be exempt under section 10(34A); and

b. the company (with buys-back its own shares), will be liable for tax on distributed income under section 115QA.

**Note:** Further if the public announcement of Buy Back of Listed Shares is made before 5th July then the new amended provision shall not apply, i.e. Sec 115QA and Sec 10(34A) shall not apply. *(Amendment made by Ordinance on 20th September 2019)*

**AMENDMENT NO -10**

**CANCELLATION OF REGISTRATION OF CHARITABLE TRUST/INSTITUTION [SEC. 12AA]**

Section 12AA prescribes for manner of granting registration in case of trust or institution for the purpose of availing of exemption under section 11. Further, section 12AA provides procedure for cancellation of registration on the basis of the following two grounds -

- CIT/PCIT is satisfied that activities of trust or institute are not genuine or are not being carried out in accordance with its objects; or

- it is noticed that the activities of trust/institute are being carried out in a manner that either whole or any part of its income would cease to be exempt {Sec 13(1)}


**AMENDMENT -** To supersede the aforesaid rulings, section 12AA has been amended with effect from September 1, 2019. The amended provisions provide the following-

**Enquiry at the time of registration -** At the time of granting the registration to a trust or institution, the CIT/PCIT 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.

**Violation requirement for cancellation** - Where a trust or an institution has been granted registration under section 12AA(1)(b) 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 for direction or decree, holding that such violation has occurred, has not been disputed (or has attained finality), CIT/PCIT may, by an order in writing, cancel the registration of such trust or institution after affording a reasonable opportunity of being heard.

### AMENDMENT NO -11

**PRESCRIPTION OF ELECTRONIC MODE OF PAYMENT [SEC 13A]**

To claim exemption under section 13A, a political party is required to receive donation (exceeding Rs. 2,000) only through an account-payee cheque/draft or using the electronic clearing system through a bank account.

**AMENDMENT TO SECTION 13A** - In order to encourage other electronic modes of payment, section 13A has been amended (with effect from the assessment year 2020-21) so as to include **such other electronic mode as may be prescribed**, in addition to the already existing permissible modes of payment in the form of an account-payee cheque or an account-payee bank draft or the electronic clearing system through a bank account.

**AMENDMENT TO OTHER SECTIONS** - There are several provisions in other sections [list given in the Table below] which prohibit cash transactions and allow/encourage payment or receipt only through account-payee cheque, account-payee draft or electronic clearing system through a bank account. To promote other electronic modes of payment, identical modifications have been made in the scheme of these sections so as to include such other electronic mode as may be prescribed, in addition to the already existing permissible modes of payment in the form of an account-payee cheque or an account-payee bank draft or the electronic clearing system through a bank account. A list of similar amendment in other sections is as follows –

<table>
<thead>
<tr>
<th>Section</th>
<th>Amount in excess of which payment / receipt is required by an account-payee cheque/draft/electronic clearing system through a bank</th>
<th>Other electronic modes (as maybe prescribed) will be applicable from</th>
</tr>
</thead>
<tbody>
<tr>
<td>35AD: Expenditure of capital nature</td>
<td>Rs. 10,000</td>
<td>Assessment year 2020-21</td>
</tr>
<tr>
<td>40A(3)/(3A): Any business expenditure</td>
<td>Rs. 10,000</td>
<td>Assessment year 2020-21</td>
</tr>
<tr>
<td>43(1): Actual cost</td>
<td>Rs. 10,000</td>
<td>Assessment year 2020-21</td>
</tr>
<tr>
<td>43CA: Consideration for transfer</td>
<td>Full consideration or part thereof</td>
<td>Assessment year 2020-21</td>
</tr>
</tbody>
</table>
AMENDMENT NO -12

DISALLOWANCE OF BUSINESS EXPENDITURE ON ACCOUNT OF NON-DEDUCTION OF TAX ON PAYMENT TO NON-RESIDENT PAYEE [Sec. 40(a)(i)]

In case of payment /credit to a non-resident/foreign company or payment/ credit to a person outside India, tax deduction provisions are applicable, if the following conditions are satisfied –

a. the amount paid/payable is interest, royally, technical fees or any other sum (but not salary), and

b. in the hands of the recipient, it is chargeable to tax in India.

Disallowance under section 40(a)(i) is applicable in the following two cases -

Case 1 - Tax is deductible from aforesaid payment/credit to a non-resident /foreign company, but it is not deducted.

Case 2 - Tax is deductible (and it is so deducted) on the aforesaid payment/credit but the tax deducted is not deposited by the deductor till the due date of submission of his return of income.

In the above two cases, 100 per cent of payment credit is disallowed under section 40(a)(i). Consequently no deduction is available in the year of payment /credit. If, however, tax is deducted in a subsequent year, expenditure [i.e., amount disallowed under section 40(a)(i)] will be allowed as deduction in the year in which TDS is deposited by the deductor with the Government.

Amendment to section 40(a)(i) - The above provisions have been amended with effect from the assessment year 2020-21. Under the amended provisions, a relief is given in Case 1 (and not in Case 2). This relief will be available if the following conditions are satisfied -

1. Tax is deductible, on the aforesaid payments but it is not deducted (wholly or partly) by the payer (i.e., Case 1).

2. The payer is not deemed to be an assessee-in-default under the first proviso to section 201(1).

If the above conditions are satisfied, then for the purpose of section 40(a)(i) it shall be deemed that the payer has deducted and paid the tax on such amount on the date of the furnishing of return of income by the recipient.
Amendment to section 201 - Currently, relief is available under section 201 in the case of TDS default when recipient is resident. To accommodate the aforesaid modification in the scheme of section 40(a)(i), section 201 has been simultaneously amended with effect from the assessment year 2020-21.

After the amendment, by virtue of first proviso to section 201(1), the payer is not deemed to be an assessee-in-default if -

a. the recipient has furnished his return of income under section 139;

b. the recipient has taken into account the above income in such return of income:

c. the payer has paid the tax due on the income declared in such return of income, and

d. the payer furnishes a certificate to this effect from a chartered accountant in a prescribed form.

AMENDMENT NO -13

SECTION 43B EXTENDED TO NON-BANKING FINANCE COMPANIES

Section 43B is applicable only if the taxpayer maintains books of account on the basis of mercantile system of accounting. Provisions of section 43B have been amended (with effect from the assessment year 2020-21) by inserting clause (da). After this amendment, the scope of section 43B has been extended to cover interest payable on loan or borrowing from -

a. "systemically important non-deposit taking non-banking financial company (NBFC)";

or

b. “deposit taking [NBFC]”.

Impact of amendment - Outcome of the amendment is as follows –

1. Deduction on payment basis - Interest payable on loan or borrowing to the aforesaid entities will be deductible on payment basis in the year in which interest is actually paid.

2. When deductible on accrual basis - If, however, interest is paid after the end of the previous year but on or before the due date of submission of return of income, interest will be deductible on “accrual” basis in the year in which it becomes due for payment.

3. Double deduction not allowed - Explanation 3AA has been inserted to provide that where a deduction in respect of aforesaid interest is allowed as deduction in any earlier year (i.e., prior to the assessment year 2020-21) on accrual basis, such interest is not again deductible on payment basis in the year in which the payment is made.

4. Conversion of interest into loan - Explanation 3CA has been inserted to provide that if an outstanding interest is converted into loan, conversion will not be treated as payment of interest.

5. Systemically important non-deposit taking NBFC – It means a non-banking financial company (NBFC) which is not accepting or holding public deposits and is having total assets of not less than Rs. 500 crores as per the last audited balance sheet.
and is registered with RBI under the provisions of the Reserve Bank of India Act.

6. **Deposit taking NBFC** - “Deposit taking NBFC” means a non-banking financial company which is accepting or holding public deposits and is registered with RBI under the provisions of the Reserve Bank of India Act.

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**AMENDMENT NO -14**

**INCENTIVES TO NON-BANKING FINANCE COMPANIES [SEC. 43D]**

*Amendment* - Section 43D has been amended so as to insert reference of a "deposit-taking NBFC" or a "systemically important non-deposit taking NBFC" in it in order to extend the benefit of the provision of this section to the said entities.

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**AMENDMENT NO -15**

**AMENDMENT TO SECTION 47(viia)**

Section 47 provides that any transfer of a capital asset, being bonds or Global Depository Receipts [referred to in section 115AC(1)] or rupee denominated bond of an Indian company or derivative, made by a non-resident shall not be regarded as transfer.

*AMENDMENT* - The above provision of section 47(viia) has been amended (with effect from the assessment year 2020-21) to provide that transfer of securities (as may be notified by the Central Government) shall not be regarded as transfer in the hands of a non-resident.

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**AMENDMENT NO -16**

**AMENDMENT TO SECTIONS 50CA AND 56(2)(x)**

Shares received by a person for inadequate consideration (or without consideration) are chargeable to tax in the hands of recipient under section 56(2)(x) to the extent of inadequacy of consideration (or absence of consideration), if a few conditions are satisfied (this section is also applicable for receipt of money or property without consideration or for inadequate consideration). Conversely, section 50CA provided that if unquoted shares are transferred for inadequate consideration, capital gain is calculated in the hand of transferor by taking fair market value of shares as "full value of consideration".

**FAIR MARKET VALUE** - For these provisions, the Fair market value is determined based on the prescribed method. Determination of fair market value based on the prescribed rules may result into genuine hardships in certain cases where the consideration for transfer of shares is approved by certain authorities and the person transferring the share has no control over such determination.

**EXEMPTION** - Currently, the provisions of section 56(2)(x) are not applicable to certain specified transitions. However, no such exemption is available under section 50CA. For instance, if X transfers shares (fair market value: Rs. 10 lakh) to Y for Rs. 4 lakh, Rs. 6 lakh is taxable as income of Y (i.e., recipient) under section 56(2)(x). Capital gain of X (i.e., transferor) will be calculated by taking Rs. 10 lakh as full value of consideration under
section 50C. If X and Y are relatives, section 56(2)(x) is not applicable [there are a few more such cases where section 56(2)(x) is not applicable]. However, no such exemption is available under section 50CA.

