DIRECT TAXES

SEMINAR ON

"IMPORTANT INCOME TAX AMENDMENTS RELEVANT FOR FILLING RETURNS & TAX AUDIT FOR A.Y. 2018-19"

- CA MEHUL THAKKER

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ASSESSMENT YEAR 2018-19

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Special Thanks to CA Chetan V Chaudhary

Law stated in this book is as amended by the Finance Act, 2017

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1 – BASICS OF INCOME TAX

1.1 RATES OF INCOME TAX

(A) Paragraph A

(a) Individual/ HUF/ AOP / BOI and every artificial juridical person

Level of Total Income	Rate of income-tax
Where the total income	
- Does not exceed Rs. 2,50,000	Nil
- Exceeds Rs. 2,50,000 but does not exceed Rs. 5,00,000	5% of the amount by which the total income exceeds Rs. 2,50,000
- Exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	Rs. 12,500 plus 20% of the amount by which the total income exceeds Rs. 5,00,000
- Exceeds Rs. 10,00,000	Rs. 1,12,500 plus 30% of the amount by which the total income exceeds Rs. 10,00,000

(b) For resident individuals of the age of 60 years or more but less than 80 years at any time during the previous year

Level of total income	Rate of income-tax
Where the total income	
- Does not exceed Rs. 3,00,000	Nil
- Exceeds Rs. 3,00,000 but does not exceed Rs. 5,00,000	5% of the amount by which the total income exceeds Rs. 3,00,000
- Exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	Rs. 10,000 plus 20% of the amount by which the total income exceeds Rs. 5,00,000
- Exceeds Rs. 10,00,000	Rs. 1,10,000 plus 30% of the amount by which the total income exceeds Rs. 10,00,000

(c) For resident individuals of the age of 80 years or more at any time during the previous year

Level of total income	Rate of income-tax
Where the total income	
- Does not exceed Rs. 5,00,000	Nil
- Exceeds Rs. 5,00,000 but does not exceed Rs. 10,00,000	20% of the amount by which the total income exceeds Rs. 5,00,000
- Exceeds Rs. 10,00,000	Rs. 1,00,000 plus 30% of the amount by which the total income exceeds Rs. 10,00,000

(B) Circular No. 28/2016, dated 27-07-2016

Clarification regarding attaining prescribed age of 60 years/80 years on 31st March itself, in case of senior/very senior citizens whose date of birth falls on 1st April

- **The Supreme Court in the case of Prabhu Dayal Sesma vs. State of Rajasthan &, another 1986, AIR, 1948 observed that while counting the age of the person, whole of the day should be reckoned and it starts from 12 o'clock in the midnight and he attains the specified age on the day preceding, the anniversary of his birthday.**
- The CBDT has, vide this Circular, clarified that a person born on 1st April would be considered to have attained a particular age on 31st March, the day preceding the anniversary of his birthday.
- Therefore, a resident individual whose 60th birthday/80th birthday falls on 1st April, 2018, would be treated as having attained the age of 60 years in the P.Y.2017-18, and would be eligible for higher basic exemption limit of Rs.3 lakh / Rs.5 lakh in computing his tax liability for A.Y.2018-19.

(C) Paragraph B:- Co-operative society

Level of total income	Rate of income-tax
Where the total income	
(1) Does not exceed Rs. 10,000	10% of the total income
(2) Exceeds Rs. 10,000 but does not exceed Rs. 20,000	Rs. 1,000 plus 20% of the amount by which the total income exceeds Rs. 10,000
(3) Exceeds Rs. 20,000	Rs. 3,000 plus 30% of the amount by which the total income exceeds Rs. 20,000

(D) Paragraph C: Firm/Limited Liability Partnership (LLP)

The rate of tax for a firm (LLP) for A.Y. 2018-19 is 30%.

(E) Paragraph D: Local authority

The rate of tax for a local authority for A.Y.2018-19 is 30%.

(F) Paragraph E: Company

The rates of tax for A.Y.2018-19 are as under:-

	Domestic companies		**Foreign companies**
	If Total Turnover or Gross Receipts in P.Y.2015-16 does not exceed Rs.50 Crore	**If Total Turnover or Gross Receipts in P.Y.2015-16 exceeds Rs.50 Crore**	
	Tax rates	**Tax rates**	**Tax rates**
Short Term Capital Gain u/s.111A	15% + SC+EC	15% + SC+EC	15%+ SC+EC
Long-term capital gain	20% +SC+EC	20% +SC+EC	20%+ SC+EC
Winnings from lotteries	30% + SC+EC	30% + SC+EC	30%+ SC+EC
Other income	25%+ SC+EC	30%+ SC+EC	40%+ SC+EC

1.2 SURCHARGE AND MARGINAL RELIEF

The rates of surcharge applicable for A.Y. 2018-19 are as follows –

Surcharge (as a percentage of income tax)-	If total income is	If total income is in the range of	If total income is in the range of	If total income is
	Upto Rs.50 lakhs	Rs.50 lakhs to Rs.1 crore	Rs.1 crore to Rs.10 crore	Above Rs.10 crore
Individuals/HUF/AOP/BOI/artificial juridical person	Nil	10%	15%	15%
Firm	Nil	Nil	12%	12%
Co-operative society	Nil	Nil	12%	12%
Local authority	Nil	Nil	12%	12%
Domestic company	Nil	Nil	7%	12%
Foreign company	Nil	Nil	2%	5%

The above surcharge is subject to a Marginal relief

Why there is a need for marginal relief?

Consider Example (A) and (B)

Example : (A) Taxpayer : Mr. Active, 54 years having total income of Rs.50,00,000.

Particulars	**Rs.**
Tax on Rs.50,00,000	13,12,500
Add: Surcharge	Nil
Sub-total	13,12,500

Example : (B) Taxpayer: Mr. Passive, 55 years having total income of Rs.50,50,000.

Particulars	**Rs.**
Tax on Rs.50,50,000	13,27,500
Add: Surcharge (10%)	1,32,750
Sub-total	14,60,250

Now, as compared to Example (A), in Example (B), income is increased by **Rs. 50,000,** while tax is increased by Rs.**1,47,750,** therefore, there is a need for marginal relief.

Under marginal relief, **tax liability of Rs. 50,50,000 is restricted as under**:-

Tax on 50,50,000 = Tax on 50,00,000 + (Total Income – Rs.50,00,000)

= Tax on 50,00,000+ (50,50,000-Rs.50,00,000)

= 13,12,500 + 50,000

= 13,62,500

The above tax is increased by education cess 3%

☺ EASY STEPS to compute Final tax liability when total income of Individual ranges between Rs.50,00,001 to Rs. 1,00,00,000.

Step 1: Find out regular tax liability + Surcharge (Ignore education cess)
Step 2: Find out tax on 50,00,000 + (Total Income-50,00,000)
Step 3: Step 1 or Step 2 whichever is lower
Step 4: Add Education Cess (@3%)

Practical 1

Find out tax payable of Mr. Jayesh, 51 years, having total income of Rs. 51,00,000.

Solution

Step 1:- Tax on 51,00,000 = Rs. 13,42,500
+ Surcharge (10%) = Rs. 1,34,250
Rs. 14,76,750

Step 2:- Tax on 50,00,000 + (51,00,000 – 50,00,000)
= Rs. 13,12,500 + Rs. 1,00,000
=Rs. 14,12,500

Step 3:-	Step 1 or Step 2 whichever is lower i.e.	Rs. 14,12,500
Step 4:-	Add education cess (3% of 14,12,500)	Rs. 42,375
	Tax Payable	Rs. 14,54,875
	Tax Payable (Rounded off)	**Rs. 14,54,880**

Reader's Note:

1.3 EDUCATION CESS/SECONDARY AND HIGHER EDUCATION CESS ON INCOME-TAX

"Education cess (EC)" is to be calculated at the rate of 2% of income-tax and surcharge. Similarly, "Secondary and higher education cess on income-tax (SHEC)" is to be computed @1% of income-tax and surcharge. EC and SHEC is applicable to all assessees i.e., individuals, HUFs, AOP/BOIs, co-operative societies, firms, LLPs, local authorities and companies. The format of computation of EC and SHEC is as under:-

(a) Income Tax	XXXXX
(b) Add: Surcharge on Income Tax (if any)	XXXXX
(c) Sub-Total (a+b)	XXXXX
(d) Education cess @ 2% on (c)	XXXXX
(e) Secondary and higher education cess on@ 1% on (c)	XXXXX
(f) Total Tax payable (c+d+e)	XXXXX

No marginal relief would be available in respect of such cess.

1.4 RATES OF DISTRIBUTION TAX

Section	Particulars	Rate of Tax
115-O	Tax on distributed income of domestic companies by way of dividend	15%
115-QA	Tax on distributed income of domestic company for buyback of unlisted shares	20%
115R	Tax on distributed income of UTI/Mutual Funds	
	— Distribution to a unit-holder of equity oriented funds or any income distributed by the Administrator of the specified undertaking to unit-holder	Nil
	— Distribution by Money Market Mutual Fund or a Liquid Fund or any Other Fund to Unit Holder being individuals/ HUFs	25%
	— Distribution by Money Market Mutual Fund or a Liquid Fund or any Other Fund to Unit Holder being any other person	30%
	— Distribution by infrastructure debt funds to non-residents/foreign companies	5%

Surcharge@12% would be leviable on distribution tax levied under sections 115-O, 115-QA and 115R **irrespective of amount distributed.** Further, education cess@2% and secondary and higher education cess@1% would be leviable on (the distribution tax plus surcharge).

1.5 REBATE

Section:- 87A – Effective from A.Y.2018-19

(a) Section 87A has been inserted to provide a rebate from the tax payable (before education cess) by an individual who is resident in India, provided his total income **does not exceed** Rs.5,00,000 **[Rs. 3,50,000 w.e.f. A.Y. 2018-19]**.

(b) Such rebate shall be the amount of **income-tax payable** on the total income **or** an amount of Rs. 5,000 ***[Rs. 2,500 W.e.f. A.Y. 2018-19]*** **whichever is less.**

Practical 2

The gross total income of Mr. X, a resident aged 30 years, comprises of salary (Rs.3,85,000) and interest on savings bank (Rs.8,000). Compute his tax liability, assuming that he had deposited Rs.50,000 in public provident fund.

Solution

Computation of total income of Mr. X

Particulars	Rs.	Rs.
Salary		3,85,000
Interest on savings bank account		8,000
Gross Total Income		**3,93,000**
Less: Deductions under chapter VIA		
Section 80C (deposit in PPF)	50,000	
Section 80TTA (interest on savings bank account)	8,000	58,000
Total Income		**3,35,000**

Computation of tax liability of Mr. X

Particulars	Rs.
Tax on total income @ 5% of Rs.85,000 (Rs.3,35,000-Rs.2,50,000)	4,250
Less: Rebate under 87A	(2,500)
	1,750
Add: Education cess @2%	35
Secondary and higher education cess @ 1%	18
Total tax liability	**1,803**
Total tax liability (Rounded off)	**1,800**

Reader's Note:

2 – INCOME WHICH DO NOT FORM PART OF TOTAL INCOME

2.1 TAX EXEMPTION OF INCOME OF CHIEF MINISTER'S RELIEF FUND/LIEUTENANT GOVERNOR'S RELIEF FUND

Section:- 10(23C) [w.r.e.f A.Y.1998-99] and 11 [Effective A.Y.2018-19]

Eligible Assessee	Nature Of Income	Conditions/Definitions/Comments
Income received by any person on behalf of following entities **(a)** Prime Minister's National Relief fund. **(b)** Prime Minister's fund for promotion of folk art **(c)** Prime Minister's Aid to Students Fund **(d)** National foundation for communal harmony **(e)** Swachh Bharat Kosh **(f)** Clean Ganga Fund **(g)** **Chief Minister's Relief Fund or Lieutenant Governor's Relief Fund (inserted by Finance Act, 2017 w.r.e.f. A.Y. 1998-99)** **(h)** University or other Educational Institution wholly or substantially financed by the Government **(i)** Hospital or other institution wholly or substantially financed by Central govt. for treatment of specified illness and established for	Any income	**1.** The fund, trust, university, hospitals, charitable organization requiring approvals shall make an application in prescribed form to prescribed authority for the grant of or continuation of exemption. **2.** Exemption shall not be available for anonymous donations referred to in section 115BBC. **3.** The provisions of section 11, 12 or 12AA shall also apply to various institutions referred to herein. **4.** The institutions where their income exceeds the maximum amount chargeable to tax shall get their accounts audited. **5.** With retrospective effect from A.Y. 09-10 In case of other charitable trusts, universities, hospitals, charitable organization approved by specified authority in which case 1st proviso to Sec.2(15) applies exemption under this sec. shall not be allowed. **6.** Where any income is required to be applied (or accumulated or set apart for application), then, for such purposes the income shall be determined without any deduction or allowance by way of depreciation (or otherwise) in respect of any asset, acquisition of which has been claimed as an application of income under section 10(23) in the same or any other previous year. **(a) For Entities mentioned at (g) and (h)** Any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds such

philanthropic purpose only. **(j)** University or educational institution set up for education purpose and not for profit and whose gross receipt does not exceed Rs.1 crore. **(k)** Hospital or other institution set up for philanthropic purpose for treatment of specified illness and whose gross receipts do not exceed Rs. 1 crore. Other charitable trusts, universities, hospitals, charitable organization approved by specified authority		percentage of the total receipts including any voluntary contributions, as may be prescribed (50% prescribed), of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year. **(b) For Entities mentioned at (k)** Entities which have been approved or notified for claiming benefit of exemption u/s 10(23) would not be entitled to claim any benefit of exemption under other provisions of section 10 (except the exemption in respect of agricultural income). **(c) For Entities mentioned at (l)** **With effect from Assessment Year 2018-19,** any donation (contribution) given to a trust or institution with a specific direction that they shall form part of the corpus of recipient trust or institution, then it shall not be treated as application of income for the donor trust or institution falling under point no. (l). **[Amendment by Finance Act, 2017]**

2.2 TAX HOLIDAY UNDER SECTION 10AA – EXEMPTION VS. DEDUCTION

Section:- 10AA - Effective from A.Y.2018-19

(A) Conditions:

(1) A unit in SEZ has begun to manufacture or produce any article or things or provide any services after 31.03.2005 but on or before 31st March, 2020.

(2) The unit in SEZ is not formed by the splitting up, or the reconstruction, of a business already in existence.

However, where an industrial undertaking is formed as a result of re-establishment, reconstruction or revival by the assesse of the business of any such industrial undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section the same will quality for the tax concession.

> **Section 33B**
>
> The business of any industrial undertaking carried on in India is discontinued in any previous year by reason of extensive damage to, or destruction of, any building, machinery, plant or furniture owned by the assessee and used for the purposes of such business as a direct result of—

(*i*) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature ; or

(*ii*) riot or civil disturbance ; or

(*iii*) accidental fire or explosion ; or

(*iv*) action by an enemy or action taken in combating an enemy (whether with or without a declaration of war),

and, thereafter, at any time before the expiry of three years from the end of such previous year, the business is re-established, reconstructed or revived by the assessee.

(3) The unit in SEZ is not set up by the transfer of plant and machinery previously used for any purpose. This condition is subject to following relaxation:

(a) *20 per cent previously used plant and machinery is permitted* - If the value of the previously used plant and machinery does not exceed 20 per cent of the total value of the machinery or plant used in the business, this condition is deemed to have been complied with.

(b) *Second-hand imported machinery is treated as new-* Any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled—

(i) Such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India.

(ii) Such machinery or plant is imported into India from any country outside India.

(iii) No deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the Act in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

(4) The assessee shall furnish the report from an chartered accountant in a prescribed form along with the return of income, certifying that the deduction has been correctly claimed in accordance with the provision of this section.

(5) Deduction under section 10AA is not available unless it is claimed in the return of income. – Section 80A(5).

(6) *If deduction is claimed in respect of a specified business [as referred to in section 35AD(8)(c)] under section 10AA, no deduction in respect of that business will be available under section 35AD.*

(B) Period and quantum of deduction:-

First 5 consecutive assessment years (beginning with the assessment year in which undertaking begins to manufacture or produce articles or things or computer software, as the case may be)	100% of profits and gains derived from export
Next 5 assessment years	50% of profits and gains derived from export
Next 5 assessment years	50% of profits and gains derived from export or amount transferred to "Special Economic Zone Reinvestment Allowance Reserve Account" whichever is lower.

(C) Profits and gains derived from export shall be worked out as under:-

$$\text{Profits of the business of the unit} \times \frac{\text{Export turnover of the unit}}{\text{Total Turnover of the unit}}$$

(1) Export Turnover means the consideration in respect of export by the unit of articles or things or services received in, or brought into India by the assessee, but does not include the following:

a. Freight;

b. Telecommunication charges;

c. Insurance attributable to the delivery of the articles or things outside India;

d. Expenses, if any, incurred in foreign exchange in rendering of services outside India.

(2) The profits and gains derived from on-site development of computer software including services for development of software outside India shall be deemed to be export profits eligible for deduction.

(D) Ceiling on deduction to be claimed under section 10AA of the Act

As per the amendment made by Finance Act, 2017 w.e.f. A.Y. 2018-19,

(a) *Amount of deduction under section 10AA shall be allowed from the total income of the assessee computed under the Act before giving deduction under section 10AA and*

(b) *Deduction under section 10AA shall not exceed (a) above*

Practical 1

Rajesh Exports Pvt Ltd. has set up its manufacturing unit in SEZ which is eligible for the benefit under section 10AA of Income Tax Act. Apart from that it has another manufacturing unit in Non-SEZ area. It provides following information for the year under consideration:

Particulars	**(Rs. In lakhs)**
Profit from the manufacturing unit set up in SEZ (Export turnover/Total Turnover = 90%)	80
Profit from the manufacturing unit in Non-SEZ area	-40
Income from other sources	22
Amount eligible for deduction under section 80G	5

Compute total income of Rajesh Exports Pvt Ltd. (a) before amendment made by Finance Act, 2017 (b) After amendment made by Finance Act, 2017.

Solution

(a) Computation of Total Income of Rajesh Export Pvt Ltd. before amendment

Particulars	**Rs.**	**Rs.**
Profit from the manufacturing unit set up in SEZ	80	
Less: Exemption under section 10AA (90% of Rs. 80)	(72)	8
Profit from the manufacturing unit in Non-SEZ Area		(40)
Income under the head PGBP (A)		**(32)**
Income from Other sources (B)		**22**
Gross Total Income (A) plus (B)		**(10)**
Deduction under section 80 G		Nil
Total Income		**(10)**

Note: Business loss to be carried forward Rs. 10 Lakh.

(b) Computation of Total Income of Rajesh Export Pvt Ltd. after amendment

Particulars	Rs.	Rs.
Profit from the manufacturing unit set up in SEZ	80	
Profit from the manufacturing unit in Non-SEZ Area	(40)	
Income under the head PGBP (A)		**40**
Income from Other sources (B)		**22**
Gross Total Income (A) plus (B)		**62**
Less: Deduction under section 80 G		(5)
Total Income before giving deduction under section 10AA (C)		**57**
Less: Deduction under 10 AA is lower of followings:		(57)
(a) Total income as per (C) above	57	
(b) Deduction under section 10AA (90% of Rs. 80)	72	
Total Income		**Nil**

Readers Note:

3 – SALARY

No Amendment

4 – HOUSE PROPERTY

4.1 NO NOTIONAL INCOME FOR HOUSE PROPERTY HELD AS STOCK IN TRADE UPTO ONE YEAR

Section:- 23(5) - Effective from A.Y.2018-19

Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade

and

the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property,

for the period up to one 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,

shall be taken to be nil.

5 – PROFITS AND GAINS FROM BUSINESS OR PROFESSION

5.1 DEDUCTION IN RESPECT OF EXPENDITURE ON SPECIFIED BUSINESS

Section:- 35AD - Effective from A.Y.2018-19

(1) Conditions

(a) Assessee must be carrying on "specified business".

(b) The specified business should not be set up by splitting up, or the reconstruction, of a business already in existence.

Not only that, it should not be set up by the transfer of old plant and machinery. However, in following two cases old machinery is permitted:

Case 1:- If the value of the old assets does not exceed 20 per cent of the total value of the plant and machinery, this condition is deemed to have been satisfied.

Case 2:- Second-hand imported machinery is treated as new subject to satisfaction of few conditions in this regard.

(c) Books of account of the assessee must be audited.

(2) Quantum of Deduction

Sr. No.	Specified business	Quantum of deduction (Percentage of capital Expenditure)
1.	Setting up and operating a cold chain facility (Refer Note 1)	**100%**
2.	Setting up and operating a warehousing facility for Storage of agricultural produce	**100%**
3. *	Laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network. (Refer Note 2)	100%
4.	Building and operating anywhere in India a new hotel of 2 star or above category (Refer Note 3)	100%
5.	Building and operating anywhere in India, new hospital with at least 100 beds for patients	**100%**
6.	Developing and building a housing project under a scheme for slum redevelopment or rehabilitation	100%
7.	Developing and building a housing project under a scheme for affordable housing	**100%**
8.	Production of fertilizer in India	**100%**
9.	setting up and operating an inland container depot or a container freight station	100%
10.	Bee-keeping and production of honey and beeswax	100%
11.	setting up and operating a warehousing facility for storage of sugar	100%

12.	Laying and operating a slurry pipeline for the transportation of iron ore	100%
13.	Setting up and operating a semiconductor wafer fabrication manufacturing unit.	100%
14. *	Developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility (Amendment by Finance Act, 2016 but effective from A.Y. 2018-19) (Refer Note 4)	100%

* The benefit of deduction under this section is available to a company formed under Companies Act, 1956 or a consortium of such companies or an authority or a board or a corporation established under Central or State Act.

Notes

1. "Cold chain facility" means a chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.
2. This business shall make not less than one-third (for a natural gas pipeline network) or one-fourth (for petroleum product pipeline network) of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person. Associated person is a person who participates in the management of the assessee; holds at least 26 per cent voting power in the assessee; appoints more than half of the board of directors or who guarantees not less than 10 per cent of the total borrowing of the assessee.
3. Where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, the assessee shall be deemed to be carrying on the specified business.
4. infrastructure facility" means—
   (i) a road including toll road, a bridge or a rail system;
   (ii) a highway project including housing or other activities being an integral part of the highway project;
   (iii) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;
   (iv) a port, airport, inland waterway, inland port or navigational channel in the sea.

(3) Year of Deductibility

Above mentioned deduction under section 35AD in respect of any capital expenditure (whether old or new) shall be allowed in the previous year in which such capital expenditure is incurred.

In case of expenditure incurred prior to the commencement of specified business, the same shall be allowed as deduction during the previous year in which the assessee commences the operation specified business, if the amount is capitalized in the books of account on the date of commencement of specified business.

(4) Restrictions

Capital expenditure incurred on the following shall not be eligible for deduction under section 35AD

(i) land

(ii) goodwill

(iii) financial instrument

(iv) any capital expenditure in respect of which the payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account, exceeds ten thousand rupees. (Inserted by Finance Act, 2017, w.e.f. A.Y. 2018-19)

Practical 1

Priyanka warehouse LLP set up the operation of warehousing facility in Gujarat for storage of agricultural produce. It commenced operation with effect from April 1, 2017. The following information is available from the records of LLP.

Particulars	Rs.
Expenses incurred prior to April 1, 2017 and capitalized in the books	
Purchase of land for warehouse	80,00,000
Construction cost of warehouse (Material)	12,00,000
Payment to labour contractor for construction of warehouse(single payment - in cash)	7,00,000
Expenses incurred during 2017-18	
Further construction cost of warehouse	50,00,000
Purchase of old plant and machinery (from India)	2,50,000
Purchase of old plant and machinery (from Denmark)	3,50,000
Purchase of new plant and machinery	9,00,000

Compute amount of deduction u/s 35AD assuming that the books of accounts of Priyanka warehouse LLP have been audited.

Solution

Statement showing computation of deduction under section 35AD in the hands of Priyanka warehouse LLP:

Particulars	Rs.
Expenses incurred prior to April 1, 2017 and capitalized in the books	
Purchase of land for warehouse	Not Eligible for 35AD benefit
Construction cost of warehouse	12,00,000
Payment to labour contractor for construction of warehouse (Not eligible because single payment is made in cash exceeding Rs.10,000)	Nil
Expenses incurred during 2017-18	
Further construction cost of warehouse	50,00,000
Purchase of old plant and machinery (from India)	2,50,000
Purchase of old plant and machinery (from Denmark)	3,50,000
Purchase of new plant and machinery	9,00,000
Total Deduction under section 35AD	**77,00,000**

Reader's Note:

5.2 DEDUCTION FOR PROVISION FOR BAD AND DOUBTFUL DEBTS IN CASE OF CERTAIN ASSESSEE

Section:- 36(1)(viia) - Effective from A.Y.2018-19

Assessee	Amount of Deduction	Additional Deduction in case of Rural Branches	Additional Optional deduction
Any Scheduled, Non-Scheduled or co-operative bank but other than a primary agriculture credit society or a primary co-operative agricultural and rural development bank (Except Foreign Bank)	Not exceeding 7.5% **(8.5% w.e.f. A.Y. 2018-19)** of its total income*	10% of aggregate average advances made by rural branches of Bank.	Further deduction of an amount not exceeding the income derived from redemption of securities in accordance with scheme framed by Government. However, this additional deduction can be claimed only if income from such securities has been offered for taxation under the head "Profits and Gains of Business or Profession".
Any Foreign Bank	5% of its total income*	Not available	Not available
Public Financial Institution or State Financial Corporation or State Industrial Investment Corporation or NBFC			

*Total Income means total income before claiming deduction under this clause and Chapter VIA

Notes:

In the case of an assessee to which section 36(1)(viia) applies, the amount of the deduction relating to any bad debt or part thereof under section 36(1)(vii) shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1) (viia) ***without making any distinction between rural advances and other advances.***

That means, there should be only ***one account in respect of provision for bad and doubtful debts*** without making any distinction between rural advances and other advances.

Practical 2

The following are the particulars in respect of Indian Bank

Sr. No.	Particulars	Rs. in lakhs
(i)	Provision for bad and doubtful debts u/s 36(1)(viia) as on **1st April 2017**	200
(ii)	Gross Total Income of **A.Y.2018-19** [before deduction u/s 36(1)(viia)]	1000
(iii)	Aggregate average advances made by rural branches of the bank (assume that bank opened first time rural branches in previous year **2017-18**).	400

(iv)	Bad debts written off (for the first time) in the books of account (in respect of urban advances only) during the previous year **2017-18**	350

Compute deduction:

(a) in respect of provision for bad and doubtful debt under section 36(1) (viia)

(b) in respect of bad debts under section 36(1)(vii)

Solution

(a) Deduction in respect of provision for bad and doubtful debt under section 36(1) (viia) = Rs. 85 lacs + Rs. 40 Lacs = Rs. 125 Lacs

(b) Deduction in respect of bad debts under section 36(1) (vii) = Rs. 25 Lacs

Working Note:

Provision for Bad-Doubtful Debts A/c

[ONE/SINGLE ACCOUNT]

Dr. **Cr.**

Particulars	**Rs. in lakhs**	**Particulars**	**Rs. in lakhs**
		By Balance b/f	200
		By Profit & Loss A/c [1000 x 8.5%]	85
To Debtors A/c	325	By Profit & Loss A/c [400 x 10%]	40
	325		**325**

Bad-Debts A/c

Dr. **Cr.**

Particulars	**Rs. in lakhs**	**Particulars**	**Rs. in lakhs**
To Debtors A/c [350-325]	25	By Profit & Loss A/c	25
	25		**25**

Reader's Note:

5.3 PAYMENTS MADE TO A RELATIVE ETC

Section:- 40A(2) - w.r.e.f A.Y.2017-18

The payment is in respect of goods, services or facilities supplied / provided by a relative or specified person and the amount paid to such relative or specified person is considered to be excessive or unreasonable as compared with the market value of such goods, services or facilities, or the legitimate needs of the business or profession of the assessee or the benefit derived by or accruing to him therefrom, then such excess shall be disallowed.

~~**Provided** that no disallowance, on account of any expenditure being excessive or unreasonable having regard to the fair market value, shall be made in respect of a specified domestic transaction referred to in section 92BA, if such transaction is at arm's length price as defined in clause (ii) of section 92F~~. **(This proviso not relevant from A.Y. 2017-18 and onwards – Amendment by Finance Act, 2017).**

5.4 PAYMENT EXCEEDING RS.20,000 MADE OTHERWISE THAN BY ACCOUNT PAYEE CHEQUE OR DEMAND DRAFT

Section:- 40A(3) - Effective from A.Y.2018-19

(1) Where the assessee incurs any expenditure in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, exceeds twenty thousand rupees **(ten thousand rupees w.e.f. A.Y. 2018-19)**, no deduction shall be allowed in respect of such expenditure.

(2) With effect from 1st October, 2009, the monetary limit of Rs. 20,000 (Rs.10,000 w.e.f. A.Y. 2018-19) u/s 40A(3) has been raised to Rs. 35,000 in the case of payment made for plying, hiring or leasing goods carriages.

(3) The provisions of this section all types of expenditure including payment made for purchase of goods which are to be claimed under the head "PGBP".

(4) However, no disallowance shall be made this sub-section, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of banking facilities available, considerations of business expediency and other relevant factors. – Rule 6 DD

Practical 3

From the following information, determine the amount of disallowance in the hands of ABC Limited.

1. Salary for the month of **January, 2018** paid to three employees namely:-Mahesh, Suresh and Ramesh in cash. (Cash payment made Rs.6,000, Rs.8,000 and Rs.22,500 respectively).

2. On **10th June, 2017**, ABC Limited purchased goods on credit from PQR Ltd. for Rs.54,000. This liability was discharged as under: -
   (a) Rs.8,000 in cash on **15th June, 2017;**
   (b) balance amount by a bearer cheque on **1st July, 2017.**

3. On **18th August, 2017,** ABC Limited incurred expenditure Rs.36,000 on machine repairing. However it made entire payment in cash on **21st September, 2017** as under:
   (a) Rs. 12,000 at 10 am
   (b) Rs. 10,000 at 3 pm
   (c) Rs. 14,000 at 6pm

4. On **18th November, 2017**, ABC Ltd. purchased packing material on credit from a relative of a director for Rs.48,000 though market value was Rs. 40,000. The amount was paid by way of bearer cheque on **22nd December, 2017**.

5. On **12th January, 2018**, ABC Ltd. made cash payment of Rs. 32,000 to transport operator, Mr. Bhola.

Solution

1. Rs.22,500 being payment made to Mr. Ramesh shall be disallowed.
2. Nothing will be disallowed out of the payment of Rs.8,000 in cash on **15th June, 2017**, as the payment does not exceed Rs.10,000. However, Rs.46,000 shall be disallowed since payment exceeds Rs.10,000 and payment has been made otherwise than by account payee cheque or draft.
3. Entire Rs. 36,000 shall be disallowed since aggregate payment made in a day to the same person exceeds Rs. 10,000 otherwise than by way of account payee cheque or draft.
4. **1st View:** Out of the payment of Rs.48,000, Rs.8,000 (being the excess payment to a relative) shall be disallowed under section 40A(2). As the payment is made by bearer cheque (and not an account payee cheque) and the remaining amount (i.e. Rs. 40,000) exceeds Rs.10,000, Rs.40,000 shall be disallowed under section 40A(3).

   2nd View: Entire Rs.48,000 shall be disallowed under section 40 A (3) since payment is made by bearer cheque and not an account payee cheque.
5. Nothing shall be disallowed out of payment made to Mr. Bhola since payment made to him does not exceed Rs. 35,000.

Reader's Note:

5.5 DEDUCTION HAS BEEN CLAIMED EARLIER ON DUE BASIS AND PAYMENT IS MADE SUBSEQUENTLY OTHERWISE THAN BY ACCOUNT PAYEE CHEQUE OR DRAFT

Section:- 40A(3A) - Effective from A.Y.2018-19

A special provision has been introduced to cover the above-mentioned payments under section 40A (3A) which is given below-

(i) The taxpayer had claimed deduction in respect of an expenditure in any of the earlier years.
(ii) The amount of deduction exceeds Rs. 20,000 (**Rs. 10,000 w.e.f. A.Y. 2018-19)**
(iii) Subsequent year payment is made in respect of the aforesaid liability
(iv) The payment exceeds Rs. 20,000 (**Rs. 10,000 w.e.f. A.Y. 2018-19)**
(v) The payment is made otherwise than by an account payee cheque or draft or use of electronic clearing system through a bank account.

If above conditions are satisfied, the payment so made shall be deemed to be the business income of the previous year in which payment is made.

Practical 3

Tip Top Ltd. purchased goods worth Rs. 95,000 on credit from Mr. Mohan. This purchase was made on **10-07-2014.** However, Tip Top Ltd. discharged such liability on **10-8-2017** by cash payment. Discuss tax consequence of above transaction in the hands of TIP Top Ltd.

Solution

Provisions of section 40A(3A)

(i) Tip Top Ltd. had claimed deduction in respect of purchase in previous year **2014-15.**
(ii) The amount of deduction exceeds Rs. 10,000 (In this case, it is Rs. 95,000)

(iii) Subsequent year (In this case, previous year **2017-18**) payment is made in respect of the aforesaid liability.

(iv) The payment exceeds Rs. 10,000. (In this case, it is Rs. 95,000)

(v) The payment is made otherwise than by an account payee cheque or draft. (In this case, payment is made by way of cash)

If above conditions are satisfied, the payment so made (Rs. 95,000) shall be deemed to be the business income of the previous year **(2017-18)** in which payment is made.

Reader's Note:

5.6 CERTAIN DEDUCTIONS TO BE ONLY ON ACTUAL PAYMENT

Section:- 43B - Effective from A.Y.2018-19

- Followings are deductible on payment basis:-

  (a) Any sum payable by way of tax, duty, cess or fees by whatever name called under any law for the time being in force e.g. Municipal tax, Excise Duty, VAT, Service Tax, Custom Duty

  (b) Any sum payable by an employer by way of contribution to provident fund or superannuation fund or any other fund for the welfare of employees. **(Employers' Contribution)**

  (c) Any sum payable as bonus or commission to employees.

  (d) Any sum payable as interest on any loan or borrowing from a public financial institution or a state financial corporation or a state industrial investment corporation.

  (e) Interest on any loan or advances taken from a scheduled bank or **a co-operative bank other than a primary agriculture society or a primary co-operative agricultural and rural development bank. (bold portion inserted by Finance Act, 2017 w.e.f. A.Y. 2018-19)**

  (f) Any sum payable by an employer in lieu of leave at the credit of his employee

  (g) any sum payable by the assessee to the Indian Railways for the use of railway assets.

- Above expenditures are deductible in the previous year in which they have been incurred provided actual payment has been made on or before the due date for furnishing return of income u/s 139(1).

- If payment is not made within the time mentioned above, then relevant expenditure is first disallowed and thereafter it shall be allowed as deduction in the previous year in which actual payment is made.

- **Explanation 3C and 3D of section 43B**

  If any sum payable by an assessee as interest on any loan or borrowing or advance is converted by the bank or financial institution into a fresh loan, the interest so converted (but not actually paid) shall not be deemed to have been actually paid for the purpose of this section and therefore same shall not be allowed as deduction under the head PGBP.

- Further, student must note that **Employees' Contribution** is not governed by section 43B. It is governed by section 2(24) and section 36(1) (va). Tax treatment of Employees' Contribution is as under:-

N.P. as per profit and loss account	XXX
Add: Employees' Contribution :- It is deemed income as per definition of Income [Section 2(24) (x)]	XXX
Less: Amount deposited within the due date under Provident Fund Act or any other relevant Act [Section 36(1)(va)]	XXX

5.7 SPECIAL PROVISION IN CASE OF INCOME OF PUBLIC FINANCIAL INSTITUTIONS, PUBLIC COMPANIES, ETC.

Section:- 43D - Effective from A.Y.2018-19

Assessee	Nature of Income	Year of taxability
— Public Financial Institutions — Scheduled banks — **co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) – Inserted by Finance Act, 2017** — State Financial Corporations — State Industrial Investment Corporations	Interest on advances categorized as 'Bad & Doubtful debts" as per the guidelines issued by RBI.	Year in which such interest is: (i) credited to P&L account or (ii) actually received by the assessee whichever is earlier

Practical 4

Ratnakar Home Furniture Private Ltd (RHFPL) had raised term loan from Kalupur Commercial Co-operative Bank Limited (KCCBL) two years before. However, RHFPL failed to pay the instalments of term loan and therefore KCCBL categorized this term loan as "Bad and Doubtful Debts" as per the guidelines issued by RBI. The total interest not served by RHFPL was Rs. 32,00,000 for the previous year 2017-18. Discuss tax consequence of the abovementioned transaction in the hands of

(a) RHFPL

(b) KCCBL

Solution

Tax consequence in the hands of RHFPL

As per the amended provisions of section 43B, RHFPL is not entitled to claim unpaid interest of Rs. 32,00,000 unless it has been actually paid on or before due date of filing return under section 139(1) of the Act.