**AMENDMENT** - In order to provide relief to such types of transactions (as given above) from the applicability of sections 56(2)(x) and 50CA, these sections have been amended with effect from the assessment year 2020-21. The amended provisions empower the Board to prescribe transactions undertaken by certain class of persons to whom the provisions of sections 56(2)(x) and 50CA shall not be applicable.

**AMENDMENT NO -17**

**AMENDMENT TO SECTION 54GB**

The existing provisions of the section 54GB, inter alia, provide for rollover benefit in respect of capital gain arising from the transfer of a residential property owned by an individual or a HUF. To be able to get benefit of this provision, the assessee is required to utilise the net consideration for subscription in the equity shares of an eligible company (i.e., a company which owns an eligible start-up) before the due date of filing of the return of income. The assessee is required to have more than 50 per cent share capital (or more than 50 per cent voting rights) after the subscription in shares in the eligible company. The said section, inter alia, puts restriction on transfer of assets acquired by the company for 5 years from the date of acquisition. Currently, the benefit of this section is only available for investment in the equity shares of eligible start-up and that period ends on March 31, 2019 (in other words, at present no benefit is available for residential property transferred after March 31, 2019).

**AMENDMENT** - The following amendments have been made to the scheme of section 54GB with effect from the assessment year 2020-21 -

1. The sunset date of transfer of residential property (for investment in eligible start-up company) has been extended from March 31, 2019 to March 31, 2021.
2. The condition of minimum shareholding of 50 per cent of share capital or voting rights has been reduced to 25 per cent.
3. The condition restricting transfer of new asset (being computer or computer software) has been relaxed from the current 5 years to 3 years.

**AMENDMENT NO -18**

**AMENDMENT TO SECTION 56(2)(viib)**

Section 56(2)(viib) is applicable if a closely held company (i.e., a company in which the public are not substantially interested) receives consideration for issue of shares at a premium from resident persons. The aggregate consideration received for such shares (as exceeds the fair market value of shares) shall be chargeable to tax in the hands of recipient company.

**AMENDMENT TO CATEGORY II AIF** - Exemption from this provision has been provided for the consideration for issue of shares received by a venture capital undertaking from a venture capital company or a venture capital fund or by a company from a class or
classes of persons as may be notified by the Central Government in this behalf (i.e., a start-up company). Currently, the benefit of exemption is available to Category I Alternate Investment Fund (AIF). With a view to facilitate venture capital undertakings to receive funds from Category II AIF, section 56(2)(viib) has been amended (with effect from the assessment year 2020-21). After this amendment, the benefit of exemption will be available to fund received by venture capital undertakings from Category I or Category II AIF.

**AMENDMENT TO COMPLIANCE WITH THE NOTIFICATION OF EXEMPTION ISSUED UNDER SECTION 56(2)(viib)**

Under section 56(2)(viib), the Central Government is empowered to notify that the provisions of this section shall not be applicable to consideration received by a notified company. For the purpose of section 56(2)(viib), exemption is available to a “startup” if a few conditions, given by Notifications specified in the notification are satisfied. The scheme of section 56(2)(viib) has been amended (with effect from the assessment year 2020-21) to provide that in case of failure to comply with the aforesaid conditions, the consideration received for issue of shares (which exceeds the fair market value of such shares), shall be deemed to be the income of the company chargeable to tax for the previous year in which the failure to comply with any of the aforesaid conditions has taken place. Further, it shall be deemed that the company has under-reported the said income in consequence of the misreporting referred to in section 270A(8)(9) for the said previous year.

**AMENDMENT NO -19 AMENDMENT TO SECTION 79**

Section 79 regulates carry forward and set off of losses in case of a closely held company (i.e., not being a company in which the public are substantially interested). Clause (a) of section 79 applies to all such companies (except an eligible start-up as referred to in section 80-IAC), while clause (b) applies only to such eligible start-up. These provisions are as follows –

**Clause (a) of section 79: Loss of a closely held company**

Where a change in shareholding has taken place during the previous year in the case of a closely held company, earlier year losses shall be carried forward and set off against the income of the current previous year, only if the persons beneficially holding 51 per cent of the voting power on the following two dates are same -

a. on the last day of the previous year in which the loss was incurred;

b. on the last day of the previous year in which the company wants to set off the brought forward loss.

**Clause (b) of section 79 : Loss of a start-up**

In case of a closely held start-up (as referred to in section 80-IAC), brought forward loss can be set off against current year’s income only if all the shareholders of the company (who held shares carrying voting power on the last day of the previous year in which the loss was incurred), continue to hold shares on the last day of the current year (i.e., the year in which the company wants to set off the brought forward loss). This restriction is applicable only for such loss which is incurred during the period of 7 years beginning from
the year in which such company is incorporated.

**Amendment for eligible start-up**
Currently, a closely held company (which owns an eligible start-up) cannot carry forward and setoff loss under section 79(a).
To further facilitate ease of doing business in the case of an eligible start-up, the scheme of section 79 has been modified (with effect from the assessment year 2020-21) so as to provide that brought forward loss of a closely held eligible start-up shall be carried forward and set off against the income of current previous year on satisfaction of either of the two conditions stipulated currently under clause (a) or clause(b) as given above.
For other closely held companies, there would be no change, and loss incurred in any year prior to the previous year shall be carried forward and set off only on satisfaction of condition currently provided at clause (a).

**AMENDMENT NO -20**

**AMENDMENT TO RESOLUTION OF DISTRESSED COMPANIES –**
The existing provisions of section 79 are not applicable to a company where any change in shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016 (IBC). Thus, loss in such cases can be carried forward and set off even if there is change in voting power or shareholding. This benefit has been extended to certain companies (with effect from the assessment year 2020-21). Thus, it has been provided in newly substituted section 79 that the provision of this section shall not apply to those companies, and their subsidiary and the subsidiary of such subsidiary, where -

- the National Company Law Tribunal (NCLT) on a petition moved by the Central Government under section 241 of the Companies Act has suspended the Board of Directors of such company and has appointed new directors, who are nominated by the Central Government, under section 242 of the Companies Act; and

- a change in shareholding of such company, and its subsidiaries and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by NCLT under section 242 of the Companies Act.

**AMENDMENT NO -21**

**AMENDMENT TO SECTION 80C**
Section 80C has been amended with effect from the assessment year 2020-21. The amended version is applicable if the following conditions are satisfied –

1. The taxpayer is an employee of the Central Government.
2. He contributes to his NPS (Tier-II) account.
3. Such contribution is for a fixed period of not less than 3 years.
4. Such contribution is in accordance with the scheme as may be notified by the Central Government for this purpose.
If these conditions are satisfied, the aforesaid contribution will be deductible within the overall limit of Rs. 1,50,000 under section 80C.
AMENDMENT NO -22
AMENDMENT TO SECTION 80CCD

The Union Cabinet in its meeting on December 6, 2018 has approved enhancement of the mandatory contribution by the Central Government for its employees covered under NPS Tier-1 from 10 per cent to 14 per cent (minimum contribution by employees to remain 10 per cent). To avoid any adverse tax treatment in the hands of employees, section 80CCD(2) has been amended with effect from the assessment year 2020-21. The impact of amended version is as follows —

1. Contribution by the Central Government (or by any other employer) to NPS is first included under the head “Salaries” in hands of employees under section 15, read with section 17(1) (viii). After the above Union Cabinet’s decision, the Central Government will continue 14 per cent of salary for its employees. To put it differently, 14 per cent contribution by the Central Government will be included in the salary of concerned employee under section 15, read with section 17(1) (viii).

2. Employer’s contribution to NPS is deductible under section 80CCD(2) (the ceiling limit of Rs. 1,50,000 is not applicable). However, amount deductible under section 80CCD(2) on account of employer's contribution to NPS cannot exceed 10 per cent of “salary” of the concerned employee. This limit of 10 per cent has been extended to 14 per cent in the case of Central Government employees (with effect from the assessment year 2020-21). There is no amendment pertaining to non-Government employees.

AMENDMENT NO -23
DEDUCTION IN RESPECT OF INTEREST ON LOAN TAKEN FOR CERTAIN HOUSE PROPERTY [SEC 80EEA]

Section 80EEA has been inserted with effect from the assessment year 2020-21. Deduction under this section is available if the following conditions are satisfied –

1. The assessee is an individual.
2. He is not eligible to claim any deduction under section 80EE.
3. He has taken a loan for the purpose of acquisition of residential house property.
4. The loan is sanctioned by a financial institution (i.e., a bank or banking institution or a housing finance company) during April 1, 2019 and March 31, 2020.
5. The stamp duty value of the residential house property does not exceed Rs. 45 lakhs.
6. The assessee does not own any residential house property on the date of sanction of loan.

AMOUNT OF DEDUCTION - If the above conditions are satisfied, the assessee can claim deduction under section 80EEA. Deduction is available in respect of interest payable on the above loan or Rs. 1,50,000, whichever is less. Deduction is available for the assessment year 2020-21 and subsequent assessment years.

SAME INTEREST IS NOT DEDUCTIBLE TWICE - If interest is claimed as deduction under section 80EEA, such interest (or such portion of interest) is not again deductible under section 24(b) or under any other provision of the Act for the same or any other assessment year.
AMENDMENT NO -24
DEDUCTION IN RESPECT OF INTEREST ON LOAN TAKEN FOR PURCHASE OF ELECTRIC VEHICLE [SEC 80EEB]

Section 80EEB has been inserted from the assessment year 2020-21. Under this section, deduction is available if the following conditions are satisfied –

1. The assessee is an individual.
2. He has taken a loan for the purpose of purchase of an electric vehicle. For this purpose, "electric vehicle" means -
   - a vehicle which is powered "exclusively" by an electric motor whose traction energy is supplied exclusively by traction batter) installed in the vehicle, and
   - it has such electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electrical energy.
As the word “exclusive” is used, interest on loan taken for purchase of a “hybrid car” (which derives some of its power from Conventional engine) is not eligible for deduction.
3. Loan is taken from a financial institution (i.e., a bank or any deposit taking NBFC or a systematically important non-deposit taking NBFC).
4. Loan is sanctioned during April 1, 2019 and March 31, 2023.