Tax consequence in the hands of KCCBL

As per the amended provisions of section 43BD, if KCCL does not recognize Rs. 32,00,000 as interest income in its books account then it would not be taxable in the previous year 2017-18.

Reader's Note:

5.8 MAINTENANCE OF BOOKS OF ACCOUNTS

Section:- 44AA - Effective from A.Y.2018-19

The requirement of this section regarding maintenance of books of account by certain persons are based on two criteria:

(a) Financial criteria;

(b) Persons specified under Section 44AA (1).

Accordingly, the requirement of keeping books of account shall be as under:

Types of profession /Business	Financial criteria	Books of account/documents to be maintained
Specified professions u/s 44AA(1)	• Total gross receipts exceed Rs.1,50,000 in any of the three years immediately preceding the previous year **or** • where the profession is newly set up in the previous year, total gross receipts are likely to exceed Rs.1,50,000.	Books and documents as prescribed under Rule 6F (2).
Specified professions u/s 44AA (1)	• Total gross receipt Rs.1,50,000 or below in any of the three years immediately preceding the previous year **or** • total gross receipts not likely to exceed Rs.1,50,000 in the previous year, if the profession is newly set up.	Such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provision of the Act.
Other persons	(a) Income from business or profession exceeds Rs.1,20,000 or total sales, turnover or gross receipts exceed Rs.10 lakhs in any of the three years preceding the previous year **or** (b) Where the business or profession newly set up in the previous year, if his income from business or profession likely to exceed Rs. 1,20,000 or total sales, turnover or gross receipts likely to exceed Rs.10 lakhs, **or** (c) **In case of person being an individual or Hindu undivided family, the provisions of clause (a) and (b) above, the limit of Rs. 1,20,000 shall be substituted by Rs. 2,50,000 and the limit of Rs. 10 lakhs shall be substituted by Rs. 25 lakhs (Inserted by Finance Act, 2017 w.e.f. A.Y. 2018-19) or**	Such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provision of the Act.

	(d) where profits and gains from the business are claimed to be lower than profits computed under Section 44AE or 44BB or 44BBB or (e) Where the provisions of section 44AD(4) are applicable in his case and his income exceeds maximum amount not chargeable to tax in any previous year.	
Other persons	Not covered by above	Not required to maintain any books of account.

(1) Persons specified u/s 44AA (1): Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorized representative or film artist.

(2) Books and documents specified under Rule 6F: The books of account and other documents prescribed under Rule 6F(2) are:

(i) a cash book;

In cases where the cash book maintained by the assessee contains adequate particulars in respect of the expenditure incurred by him, it would not be necessary to prepare and sign the payment voucher.

(ii) a journal, if the accounts are maintained under mercantile system of accounting

(iii) a ledger;

(iv) for an amount exceeding Rs.25, carbon copies of bills, whether machine numbered or otherwise serially numbered, wherever such bills are issued by the assessee and carbon copies or counterfoils of machine numbered or otherwise serially numbered receipts issued by him;

(v) original bills wherever issued to the assessee and receipts in respect of expenditure incurred by the assessee or, where such bills and receipts are not issued and the expenditure incurred does not exceed Rs.50, payment vouchers prepared and signed by the assessee.

(3) In addition to the above books of account and other documents, under Rules 6F(3) a person carrying on medical profession shall also maintain the following:

(i) a daily case register in Form No.3C;

(ii) an inventory under broad heads, as on the first and the last day of the previous year, of the stock of drugs, medicines and other consumable accessories used for the purpose of his profession.

(4) The books of account and other documents specified above under rule 6F(2) and 6F(3) shall be kept and maintained for a period of 6 years from the end of the relevant assessment year.

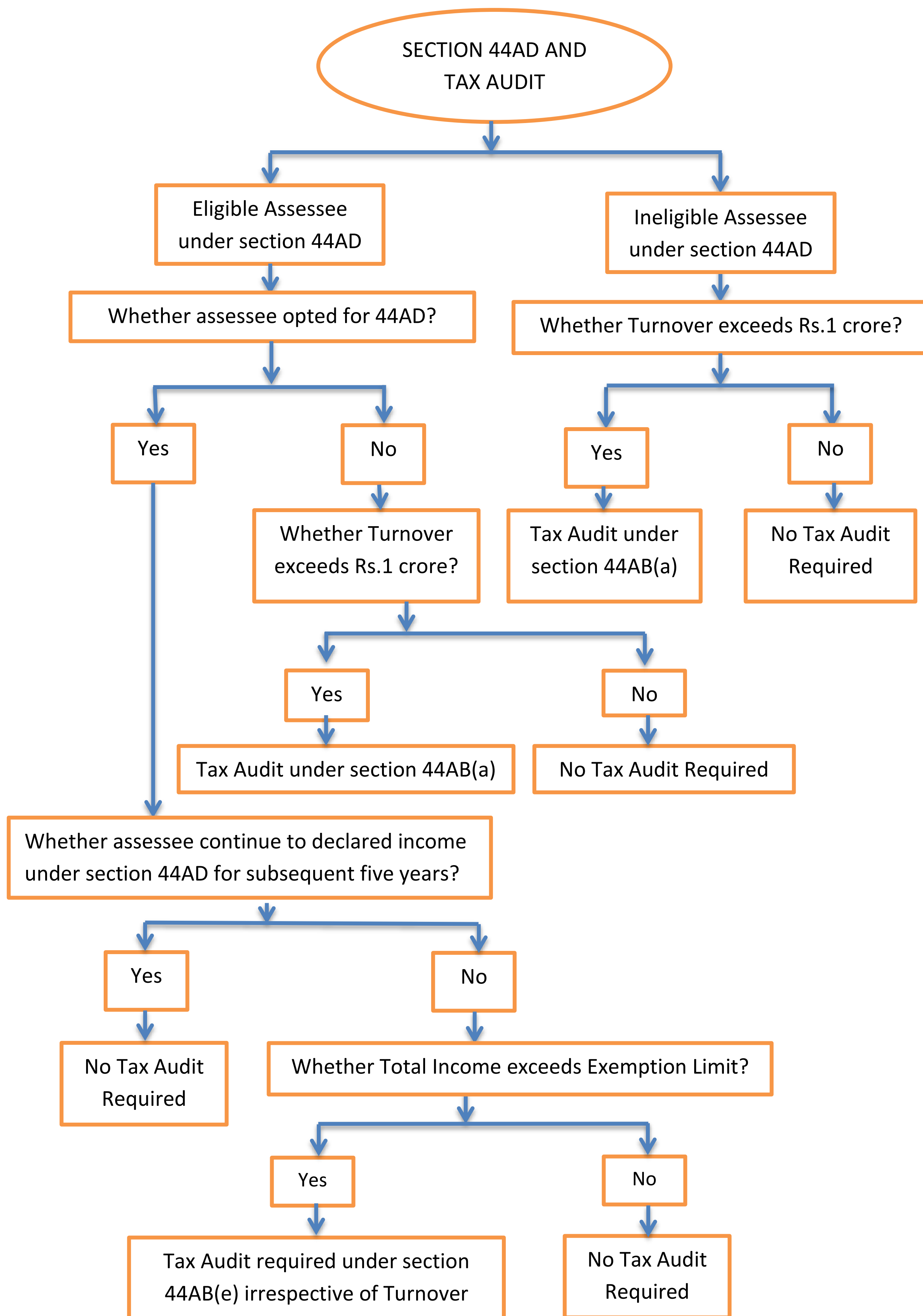
5.9 TAX AUDIT

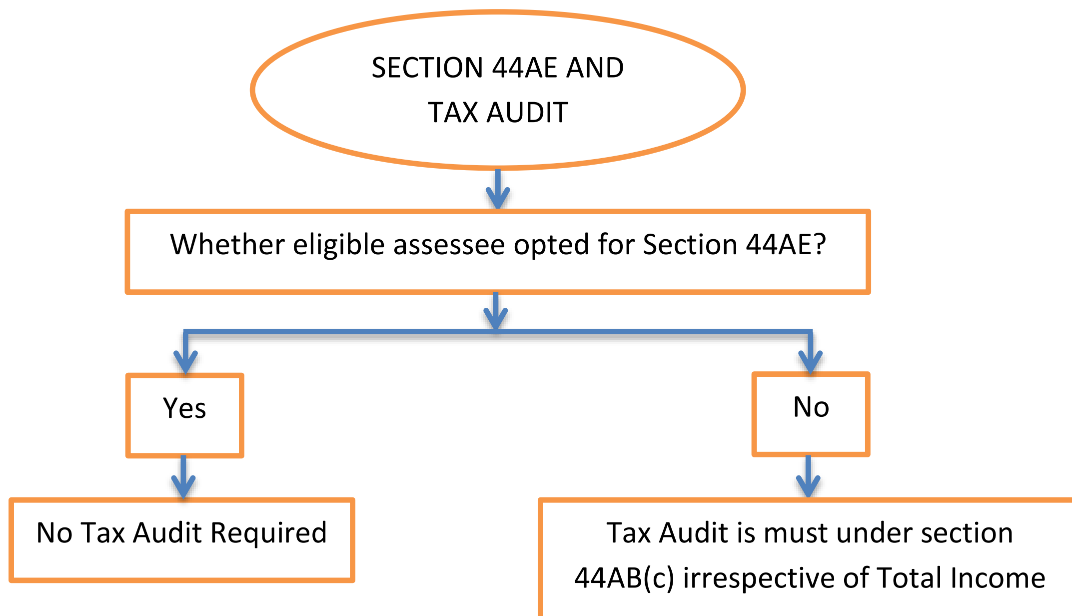
Section:- 44AB – w.r.e.f. A.Y.2017-18

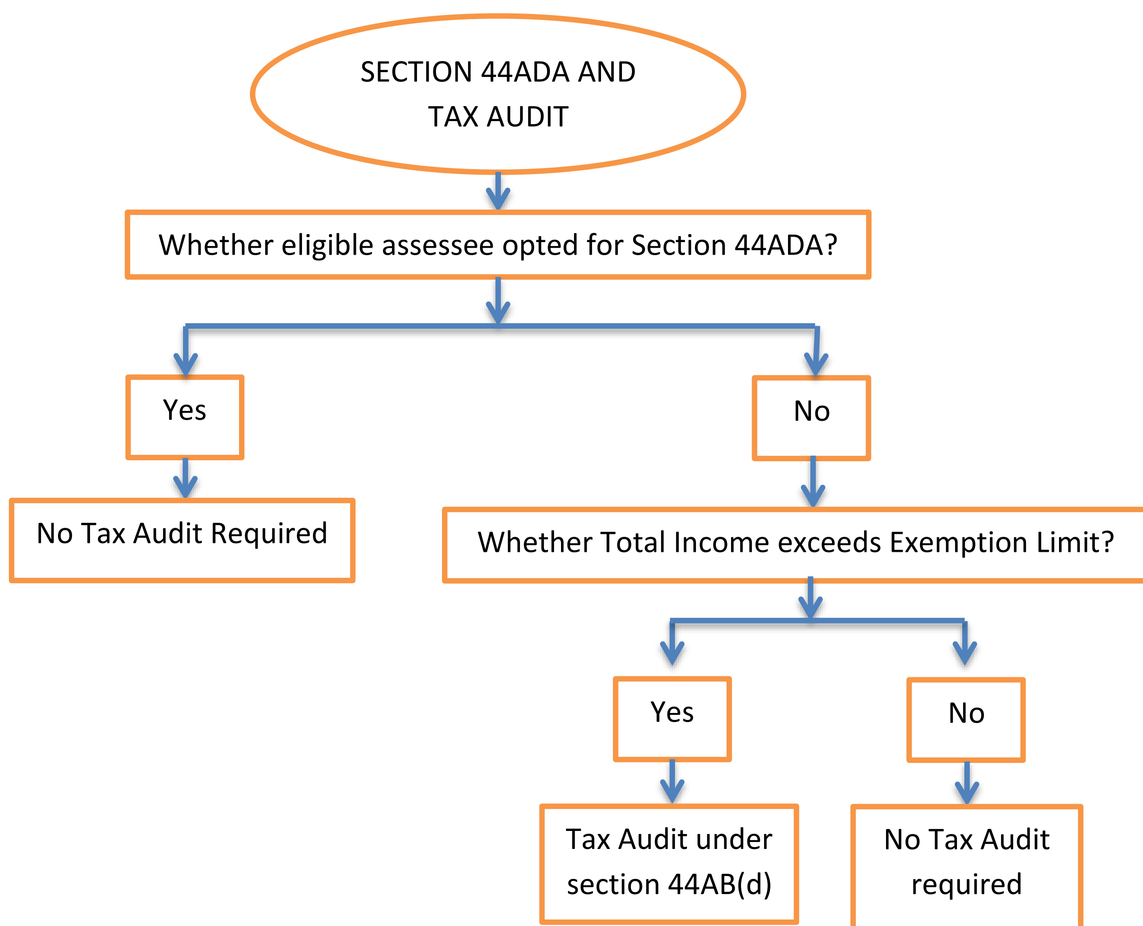
Section 44AB prescribes accounts to be audited in following five situations:-

Clause No.	Situation giving rise to tax audit
(a)	Every person carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year;
(b)	Every person carrying on profession shall, if his gross receipts in profession exceed **twenty-five (fifty – Amendment by Finance Act, 2016)** lakh rupees in any previous year; or
(c)	Every person carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and **he has claimed his income to be lower than the profits** or gains **so deemed** to be the profits and gains of his business, as the case may be, in any previous year;
(d)	Every person carrying on the profession shall, if the profits and gains from the profession are deemed to be the profits and gains of such person under **section 44ADA and he has claimed such income to be lower than the profits** and gains **so deemed** to be the profits **and** gains of his profession **and his total income exceeds the maximum amount which is not chargeable** to income-tax in any previous year; **(modified by Finance Act, 2016)**
(e)	Every person carrying on the business shall, if the provisions of **sub-section (4) of section 44AD** are applicable in his case and **his total income exceeds the maximum amount** which is **not chargeable to** income-**tax** in any previous year.
1st Proviso	However, this section shall not apply to the persons, who declares profits and gains for the previous year in accordance with the provisions of section 44AD(1) and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year **(inserted by Finance Act, 2017 w.r.e.f A.Y. 2017-18)**

To sum up presumptive taxation and tax audit, consider following:







Whether deduction of interest and remuneration to partner shall be allowed out of presumptive income?

Section 44AD	Section 44AE	Section 44ADA
No	Yes	No

Practical 5

Mr. Ramesh runs grocery shop. Total turnover of this grocery shop for the previous year **2017-18** is Rs. 1 Cr and 45 Lacs. He would not like to opt for the provisions of section 44AD. He regularly maintains books of accounts. Due to loss under head house property and the deductions under section 80C to 80 U, total income of Mr. Ramesh for the previous yea**r 2017-18** is Rs. 2,30,000. Whether he is required to get his accounts audited? If yes, then under which clause?

Solution

Consider following press release issued by the CBDT dated 20th June, 2016 giving clarification on "Threshold Limit of tax audit under section 44AB and section 44AD":

- Section 44AB of the Income-tax Act ('the Act') makes it obligatory for every person carrying on business to get his accounts of any previous year audited if his total sales, turnover or gross receipts exceed one crore rupees.
- However, if an eligible person opts for presumptive taxation scheme as per section 44AD(1) of the Act, he shall not be required to get his accounts audited if the total turnover or gross receipts of the relevant previous year does not exceed two crore rupees.
- The higher threshold for non-audit of accounts has been given only to assessees opting for presumptive taxation scheme under section 44AD.

Considering the above press release, 1st proviso to section 44AB of the Act as inserted by Finance Act, 2017 and the fact that Mr. Ramesh would not like to opt for section 44AD, he is advised to get his accounts audited under **clause (a) section 44AB** of the Act since turnover of grocery shop exceeded Rs. 1 Cr irrespective of his total income.

Reader's Note:

Practical 6

Mr. Kishore owns 5 heavy trucks throughout the previous year **2017-18**. He wants to declare business income of Rs. 2,45,000 from truck operations. Income from other sources is Rs.5,000. He wants to claim deduction of Rs. 30,000 u/s 80C. Advice Mr. Kishore for maintaining books of accounts and getting them audited.

Solution

In this case, Mr. Kishore wants to declare income from truck operation Rs.2,45,000 which is less than the income required to be disclosed under section 44AE (i.e., 5 x Rs.7500 x 12 = Rs. 4,50,000). Therefore, he must maintain books of accounts and get the same audited under section 44AB(c) irrespective of his total income.

Reader's Note:

Practical 7

Mr. Utsav is a chartered accountant. He practices in individual name. For the previous year **2017-18**, his gross receipts from the profession was Rs. 9,00,000. He wants to declare Rs. 2,55,000 net income from this profession. Further, he earned interest on fixed deposit Rs. 5,000. He wants to claim deduction Rs. 30,000 u/s 80C. Advise him about getting his accounts audited in view of requirements of Section 44AB (d) of the Act.

Solution

In this case, Mr. Utsav wants to declare Rs.2,55,000 from his profession which is less than 50% of gross receipts (Rs.9,00,000 in this case).

Computation of Total Income of Mr. Utsav

	Particulars	Rs.
	Income from profession	2,55,000
Add:	Income from other Sources	5,000
	Gross Total Income	**2,60,000**
Less:	Deduction under section 80C	(30,000)
Total Income		**2,30,000**

Since total income of Mr. Utsav does not exceed exemption limit, therefore, he is not required to get his accounts audited in view of the requirements of section 44AB(d) of the Act even though he would like to declare income from profession lower than 50% of gross receipts.

Reader's Note:

Practical 8

Does your answer differ in above problem, if income from other sources was Rs.40,000 instead of Rs.5,000.

Solution

Computation of Total Income

	Particulars	Amount in Rs.
	Business Income	2,55,000
Add:	Income from other Sources	40,000
	Gross Total Income	**2,95,000**
Less:	Deduction under section 80C	30,000
Total Income		**2,65,000**

Since total income of Mr. Utsav exceeded exemption limit, therefore, he is required to get his accounts audited under section 44AD(d).

Reader's Note:

5.10 PRESUMPTIVE TAXATION FOR ELIGIBLE ASSESSEE CARRYING ON ELIGIBLE BUSINESS

Section:- 44AD – w.r.e.f A.Y. 2017-18

(1) Eligible Assessee

– would mean an assessee who:

(i) is a resident, individual, Hindu undivided family or a partnership firm (limited liability partnership firm specifically excluded) and

(ii) has not claimed deduction under any of the sections 10AA and 80H to 80RRB.

(2) Eligible business means—

(i) any business except the business of plying, hiring or leasing goods carriages referred to in section 44AE; and

(ii) whose total turnover or gross receipts in the previous year does not exceed an amount of **two crore rupees** (Amendment by Finance Act, 2016).

(3) Provisions of this section shall not apply to-

(i) a person carrying on profession as referred to in sub-section (1)of section 44AA;

(ii) a person earning income in the nature of commission or brokerage; or

(iii) a person carrying on any agency business

(4) Presumptive Income

8% of the total turnover/ gross receipts or amount earned by the eligible assessee from such business whichever is higher.

However, the words "eight per cent", the words "six per cent" had been substituted, in respect of the amount of total turnover or gross receipts which is received by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account during the previous year or before the due date specified in sub-section (1) of section 139 in respect of that previous year. **(Inserted by Finance Act, 2017 w.r.e.f. A.Y. 2017-18)**

(5) Other salient features of this presumptive scheme

- **Section 44 AD(2):-** All the deductions under section 30 to 38 shall deemed to have been allowed. Due to deletion of proviso to this section, if eligible assessee is a firm then it cannot claim deduction in respect of interest and salary paid to partners. (Amendment made by Finance Act, 2016).
- **Section 44 AD(3) :-** The WDV of any asset shall be deemed to have been calculated as if the eligible assessee had claimed the deduction in respect of the depreciation for each of the relevant assessment years.
- **Section 44 AD(4):-** Where an eligible assessee declares profit for any assessment year in accordance with the provisions of this section and he declares profit for any of the five consecutive subsequent assessment years at lower than the required 8 percent, then he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared up to 8 percent.
- **Section 44 AD(5):-** Consequently, such assessee, if total income exceeds maximum amount not chargeable to tax, shall be required to keep and maintain books of accounts and other documents as per section 44AA and get them audited and furnish a report of such audit as required under section 44AB.

Practical 9

M/s. Patel & Co., a partnership firm has opened medical store on **10-5-2017.** The firm purchased small furnished shop on **15-04-2017** for Rs. 45,00,000 (which includes Rs. 5,00,000 for furniture) Since it was the first year of operations, firm would like to opt for section 44AD of the Act. Following are the details of first year of operations:

Particulars	**Rs.**
Sales of Medicines (Cash Sales)	1,12,00,000
Less :	
Cost of goods sold	(1,03,00,000)
Depreciation as per section 32- shop	(4,00,000)
Depreciation as per section 32- furniture	(50,000)
Salary and interest to partners (as permitted by section 40(b)	(3,65,000)
Other shop expenses	(55,000)
Net profit	30,000
Income from other sources	10,000

You are required to compute total income of the firm for the assessment year **2018-19.**

Solution

Computation of Total income of Patel & Co. for the A.Y. 2018-19

Particulars	**Rs.**
Business income	8,96,000
Income from other Sources	10,000
Total Income	**9,06000**

Working Note: Calculation of presumptive income as per section 44AD

Particulars	**Rs.**
Turnover	1,12,00,000
Presumptive Income as per section 44AD (8% of Turnover)	**8,96,000**
Less: Salary and interest to partners	Not deductible
Net presumptive income under section 44AD	**8,96,000**

Other Notes:

1. Patel & Co. runs medical store and its turnover is less than Rs. 2 Crore, therefore, it is an eligible assessee under section 44AD of the Act.
2. As per the provisions of section 44AD of the Act, assessee has to declare minimum 8% of gross receipts as income under the head “PGBP”, if firm would not like to maintain books of accounts.
3. Once firm opts for the section 44AD, all deductions under section 30 to 38 shall be deemed to have been allowed.
4. Further under section 44AD, firm cannot claim interest and remuneration paid to partners as well.

Reader’s Note:

Practical 10

Continuing above problem, M/s. Patel & Co. offered its income under section 44AD for the **assessment year 2019-20** and **2020-21** also. However, for **assessment year 2021-22**, M/s. Patel & Co. decided to declare profit from the medical store lower than the 8% of turnover. Discuss the tax consequences of this decision and also find out the depreciation for the **assessment year 2021-22.**

Solution

As per section **44AD(4)** of the Act, where an eligible assessee declares profit for any assessment year in accordance with the provisions of this section and he declares profit for any of the five consecutive subsequent assessment years at lower than the required 8 percent, then he shall not be eligible to claim the benefit of the provisions of this section for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared up to 8 percent. Considering the above provision and the facts of present case, since Patel & Co. has declared profit under section 44AD for the **assessment year 2018-19,** ideally, it shall declare the profits under section 44AD of the Act for the following five assessment years:

Sr. No.	Assessment years
1	2019-20
2	2020-21
3	2021-22
4	2022-23
5	2023-24

However, Patel & Co. would like to declare profit from the medical store lower than 8% of turnover in **assessment year 2021-22,** then it shall not be eligible to claim benefit of section 44AD for the following five assessment years:

Sr. No.	Assessment years
1	2022-23
2	2023-24
3	2024-25
4	2025-26
5	2026-27

Consequently, Patel & Co. shall be required to keep and maintain books of accounts and other documents as per section 44AA and get them audited under section 44AB(e) for all the above years provided its total income exceeds exemption limit- **Section 44AD(5)**

As per the provisions of **section 44AD(3)**, the WDV of any asset shall be deemed to have been calculated as if the eligible assessee had claimed the deduction in respect of the depreciation for each of the relevant assessment years. Considering the requirement of this provision, Patel & Co. can claim depreciation on Shop and furniture for the assessment year **2021-22** as under:

Particulars	Building (Rs.)	Furniture (Rs.)
WDV as on **01-4-2017**	Nil	Nil
Add: Purchased during previous year **2017-18**	40,00,000	5,00,000
Less: Sold out during previous year **2017-18**	Nil	Nil
WDV for the previous year 2017-18	**40,00,000**	**5,00,000**

Less: depreciation for the previous year **2017-18**	(4,00,000)	(50,000)
WDV as on 01-04-18	**36,00,000**	**4,50,000**
Less: Depreciation for the previous year **2018-19**	3,60,000	45,000
WDV as on 01-04-19	**32,40,000**	**4,05,000**
Less: Depreciation for the previous year **2019-20**	3,24,000	40,500
WDV as on 01-04-2020	**29,16,000**	**3,64,500**
Less: Depreciation for the previous year **2020-21 (A.Y. 2021-22)**	**2,91,600**	**36,450**

Reader's Note:

Practical 11

Mr. Sanjay is engaged in the business of Civil Construction undertakes small government projects. He received the following amounts by way of contract receipts:

Particulars	Rs.
Towards contract work for supply of labour	70,00,000
Value of materials supplied by Government	10,00,000
Gross receipts	80,00,000

Mr. Sanjay paid Rs. 50,00,000 to labourers in cash. He has brought forward loss and unabsorbed depreciation of the discontinued business Rs.45,000 and Rs. 30,000 respectively. Compute income under the head "PGBP" assuming that he opts for section 44AD.

Solution

Particulars	Rs.
Presumptive income under section 44AD [Rs. 70,00,000 x 8%]	5,60,000
Less: unabsorbed depreciation	Nil
	5,60,000
Less: Business loss brought forward u/s 72	(45,000)
Business Income	5,15,000

Notes:

(1) As per para **31.1** of the **circular no. 684 of CBDT dated 10-06-1994,** gross receipts are the amount received from the clients for contract and will not include the value of material supplied by the client.

(2) Once assessee opts for section 44AD, deduction under section 30 to 38 shall be deemed to have been allowed. Therefore, question of disallowance in respect of labour payment of Rs. 50,00,000 in cash under section 40 A(3) does not arise.

(3) Once assessee opts for section 44AD, deduction under section 30 to 38 shall be deemed to have been allowed. Since depreciation is governed by section 32(2), it cannot be adjusted while computing income under section 44AD of the Act. But brought forward business loss is governed by section 72, same shall be adjusted against presumptive income computed under section 44AD.

Reader's Note:

6 – CAPITAL GAINS

6.1 DEFINITION OF CAPITAL ASSET

Section:- 2(42A) – Effective from A.Y.2018-19

As per section 2(42A), a short-term capital asset means capital asset held by an assessee for not more than 36 months immediately prior to its date of transfer. However, in the following cases an asset, held for not more than 12 months, is treated as short-term capital asset-

(a) Equity or preference shares in a company (Listed in a recognized stock exchange)
(b) Securities listed in a recognized stock exchange in India.
(c) Units of UTI (whether listed or not)
(d) Units of an equity oriented fund (whether listed or not)
(e) Zero Coupon Bonds (whether listed or not)

Remark:

1. In case of unlisted shares (equity or preference), if transfer takes place on or after 1st April, 2016, the period of holding not exceeding 24 months, shall be taken into consideration instead of 36 months.
2. **In case of *an immovable property, being land or building or both,* if transfer takes place on or after 1st April, 2017, the period of holding not exceeding 24 months, shall be taken into consideration instead of 36 months.**

Practical 1

Mr. Jagmohan purchased residential building on 10th August, 2015. Thereafter, he sold out this building on 15th August, 2017. Determine the nature of asset.

Solution

Period of holding in respect of residential building exceeded 24 months. Hence, the residential building transferred by Mr. Jagmohan is a long term capital asset.

Reader's Note:

6.2 SHIFTING BASE YEAR FROM 1981 TO 2001 FOR COMPUTATION OF CAPITAL GAIN

Section:- 48 and 55 - Effective from A.Y.2018-19

Existing Provisions

If a capital asset which was acquired (prior to April 1, 1981) is transferred, the assessee has been given an option of either to adopt the fair market value of the asset as on April 1, 1981 or the actual cost of the asset as cost of acquisition.

Further, assessee is not allowed to claim deduction for cost of improvement incurred before April 1, 1981, if any.

Amendment

The base year for computation and capital gain is shifted from 1981 to 2001 with effect from the assessment year 2018-19.

Consequently, the following changes are required to be kept in mind while computing capital gain from the assessment year 2018-19 onwards –

1. If a capital asset which was acquired (prior to April 1, 2001) is transferred, the assessee will be given an option of either to adopt the fair market value of the asset as on April 1, 2001 or the actual cost of the asset as cost of the acquisition.
2. The assessee is not allowed to claim deduction for cost of improvement incurred before April 1,2001, if any.
3. As a result of above changes, if bonus shares were allotted prior to April 1, 2001, then cost of acquisition of such shares will be the fair market value on April 1, 2001. On the contrary, if bonus shares are allotted on or after April 1, 2001, cost of acquisition shall be taken as zero.
4. The Central Government has notified the "Cost inflation index" for the purpose of long-term capital gain as follows:

Financial year	*Cost inflation index*	*Financial year*	*Cost inflation index*
2001-02	100	2010-11	167
2002-03	105	2011-12	184
2003-04	109	2012-13	200
2004-05	113	2013-14	220
2005-06	117	2014-15	240
2006-07	122	2015-16	254
2007-08	129	2016-17	264
2008-09	137	2017-18	272
2009-10	148		

6.3 EXEMPTION FROM LONG TERM CAPITAL GAINS SCHME MODIFIED

Section:- 10(38) - Effective from A.Y.2018-19

Under the existing provisions of the Section 10(38) of the Income-tax Act, 1961, the income arising from a transfer of long term capital asset, being equity share of a company or a unit of an equity oriented fund, is exempt from tax if the transaction of sale is undertaken on or after 1st October, 2014 and is chargeable to Securities Transaction Tax under Chapter VII of the Finance (No.2) Act, 2004.

It has been noticed that exemption provided under section 10(38) is being misused by certain persons for declaring their unaccounted income as exempt long-term capital gains by entering into sham transactions.

With a view to prevent this abuse, it is proposed to amend section 10(38) to provide that exemption under this section for income arising on transfer of equity share acquired or on after 1st day of October, 2004 shall be available only if the acquisition of share is chargeable to Securities Transactions Tax under Chapter VII of the Finance (No 2) Act, 2004.

However, to protect the exemption for genuine cases where the Securities Transactions Tax could not have been paid like acquisition of share in IPO, FPO, bonus or right issue by a listed company acquisition by non-resident in accordance with FDI policy of the Government etc., it is also proposed to notify transfers for which the condition of chargeability to Securities Transactions Tax on acquisition shall not be applicable.

As on 05/06/2017 Government issued a notification no. 43/2017. In preamble of said notification, the Government notifies all transactions (with few specific exclusion and few specific inclusion) of acquisition of equity share entered into on or after the 1st day of October, 2004 which are not chargeable to STT EXCEPT the **Column 1** transactions but including the **column 2** transactions;

Column 1	Column 2
Specific exclusion – STT on acquisition not paid, not eligible for 10(38) exemption	**Specific Inclusion – STT on acquisition not paid, still eligible for 10(38) exemption**
Acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognised stock exchange of India is made through a preferential issue	Acquisition of listed equity shares in a company which has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf
	Acquisition of listed equity shares in a company by any non-resident in accordance with foreign direct investment guidelines issued by the Government of India
	Acquisition of listed equity shares in a company by an investment fund referred to in clause (a) of Explanation 1 to section 115UB of the Act or a venture capital fund referred to in clause (23FB) of section 10 of the Act or a Qualified Institutional Buyer
	Acquisition of listed equity shares in a company through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply
Where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange of India	Following acquisition of listed equity shares in a company made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 – acquisition through an issue of share by a company other than the issue referred to in clause (a) i.e. preferential allotment. – acquisition by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business

	– acquisition which has been approved by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf – acquisition under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 – acquisition by any non-resident in accordance with foreign direct investment guidelines of the Government of India – where acquisition of shares of company is made under Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 – acquisition from the Government – acquisition by an investment fund referred to in clause (a) to Explanation 1 to section 115UB of the Income-tax Act or a venture capital fund referred to in clause (23FB) of section 10 of the income-tax Act or a Qualified Institutional Buyer – acquisition by mode of transfer referred to in sections 47 or 50B of the Income-tax Act, if the previous owner of such shares has not acquired them by any mode referred to in clause (a) or clause (b) or clause (c) [other than the transactions referred to in the proviso to clause (a) or clause (b)].
Acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules made thereunder	-

Explanation,—For the purposes of this notification,—

(a) "frequently traded shares" means shares of a company, in which the traded turnover on a recognised stock exchange during the twelve calendar months preceding the calendar month in which the acquisition and transfer is made, is at least ten per cent. of the total number of shares of such class of the company: Provided that where the share capital of a particular class of shares

of the company is not identical throughout such period, the weighted average number of total shares of such class of the company shall represent the total number of shares.

(b) **“listed‟** means listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 and the rules made thereunder

(c) **“preferential issue” and “Qualified Institutional Buyer”** shall have the meanings respectively assigned to them in sub-regulation (1) of regulation (2) of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

(d) **"public financial institution" and "scheduled bank"** shall have the meanings respectively assigned to them in Explanation to clause(viia) of sub-section (1) of section 36 of Income-tax Act.

(e) **“recognised stock exchange"** shall have the same meaning assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956

(f) **“reconstruction company” and “securitisation company”** shall have the meanings respectively assigned to them in sub-section (1) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

6.4 SPECIAL PROVISIONS FOR COMPUTATION OF CAPITAL GAIN IN CASE OF JOINT DEVELOPMENT AGREEMENT

Section:- 45(5A) and 49(7) - Effective from A.Y.2018-19

Section 45(5A):- Taxability of capital gains in case of Specified agreement:

The definition of 'transfer', inter alia, includes any arrangement or transaction where any rights are handed over in execution of part performance of contract, even though the legal title has not been transferred.

And therefore, execution of Joint Development Agreement between the owner of immovable property and the developer attracts capital gain tax liability in the hands of owner in the year in which possession is handed over to the developer.

With a view to minimise the genuine hardship which the owner of land or building may face in paying capital gains tax in the year of transfer, a new sub-section (5A) in section 45 has been inserted to provide that

- in case of an assessee being individual or Hindu undivided family who transfers land or building or both under a specified agreement,
- then capital gain arising from such transfer shall be chargeable to income-tax as income of the **previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority.**

What is the full value of consideration? The stamp duty value of his share, being land or building or both, in the project on the date of issuing of said certificate of completion as increased by any consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

Benefit of provisions of section 45(5A) not available [Proviso to section 45(5A)]:- It may, however, be noted these beneficial provisions would not apply, where the assessee transfers his share in the project on or before the date of issue of said completion certificate and therefore, the capital gain tax liability would be deemed to arise in the previous year in which such transfer took place. In such a case, full value of consideration received or accruing shall be determined by the general provisions of the Act.

Meaning of certain terms:

(a) Specified Agreement:- Specified agreement means the registered agreement in which a person owing land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.