AMOUNT OF DEDUCTION – If the above conditions are satisfied, the assessee can claim deduction under section 80EEB. Deduction is available in respect of interest payable on the above loan or Rs. 1,50,000, whichever is less. Deduction is available for the assessment year 2020-21 and subsequent assessment years.

SAME INTEREST IS NOT DEDUCTIBLE TWICE – If interest is claimed as deduction under section 80BEB, such interest (or such portion of interest) is not again deductible under any other provision of the Act for the same or any other assessment year.

AMENDMENT NO -25
TAX INCENTIVE FOR CONSTRUCTION OF AFFORDABLE HOUSING PROJECTS [SEC. 80-IBA]

The existing provisions of section 80-IBA, inter alia, provide that where the gross total income of an assessee includes any profits and gains derived from the business of developing and building housing projects, there shall subject to certain conditions, be allowed, a deduction of an amount equal to 100 per cent of the profits and gains derived from such business.

EXISTING CONDITIONS PERTAINING TO PLOT SIZE, AREA OF RESIDENTIAL UNIT, ETC. –

Under the existing provisions of section 80-IBA, deduction is available only if the size of the plot, area of residential unit and utilization of FAR, should not exceed the following –
<table>
<thead>
<tr>
<th>Location of project</th>
<th>Area of plot of land on which project is situated</th>
<th>Carpet area of residential units comprised in the housing project</th>
<th>Utilization of permissible FAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project is located within the cities of Chennai, Delhi, Kolkata or Mumbai</td>
<td>Not less than 1,000 square metres</td>
<td>Not to exceed 30 square metres</td>
<td>Not less than 90%</td>
</tr>
<tr>
<td>Project is located in any other place</td>
<td>Not less than 2,000 square metres</td>
<td>Not to exceed 60 square metres</td>
<td>Not less than 80%</td>
</tr>
</tbody>
</table>

ALIGNMENT OF THE DEFINITION OF “AFFORDABLE HOUSING” WITH GST ACT –

The above parameters of “affordable housing” under section 80-IBA are different from “affordable housing” under GST Act. To align the aforesaid parameters with GST regulations, section 80-IBA has been amended (with effect from the assessment year 2020-21). The amended provisions (which are applicable for the projects approved on or after September 1, 2019) are as follows -

Size of the plot, area of residential unit, etc. - The size of the plot, area of residential unit and utilization of FAR should not exceed the following -

<table>
<thead>
<tr>
<th>Location of project</th>
<th>Area of plot of land on which project is situated</th>
<th>Carpet area of residential units comprised in the housing project</th>
<th>Utilization of permissible FAR</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project is located within the metropolitan cities of Bengaluru, Chennai, Delhi, NCR (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai Metropolitan Region)</td>
<td>Not less than 1,000 square metres</td>
<td>Not to exceed 60 square metres</td>
<td>Not less than 90%</td>
</tr>
<tr>
<td>Project is located in any other place</td>
<td>Not less than 2,000 square metres</td>
<td>Not to exceed 90 square metres</td>
<td>Not less than 80%</td>
</tr>
</tbody>
</table>

STAMP DUTY VALUE NOT EXCEEDING RS. 45 LAKH

The stamp duty value of a residential unit in the housing Project does not exceed Rs,45 lakh.
AMENDMENT NO -26
AMENDMENT TO SECTION 80LA

Under the existing provisions of section 80LA, deduction is available to –

a. a scheduled bank and having an offshore banking unit in a special economic zone; or
b. a foreign bank and having an offshore banking unit in a special economic zone; or
c. a unit of International Financial Services Centre.

These assesses can claim deductions pertaining to (a) any income from the offshore banking unit in a Special Economic Zone; (b) income from the business referred to in section 6(1) of the Banking Regulation Act, with an undertaking located in Special Economic Zone or any other undertaking which develops, develops and operates or operates and maintains a Special Economic Zone; (c) income from any unit of the International Financial Services Centre from its business for which it has been approved for setting up in such a centre in a Special Economic Zone. The amount of deduction is 100 per cent of the aforesaid income for first 5 years and 50 per cent for next 5 years.

Amendment – Under the amended version (which is applicable from the assessment year 2020-21). Deduction available to a unit of International Financial Services Centre shall be increased to 100 per cent for any 10 consecutive years. The assessee, at his option, may claim the said deduction for any 10 consecutive assessment years out of 15 years beginning with the year in which the necessary permission is obtained.

AMENDMENT NO -27
POWER OF AO IN RESPECT OF MODIFIED RETURN OF INCOME FILED IN PURSUANCE TO SIGNING OF APA [SEC 92CD]

Advance Pricing Agreement (APA) is an agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for a set of transactions over a fixed period of time in future.

The APA offers better assurance on transfer pricing methods and are conducive in providing certainty and unanimity of approach. Sections 92CC and 92CD provide a framework to empower the Board (with the approval of the Central Government) to enter into an APA with any person for determining the arm’s length price (ALP) or specifying the manner in which ALP is to be determined in relation to an international transaction which is to be entered into by that person. The APA is valid for a period, not exceeding 5 previous years, as may be specified therein. These sections also provide for rollback of the APA for 4 years. In order to give effect to the APA section 92CD also provides for mechanism, including filing of modified return of income by the taxpayer and manner of completion of assessments by the Assessing Officer having regard to terms of the APA.

Sub-section (3) of this section deals with a situation where assessment or re-assessment has already been completed, before expiry of the time allowed for filing of modified return. There is a view that due to the use of words "assess or reassess or recomputed", the Assessing Officer may start fresh assessment or reassessment in respect of completed assessments or reassessments of the assessees who have modified their returns of income in accordance with the APA entered into by them, while the intention of the legislature is that Assessing Officer should merely modify the total income consequent to modification of return of income in pursuance of APA.
AMENDMENT - The scheme of section 92CD has been amended to clarify that in cases where assessment or reassessment has already been completed and modified return of income has been filed by the taxpayer, the Assessing Officers shall pass an order modifying the total income of the relevant assessment year (determined in such assessment / reassessment) having regard to and in accordance with the APA. These amendments are applicable with effect from September 1, 2019.

AMENDMENT NO -28
CLARIFICATIONS PERTAINING TO SECONDARY ADJUSTMENT AND OPTION TO ASSESSEE TO MAKE ONETIME PAYMENT [SEC. 92CE]
Section 92CE regulates provisions pertaining to secondary adjustment in international transactions. It was inserted with effect from the assessment year 2018-19. Secondary adjustment under section 92CE is applicable in the following situations -
1. Where a primary adjustment to transfer price has been made suo motu by the assessee in his return of income.
2. Where a primary adjustment to transfer price made by the Assessing Officer has been accepted by the assessee.
3. Where a primary adjustment to transfer price is determined by an APA (advance pricing agreement) entered into by the assessee under section 92CC.
4. Where a primary adjustment to transfer price is made as per the sale harbour rules framed under section 92CB.
5. Where a primary adjustment to transfer price is arising as a result of resolution of an assessment by way of the mutual agreement procedure under DTAA entered into under section 90/90A.

THRESHOLD LIMIT - If the following two conditions are not satisfied, secondary adjustment is not required –
a. the amount of primary adjustment made in the case of an assessee in any previous year does not exceed Rs. 1 crore; and
b. the primary adjustment is made in respect of the assessment year 2016-17 (or any earlier assessment year).

AMENDMENTS (WITH EFFECT FROM THE ASSESSMENT YEAR 2018-19) – The following amendments have been made to the above scheme of secondary adjustment under section 92CE (with effect from the date of insertion of section 92CE, i.e., assessment year 2018-19 onwards) -
Threshold limit - The condition of threshold [i.e., (a) and (b) given above) of Rs. 1 crore and of the primary adjustment made up to assessment year 2016-17, are alternate conditions. However no refund will be granted if already paid because of AND.
Excess money – The assessee shall be required to calculate interest on the excess money or part thereof.

1.126
Repatriation of excess money - The excess money may be repatriated from any of the associated enterprises of the assessee which is not resident in India.

Amendment (applicable with effect from September 1, 2019) - Sub-sections (2A) to (2D) have been inserted in section 92CE with effect from September 1, 2019. These provisions are given below -

Additional income tax – In a case, where the excess money or part thereof has not been repatriated in time, the assessee will have the option to pay additional income-tax at the rate of 18 per cent on such excess money (or part thereof). It will be increased by surcharge at the rate of 12 per cent and health and education cess at the rate of 4 per cent (effective tax rate: 20.9664 per cent). The following points should be noted –

- If the assessee pays the additional income-tax, he will not be required to make secondary adjustment or compute interest from the date of payment of such tax. However, he is required to make secondary adjustment pertaining to interest till the date of payment of additional tax.
- The tax so paid shall be the final payment of tax and no credit shall be allowed in respect of the amount of tax so paid.
- The deduction in respect of the amount on which such tax has been paid, shall not be allowed under any other provision.

E1 X Ltd. is an Indian company. It renders services to Y Inc. (an American company which is an associated enterprise of X Ltd. within the parameters of section 92A), During the previous year 2017-18, X Ltd. charges 8 per cent on cost for providing services to Y Inc. However, X Ltd. would have earned a margin of 11 per cent on cost if similar services were provided to unconnected foreign entities. The Assessing Officer makes transfer pricing adjustments to the tune of 3 per cent which comes to an addition of Rs. 12 crore to the reported income of X Ltd. (date of assessment order: December 20, 2018) The adjustment is accepted by X Ltd.