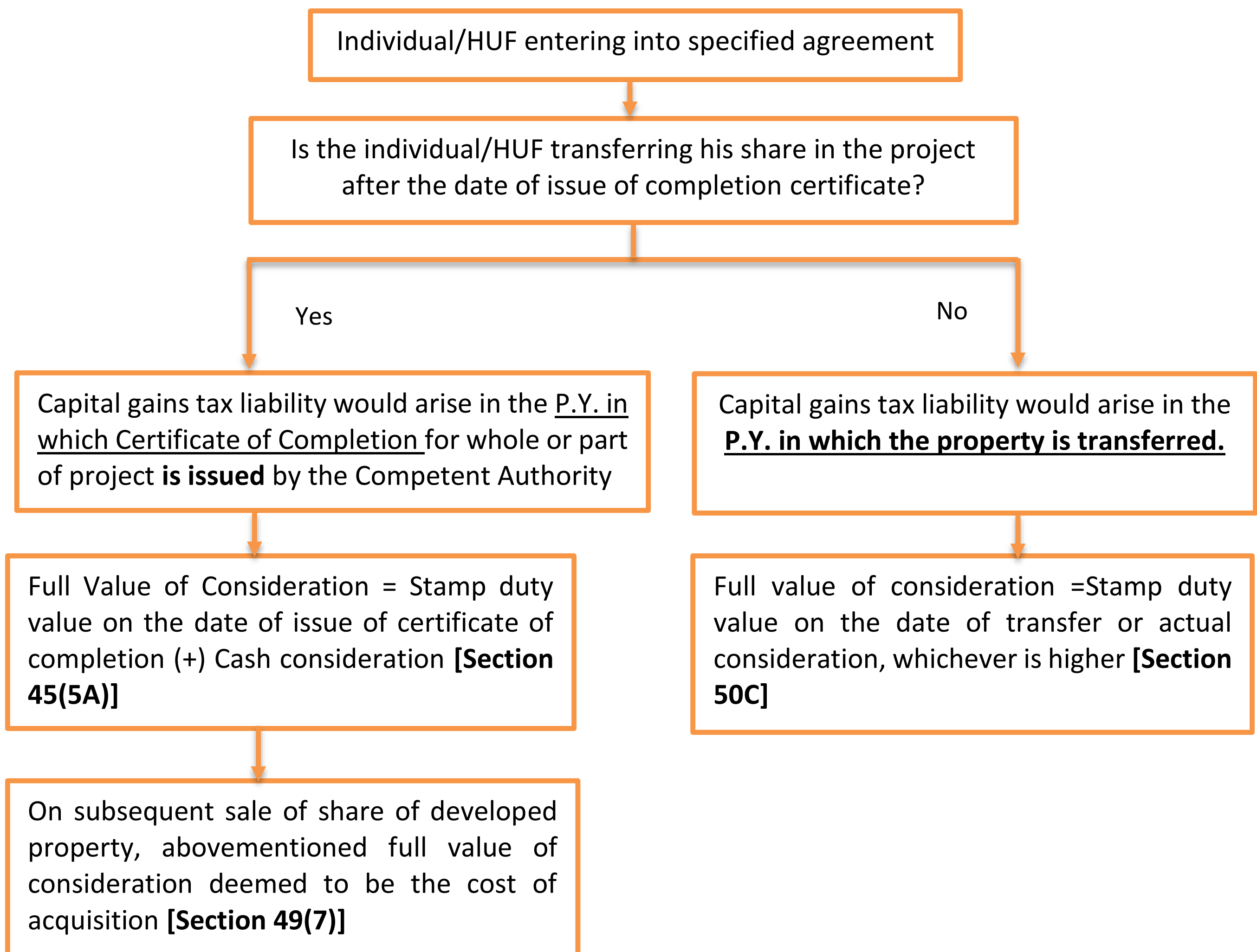
(b) Competent authority:- The authority empowered to approve the building plan by or under any law for the time being in force.

(c) Stamp duty value:- The value adopted or assessed or reassessable by any authority of Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.

Section 49(7):- Cost of acquisition of capital asset, being share in the project referred under section 45(5A)

Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in section 45(5A) which is chargeable to tax in the previous year in which the completion of certificate for the whole or part of the project is issued by the competent authority), the cost of acquisition of such asset, shall be the amount which is deemed as full value of consideration in that sub-section.

SUMMARY



Practical 2

Mr. Abhinav provides following information:

(a) He purchased small plot of land in Ahmedabad on 10th July 1998 for Rs. 10 lakh (fair market value of such plot as on 1st April, 2001 was Rs. 12 lakh)

(b) He entered into a “Specified Agreement” with Amrapali Devlopers Ltd. on 18th May 2017.

(c) Agreed consideration was : Cash component Rs. 1 Crore and 50% share in constructed area

(d) Project completion certificate was issued by Local authority on 10th August, 2018.

(e) Stamp duty valuation of 50% share in constructed area (as on 10th August, 2018): Rs. 2.25 Crore.

(f) He sold out the constructed area allotted to him on 1st May, 2019 for Rs. 3 Cr.

Discuss tax consequences of above transaction in the hands of Mr. Abhinav.

Solution

Computation of Long Term Capital Gain in the hands of Abhinav for P.Y. 2018-19

Period of Holding: From 10-07-1998 to 18-05-2017
Type of Capital Asset : Long Term

Particulars	Rs.
Full value of consideration (Rs. 1 Cr. + Rs. 2.25 Cr.)	3,25,00,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	3,25,00,000
Less: Indexed Cost of Acquisition $(\text{Rs. }12{,}00{,}000) \times \frac{272}{100}$	32,64,000
Taxable Long Term Capital Gain	**2,92,36,000**

Computation of Long Term Capital Gain in the hands of Abhinav P.Y. 2019-20

Period of Holding: From 10-08-2018 to 01-05-2019
Type of Capital Asset : Short Term

Particulars	Rs.
Full value of consideration	3,00,00,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	3,00,00,000
Less: Cost of Acquisition **as per section 49(7)**	2,25,00,000
Taxable Short Term Capital Gain	**75,00,000**

Reader's Note:

6.5 FAIR MARKET VALUE TO BE THE FULL VALUE OF CONSIDERATION FOR TRANSFER OF UNQUOTED SHARES - Effective from A.Y.2018-19

Section:- 50CA

In order to ensure the full consideration is not understated in case of transfer of unlisted shares, a new section 50CA has been inserted to provide that where the consideration received or accruing as a result of transfer of a capital asset, being share of a company other than a quoted share, is less than the fair market value of such share determined in such manner as may be prescribed, such fair market value shall be deemed to be the full value of consideration received or accruing as a result of such transfer.

For the purpose, "quoted shares" means the share quoted on any recognized stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.

Note:

The fair market value of the unquoted shares would be determined in the manner provided in sub-clause (b) or sub-clause (c), as the case may be, of Rule 11UA(1)(c) and for this purpose the reference to valuation date in the Rule 11U and 11UA shall mean the date on which the capital asset, being unquoted share of a company is transferred (Rule 11UAA).

For determination of fair market value: Refer Rule 11U and Rule 11UA under **Chapter 7: Income from Other Sources.**

Practical 3

Mr. Dravid provides following information:

(a) He subscribed shares of ABC Infrastructure Private Limited for Rs. 12,00,000 on 16th May, 2001.

(b) He sold out these shares for Rs. 85,00,000 on 18th May, 2017.

(c) Fair market value of this share on 18th May, 2017 was Rs. 98,00,000.

Discuss tax consequences of above transaction in the hands of Mr. Dravid.

Solution

Computation of Long Term Capital Gain in the hands of Mr. Dravid for P.Y.2017-18

Period of Holding: From 16-05-2001 to 18-05-2017

Type of Capital Asset : Long Term

Particulars	Rs.
Full value of consideration (actual consideration or FMV whichever is higher	98,00,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	98,00,000
Less: Indexed Cost of Acquisition $(\text{Rs. } 12,00,000) \times \frac{272}{100}$	32,64,000
Taxable Long Term Capital Gain	**65,36,000**

Reader's Note:

6.6 FEW MORE TRANSACTIONS ARE NOT TREATED AS TRANSFER

Section:- 47 (viiaa), (xb) - Effective from A.Y.2018-19

As per clause (viiaa) of section 47, any transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a non-resident to another non-resident is not treated as transfer.

As per clause (xb) of section 47, conversion of preference shares of a company into equity shares of that company is not treated as transfer.

6.7 HOW TO FIND OUT CAPITAL GAINS WHEN EQUITY SHARES RECEIVED ON CONVERSION ARE SUBSEQUENTLY SOLD?

Section:- 49(2AE), Explanation to section 2(42A) - Effective from A.Y.2018-19

(a) Section 49(2AE) has been inserted to provide that cost of acquisition of preference shares shall be treated as cost of acquisition for equity shares (received on conversion).

(b) Further, to find out whether such equity shares received on conversion are long-term capital assets or not, the period of holding shall be determined from date of acquisition of preference shares of such company.– **Explanation 1 to section 2(42A).**

(c) The benefit of indexation will start from the date of acquisition of preference shares in the company.

Practical 4

Ms. Mayuri subscribed 10,000 preference shares of Online Education Private Limited @ Rs. 10 each on 18th August, 2015. Such shares were converted into 12,500 equity shares on 10th April, 2017. She then transferred 8,000 shares on 21st September, 2017 for Rs. 12 per share. Discuss tax consequences of above transaction in the hands of Ms. Mayuri.

Solution

As discussed earlier, conversion of preference shares into equity shares is not treated as transfer by virtue of section 47 (xb). Therefore, conversion will not attract capital gain tax liability in the hands of Ms. Mayuri.

Computation of Capital Gain in the hands of Ms. Mayuri.

Period of Holding: From 18-08-2015 to 21-09-2017
Type of Capital Asset : Long Term

Particulars	Rs.
Full value of consideration (8,000 X Rs. 12)	96,000
Less: Expenses in connection with Transfer	Nil
Net Consideration	96,000
Less: Indexed Cost of Acquisition (Working Note)	(68,535)
Taxable Long Term Capital Gain	**27,465**

Working Note:-

Total Cost of 12500 equity shares	= Cost of preference shares =10000 × Rs. 10 = Rs.1,00,000
Hence, cost per equity share	$=\frac{1,00,000}{12500}$ = Rs.8
Hence, cost of acquisition of 8000 equity shares	=8000×Rs.8=Rs.64,000
Therefore, Indexed Cost of Acquisition =	$=\left(64000 \times \frac{272}{254}\right)$ =Rs.68,535

Readers Note:

6.8 WHAT IS THE COST OF ACQUISITION OF CAPITAL ASSETS OF CHARITABLE TRUSTS ON WHICH TAX HAS BEEN LEVIED UNDER SECTION 115TD?

Section:- 49(8) – w.r.e.f A.Y.2017-18

Where the capital gain arises from the transfer of an asset, being the asset held by a trust or an institution in respect of which accreted income has been computed and the tax has been paid thereon in accordance with the provisions of Chapter XII-EB, **the cost of acquisition of such asset shall be deemed to be the fair market value of the asset which has been taken into account for computation of accreted income as on the specified date referred to in sub-section (2) of section 115TD**.

6.9 CAPITAL GAIN NOT TO BE CHARGED ON INVESTMENT IN CERTAIN BONDS

Section:- 54EC - Effective from A.Y.2018-19

Q 1. Who can claim exemption?

Ans. Any person

Q2. What is the nature of capital asset which has been transferred?

Ans. Long Term Capital Asset

Q3. Which specific asset is eligible for exemption (that means which asset has been transferred?)

Ans. Any Long Term Capital Asset

Q4. Which asset the tax-payer shall acquire to avail exemption under this section?

Ans. Bonds of National High-way Authority of India (NHAI) or Rural Electrification Corporation Limited or **any other notified by the Central Government in this behalf.**

Notification No. 47 / 2017 dated 8th June, 2017:- Bonds (redeemable after three years) issued on or after 15th day of June, 2017 by Power Finance Corporation Limited are eligible for availing benefit under section 54 EC

Notification No. 79 / 2017 dated 8th August, 2017:- Bonds (redeemable after three years) issued on or after 8th day of August, 2017 by Indian Railway Finance Corporation Limited are eligible for availing benefit under section 54 EC.

Q5. What is time-limit for acquiring the new capital asset?

Ans. Six months from the date of transfer

Q6. What is the quantum of exemption?

Ans. Exemption under section 54EC = Amount invested in new asset or capital gain whichever is lower

Upper Limit for exemption: Under no circumstances, exemption under 54EC shall exceed Rs. 50 Lac in a financial year.

Q7. Is it possible to revoke the exemption in a subsequent year? (Can exemption be taken back?)

Ans. If new asset is transferred or converted into money or loan is taken on the security of new asset within 3 years from the date of its acquisition.

Q7.1.What is the nature of capital gain if exemption is taken back in subsequent year?

Ans. Long term

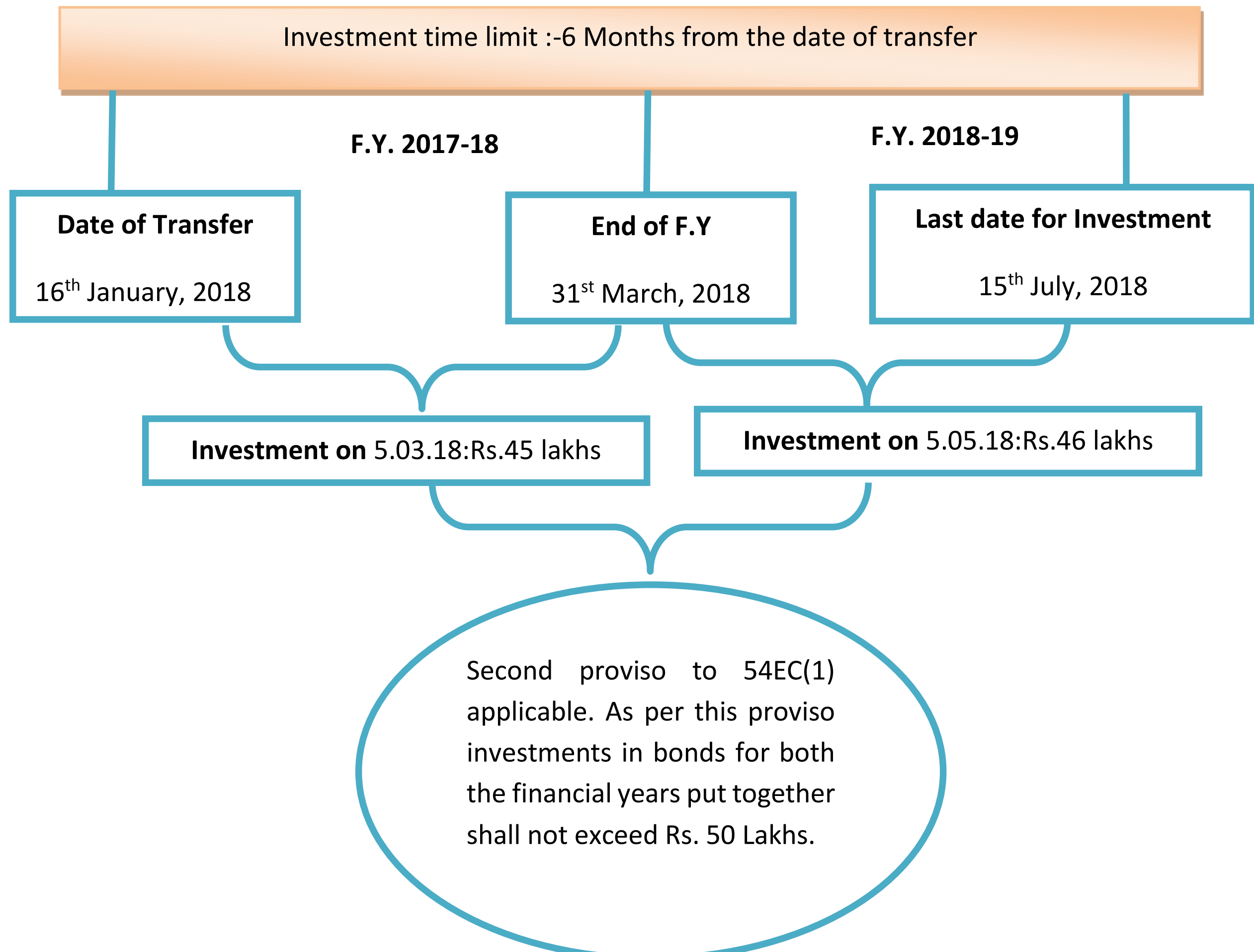
Q8. Is scheme of Deposit available?

Ans. No

Practical 5

Mrs. X, resident woman, transfers (Date of transfer:-January 16, 2018) a house property resulting into long term capital gain of Rs. 1,01,50,000. She invests a sum of Rs. 45,00,000 in capital gains bonds issue by Power Finance Corporation Limited on March 5, 2018. She further invests a sum of Rs. 46,00,000 in the same bonds on May 5, 2018. Accordingly, she wants to claim exemption of Rs. 91,00,000 under 54EC. Advise her suitably.

Solution



Therefore, Mrs. X is entitled to claim exemption of Rs. 50,00,000 under section 54EC instead of Rs 91,00,000.

Readers Note:

7 – INCOME FROM OTHER SOURCES

7.1 DEFINITION OF INCOME AMENDED

Section:- 2(24) - Effective from 01.04.2017

The reference of section 56 (2)(x) has been inserted in section 2(24) w.e.f April 1, 2017.

7.2 SUM OF MONEY/PROPERTIES RECEIVED WITHOUT CONSIDERATION OR PROPERTIES RECEIVED FOR A CONSIDERATION WHICH IS LESS THAN FAIR MARKET VALUE OR STAMP DUTY, AS THE CASE MAY BE

Section:- 56(2)(x) - Effective from A.Y.2018-19

Following paragraphs deal with taxation of sum of money or properties received without consideration or properties received for a consideration which is less than fair market value or stamp duty, as the case may be.

Para No.	Description
Para 7.2	Sum of money/ properties received without consideration.
Para 7.2A	Exceptions / Relief from taxation
Para 7.2B	Meaning of Property
Para 7.2C	Determination of fair market value of Jewellery etc.
Para 7.2D	Determination of fair market value of Shares and Securities
Para 7.2E	What is the cost of acquisition if properties are subsequently sold?

Conditions for taxability:

If any person receives one or more of the following during the previous year from any other person, on or after the 1st day of April, 2017, then shall be regarded as income and subject to tax under this head:

(A) Sub Clause (a) of section 56(2)(x)

Transaction	*Condition*	*Taxable amount*
Sum of money received without consideration	*Aggregate amount received exceeds Rs.50,000*	***Aggregate** amount received*

Practical 1

During concerned previous year, Mr. Krishna received following sum of money without consideration. Discuss tax consequences.

From	Rs.
Friend A	17,000
Friend B	14,000
Friend C	19,000

Solution

Mr. Krishna received exactly Rs.50,000 (not exceeding Rs. 50,000) without consideration. Therefore nothing shall be taxed in his hands.

Reader's Note:

Practical 2

Suppose in the above problem, amount received from Friend C is Rs.19,001 instead of Rs. 19,000. Discuss tax consequences.

Solution

The aggregate amount received without consideration by Mr. Krishna is Rs.50,001 (exceeding Rs. 50,000), therefore, entire Rs. 50,001 shall be taxed in the hands of Mr. Krishna under the head "Income from other sources."

Reader's Note:

(B) Sub Clause (A) of section 56(2)(x)(b)

Transaction	*Condition*	*Taxable amount*
Immovable property received without consideration	*Stamp duty value of immovable property exceeds Rs50, 000.*	*Stamp duty value of such property. (This rule shall be applicable for* ***each property separately)***

Practical 3

During concerned previous year, Mr. Yudhisthir received following urban lands without consideration.

From	Valuation for Stamp Duty Purpose (Rs.)
Friend P	32,000
Friend Q	68,000

Solution

The valuation of land received from friend "P" does not exceed Rs. 50,000 (It is Rs. 32,000), therefore, it shall not be taxed in the hands of Mr. Yudhisthir. However, value of land received from friend "Q" exceeds Rs. 50,000 (It is Rs. 68,000), the same shall be taxed.