The addition of Rs. 12 crore is known as primary adjustment. However, the primary adjustment to the income of X Ltd. does not address the benefit obtained by Y Inc. by retaining Rs. 12 crore in cash. Provisions of section 92CE on secondary adjustment seek to target such cash benefit by applying a tax charge on excess benefit in the hands of foreign entity. Under this section, Rs. 12 crore will be considered as a separate transaction as a deemed loan (in the language of section 92CE it is known as "secondary adjustment") given by X Ltd. to Y Inc. This deemed loan would exist for tax purposes only and would not appear in the books of account of X Ltd. Arm's length value of interest on deemed loan will be calculated as per rule 10CB [i.e., where international transaction is de-nominated in Indian rupee : MCLR of SBI (1 year) + 3.25%]. This interest will be taxable in the hands of X Ltd. annually till Rs. 12 crore is repatriated by Y Inc. (of America) to X Ltd. (in India). Tax consequences in this case will be as follows on the assumption that (a) MCLR (1 year) of SBI + 3.25% comes to 11.7%, and (b) Y Inc. has not repatriated Rs. 12 crore to X Ltd. –

Previous year 2018-19 - Dale of final assessment order (no appeal by X Ltd.) is December 20, 2018. Excess money is Rs. 12 crores. Time-limit for repatriation is 90 days from the date of final order (i.e., December 20, 2018 + 90 days, last date for repatriation is March 20,
Deemed interest on Rs. 12 crores will start from March 21, 2019 at the rate of 11.7%. For the previous year ending March 31, 2019, it comes to Rs. 4,23,123 (i.e., amount of secondary adjustment for the previous year 2018-19). X Ltd. will pay income-tax on Rs. 4,23,123 at the applicable rate (i.e., 25% or 30% + applicable surcharge + HEC).

**Previous year 2019-20** - The following calculations are given on the assumption that income of X Ltd. before the aforesaid secondary adjustment is Rs. 2 crores. Tax on secondary adjustment is calculated under two different situations: Situation 1 - X Ltd. does not pay additional income-tax as per section 92CE(2A), Situation 2 - X Ltd. pays additional income-tax on the entire excess money on October 31, 2019 under section 92CE(2A) -

<table>
<thead>
<tr>
<th></th>
<th>Situation 1</th>
<th>Situation 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary adjustment for the previous year 2018-19</td>
<td>12,00,00,000</td>
<td>12,00,00,000</td>
</tr>
<tr>
<td>Add Secondary adjustment for the previous year 2018-19</td>
<td>4,23,123</td>
<td>4,23,123</td>
</tr>
<tr>
<td>Total (a)</td>
<td>12,04,23,123</td>
<td>12,04,23,123</td>
</tr>
</tbody>
</table>

**Secondary adjustment for the previous year 2019-20** -
- In Situation 1 [i.e., interest @ 11.7% on (a) from April 1, 2019 to March 31, 2020] 1,40,89,505
- In Situation 2 [i.e., interest (i.e., 11.7% on (a) from April 1, 2019 to October 31, 2019] - 82,18,878

Other income 2,00,00,000 2,00,00,000

Net income 3,40,89,510 2,82,18,880

Tax @ 30% + SC : 7% + HEC : 4% 1,13,80,440 94,20,590

Additional income-tax under section 92CE(2A) -
Income-tax (18% of Rs. 12,00,00,000) - 2,16,00,000
Add: Surcharge @ 12% (always applicable, even if net income is below Rs. 1 crore) - 25,92,000

Total - 2,41,92,000
Add: Health and education cess @ 4% - 9,67,680
Additional tax under section 92CE(2A) - 2,51,59,680

**Note**: If the aforesaid additional tax is not paid, secondary adjustment for the previous year 2020-21 will be national interest [@ MCLR (1 year) of SBI + 3.25%] on (Rs. 12,04,23,123 + 1,40,89,505).

**AMENDMENT NO -29**

**AMENDMENT TO SECTION 111A**
Section 111A has been amended (with effect from the assessment year 2020-21) so as to provide that “equity-oriented fund” shall have the meaning assigned to it in clause (a) of the Explanation to section 112A.
### AMENDMENT NO.-30
**AMENDMENT TO SECTION 115A**
Section 115A provides the method of calculation of income-tax payable by a non-resident /foreign company where the total income includes any income by way of dividend (other than referred in section 115-O), interest, royalty and fees for technical services; etc. Section 80LA, provides for deduction in respect of certain incomes to a unit located in an International Financial Services Centre (IFSC). However, section 115A(4) prohibits any deduction under Chapter VIA (which includes section 80LA).

In order to ensure that units located in IFSC claim full deduction under section 80LA, the scheme of section 115A has been amended (with effect from the assessment year 2020-21) to provide that the aforesaid provision of section 115A(4) shall not apply to a unit of an IFSC for claiming deduction under section 80LA.

### AMENDMENT NO.-31
**BOOK PROFIT UNDER SECTION 115JB**
Book profit for the purpose of calculation of minimum alternate tax is regulated by Explanation 1 to section 115JB, Clause (iii) of the Explanation provides that in case of a company, against which an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7/9/10 of the Insolvency and Bankruptcy Code, the aggregate amount of unabsorbed depreciation and loss (before depreciation) brought forward shall be allowed to be reduced from the net profit to calculate book profit. This clause has been amended (with effect from the assessment year 2020-21) so as to provide that the aggregate amount of unabsorbed depreciation and loss (excluding depreciation) brought forward shall also be allowed to be reduced from net profit to calculate book profit in case of a company, and its subsidiary and the subsidiary of such subsidiary, where, the National Company Law. Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors who are nominated by the Central Government, under section 242 of the said Act.

**MEANING OF SUBSIDIARY COMPANY** – A company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company.

### AMENDMENT NO.-32
**TAX ON INCOME DISTRIBUTED BY WAY OF DIVIDEND BY A UNIT OF INTERNATIONAL FINANCIAL SERVICES CENTRE [SEC. 115-O(8)]**
Section 115-O(8) provides that no tax on distributed profits shall be chargeable in respect of the total income of a company, being a unit of an International Financial Services Centre (IFSC), deriving income solely in convertible foreign exchange, for any assessment year on any amount declared, distributed or paid by such company, by way of dividends (whether interim or otherwise), on or after April 1, 2017, out of its current income, either in the hands of the company or the person receiving such dividend.

**AMENDMENT** – To facilitate distribution of dividend by companies operating in IFSC, the above provisions of section 115-O(8) have been amended (with effect from September 1, 2019).
2019) to provide that any dividend paid out of accumulated income derived from operations in IFSC, after April 1, 2017 shall also not be liable for tax on distributed profits.

**AMENDMENT NO -33**

**TAX ON INCOME DISTRIBUTED BY WAY OF BUY-BACK OF SHARES [SEC. 115QA]**

Section 115QA provides for the levy of additional income-tax at the rate of 20 per cent (effective rate after surcharge and cess: 23.296 per cent) of the distributed income on account of buy-back of unlisted shares by the company. As additional income-tax has been levied at the level of company, the consequential income arising in the hands of shareholders has been exempted from tax under section 10(34A).

**Anti-abuse provision -** Section 115QA was introduced as an anti-abuse provision to check the practice of unlisted companies resorting to buy-back of shares instead of payment of dividends. This practice of widespread abuse was noted, in the past, amongst unlisted companies where the taxpayers preferred it for tax avoidance, as tax rate for capitals gains was lower than the rate of dividend distribution tax. However, instances of similar tax arbitrage have now come to notice in case of listed shares as well, whereby the listed companies are also indulging in such practice of resorting to buy-back of shares, instead of payment of dividends.

**AMENDMENT -** In order to curb such tax avoidance practices adopted by the listed companies, the scope of existing anti-abuse provision under section 115QA has been extended to all companies (including companies listed on a recognised stock exchange). Thus, any buy-back of shares (on or after July 5, 2019) from a shareholder by a company listed on recognised stock exchange, shall also be covered by the provision of section 115QA. Accordingly, the scope of exemption under section 10(34A) has been extended to shareholders of the listed company on account of buy-back of shares.

**Note:** Further if the public announcement of Buy Back of Listed Shares is made before 5th July then the new amended provision shall not apply, i.e. Sec 115QA and Sec 10(34A) shall not apply. *(Amendment made by Ordinance on 20th September 2019).*

**AMENDMENT NO -34**

**AMENDMENT TO SECTION 115R**

The existing provisions of the section 115R provide that any amount of income distributed by the specified company or a mutual fund to its unitholders shall be chargeable to tax and such specified company or mutual fund shall be liable to pay additional income-tax on such distributed income.

**AMENDMENT -** In order to incentivize relocation of mutual fund in International Financial Services Centre (IFSC), the above provisions of section 115R have been amended with effect from September 1, 2019. The amended version provides that no additional income-tax shall be chargeable under section 115R if the following conditions are satisfied -

1. Income is distributed by "specified mutual fund". "Specified mutual fund" for this purpose is -
   - It is a mutual fund specified under section 10(23D).
1. It is located in any IFSC.
   - All the units are held by non-residents

2. Such income is distributed out of its income derived from transactions made on a recognised stock exchange located in any IFSC and where the consideration for such transaction is paid or payable in convertible foreign exchange.

3. Such income is distributed on or after September 1, 2019.

**AMENDMENT NO -35**
**AMENDMENT TO SECTION 115UB**

Section 115UB, *inter alia*, provides for pass through of income earned by the Category I and II Alternative Investment Fund (AIF), except for business income which is taxed at AIF level. Pass through of profits (other than profit and gains from business) has been allowed to individual investors so as to give them benefit of lower rate of tax, if applicable. Pass through of losses are not provided under the existing regime and are retained at AIF level to be carried forward and set off in accordance with Chapter VI Provisions regulating adjustment of losses have been amended. Legal provision, before and after amendment, is summarised below -

**Adjustment of losses up to the assessment year 2019-20**

If in any year there is a loss at the fund level (either current loss or the loss which remained to be set off), the loss shall not be allowed to be passed through to the investors, but would be carried over at fund level to be set off against income of the next year in accordance with the provisions of Chapter VI.