Reader's Note:

Practical 4

Suppose in the above problem, land received from friend Q is an agricultural land instead of urban land. Discuss tax consequences.

Solution

Since land received from Friend Q is not a capital asset (in this case, it is an agricultural land), nothing shall be taxed in the hands of Mr. Yudhisthir even though value of this land exceeds Rs. 50,000.

Reader's Note:

(C) Sub Clause (B) of section 56(2)(x) (b)

Transaction	*Condition*	*Taxable amount*
Immovable property received for a consideration which is less than the stamp duty value.	*Consideration is less than the stamp duty value of the property by an amount exceeding Rs. 50,000. (Refer Note)*	*Difference between stamp duty value and the consideration (This rule shall be applicable for **each property separately)***

Notes:

1. If there is a time gap between date of agreement and date of registration, **the stamp duty value may be taken as on the date of agreement** instead of the date of registration. However, for this purpose, at least a part of the consideration has been paid by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account, on or before the date of agreement.
2. If assessee may dispute the stamp duty value of property on grounds mentioned under section 50C(2),then the assessing officer may refer the valuation of such property to the valuation officer, and the provisions of section 50C and section 155(15) shall apply accordingly for the purpose of sub clause (b) of Section 56(2)(x).

Practical 5

Shweta purchased flat from Rahul, details of which are as under:

1. Date of entering into agreement :-1.7.**2017**.
2. Agreed consideration : Rs. 100 lakhs
3. Down payment of Rs. 15 lakhs was paid by cheque on the date of agreement.
4. Stamp duty value of flat on the date of agreement was Rs. 135 lakhs.
5. Registration of sale deed in respect of flat took place on 1.1.**2018**.
6. Stamp Duty value on the date of registration of sale deed was Rs. 150 lakhs.

Discuss tax implications in the hands Shweta.

Solution

(1) Taxable Amount under the head "Income from Other Sources"

Taxable Amount =Stamp Duty Value ***Less*** Actual Consideration
= Rs.135 lakhs – Rs.100 lakhs
= Rs. 35 lakhs

(2) Further, Shweta shall deduct TDS under section 194 IA at 1 % of consideration (Reader must note that 1% is not of stamp duty value, it is of consideration). Therefore, Shweta shall deduct TDS of Rs. 1,00,000/- while making payment to Rahul.

Reader's Note:

(D) Sub Clause (A) of section 56(2)(x) (c)

Transaction	*Condition*	*Taxable amount*
Movable property received without consideration	*Aggregate fair market value of movable properties exceeds Rs 50,000*	*fair market value **on aggregate basis***

Practical 6

During concerned previous year, Mr. Arjuna received following properties without consideration. Discuss tax consequences.

Description of Property	Fair Market Value (Rs.)
Jewelry from friend M	27,000
Archeological Collections from friend N	14,000
Mobile from friend O	15,000

Solution

Description of Property	Fair Market Value (Rs.)
Jewelry from friend M	27,000
Archeological Collections from friend N	14,000
Mobile from friend O **(Not covered within the meaning of property)**	-
Aggregate	**41,000**

Since aggregate amount does not exceed Rs. 50,000, nothing is taxable in the hands of Mr. Arjuna.

Reader's Note:

(E) Sub Clause (B) of section 56(2)(x) (c)

Transaction	*Condition*	*Taxable amount*
Movable property received for a consideration which is less than the aggregate fair market value.	*Consideration is less than the aggregate fair market value of properties by an amount exceeding Rs 50,000*	*Difference between fair market value and consideration **on aggregate basis***

Practical 7

During concerned previous year, Mr. Bhima purchased following properties. Discuss the tax consequences.

Particulars	Fair Market Value (Rs.)	Purchase Price
Golden Ring	78,000	72,000
L.C.D. Television	42,000	32,000
Paintings	1,00,000	61,000

Solution

Particulars	Fair Market Value (Rs.)	Purchase Price (Rs.)	Difference (Rs.)
Golden Ring	78,000	72,000	6,000
L.C.D.Television**(Not covered within the meaning of property)**	-	-	-
Paintings	1,00,000	61,000	39,000
Aggregate of Difference			45,000

Since aggregate amount does not exceed Rs. 50,000, nothing is taxable in the hands of Mr. Bhima.

Reader's Note:

Practical 8

Suppose in the above problem painting was purchased for Rs.51,000 instead of Rs. 61,000. Discuss the tax consequences.

Solution

Particulars	Fair Market Value(Rs.)	Purchase Price(Rs.)	Difference (Rs.)
Golden Ring	78,000	72,000	6,000
L.C.D.Television**(Not covered within the meaning of property)**	-	-	-
Paintings	1,00,000	51,000	49,000
Aggregate of Difference			**55,000**

Since aggregate amount exceeds Rs. 50,000, entire difference of Rs. 55,000 is taxable in the hands of Mr. Bhima.

Reader's Note:

Practical 9

Mr. Nakula provides the following information for the concerned previous year. Discuss the tax consequences.

(i) Received gift of Rs. 48,000 from friend X.

(ii) Received house property without consideration from friend's grandmother, valuation of the same for stamp duty purpose was Rs. 42,000.

(iii) Purchased urban land for Rs.11,82,000 though the value of the same for stamp duty purpose was Rs.11,00,000.

(iv) Received gift of shares worth Rs. 29,000

(v) Purchased sculpture for Rs.9,000 though fair market value was Rs.49,000

Solution

Tax Consequences in the hands of Mr. Nakula

Sr. No.	Particulars	Relevant Para Applicable (Rs.)				
		Para 7.12(A)	Para 7.12(B)	Para 7.12(C)	Para 7.12(D)	Para 7.12(E)
(i)	Received Cash	48,000				
(ii)	Received House property without consideration		42,000			
(iii)	Purchased Urban land			Refer Note		
(iv)	Gift of Shares				29,000	
(v)	Sculpture					40,000
	Which rule Applicable-Aggregation or each transaction?	Aggregate	Each transaction	Each transaction	Aggregate	Aggregate
	Aggregate	48,000	NA	NA	29,000	40,000
	Taxability	**Not Taxable**	**Not Taxable**	**Not Taxable**	**Not Taxable**	**Not Taxable**

Reader's Note:

Note: Section 56 is not applicable since Nakula purchased land for a value more than the value adopted for stamp duty purpose.

7.2A EXCEPTIONS / RELIEF FROM TAXATION

Section:- Proviso to section 56(2)(vii)

While calculating the above monetary limit of Rs. 50,000, any sum of money/properties received form the following shall not be considered.

1. Any sum of Money/properties which is received from any relative
2. Any sum of Money/properties which is received on the occasion of the marriage of the individual.
3. Any sum of Money/properties which is received under a will or by way of inheritance.
4. Any sum of Money/properties which is received in contemplation of death of the payer.
5. Money/properties received from a local authority
6. Money/properties received from any fund, foundation, university, other educational institution, hospital, medical institution, any trust or institution referred to in section 10(23C).
7. Money/properties received from a charitable institute registered under section 12AA.
8. Money/properties received by way of transaction not regarded as transfer under clause (vicb) or clause (vid) or clause (vii) of section 47. [i.e., receipt of money/ properties in a scheme of amalgamation, demerger, etc.]
9. Money / properties received by a trust from an individual where trust is created or established solely for the benefit of relative of the individual.

Meaning of relative in relation to "Individual" -For the aforesaid purpose, the term "relative" in relation to "Individual" means—

1. Spouse of the individual
2. Brother or sister of the individual
3. Brother or sister of the spouse of the individual
4. Brother or sister of either of the parents of the individual
5. Any lineal ascendant or descendant of the individual
6. Any lineal ascendant or descendant of the spouse of the individual
7. Spouse of the person referred to in (2) to (6)

Meaning of relative in relation to "HUF" - For the aforesaid purpose, the term "relative" in relation to "HUF" means any member thereof.

That means any sum of money or property received without consideration or for an inadequate consideration by an HUF from its members will not be subject to tax.

Practical 10

Mr. Jayesh received gift of Rs. 1, 00,000 from his uncle. Discuss tax consequences in the hands of Mr. Jayesh.

Solution

Mr. Jayesh received Rs.1,00,000 from his uncle who falls under the definition of relative for Mr. Jayesh. Any sum of money / property received from relative does not fall under section 56(2)(vii), therefore, nothing shall be taxed in the hands of Mr. Jayesh.

Reader's Note:

Practical 11

Mr. Uncle received gift of Rs. 1,00,000 from his nephew. Discuss tax consequences in the hands of Mr. Uncle.

Solution

Mr. Uncle received Rs.1,00,000 from his nephew who does not fall under the definition of relative for Mr. Uncle. And amount received exceeds Rs. 50,000 therefore entire Rs. 1,00,000 shall be taxed in the hands of Mr. Uncle.

Reader's Note:

Practical 12

Mr. Manmoji received gold from various persons without consideration. The fair market value of gold is Rs. 1,25,000. Discuss tax consequences in the hands of Mr. Manmoji under following alternatives:-

Alternative (a) : Mr. Manmoji received gold on occasion of his marriage.

Alternative (b) : Mr. Manmoji received gold on his 25th marriage anniversary.

Solution

Alternative (a)

For the purpose of section 56(2(vii), any sum of money/properties received on the occasion of the marriage of the individual shall excluded.

Therefore, gold received on the occasion of marriage by Mr. Manmoji is not taxable.

Alternative (b)

As discussed above, For the purpose of section 56 (2)(vii), any sum of money/properties received on the occasion of the marriage of the individual shall excluded. However it does not exclude any money/properties received on the occasion of marriage anniversary from non-relative.

Therefore, gold receive worth Rs. 1,25,000 (exceeding Rs. 50,000) on the occasion of 25th marriage anniversary shall be chargeable to tax in the hands of Mr.Manmoji.

Reader's Note:

7.2B MEANING OF PROPERTY

Section:- 56(2)(vii)

"Property" *means capital asset of the assessee being*

(i) immovable property being land or building or both;

(ii) shares and securities;

(iii) jewellery;

(iv) archaeological collections;

(v) drawings;

(vi) paintings;

(vii) sculptures;

(viii) any work of art;

(ix) *bullion;*

Practical 13

During concerned previous year, Mr. Sahdev received 1,000 shares of WIPRO Limited from his friend, without consideration. Fair market value of this shares on the date of gift was Rs. 2,500 per share. Discuss tax consequences in the hands of Sahdev under following alternatives:-

Alternative (a): Mr. Sahdev is a share trader

Alternative (b): Mr. Sahdev is not a share trader

Solution

On minute reading of the definition of property, it shall be taxed in the hands of recipient only if it is a capital asset for the recipient.

Alternative (a):- In this alternative, Mr. Sahdev is a share trader and if he treats the shares of WIPRO Limited received by him from his friend as a part of stock-in-trade (not a capital asset), then nothing shall be taxed under section 56(2)(x)(c)(A)

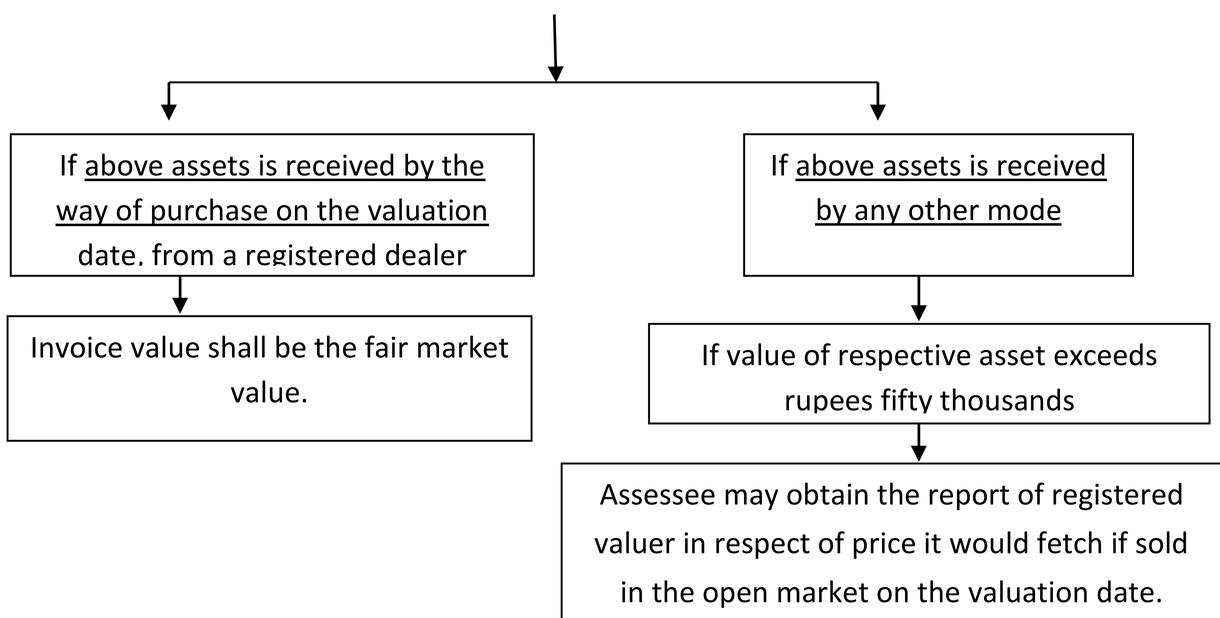
Alternative (b):- In this alternative, Mr. Sahdev is not a share trader and therefore, shares of WIPRO Limited received by him from his friend are capital asset. Hence, Rs. 25,00000 (Fair market value) shall be taxed under section 56(2)(x)(c)(A).

Reader's Note:

7.2C DETERMINATION OF FAIR MARKET VALUE OF JEWELLERY, DRAWINGS ETC.

Rule:- 11 U, 11 UA

The FMV of jewellery, archeological collections, drawings, paintings, sculptures or any work of art shall be estimated to be price which it would fetch if sold in the open market on the valuation date: Consider following chart:-



Relevant definitions:

1) **Registered dealer**

   "registered dealer" means a dealer who is registered under Central Sales tax Act, 1956 or General Sales-tax Law for the time being in force in any State including value added tax laws.

2) **Registered valuer**

   "Registered valuer" shall have the same meaning as assigned to it in section 34AB of the Wealth Tax Act, 1957 read with rule 8A of wealth-tax Rules, 1957.

3) **Valuation date**

   "valuation date" means the date on which the property is received by the assessee.

Practical 14

Ms. Jaya purchased diamond jewellery from "Abhushan" Jewellers, a registered dealer under Gujarat VAT Act for Rs. 55,000. Similar jewellery was purchased by Ms. Chhaya on the same day from "Kalyan Jewellers", a registered dealer under Gujarat VAT Act for Rs. 62,000. Find out fair market value for the purpose of section 56 in the hands of Ms. Jaya and Ms. Chhaya under following alternatives:-

Alternative (a): Both Ms. Jaya and Ms. Chhaya have obtained the invoice from respective jewellers.

Alternative (b): Both Ms. Jaya and Ms. Chhaya have not obtained the invoice from respective jewellers

Alternative (c): Both Ms. Jaya and Ms. Chhaya have obtained the invoice from respective jewellers but both the jewellers are unregistered.

Solution

Alternative (a): Both Ms. Jaya and Ms. Chhaya have obtained the invoice from respective jewellers.

If diamond is purchased from a registered dealer by obtaining invoice, then as per valuation rule, invoice value shall be the fair market value.

Therefore, respective invoice value of the diamond shall be the fair market value in the hands of Ms. Jaya and Ms. Chhaya.

Alternative (b): Both Ms. Jaya and Ms. Chhaya have not obtained the invoice from respective jewellers

If diamond is purchased from a registered dealer without obtaining invoice, then as per valuation rules, assessee may obtain the report of registered valuer in respect of fair market value of diamond on the date of purchase.

Alternative (c): Both Ms. Jaya and Ms. Chhaya have obtained the invoice from respective jewellers but both the jewellers are unregistered.

If Diamond is purchase from a unregistered dealer, then as per valuation rules, assessee may obtain the report of registered valuer in respect of fair market value of diamond on the date of purchase.

Reader's Note:

Practical 15

Ms. Kamli purchased gold jewellery from "Gharana Jewellers', being unregistered dealer for Rs. 45,000. Further, she purchased painting from "Modern Art" being unregistered dealer for Rs. 38,000. Is Ms. Kamli required to obtain report of registered valuer?

Solution

On reading of valuation rule, Ms. Kamli required to obtain report of registered valuer only when the value of respective asset exceeds Rs.50,000. In this case, value of each asset (i.e. jwellery and painting) does not exceed Rs.50,000, therefore, Ms Kamli is not required to obtain report from registered valuer.

Reader's Note:

Practical 16

Mr. Viru purchased painting on **5th May, 2017** from registered dealer for Rs.1, 00,000 and obtained the invoice of same. He gifted this painting to Miss Mohmaya on **9th September 2017**. Fair market value of this painting, as per registered valuer report on **9th September, 2017** was Rs.1, 25,000. Discuss taxability of this transaction in the hands of Miss Mohmaya.