**Adjustment of losses with effect from the assessment year 2020-21**

From the assessment year 2020-21, section 115UB(2) has been amended to provide that -

- the business loss of the investment fund shall be allowed to be carried forward by the fund and it shall not be passed onto the unit holder;

- the loss (other than business loss) shall also be ignored for the purposes of pass through to its unit holders, if such loss has arisen in respect of a unit which has not been held by the unit holder for a period of at least 12 months;

- the loss (other than business loss) accumulated at the level of investment fund as on March 31, 2019, shall be deemed to be the loss of a unit holder who held the unit on March 31, 2019 in respect of the investments made by him in the investment fund and allowed to be carried forward by him for the remaining period calculated from the year in which the loss had occurred for the first time taking that year as the first year and it shall be set-off by him in accordance with the provisions of Chapter VI;

- the loss so deemed in the hands of unit holders shall not be available to the investment fund for the purposes of Chapter VI.

**AMENDMENT NO -36**
**MANDATORY FURNISHING OF RETURN OF INCOME BY CERTAIN PERSONS**

[SEC. 139]

The following amendments have been made to the provisions of section 139 -

**High value transactions** - Currently, a person (other than a company or a firm) is required to furnish the return of income only if his total income exceeds the maximum amount not
chargeable to tax, subject to certain exceptions. Therefore, a person entering into certain high value transactions is not necessarily required to furnish his return of income. In order to ensure that persons who enter into certain high value transactions do furnish their return of income, section 139 has been amended with effect from April 1, 2020 (i.e., from the assessment year 2020-21 onwards). Under the amended version, a person (other than a company or a firm) shall be mandatorily required to file his return of income, if during the previous year, he -

1. has deposited an amount (or aggregate of the amounts) exceeding Rs. 1 crore in one or more current account maintained with a banking company or a co-operative bank; or
2. has incurred expenditure of an amount (or aggregate of the amounts) exceeding Rs. 2 lakhs for himself or any other person for travel to a foreign country; or
3. has incurred expenditure of an amount (or aggregate of the amounts) exceeding Rs. 1 lakh towards consumption of electricity; or
4. fulfils such other prescribed conditions, as may be prescribed.

**AMENDMENT NO -37**

**Persons claiming exemption under sections 54, 54B, etc.** - Currently, a person claiming rollover benefit of exemption from capital gains tax on investment in specified assets like house, bonds, etc., is not required to furnish a return of income, if after claim of such rollover benefits, his total income is not more than the exemption limit. In order to make furnishing of return compulsory for such persons, sixth proviso to section 139(1) has been amended with effect from April 1, 2020 (i.e., from the assessment year 2020-21 onwards). Impact of sixth proviso (before and after amendment) is given below –

<table>
<thead>
<tr>
<th>Who is covered by sixth proviso?</th>
<th>Individual/HUF/AOP/BOI/artificial juridical person</th>
</tr>
</thead>
<tbody>
<tr>
<td>When return is required to be submitted on compulsory basis?</td>
<td>If total income (or net income or taxable income) exceeds the exemption limit without claiming the following exemptions or deductions -</td>
</tr>
<tr>
<td>1. Deduction under sections 10A, 10B, 10BA, 80C to 80U. (Till AY 2019-20)</td>
<td></td>
</tr>
<tr>
<td>2. Exemption under sections 54, 54B, 54D, 54EC, 54F, 54G, 54GA and 54GB [applicable from the assessment year 2020-21 onwards along with Point 1.]</td>
<td></td>
</tr>
</tbody>
</table>

**AMENDMENT NO -38**

**PROVISION OF CREDIT OF RELIEF PROVIDED UNDER SECTION 89 [SECS. 140A, 143, 234A, 234B AND 234C]**

Section 89 contains provisions for providing relief where salary (or family pension) is paid in arrears or in advance. The existing provisions of sections 140A, 143, 234A, 234B and 234C contain provisions pertaining to tax computation after allowing credit for prepaid taxes and certain admissible reliefs, credits, etc. However, the relief under section 89 is not specifically mentioned in these sections.

**AMENDMENT** - With a view to avoiding genuine hardship in the case of a person who is eligible for relief under section 89, the provisions of sections 140A, 143, 234A, 234B and
234C have been amended (with retrospective effect from the assessment year 2007-08) to provide that computation of tax liability shall be made under these sections after allowing relief under section 89.

**AMENDMENT NO -39**

**TDS ON NON-EXEMPT PORTION OF LIFE INSURANCE PAY-OUT ON NET BASIS [SEC. 194DA]**

Under section 194DA, a person is required to deduct tax at source, if it pays any sum to a resident under a life insurance policy, which is not exempt under section 10(10D). The present requirement is to deduct tax at the rate of 1 per cent of amount payable [i.e., sum payable by way of a life insurance policy including the sum allocated by way of bonus on such life insurance policy but excluding the amount exempted under section 10(10D)].

**AMENDMENT** - The aforesaid provision has been amended with effect from September 1, 2019 to provide tax deduction at the rate of 5 per cent of income component of the sum payable by the deductor.

**AMENDMENT NO -40**

**AMENDMENT TO SECTION 194-IA**

Section 194-IA relates to payment on transfer of certain immovable property (other than agricultural land) and provides for levy of TDS at the rate of 1 per cent on the amount of consideration paid or credited for transfer of such property.

**AMENDMENT** - The term "consideration for transfer of any immovable property" is not defined for the purposes of section 194-IA. In the case of purchase of immovable property, there are other types of payments made besides the sales consideration and the buyer is contractually bound to make such payments to the builder/seller, either under the same agreement or under a different agreement. Some of these payments are those for rights to amenities like club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee, etc. Accordingly, section 194-IA has been amended (with effect from September 1, 2019) to provide that the term "consideration for immovable property" shall include all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

**AMENDMENT NO -41**

**TDS ON CERTAIN PAYMENTS BY INDIVIDUAL/HUF [SEC 194M, APPLICABLE FROM SEPTEMBER 1, 2019]**

Section 194M has been inserted with effect from September 1, 2019. Provisions of this section are given below -

**Who is deductor** - An individual/HUF (who is not required to deduct tax at source under sections 194C, 194H or 194J) is required to deduct tax under section 194M. Consequently, an individual/HUF is required to deduct tax at source in respect of the following under section 194M -

- Payment/credit to a resident contractor or resident professional, when such payment is
for personal use.
- Payment/credit to a resident contractor or resident professional or to a resident by way of commission (not being insurance commission) or brokerage [where payer is an individual/HUF who carries on business or profession and books of account are not subject to tax audit under section 44AB(a)/(b) in the immediately preceding financial year].

**Threshold limit** - Tax is not deductible if aggregate amount paid or payable during the financial year to a resident does not exceed Rs. 50 lakh.

**Payment covered** - TDS under section 194M is applicable in respect of amount paid/payable to a resident for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract or by way of commission (not being insurance commission) or brokerage or by way of fees for professional services.

**When deductible** - Tax is deductible at the time of credit of aforesaid sum or at the time of payment of the aforesaid sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

**Rate of TDS** - Tax is deductible at the rate of 5 per cent of the aforesaid payment or credit.

**Lower TDS certificate** - Recipient can apply for nil/lower TDS certificate under section 197.

**TAN not necessary** - Individual/HUF (who is required to deduct tax under section 194M) shall be able to deposit the tax deducted using his PAN and shall not be required to obtain TAN.

E1 X is an individual. He makes the following payments to a resident consultant (or to a resident contractor or a resident by way of commission/brokerage).
- Amount of payment is Rs. 27,00,000 on August 10, 2019 and Rs. 26,00,000 on November 22, 2019. The following situations are examined -

  **Situation 1** - X is a businessman. His books of account are audited every year under section 44AB. Payment to consultant (or contractor or broker) is for business purposes.

  **Situation 2** - X is a businessman. His books are not audited in the immediately preceding financial year (as turnover is lower than the threshold limit of Rs. 1 crore). Payment to consultant (or contractor or broker) is for business purposes.

  **Situation 3** - Payment to consultant (or contractor) is for personal purposes [not deductible under section 37(1)].

  **Situation 4** - X is a non-resident Indian (or foreign citizen). He does not have any income in India. Payment to consultant (or contractor) is for personal purposes.

  **Situation 5** - X is a farmer. His entire income is exempt under section 10(7). Payment to consultant (or contractor) is for personal purposes.

- **Situation 1** - Tax is deductible under section 194J (if the recipient is consultant) or under section 194C (if recipient is a contractor) or under section 194H (if recipient is a broker).
Consequently, TDS provisions of section 194M are not applicable. If it is payment to a consultant, amount of TDS under section 194J is 10% of Rs. 27,00,000 on August 10, 2019 and 10% of Rs. 26,00,000 on November 22, 2019.

**Situation 2** - Provisions of sections 194C, 194H and 194J are not applicable. Aggregate payment to the recipient during the financial year 2019-20 is Rs. 53,00,000 (more than the threshold of Rs. 50,00,000 under section 194M). Tax is deductible under section 194M. Payment of Rs. 27,00,000 is made prior to September 1, 2019 (i.e., before the application of section 194M). Therefore, tax deduction is not required at the time of payment of Rs. 27,00,000 on August 10, 2019. However, payment on November 22, 2019 is subject to TDS under section 194M (amount of TDS will be Rs. 1,30,000, being 5% of Rs. 26,00,000).

**Situation 3** - It is payment to a consultant or contractor. Payment is for personal purposes. Tax is not deductible under section 194C or 194J. Consequently, tax is deductible under section 194M. No tax deduction at the time of payment of Rs. 27,00,000 on August 10, 2019. Tax of Rs. 1,30,000 will be deducted by X at the time of payment of Rs. 26,00,000 on November 22, 2019.

**Situation 4** - Even if X is non-resident (not having income in India), TDS provisions of section 194M are applicable (as given above, no TDS on August 10, 2019 and Rs. 1,30,000 will be deducted on November 22, 2019).

**Situation 5** - Even if income of X is exempt under section 10(7), TDS provisions of section 194M (as given above) are applicable.

### AMENDMENT NO -42

**TDS ON PAYMENT OF CERTAIN AMOUNTS IN CASH [SEC. 194N, APPLICABLE FROM SEPTEMBER 1, 2019]**

Section 194N has been inserted with effect from September 1, 2019. Provisions of section 194N are given below -

**Who is deductor** - A bank, co-operative bank or a post office, who is responsible for paying any sum in cash to an account holder, is required to deduct tax at source under section 194N.