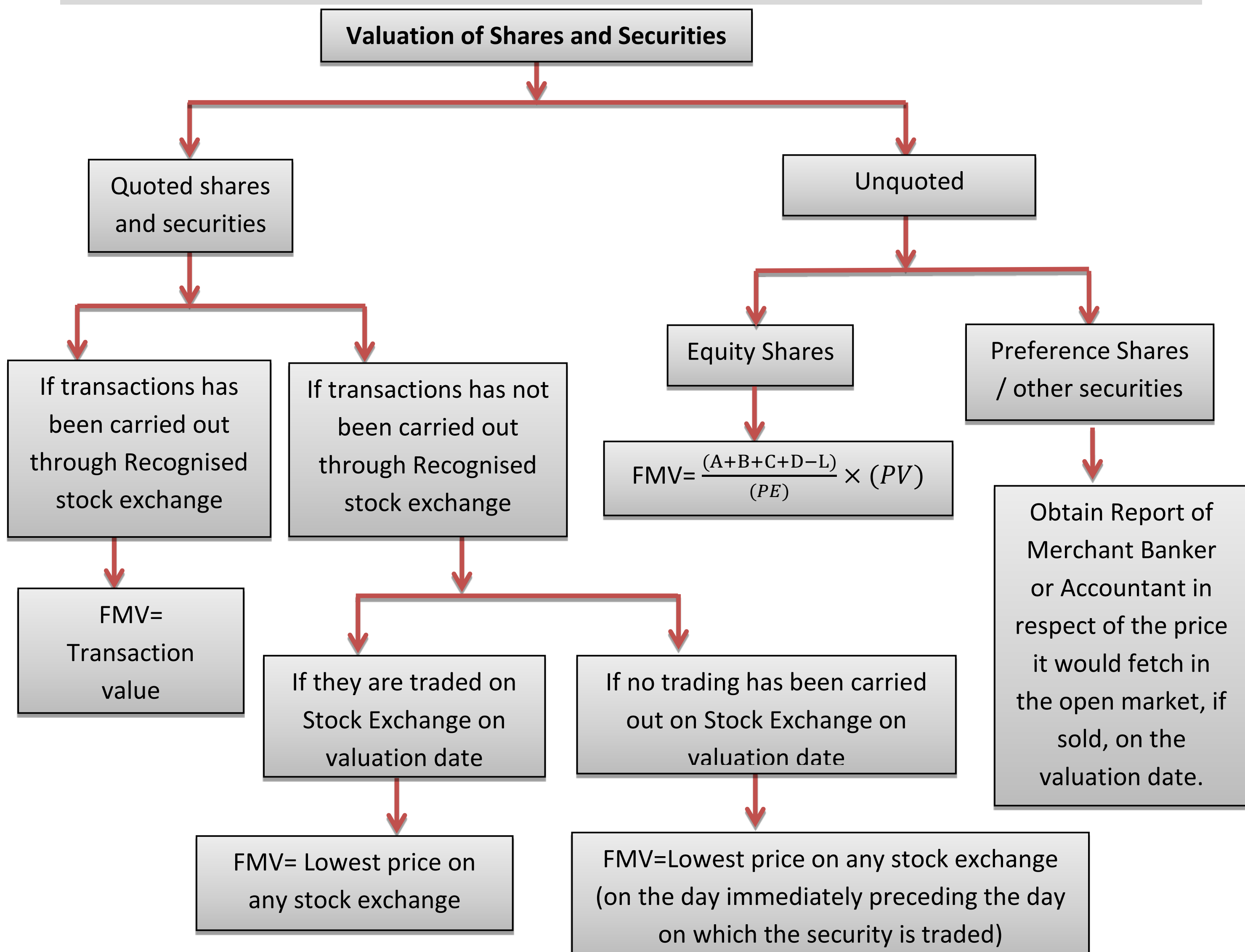
Solution

Miss Mohmaya has received paintings without consideration, therefore, fair market value of painting on the date of gift (i.e. Rs.1,25,000) shall be chargeable to tax in her hands.

Reader's Note:

7.2D DETERMINATION OF FAIR MARKET VALUE OF SHARES AND SECURITIES

RULE:- 11U, 11UA



Meaning of various terms used in the above valuation rule:

A= book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,-

(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and

(ii) any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of shares and securities as determined in the manner provided in this rule;

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

L= book value of liabilities shown in the balance sheet, but not including the following amounts, namely:—

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PV= the paid up value of such equity shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;"

Relevant definitions

(a) "accountant" shall have the same meaning as assigned to it in the Explanation below sub-section (2) of section 288 of the Act;

(b) The balance-sheet in relation to any company means balance sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor appointed u/s 224 of the Companies Act, 1956(1 of 1956);

(c) "Merchant banker" means category I merchant banker registered with Security and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(d) "quoted shares or securities" in relation to share or securities means a share or security quoted on any recognized stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business;

(e) "recognized stock exchange" shall have the same meaning as assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(f) "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(g) "unquoted shares and securities", in relation to shares or securities, means shares and securities which is not a quoted shares or securities;

(h) "valuation date" means the date on which the property is received by the assessee.

Practical 17

Mr. Abhishek gifted 10,000 unquoted shares of Ajitabh Bachhan Corporation Limited (ABCL) to Dr. Deval on **10th July, 2017**. Find out amount, if any, to be taxed in the hands of Dr. Deval under the head "Income from other sources".

Balance Sheet of ABCL on 10th July, 2017

Liabilities	Rs. In crores	Assets	Rs. In crores
30,00,000 equity shares of Rs.10 each	3.00	Fixed Assets	10.00
12% Cumulative Preference shares	2.00	Investments	2.00
Reserves and Surplus	1.50	Current Assets	2.00
Loan funds	2.50		
Current liabilities	5.00		
	14.00		**14.00**

Additional information:

(i) Fixed assets represents immovable properties of the company and the valuation assessable for the purpose of stamp duty for these assets is Rs. 25 Cr.

(ii) Investment represents investment in shares and securities, the fair market value of such investments in accordance with Rule 11UA is Rs. 3.5 Cr.

(iii) Current Asset includes advance tax Rs.50 lakh.

(iv) Current liability includes

a. Provision for unascertained liability Rs. 30 lakhs

b. Proposed dividend Rs.10 lakhs.

(v) Reserve and Surplus includes Depreciation Reserve Rs. 22.50 lakhs

(vi) Further, company reported contingent liabilities Rs. 55 lakhs which includes unpaid preference dividend of one year.

Solution

Amount to be taxed in the hands of Dr. Deval = 10,000 shares x Rs. 68.12 = Rs.6,81,200

Working Notes:

Calculation of Fair Market Value as on 10th July, 2017

Fair Market Value $= \frac{(A+B+C+D-L)}{PE} \times PV$

$= \frac{(1.5 \text{ Cr}+\text{Nil}+3.50 \text{ Cr}+25\text{Cr} - 9.565 \text{ Cr})}{3.00 \text{ Cr}} \times 10$

= Rs. 68.12 per share

Calculation of Assets (A)

Particulars	**Rs.in crores**
Total Assets	14.00
Less: Fixed Assets	(10.00)
Less: Investments	(2.00)
Less: Advance Tax	(0.50)
Assets (A)	**1.50**

Calculation of Assets (B) = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer = **NIL**

Calculation of Assets (C) = fair market value of shares and securities as determined in the manner provided in this rule = **Rs. 3.5 Cr**

Calculation of Assets (D) = the value assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property = **Rs. 25Cr**.

Calculation of Liabilities (L)

Particulars	**Rs.in crores**
Total Liabilities	14.00
Less:(1) Paid up equity share capital	(3.00)
(2) Provisions for unascertained liabilities	(0.30)
(3) Proposed dividend	(0.10)
(4) Reserves and surplus (other than depreciation reserve)	(1.275)
Add: Unpaid Preference share dividend	0.24
Liabilities (L)	**9.565**

Calculation of PE

PE =Total amount of paid up equity share capital as shown in the balance sheet

= **Rs. 3.00 crores**

Calculation of PV

PV = the paid value of equity share = **Rs.10**

Reader's Note:

7.2E WHAT IS THE COST OF ACQUISITION IF PROPERTIES ARE SUBSEQUENTLY SOLD?

Section:- 49(4) and 49(1)

Particulars	Section Applicable	Cost of acquisition	Period of holding
Gift transaction – taxable u/s 56(2)	Section 49(4)	Value adopted for purpose of section 56	Period of holding of previous owner **not included**
Gift transaction – not taxable u/s 56 (2)	Section 49(1)	Cost to the previous owner	Period of holding of previous owner **included**

Practical 18

Mr. Surya purchased diamond ring for Rs. 38,000 on ***09-09-14.*** He gifted the same to Miss Maya on ***14-02-2017***, on that day fair market value of this diamond ring was Rs. 48,000. It is the only gift received by Miss Maya during previous year 2016-17. After break-up with Mr. Surya, Miss Maya sold out this diamond ring for Rs. 52,000 on ***12-12-17.*** Discuss tax consequences in the hands of Miss Maya.

Cost of Inflation Index 2014-15: 240 2017-18: 272

Solution

In the hands of Miss Maya

(1) Taxability for the P.Y. 2016-17

Aggregate fair market value of gift received by Miss Maya does not exceed Rs. 50,000 therefore, nothing is taxable for the previous year 2016-17.

(2) Taxability for the P.Y. 2017-18

Period of Holding: 09-09-2014 to 12-12-2017

Nature of Capital Asset: Long Term

Particulars	(Rs.)
Full value of consideration	52,000
Less: Expenses in connection with Transfer	-
Net Consideration	52,000
Less: Cost of acquisition $\left(38{,}000 \times \frac{272}{240}\right)$	(43,066)
Long Term Capital Gain	**8,934**

Reader's Note:

Practical 19

Suppose in the above problem Miss Maya also received gift of gold ornament worth Rs. 22,000 on **30-03-2017** from another boy-friend Mr. Prakash. Discuss tax consequences assuming that she sold out diamond ring received from Mr. Surya as per the information given in above problem.

Solution

(1) Taxability for the P.Y. 2016-17

Particulars	Fair Market Value (Rs.)
Diamond Ring from Mr. Surya	48,000
Gold Ornament from Mr. Prakash	22,000
Aggregate	**70,000**

Aggregate fair market value of gift received by Miss Maya exceeds Rs. 50,000 therefore, Rs.70,000 shall be taxed for the previous year 2016-17

(2) Taxability for the P.Y. 2017-18

Period of Holding: 14-02-2017 to 12-12-2017

Particulars	**Rs.**
Full value of consideration	52,000
Less: Cost of acquisition **u/s 49(4)**	(48,000)
Short Term Capital Gain	4,000

Reader's Note:

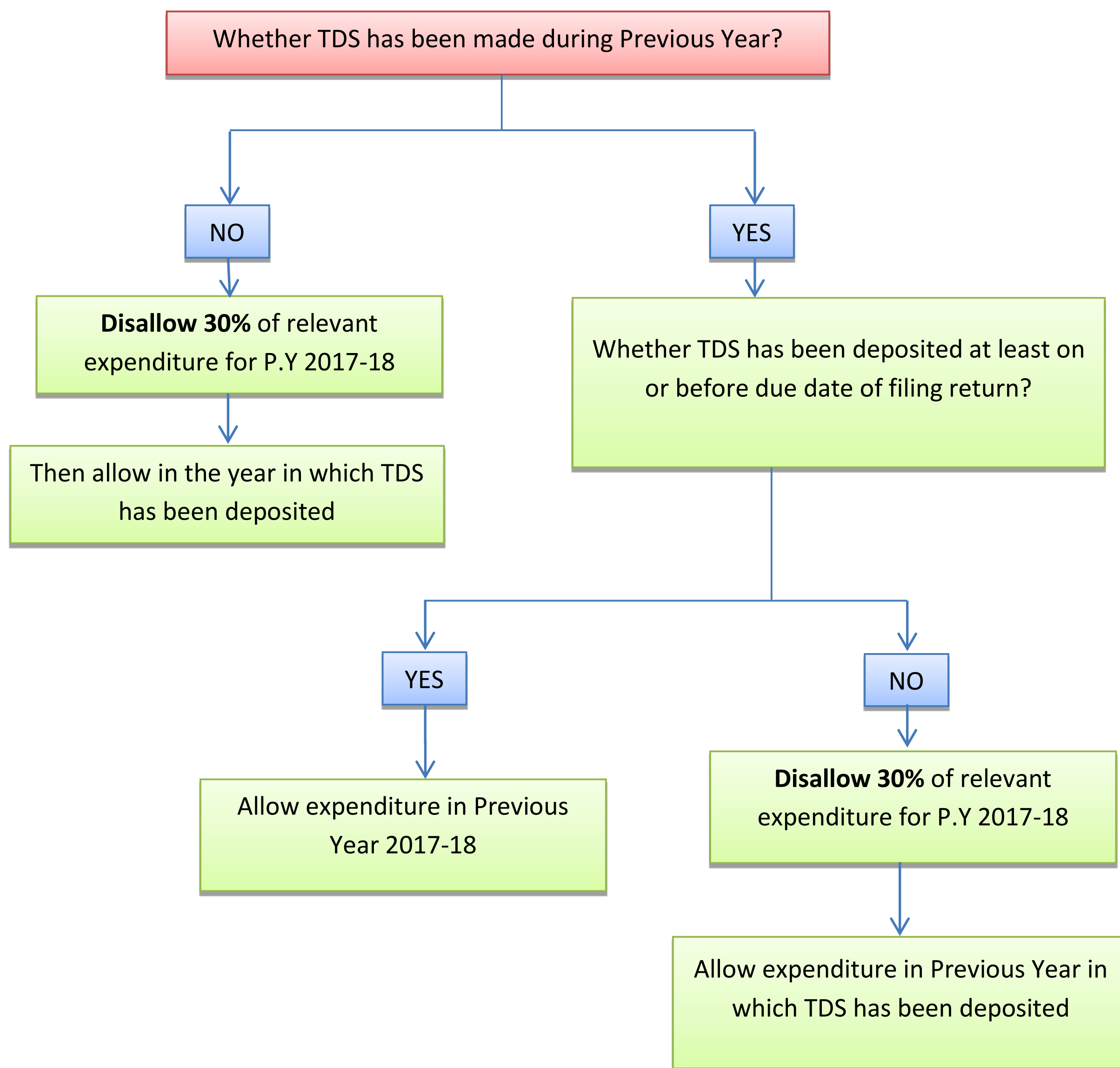
7.3 RECEIPT OF SHARES OF CLOSELY HELD COMPANY BY FIRM OR CLOSELY HELD COMPANY IS NOT CHARGEABLE TO TAX

Section:- 56(2)(viia) – Effective from 01.04.2017

7.4 DISALLOWANCE FOR TDS DEFAULT EXTENDED TO INCOME TAXABLE UNDER THE HEAD "INCOME FROM OTHER SOURCES"

Section:- 58(1A) – Effective from A.Y. 2018-19

With a view to improving compliance of provision relating to TDS, section 58(1A) has been amended (w.e.f. A.Y. 2018-19) so as to provide that provisions of section 40(a)(ia) shall, so far as they may be, apply in computing income chargeable under the head "Income from other sources" as they may be, apply in computing income chargeable under the head “Profit and Gains from Business or Profession.



8 – CLUBBING OF INCOME

No Amendment

9 – SET OFF AND CARRY FORWARD OF LOSSES

9.1 RESTRICTIONS ON SET - OFF OF LOSS FROM HOUSE PROPERTY

Section:- 71(3A) – Effective from A.Y.2018-19

Sub- section (3A) has been inserted under section 71 which provides as under:

Where in respect of any assessment year, the net result of the computation under the head "Income from house property" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to set off such loss, to the extent the amount of the loss exceeds two lakh rupees, against income under the other head.

Practical 1

Mr. Laxman provides following information about his income:

Particulars	A.Y. 2018-19 (Rs.)	A.Y. 2019-20 (Rs.)
Business income	30,00,000	50,00,000
FD interest income	3,00,000	3,40,000
Income under the head “House Property”	(-) 4,60,000	3,70,000
Invested in PPF	1,50,000	1,50,000

Find out the total income of Mr. Laxman for assessment year is 2018-19 and 2019-20. Also ascertain losses to be carried forward.

Solution

Computation of Total Income for A.Y. 2018-19

Particulars	Rs.
Income under the head house property	(-)4,60,000
Income under the head PGBP	30,00,000
Income from other sources	3,00,000
Gross Total Income (Refer Note)	**31,00,000**
Less: Deduction under section 80C	1,50,000
Total Income	**29,50,000**
House Property loss to be carried forward to next 8 years (it can be set off only against the income under head house property of next 8 years)	2,60,000

Note: In view of the amendment made by Finance Act, 2017 under section 71(3A), set-off of loss under the head “Income from house property” against any other head of income shall be restricted to Rs.2 Lakh.

Computation of Total Income for A.Y. 2019-20

Particulars	Rs.	Rs.
Business Income		50,00,000
Income from house property (Let out)	3,70,000	
Less: B/f loss under section 71B (see Note)	(2,60,000)	1,10,000
Income from other sources		3,40,000
Gross Total Income		**54,50,000**
Less: Deduction under section 80C		1,50,000
Total Income		**54,00,0000**

Note: Section 71B has not been amended. Brought forward house property loss can be adjusted in the current year against income under the head house property even if a quantum of brought forward loss is more than Rs.2,00,000.

Readers Note:

10 – DEDUCTIONS FROM GROSS TOTAL INCOME

10.1 DEDUCTION IN RESPECT OF CONTRIBUTION TO PENSION SCHEME OF CENTRAL GOVERNMENT

Section:- 80CCD – Effective from A.Y.2018-19

In order to provide parity between those who are employed and those who are self-employed, section 80CCD has been amended w.e.f A.Y. 2018-19 to increase the upper limit for contribution to NPS from 10% of Gross Total Income to 20% in case of self-employed.

Readers are requested to consider the following summary:-

SECTION	***MAXIMUM DEDUCTION***	
	For A.Y. 2017-18	***From A.Y. 2018-19***
80C	*Rs.1,50,000*	*Rs.1,50,000*
80CCC	*Rs.1,50,000*	*Rs.1,50,000*
80CCD(1) [i.e., employee's or ***assessee's contribution to NPS****]*	*[10% of Salary or 10% of GTI as the case may be]*	*10% of Salary or* ***20% of GTI*** *as the case may be.*
80CCE : The aggregate deduction under sections 80C, 80CCC and 80CCD(1)	*Rs.1,50,000*	*Rs.1,50,000*
80CCD(1B) [i.e., contribution to NPS by an individual]	*Rs.50,000*	*Rs.50,000*
80CCD(2) [i.e., employer's contribution to NPS]	*10% of salary*	*10% of salary*

10.2 DEDUCTION IN RESPECT OF INVESTMENT MADE UNDER AN EQUITY SAVINGS SCHEME

Section:- 80CCG – Effective from A.Y.2018-19

Deduction under section 80CCG will not be allowed from A.Y. 2018-19. However, an assessee who has claimed benefit under this section for A.Y. 2017-18 and earlier assessment years shall be allowed to claim deduction under this section upto A.Y. 2019-20.

10.3 DEDUCTION IN RESPECT OF DONATIONS TO CERTAIN FUNDS, CHARITABLE INSTITUTIONS, ETC.

Section:- 80G – Effective from A.Y.2018-19

No deduction shall be allowed (w.e.f. A.Y.2018-19) under section 80G in respect of donation of any sum exceeding ~~Rs.10,000~~ (Rs.2,000) unless such sum is paid by any mode other than cash.

Practical 1

Mr. Rajmohan (self-employed), whose gross total income was Rs. 7,00,000 for the financial year 2017-18 furnishes you the following information:

(i) Contributed Rs. 1,50,000 to NPS

(ii) Donation to Prime Minister National Relief Fund Rs. 5,000 in cash.

(iii) Donation to a recognized charitable trust Rs. 25,000 by cheque which is eligible for deduction under section 80G at the applicable rate.