**Threshold limit** - It is Rs. 1 crore. In other words, tax is deductible by a bank (or co-operative bank or post office) if aggregate payment in cash from one or more accounts during a previous year to an account holder, exceeds Rs. 1 crore.

**When deductible** - Tax is deductible at the time of payment in cash.

**Rate of TDS** - Tax is deductible at the rate of 2 per cent of payment (or aggregate payment) in cash exceeding Rs. 1 crore.

**Lower TDS certificate** - Not possible.

**Cash payment to certain recipients without TDS** - Exemption is available, when cash payment is made to certain recipients, such as the Government, banking company, co-operative society engaged in carrying on the business of banking, post office. Exemption is also available when cash payment is made to the following persons -

- Any business correspondent of a banking company or co-operative bank in accordance
with the guidelines issued in this regard by RBI.
- Any white label ATM operator of a banking company/co-operative bank in accordance with the authorisation issued by RBI under the Payment and Settlement Systems Act, 2007.
- Such other person or class of persons notified by the Central Government in consultation with RBI.

• Tax deducted under section 194N, not to be treated as deemed receipt - Tax deducted (under section 194N) shall not be deemed to be income received (for the purpose of section 198) for computing income of recipient.

E1 X Ltd. is a manufacturing company (having head office at Mumbai and branch office at Kolkata).

X Ltd. has a current account with SBI Mumbai and overdraft account with SBI Kolkata. The two accounts are separately operated by head office and branch office. Head office and branch office have separate TAN and GSTIN. Cash withdrawn by head office and branch office from these two accounts is as follows -
- from SBI Mumbai by head office on July 10, 2019: Rs. 10 lakhs
- from SBI Kolkata by branch office on October 10, 2019: Rs. 60 lakhs
- from SBI Mumbai by head office on January 10, 2020: Rs. 35 lakhs

Total cash payment to X Ltd. (head office and branch office) during the financial year 2019-20 is Rs. 1.05 crore. Cash payment by SBI up to January 9, 2020 does not exceed Rs. 1 crore. It exceeds Rs. 1 crore only after cash payment of Rs. 35 lakh on January 10, 2020. The excess amount is Rs. 5 lakh. Tax deductible by SBI on January 10, 2020 is Rs. 10,000 (being 2% of the excess amount of Rs. 5 lakh).

E2 Suppose cash payment by SBI to X Ltd. in the above example is as follows -
- from SBI Mumbai by head office on July 10, 2019: Rs. 1.1 crore
- from SBI Kolkata by branch office on October 10, 2019: Rs. 30 lakhs
- from SBI Mumbai by head office on January 10, 2020: Rs. 20 lakhs

Cash payment exceeds Rs. 1 crore on July 16, 2019. No tax is, however, deductible on July 10, 2019 (as section 194N is applicable only from September 1, 2019). Up to October 10, 2019, cash payment by SBI to X Ltd. is Rs. 1.40 crore. Amount in excess of Rs. 1 crore (up to October 10, 2019) is Rs. 40 lakh (this includes cash payment of Rs. 10 lakh by SBI to X Ltd. prior to September 1, 2019). Therefore, tax deductible by SBI on October 10, 2019 is Rs. 60,000 (being 2% of Rs. 30 lakh). Further SBI will deduct tax at source under section 194N on January 10, 2020 which comes to Rs. 40,000 (i.e., 2% of Rs. 20 lakh).

AMENDMENT NO -43
ONLINE FILING OF APPLICATION SEEKING DETERMINATION OF TAX TO BE DEDUCTED AT SOURCE ON PAYMENT TO NON RESIDENTS [SEC 195(2)]

Under section 195(2), a person (who is responsible for tax deduction on payment of any sum to a non-resident) considers that the whole of such sum would not be income chargeable in the case of the recipient, he can make an application to the Assessing Officer to determine the
appropriate proportion of such sum (chargeable to tax in the hands of recipient) which is subject to TDS. This provision is used by a person making payment to a non-resident to obtain certificate/order from the Assessing Officer for lower or nil withholding tax.

**AMENDMENT** - The process of obtaining above certificate/order is currently manual. In order to use technology to streamline the process, the scheme of section 195 has been amended (with effect from November 1, 2019) to allow for prescribing the form and manner of application to the Assessing Officer and also for the manner of determination of appropriate portion of sum chargeable to tax by the Assessing Officer.

**AMENDMENT NO -44**
**AMENDMENT TO SECTION 197**
Section 197 regulates the provisions pertaining to certificate of lower/ nil tax deduction. It has bee amended (with effect from September 1, 2019 so as to provide that the sums on which tax is deductible under section 194M, shall also be eligible for certificate for deduction at lower rate or nil rate.

**AMENDMENT NO -45**
**RECOVERY OF TAX IN PURSUANCE OF AGREEMENTS WITH FOREIGN COUNTRIES [SEC 228A]**
Section 228A regulates recovery of tax in pursuance of agreements with foreign countries. It, *inter alia*, provides that where an agreement is entered into by the Central Government with a foreign Government for recovery of income-tax under the Income-tax Act and the corresponding law in force in that country and where such foreign country sends a certificate for the recovery of any tax due under such corresponding law from a person having any property in India, the Board, on receipt of such certificate may, forward it to the Tax Recovery Officer within whose jurisdiction such property is situated. This provision has been amended (with effect from September 1, 2019) so as to provide for tax recovery in cases where details of property of such person are not available but the said person is a resident in India. Further, section 228A(2) has been amended so as to provide for tax recovery where details of property of assessee in default are not available but the said assessee is a resident in a foreign country.

**AMENDMENT NO -46**
**MANDATING ACCEPTANCE OF PAYMENTS THROUGH PRESCRIBED ELECTRONIC MODES [SEC 269SU]**
Section 269SU has been inserted with effect from November 1, 2019, in order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money and to promote digital economy. It requires that every person, carrying on business, shall, arrange facility for accepting payment through the prescribed electronic modes, in addition to the facility for other electronic modes of payment, if any, being provided by such person. However, this provision is applicable only if total sales, turnover or gross receipts of the person in business exceed Rs. 50 crores during the immediately preceding previous year.

1.137
**Penalty under section 271DB -** In order to ensure compliance of the aforesaid provisions, section 271DB has been inserted with effect from November 1, 2019. It provides that the failure to provide facility for electronic modes of payment prescribed under section 269SU, shall attract penalty of a sum of Rs. 5,000, for every day during which such failure continues. However, the penalty shall not be imposed if the person proves that there were good and sufficient reasons for such failure. Any such penalty shall be imposed by the Joint Commissioner.

**AMENDMENT NO -47**

**PROVISIONS RELATING TO UNDER-REPORTING OF INCOME [SEC. 270A]**

Section 270A contains provisions relating to penalty for under-reporting and misreporting of income. The existing provisions provide for various situations for the purposes of levy of penalty under this section. However, these provisions do not contain the mechanism for determining under-reporting of income and quantum of penalty to be levied in the case where the person has under-reported income and furnished the return of income for the first time under section 148.

**AMENDMENT** - The aforesaid provisions of section 270A have been amended (with retrospective effect from April 1, 2017) to provide for manner of computing the quantum of penalty in a case where the person has under-reported income and furnished his return for the first time under section 148.

**WRITE FORMULA HERE:**

**AMENDMENT NO -48**

**AMENDMENT TO SECTION 271FAA**

Section 271FAA regulates penalty for furnishing inaccurate statement of financial transaction or reportable account. It, *inter alia*, provides for penalty of a sum of Rs. 50,000, if a person referred to in section 285BA(1)(k) furnishes inaccurate information in the statement. Presently, penalty under section 271FAA cannot be imposed if inaccurate information is furnished by a person referred to in clauses (a) to (j) of section 285BA(1).

**AMENDMENT** - The above provisions of section 271FAA have been amended (with effect from September 1, 2019) so as to extend the penalty for furnishing inaccurate information in the statement to all the persons referred to in section 285BA(1).
AMENDMENT NO -49
AMENDMENT TO SECTION 272B
The following amendments have been made to the provisions pertaining to section 272B with effect from September 1, 2019 -
Section 272B(2) has been suitably amended so that penalty may also be levied on false quoting or non-intimation of Aadhaar number.
Penalty of Rs. 10,000 shall be levied for each default under section 272B(2).
New sub-section (2A) has been inserted to provide that if a person, who is required to quote and also authenticate his PAN/Aadhaar number, fails to do so, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of Rs. 10,000 for each such default.
New sub-section (2B) has been inserted to provide that if a person who is required to ensure that PAN/Aadhaar has been quoted/authenticated, fails to do so, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of Rs. 10,000 for each such default.
Before passing a penalty order under sub-section (2A) or (2B), the person (on whom the penalty is proposed to be imposed) shall be given an opportunity of being heard.

AMENDMENT NO -50
RATIONALISATION OF THE PROVISIONS OF SECTION 276CC
Section 276CC, *inter alia*, provides that prosecution proceedings for failure to furnish returns of income against a person shall not proceeded against, for failure to furnish the return of income in due time, if the tax payable by such person, not being a company, on the total income determined on regular assessment does not exceed Rs. 3,000. For determining this monitoring ceiling, tax credit pertaining to TCS/self-assessment tax is not considered.

**AMENDMENT** - In order to rationalise the aforesaid provisions of section 276CC, the following amendment have been made with effect from the assessment year 2020-21 -
1. The aforesaid threshold ceiling of Rs. 3,000 has been increased to Rs. 10,000.
2. The threshold ceiling of Rs. 10,000 shall be calculated as follows -
   - Tax payable by the defaulter (not being a company) on total income determined on regular assessment
   - *Less:* Advance tax or self-assessment tax paid before the expiry of assessment year.
   - *Less:* Tax deducted or collected at source.
If the balance is Rs. 10,000 or less, section 276CC will not be applicable.
PART B - EFFECTED BY THE FINANCE ACT (NO. 1), 2019

AMENDMENT NO -51
STANDARD DEDUCTION TO SALARIED EMPLOYEES [Sec. 16(ia)]
Clause (iia) was inserted in section 16 by the Finance Act, 2018 to provide standard deduction to salaried employees. Under this provision, standard deduction is Rs. 40,000 or salary income, whichever is lower, for the assessment year 2019-20. With effect from the assessment year 2020-21, the quantum of standard deduction has been increased to Rs. 50,000.

AMENDMENT NO -52
NOTIONAL RENT ON SECOND SELF- OCCUPIED PROPERTY EXEMPT FROM TAX [SECS 23 AND 24]
If a person has occupied one house property for his own residential purposes, it is not chargeable to income-tax. Annual value of such property is taken as nil and interest on capital which was borrowed to finance purchase, construction, etc., of such property is deductible (subject to satisfaction of a few conditions) up to Rs. 2,00,000. If a person has occupied more than one house property for his residential purposes, only one property (according to his own choice) is treated as self-occupied property (annual value of such property is taken as nil, interest liability is deductible up to Rs. 2,00,000 subject to a few conditions). In such a case, income from other self-occupied property / properties will be calculated as if such property / properties are “deemed to be let out”.

AMENDMENT – The aforesaid provision has been amended to exempt notional income pertaining to two self-occupied residential house properties. Salient features of the amendment (applicable from the assessment year 2020-21) are given below –

1. If a person occupies only one house property for his own residential purposes, annual value of such property will be nil (as earlier). Interest on borrowed capital will be deductible up to Rs. 2,00,000(subject to a few conditions).

2. If a person occupies two house properties for his own residential purposes, annual value of both the properties will be taken as nil. Aggregate interest on capital borrowed for the purpose of purchase / construction of these properties, will be deductible up to Rs. 2,00,000 (subject to similar conditions as were applicable earlier).

3. If a person occupies more than two house properties for his own residential purposes, only two properties (according to his own choice) will be treated as self-occupied properties and other houses will be “deemed to be let out”. In the case of two self-occupied properties (as selected by the assessee), annual value will be nil and aggregate interest on borrowed capital will be deductible up to Rs. 2,00,000 (subject to similar conditions as were applicable earlier). In the case of “deemed to be let out” properties, taxable income will be calculated as if such properties are let out properties.
**AMENDMENT NO 53**

NO NOTIONAL INCOME UP TO 2 YEARS FOR HOUSE PROPERTY HELD AS STOCK-IN-TRADE [SEC 23(5)]

Sub-section (5) was inserted in section 23 by the Finance Act, 2017 with effect from the assessment year 2018-19. This sub-section is applicable if the following conditions are satisfied:

1. The property (consisting of any building and land appurtenant thereto) is held as stock-in-trade by the owner of the property.
2. The property (or any part of the property) is not let out during the whole (or any part) of the previous year. If the above conditions are satisfied, annual value of such property (or part of the property) shall be taken to be nil. However, this concession is available only for the period up to 1 year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority.

**Amendment** - The aforesaid period of 1 year has been extended to 2 years with effect from the assessment year 2020-21. Consequently, if the above two conditions are satisfied, annual value of the aforesaid properties shall be taken to be nil for 2 years from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority.

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**AMENDMENT NO 54**

EXEMPTION UNDER SECTION 54 EXTENDED TO PURCHASE/CONSTRUCTION OF TWO RESIDENTIAL HOUSES

Capital gain arising from transfer of a house property is exempt under section 54, if the following conditions are satisfied:

1. The property (which is transferred) is a residential house property.
2. Transferor is an individual or a Hindu undivided family.
3. The property (which is transferred) is a long-term capital asset.
4. To avail of exemption, the assessee will have to purchase/construct one residential house property in India within a specified time-limit. If the new property is not purchased/constructed till the due date of submission of return of income, the amount should be deposited in Capital Gains Deposit Account Scheme and investment in new property can be made by withdrawing from the deposit account.

Exemption under section 54 is the amount of investment in the new property or the capital gain, whichever is lower.

**Amendment** - Currently, exemption under section 54 is available for investment in construction/purchase of one residential house property. With effect from the assessment year 2020-21, the following amendments have been made to the scheme of section 54:

1. To get exemption, one can purchase/construct two residential house properties (specified time-limit for construction/purchase will remain the same).
2. The aforesaid option (of investment in two residential house properties) will be available only where the amount of capital gain does not exceed Rs. 2 crore. To put it differently, if long-term capital asset (being a residential house property) is transferred by an individual (or HUF) and the amount of long-term capital gain (after indexation) exceeds Rs. 2 crore, the assessee cannot
claim the benefit of investment in construction purchase of two residential house properties.

3. The aforesaid option can be exercised only once in a lifetime. In other words, if an assessee exercises the aforesaid option (of investment in two residential house properties) for the assessment year 2020-21 he shall not be subsequently entitled to exercise the same option for the assessment year 2021-22 (or any subsequent assessment year). However, in future he can continue to claim section 54 exemption by investing in purchase/construction of one residential house property.

E1 The following information is given by X and Y for the previous year 2019-20 -

<table>
<thead>
<tr>
<th></th>
<th>X Rs.</th>
<th>Y Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale consideration of a residential house property situated in Kolkata</td>
<td>3,30,00,000</td>
<td>9,40,00,000</td>
</tr>
<tr>
<td>Stamp duty value on the date of transfer</td>
<td>3,50,00,000</td>
<td>9,50,00,000</td>
</tr>
<tr>
<td>Cost of acquisition in 1996-97</td>
<td>28,00,000</td>
<td>1,60,00,000</td>
</tr>
<tr>
<td>Fair market value on April 1, 2001</td>
<td>29,00,000</td>
<td>2,30,00,000</td>
</tr>
<tr>
<td>Cost of improvement incurred in 2002-03</td>
<td>40,000</td>
<td>50,00,000</td>
</tr>
<tr>
<td>Expenditure on transfer borne by transferor</td>
<td>40,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Purchase of residential house property in Cochin on December 1, 2019</td>
<td>60,70,000</td>
<td>20,10,000</td>
</tr>
<tr>
<td>Purchase of another residential house property in Mumbai on July 10, 2020</td>
<td>2,02,00,000</td>
<td>1,20,00,000</td>
</tr>
</tbody>
</table>

**Computation of capital gain** -

<table>
<thead>
<tr>
<th></th>
<th>X Rs.</th>
<th>Y Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Full value of consideration (stamp duty value is taken if it exceeds 105% of sale consideration)</td>
<td>3,50,00,000</td>
<td>9,40,00,000</td>
</tr>
<tr>
<td>Indexed cost of acquisition (it is assumed that CII of 2019-20 is 290)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- In the case of X (Rs. 29,00,000 × 290 ÷ 100)</td>
<td>84,10,000</td>
<td></td>
</tr>
<tr>
<td>- In the case of Y (Rs. 2,30,00,000 × 290 ÷ 100)</td>
<td></td>
<td>6,67,00,000</td>
</tr>
<tr>
<td>Indexed cost of improvement (it is assumed that CII of 2019-20 is 290)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- In the case of X (Rs. 40,000 × 290 ÷ 105)</td>
<td>1,10,476</td>
<td>1,38,09,524</td>
</tr>
<tr>
<td>- In the case of Y (Rs. 50,00,000 × 290 ÷ 105)</td>
<td></td>
<td>1,38,09,524</td>
</tr>
<tr>
<td>Expenditure on transfer</td>
<td>40,000</td>
<td>50,000</td>
</tr>
<tr>
<td>Long-term capital gain before exemption</td>
<td>2,64,39,52</td>
<td>1,34,40,476</td>
</tr>
<tr>
<td>Less: Exemption under section 54</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- In the case of X (as long-term capital gain exceeds Rs. 2 crore, X can avail section 54 exemption only for investment in one residential house property)</td>
<td>2,02,00,000</td>
<td></td>
</tr>
<tr>
<td>- In the case of Y (as long-term capital gain does not exceed Rs. 2 crore, Y can claim section 54 exemption for investment in two residential house properties)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


| 20,10,000 + Rs. 1,20,00,000, subject to maximum of long-term capital gain of Rs. 1,34,40,476) | - 1,34,40,476 |
| Income under the head "Capital gains" | 62,39,524 | NIl |

**AMENDMENT NO - 55**

**AMENDMENT TO SECTION 80-IBA**

Deduction under section 80-IBA is available in respect of profits and gains derived from the business of developing and building affordable housing projects. This deduction is available if the project is approved by the competent authority after June 1, 2016 but on or before March 31, 2019.

**AMENDMENT** - The time-limit for approval has been extended by one year (with effect from the assessment year 2020-21). After this amendment, deduction under section 80-IBA will be available if the project is approved by the competent authority after June 1, 2016 but on or before March 31, 2020.

**AMENDMENT NO - 56**

**INCREASE IN THRESHOLD LIMIT FOR TDS FROM INTEREST OTHER THAN INTEREST ON SECURITIES [SEC 194A]**

Tax deduction at source is required under section 194A if interest (other than interest on securities) paid or payable to a resident exceeds the threshold limit given below -

<table>
<thead>
<tr>
<th>Who is payer</th>
<th>Interest is paid/payable on</th>
<th>When recipient is a senior citizen Rs.</th>
<th>When recipient is any other person Rs.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Banking company</td>
<td>Time deposit/recurring deposit</td>
<td>50,000</td>
<td>10,000</td>
</tr>
<tr>
<td>A co-operative society engaged in carrying on the banking business</td>
<td>Time deposit/recurring deposit</td>
<td>50,000</td>
<td>10,000</td>
</tr>
<tr>
<td>Post office</td>
<td>Notified scheme (i.e., Senior Citizen Savings Scheme, 2004)</td>
<td>50,000</td>
<td>10,000</td>
</tr>
<tr>
<td>Any other person</td>
<td>-</td>
<td>5,000</td>
<td>5,000</td>
</tr>
</tbody>
</table>

**AMENDMENT** - With effect from April 1, 2019, the aforesaid limit of Rs. 10,000 has been increased to Rs 40,000. Consequently, if recipient of interest is a person (other than a senior citizen) tax will be deducted by bank/co-operative bank/post office (on or after April 1, 2019) only if aggregate interest payable during the financial year exceeds Rs. 40,000. There is no change in the threshold limit if recipient is a senior citizen Moreover, there is no change in the threshold limit of Rs. 5,000. There is no amendment in respect of taxability of interest in the hands of recipient.

1.143
AMENDMENT NO -57

INCREASE IN THRESHOLD LIMIT FOR TDS FROM RENT UNDER SECTION 194-I

Tax is deductible under section 194-I only if rent paid/payable during the financial year exceeds Rs. 1,80,000. The threshold limit has been increased to Rs. 2,40,000 with effect from April 1, 2019.
TAX RATES APPLICABLE FOR A.Y. 2020-2021

(A) INDIVIDUALS, HINDU UNDIVIDED FAMILIES, AOP'S, BOI'S -

The rates applicable for the assessment year 2020-21 are as follows:

✓ For Individuals / HUFs / AOPs / BOIs etc.:

<table>
<thead>
<tr>
<th>SLAB</th>
<th>Net Taxable Income</th>
<th>Rate of Tax</th>
<th>Basic Tax Rate (%) of Net Taxable Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Up to 3,00,000</td>
<td>Up to 5,00,000</td>
<td>NIL</td>
</tr>
<tr>
<td>2</td>
<td>3,00,001 to 5,00,000</td>
<td>2,50,001 to 5,00,000</td>
<td>5%</td>
</tr>
<tr>
<td>3</td>
<td>5,00,001 to 10,00,000</td>
<td>5,00,001 to 10,00,000</td>
<td>20%</td>
</tr>
<tr>
<td>4</td>
<td>Above 10,00,000</td>
<td>Above 10,00,000</td>
<td>30%</td>
</tr>
</tbody>
</table>

SURCHARGE:

<table>
<thead>
<tr>
<th>Sr No.</th>
<th>Total Income</th>
<th>Rate of Surcharge</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>TI up to 50 lacs</td>
<td>Nil</td>
</tr>
<tr>
<td>2</td>
<td>TI above Rs 50 lacs but up to Rs. 1 cr</td>
<td>10% on IT payable</td>
</tr>
<tr>
<td>3</td>
<td>TI &gt; 1cr.</td>
<td>15% on IT payable</td>
</tr>
<tr>
<td>4</td>
<td>TI &gt; 2cr.</td>
<td>25% on IT payable (other than CG u/s 111A &amp; 112A)</td>
</tr>
<tr>
<td>5</td>
<td>TI &gt; 5cr.</td>
<td>37% on IT payable (other than CG u/s 111A &amp; 112A)</td>
</tr>
<tr>
<td>6</td>
<td>For Point (4) &amp; (5)</td>
<td>On CG u/s 111A &amp; 112A – 15% of IT Payable</td>
</tr>
</tbody>
</table>

⇒ Health & Education Cess: @ 4% leviable on {tax plus surcharge}

⇒ Rebate u/s 87A:

In case of resident Individual, whose Total Income does not exceed Rs.5,00,000, there shall be allowed a rebate of –

(a) 100% of the Income Tax; or
(b) Rs. 12,500

Whichever is less from the amount of Income Tax.
**Alternate minimum tax** – Tax payable by a non-corporate assessee cannot be less than 18.5 per cent (+ SC+ HE CESS) of “adjusted total income” as per section 115JC

**(B) PARTNERSHIP FIRM (INCLUDING LLP)**

A firm is taxable at the rate of 30 per cent for the assessment year 2020-21.

**Surcharge** – Surcharge is 12 per cent of income-tax if net income exceeds Rs. 1 crore. It is subject to marginal relief (in the case of a person having a net income of exceeding Rs. 1 crore, the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore).

**Health & Education cess** – It is 4 per cent of income-tax and surcharge.

**Alternate minimum tax** – Tax payable by a non-corporate assessee cannot be less than 18.5 per cent (+ SC+HE CESS) of “adjusted total income” as per section 115JC. 9 per cent for UNIT located in IFSC subject to some conditions.

**(C) COMPANIES**

For the assessment years 2019-20 and 2020-21 the following rates of income-tax are applicable:

<table>
<thead>
<tr>
<th>Company Description</th>
<th>Rate of Income-tax (per cent)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Assessment year 2019-20 (Last year)</strong></td>
<td><strong>Assessment year 2020-21 (Current year)</strong></td>
</tr>
<tr>
<td>In the case of a domestic company - where its total turnover or gross receipt during the previous year 2016-17 does not exceed Rs. 250 crores</td>
<td>25</td>
</tr>
<tr>
<td>In the case of a domestic company - where its total turnover or gross receipt during the previous year 2017-18 does not exceed Rs. 400 crores</td>
<td>NA</td>
</tr>
<tr>
<td>In the case of a domestic company - any other domestic company</td>
<td>30</td>
</tr>
<tr>
<td>In the case of a foreign company</td>
<td>40</td>
</tr>
</tbody>
</table>
Surcharge – Surcharge is applicable at the rates given below –

<table>
<thead>
<tr>
<th>Domestic company</th>
<th>If net income does not exceed Rs. 1 crore</th>
<th>If net income is in the range of Rs. 1 crore – Rs. 10 crores</th>
<th>If net income exceeds Rs. 10 crores</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td>7%*</td>
<td>12%**</td>
<td></td>
</tr>
</tbody>
</table>

Foreign company

<table>
<thead>
<tr>
<th>Domestic company</th>
<th>If net income does not exceed Rs. 1 crore</th>
<th>If net income is in the range of Rs. 1 crore – Rs. 10 crores</th>
<th>If net income exceeds Rs. 10 crores</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td>2%*</td>
<td>5%**</td>
<td></td>
</tr>
</tbody>
</table>

* Marginal relief – In the case of a company having a net income of exceeding Rs. 1 crore, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore.

**Marginal relief – In the case of a company having a net income of exceeding Rs. 10 crore, the amount payable as income-tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 10 crore by more than the amount of income that exceeds Rs. 10 crore.

Health & Education cess – It is 4 per cent of income-tax and surcharge.

MINIMUM ALTERNATE TAX – The following rate of minimum alternate tax shall be applicable –

MAT Rate = 15 % of Book Profit. (Amendment made by Ordinance on 20th September)

9 per cent for UNIT located in IFSC subject to some conditions.

Surcharge – Surcharge is applicable at the rates given below –

<table>
<thead>
<tr>
<th>Domestic company</th>
<th>If Book Profit does not exceed Rs. 1 crore</th>
<th>If Book Profit is in the range of Rs. 1 crore – Rs. 10 crores</th>
<th>If Book profit exceeds Rs. 10 crores</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td>7%</td>
<td>12%</td>
<td></td>
</tr>
</tbody>
</table>

Foreign company

<table>
<thead>
<tr>
<th>Domestic company</th>
<th>If Book Profit does not exceed Rs. 1 crore</th>
<th>If Book Profit is in the range of Rs. 1 crore – Rs. 10 crores</th>
<th>If Book profit exceeds Rs. 10 crores</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nil</td>
<td>2%</td>
<td>5%</td>
<td></td>
</tr>
</tbody>
</table>

Health & Education cess – It is 4 per cent of income-tax and surcharge.

(D) CO-OPERATIVE SOCIETIES – The following rates are applicable to a co-operative society for the assessment year 2020-21 –

<table>
<thead>
<tr>
<th>Net income range</th>
<th>Rate of income-tax (Per cent)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Up to Rs. 10,000</td>
<td>10</td>
</tr>
<tr>
<td>Rs. 10,000 – Rs. 20,000</td>
<td>20</td>
</tr>
<tr>
<td>Above Rs. 20,000</td>
<td>30</td>
</tr>
</tbody>
</table>

Surcharge – Surcharge is 12 per cent of income-tax if net income exceeds Rs. 1 crore. It is subject to marginal relief (in the case of a person having a net income of exceeding Rs. 1
crore, the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore).

**Health & Education cess** – It is 4 per cent of income-tax and surcharge.

**Alternate minimum tax** – Tax payable by a non-corporate assessee cannot be less than 18.5 per cent (+ SC+ HE CESS) of “adjusted total income” as per section 115JC

(E) **LOCAL AUTHORITIES** –
Local authorities are taxable at the rate of 30 per cent.

**Surcharge** – Surcharge is 12 per cent of income-tax if net income exceeds Rs. 1 crore. It is subject to marginal relief (in the case of a person having a net income of exceeding Rs. 1 crore, the amount payable as income tax and surcharge shall not exceed the total amount payable as income-tax on total income of Rs. 1 crore by more than the amount of income that exceeds Rs. 1 crore).

**Health & Education cess** – It is 4 per cent of income-tax and surcharge.

**Alternate minimum tax** – Tax payable by a non-corporate assessee cannot be less than 18.5 per cent (+ SC+ HE CESS) of “adjusted total income” as per section 115JC

“ALL THE BEST TO EVERYONE”.
“MY BEST WISHES AND BLESSINGS ARE ALWAYS WITH YOU ALL”.
“NEVER GIVE UP”.
“DEVELOP THE QUALITY OF BEING PATIENT FOR THE NEXT 4 MONTHS”.
“SOME BAD DAYS WILL COME. DON’T WORRY, WORK HARDER AND OVERCOME THAT”.
“YOU HAVE EVERY QUALITY TO BECOME CA IN FIRST ATTEMPT. JUST BELIEVE YOURSELF AND BE FOCUSED”.
“THERE IS NO REPLACEMENT OF HARD WORK NO MATTER HOW MUCH EVER INTELLIGENT YOU ARE”.

**NOTE:**
1. **INTERNATIONAL TAXATION- PAPER 6C LIVE BATCH COMMENCING AT ANDHERI & CHARNI ROAD FROM 3RD JANUARY 2020 TO 31ST JANUARY.**
2. **NO PEN DRIVE LECTURES ARE AVAILABLE FOR REGULAR COURSE IN MUMBAI.**

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