Compute the total income of Mr. Rajmohan for the Assessment year 2018-19.

Solution

Computation of total income of Mr. Rajmohan for the A.Y.2018-19

Particulars	Rs.	Rs.
Gross Total Income		**7,00,000**
Deduction under Chapter VI-A		
Under section 80CCD(1)		
Though contribution made to NPS is Rs. 1,50,000, deduction under this section is restricted upto 20% of GTI- i.e. 20% of Rs. 7,00,000	1,40,000	
Under section 80G		
-Donation to P.M.N.R.F. exceeding Rs. 2,000 in cash therefore not eligible for deduction in view of the **Amendment by Finance Act, 2017**	Nil	
-Donation to recognized charitable trust (50% of Rs. 25,000) (Refer Note)	12,500	1,52,500
Total Income		**5,47,500**

Note: In case of deduction u/s 80G in respect of donation to a charitable trust, the net qualifying amount has to be restricted to 10% of adjusted total income, i.e., gross total income less deductions under Chapter VI-A except 80G. The adjusted total income is, therefore, Rs. 5,60,000 (i.e.7,00,000 – Rs. 1,40,000), 10% of which is Rs. 56,000, which is higher than the actual donation of Rs. 25,000. Therefore, the deduction under section 80G would be Rs. 12,500, being 50% of the actual donation of Rs. 25,000.

Readers Note:

10.4 SPECIAL PROVISIONS IN RESPECT OF SPECIFIED BUSINESS (START-UP)

Section:- 80-IAC – Effective from A.Y.2018-19

(1) Eligible Business

Business which involves innovation, development, deployment or commercialisation of new products, processes or services driven by technology or intellectual property

(2) Conditions to be fulfilled for an eligible start-up

1. The assessee is a company or a limited liability partnership (LLP) and engaged in an eligible business.
2. The above company or LLP is incorporated after March 31, 2016 but before April 1, 2019.
3. The total turnover of the company or LLP does not exceed Rs.25 crore in any of the previous years beginning from P.Y.2016-17 and ending with P.Y.2020-21.

4. It holds a certificate of eligible business from the Inter-Ministerial Board of certification as notified in the Official Gazette by the Central Government.
5. The above company or LLP is not formed by splitting up or reconstruction of a business already in existence.

   Exception: This condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section;
6. Further, undertaking should not be set up by the transfer of old plant and machinery. However, following two cases old machinery is permitted:

   Case 1:- If the value of the old assets does not exceed 20 per cent of the total value of the plant and machinery, this condition is deemed to have been satisfied.

   Case2:- *Second-hand imported machinery is treated as new subject to satisfaction of few conditions in this regard.*
7. The other provisions with reference to furnishing of audit report, determination of quantum of deduction, power of assessing officer to re-compute profit in case of inter-unit transfer, restriction on double deduction, transactions between close connection activities of 80 IA are equally applicable to this section.

(3) Quantum of deduction

If the above conditions are satisfied, 100 per cent of the profits and gains derived from eligible business is deductible for 3 consecutive assessment years. However, this deduction may, at the option of the assessee, be claimed by it for any 3 consecutive assessment years out of 5 years **(7 years with effect from A.Y. 2018-19, Amendment by Finance Act, 2017)** beginning from the year in which the eligible start-up is incorporated.

Practical 2

ABC Ltd. was incorporated on 1.4.2017 to carry on the business of innovation, development, deployment and commercialization of new processes driven by technology. It holds a certificate of eligible business from the notified IMBC.

Its estimated turnover and profits and gains from such business for the P.Y.2017-18 to P.Y.2023-24 are as follows:

(Rs. in crores)

	P.Y. 2017-18	P.Y. 2018-19	P.Y. 2019-20	P.Y. 2020-21	P.Y. 2021-22	P.Y. 2022-23	P.Y. 2023-24
Total turnover	15	18	20	22	25.5	26	28
Profits/ Losses	(2.50)	(1.30)	6.80	8.40	9.80	1.60	11.20

Is ABC Ltd. eligible for any tax advantage under the p Income-tax Act, 1961? If yes, then suggest best course of action to ABC Ltd. for maximization of such benefits?

Solution

Since all the conditions of Section 80-IAC are satisfied, ABC Ltd. is entitled to claim deduction of 100% of the profits and gains derived by it from an eligible business for any three consecutive assessment years out of seven years beginning from the year in which the eligible start up is incorporated i.e. P.Y.2017-18.

Consider the following options for claiming benefit under section 80-IAC

(Rs. in crores)

Sr. No.	Options	Deduction for 1st Year	Deduction for 2nd Year	Deduction for 3rd Year	Total deductions for all the three years
1.	Deduction claimed for P.Y. 2017-18, 2018-19 and 2019-20	Nil	Nil	3	3
2.	Deduction claimed for P.Y. 2018-19, 2019-20 and 2020-21	Nil	3	8.40	11.40
3.	Deduction claimed for P.Y. 2019-20, 2020-21 and 2021-22	3	8.40	9.80	21.20
4.	Deduction claimed for P.Y.2020-21, 2021-22 and 2022-23	8.40	9.80	1.60	19.80
5.	Deduction claimed for P.Y. 2021-22, 2022-23 and 2023-24	9.80	1.60	11.20	**22.60**
6.	Deduction claimed for P.Y. 2022-23 and 2023-24	1.60	11.20	NA	12.80
7.	Deduction claimed for P.Y. 2023-24	11.20	NA	NA	11.20

Considering the estimated turnover and profits of the ABC Ltd., it is advised to select option at Sr. No. 5 of the table above.

Readers Note:

10.5 DEDUCTIONS IN RESPECT OF PROFITS AND GAINS FROM HOUSING PROJECTS

Section:- 80-IBA – Effective from A.Y.2018-19

(1) Eligible Business

Any assessee engaged in business of developing and building a housing project.

Housing project means a project consisting predominantly of residential units with such other facilities and amenities as the competent authority may specify.

(2) Conditions

(i) The project is approved by the competent authority (*authority empowered to approve the building plan by or under any law for the time being in force)* after June 1, 2016, but on or before March 31, 2019.

(ii) The project shall be completed within a period of 3 years **(5 years with effect from A.Y. 2018-19, Amendment by Finance Act, 2017)** from the date of first approval by the competent

authority. The project shall be deemed to have been completed when a certificate of completion of project as a whole is obtained in writing from the competent authority.

(iii) The built up **(carpet w.e.f A.Y. 2018-19)** area of the shops and other commercial establishments included in the housing projects does not exceed 3 per cent of the aggregate built up **(carpet w.e.f A.Y. 2018-19)** area.

(iv) Size of the plot, area of residential units and minimum utilization of FAR (floor area ratio) should satisfy the criteria given below-

Location of project	**Areas of plot of land on which project is situated**	**Areas of residential units comprised in the housing project**	**Utilization of permissible FAR**
Project is located within the cities of Chennai, Delhi, Kolkata or Mumbai ~~(or within the distance, measured aerially, of 25 kilometers from the municipal limits of these cities)~~ **Omitted by Finance Act, 2017 w.e.f. A.Y. 2018-19**	Not less than 1,000 square meters	Not to exceed 30 square meters	Not less than 90%
Project is located in any other place	Not less than 2,000 square meters	Not to exceed 60 square meters	Not less than 80

(v) The project is the only housing project on such plot of land as specified in column 2 of the above table.

(vi) Where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual.

(vii) The assessee maintains separate books of account in respect of the housing project.

(3) Quantum & Period of deduction

If the above conditions are satisfied, 100 percent of the profit derived from the aforesaid business is deductible under section 80-IBA.

However, deduction is not available to any assessee who executes the housing project as a works contract awarded by any person (including the Central/State Government). Once deduction is claimed and allowed under this section, deduction to the extent of such profit is not available under any provision of the Act.

(4) Reversal of deduction if project not completed within stipulated time

Where the housing project is not completed within 3 years **(5 years with effect from A.Y. 2018-19, Amendment by Finance Act, 2017)** from the date of first approval by the competent authority and in respect of which a deduction has been claimed and allowed under this section, the total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be income of the assessee chargeable under the head “PGBP” of the previous year in which the period for completion so expires.

11 – COMPUTATION OF TOTAL INCOME AND TAX LIABILITY

11.1 EXEMPTION UNDER SECTION 10(34) NOT TO APPLY TO DIVIDEND CHARGEABLE TO TAX IN ACCORDANCE WITH SECTION 115BBDA

Section:- 115BBDA and 10(34) - Effective from A.Y. 2018-19

- Section 115BBDA has been inserted to provide that any income by way of aggregate dividend in excess of Rs. 10 lakh shall be chargeable to tax in the case of ~~an individual, Hindu undivided family (HUF) or a firm~~ **(specified assessee w.e.f. A.Y.2018-19)** who is resident in India, at the flat rate of 10%. Further, basic exemption limit of Rs.2,50,000 /Rs.3,00,000 / Rs.5,00,000 shall not be available for such dividend income.
- "Specified assessee" means a person other than,—
  - (a) a domestic company; or
  - (b) a fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10; or
  - (c) a trust or institution registered under section 12A or section 12AA.
- Further, no deduction in respect of any expenditure or allowance or set-off of loss shall be allowed to the assessee in computing the income by way of such dividends.
- Dividend for the purpose of this section means every dividend as covered by section 2(22) except section 2(22)(e).
- Further, a proviso has been inserted to section 10(34) to provide that dividend income which is subject to section 115BBDA shall not be exempt in the hands of shareholder.

Practical 1

Find out tax liability of Mr. X, resident and Mr. Y, resident for the **assessment year 2018-19.**

Particulars	Mr. X (Rs.)	Mr. Y (Rs.)
Income under head PGBP	(15,00,000)	(9,00,000)
Dividend from Indian Companies on which CDT has been paid	18,00,000	7,30,000
Dividend under section 2(22)(e)	3,00,000	3,00,000

Solution

Points to be considered while computing total income and tax liability of Mr. X

Considering the provisions of section 115BBDA, Mr. X is subject to this section since dividend from Indian companies on which CDT has been paid exceeded Rs. 10,00,000. (Readers must remember that for the purpose of section 115BBDA, dividend under section 2(22)(e) shall not be taken into consideration). As a result, taxable dividend under section 115BBDA shall be Rs. 8,00,000. Such dividend shall be taxed at the flat rate of 10% without being set off of any loss.

However, dividend under section 2(22)(e) shall be charged to tax under section 56 of the Act in the hands of shareholder. Since, such dividend is not subject to section 115BBDA, therefore, set off is available against such dividend income.

Considering the above remarks, **Total Income of Mr. X** is computed as under:

Particulars	Rs. In lakhs
Income under head PGBP	(15,00,000)
Dividend from Indian Companies on which CDT has been paid	8,00,000
Dividend under section 2(22)(e)	3,00,000
Total Income	**8,00,000**

Computation of Tax liability of Mr. X

Tax on Rs.8,00,000 @ 10.30% (including education cess) = Rs. 82,400

Points to be considered while computing total income and tax liability of Mr. Y

Mr. Y is not subject to section 115BBDA since dividend from Indian companies on which CDT has been paid (Rs.7,30,000 in present case) did not exceed Rs. 10,00,000. (Readers must remember that for the purpose of section 115BBDA, dividend under section 2(22)(e) shall not be taken into consideration). Hence entire dividend income of Rs. 7,30,000 is exempt under section 10(34) in the hands of Mr. Y.

However, dividend under section 2(22)(e) shall be charged to tax under section 56 of the Act in the hands of shareholder. Since, such dividend is not subject to section 115BBDA, therefore, set off is available against such dividend income.

Considering the above remarks, **Total Income of Mr. Y** is computed as under:

Particulars	Rs.
Income under head PGBP	(9,00,000)
Dividend from Indian Companies on which CDT has been paid	Exempt under section 10(34)
Dividend under section 2(22)(e)	3,00,000
Total Income	**(6,00,000)**

Note: Loss under the head "PGBP" Rs. 6,00,000 (Rs.9,00,000 – Rs. 3,00,000) shall be carried forward for next 8 assessment years.

Computation of Tax liability of Mr. Y

Since total income is negative, tax payable is NIL.

Readers Note:

11.2 TAX ON INCOME FROM TRANSFER OF CARBON CREDITS.

Section:- 115BBG - Effective from A.Y. 2018-19

1. As per the provisions of section 115BBG, income by way of transfer of carbon credits shall be charged to tax at a flat rate of 10 percent.
2. No expenditure or allowance can be claimed against such income.
3. Shifting benefit is also not available on such income

Explanation.—*For the purposes of this section, "carbon credit" in respect of one unit shall mean reduction of one tonne of carbon dioxide emissions or emissions of its equivalent gases which is validated by the United Nations Framework on Climate Change and which can be traded in market at its prevailing market price.*

12 – ASSESSMENT OF FIRMS

No Amendment

13 – ASSESSMENT OF AOP OR BOI

No Amendment

14 – ASSESSMENT OF CO-OPERATIVE SOCIETIES

No Amendment

15 – ASSESSMENT OF COMPANIES

15.1 SCHEME OF MAT CREDIT

Section:- 115JAA - Effective from A.Y. 2018-19

1. When company pays tax under MAT, the tax credit shall be an amount which is the difference between the amount payable under MAT and the regular tax.

   However, where the amount of tax credit in respect of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, allowed against the tax payable under MAT exceeds the amount of such tax credit admissible against the regular tax payable by the assessee, then, while computing the amount of MAT credit, such excess amount shall be ignored. **(Amendment by Finance Act, 2017 effective from assessment year 2018-19)**
2. MAT credit will be allowed to be carried forward for a period of ten assessment years immediately succeeding the assessment year in which MAT credit is available. However, with effect from the assessment year 2018-19, MAT credit will be allowed to be carried forward for a period of 15 assessment years. **(Amendment by Finance Act, 2017)**
3. If, in any subsequent assessment year, regular tax becomes payable, then, the difference between the regular tax and tax computed under MAT for that year shall be available as set off.
4. The MAT credit will not bear any interest.
5. The scheme of MAT credit shall not apply to a limited liability partnership which has been converted from private company or unlisted public company.

Practical 1

From the following information, compute tax liability, MAT credit to be carried forward if any and tax payable after MAT credit set off, if any.

(Rs. In lakhs)

Particulars	**1st Year**	**2nd Year**	**3rd Year**	**4th Year**
Regular Tax Liability	20	22	32	12
MAT liability	25	24	29.50	11.75

Solution

1st Year		
Sr. No.	**Particulars**	**Rs. In lakhs**
A.	Regular Tax Liability	20
B.	MAT Liability	25
C.	Tax Liability (A or B whichever is higher)	25
D.	Tax Payable	25
E.	MAT Credit arose in this year (MAT Liability – Regular Tax Liability)	5
F.	No. of years MAT Credit can be carried forward	Next 15 Years

2nd Year		
Sr. No.	**Particulars**	**Rs. In lakhs**
A.	Regular Tax Liability	22
B.	MAT Liability	24
C.	Tax Liability (A or B whichever is higher)	24
D.	Tax Payable	
E.	MAT Credit arose in this year (MAT Liability – Regular Tax Liability)	2
F.	Total MAT Credit to be carried forward	
	- Relating 1st Year (next 14 Years)	5
	- Relating 2nd Year (next 15 Years)	2

3rd Year			
Sr. No.	**Particulars**		**Rs. In lakhs**
A.	Regular Tax Liability		32
B.	MAT Liability		29.50
C.	Tax Liability (A or B whichever is higher)		32
D.	Tax Payable	32.00 lakhs	
	Less: MAT Credit Set off (to the extent of difference between Regular Tax Liability and MAT Liability: Rs.32 lakhs-29.50 lakhs)	(2.50 lakhs)	29.50
E.	Total MAT Credit to be carried forward		
	- Relating to 1st Year – (5 lakhs -2.5 lakhs) [for next 13 years]		2.5
	- Relating to 2nd Year [for next 14 years]		2

4th Year			
Sr. No.	**Particulars**		**Rs. In lakhs**
A.	Regular Tax Liability		12
B.	MAT Liability		11.75
C.	Tax Liability (A or B whichever is higher)		12
D.	Tax Payable	12.00 lakhs	12
	Less: MAT Credit Set off (to the extent of difference between Regular Tax Liability and MAT Liability: Rs.12 lakhs-11.75 lakhs)	(0.25 lakhs)	11.75
E.	Total MAT Credit to be carried forward		
	- Relating to 1st Year –(2.50 lakhs-0.25 lakhs) [for next 12 years]		2.25
	- Relating to 2nd Year [for next 13 years]		2

Readers Note:

Practical 2

From the following information, find out the (a) MAT credit to be carried forward before the amendment by Finance Act, 2017 (b) MAT credit to be carried forward after the amendment by Finance Act, 2017.

Particulars	Rs. in Lakhs
Regular Tax Liability (ignoring MAT)	8
MAT Liability	30
Tax Credit under section 90 of the Act	28

Solution

MAT Credit to be carried forward before the amendment by Finance Act, 2017

Sr. No.	Particulars	Rs. In lakhs
A.	Regular Tax Liability	8
B.	MAT Liability	30
C.	Tax Liability (A or B whichever is higher)	30
D.	Less: Tax credit under section 90 of the Act	(28)
E.	Tax payable	**2**
F.	MAT Credit to be carried forward (MAT Liability – Regular Tax Liability)	22

MAT Credit to be carried forward after the amendment by Finance Act, 2017

As per the amendment made by Finance Act, 2017, where the amount of tax credit in respect of any income-tax paid in any country or specified territory outside India, under section 90 or section 90A or section 91, allowed against the tax payable under MAT exceeds the amount of such tax credit admissible against the regular tax payable by the assessee, then, while computing the amount of MAT credit, such excess amount shall be ignored.

Sr. No.	Particulars	Rs. In lakhs
A.	MAT Credit to be carried forward before the amendment by Finance Act, 2017 (MAT Liability – Regular Tax Liability)	22
B.	Less: excess credit to be ignored as per Amendment (Refer working note)	(20)
C.	MAT Credit to be c/f after the amendment by Finance Act, 2017 (A-B)	**2**

Working Note: Excess Credit to be ignored as per the Amendment

Sr. No.	Particulars	Rs. In lakhs
A.	Tax Credit available under section 90 of the Act against the tax payable under MAT (Foreign Tax credit or MAT whichever is lower)	28
B.	Less: Tax Credit available under section 90 of the Act against the regular tax payable (Foreign Tax credit or Regular Tax whichever is lower)	(8)
C.	Excess credit to be ignored as per the amendment	**20**

Readers Note:

15.2 CARRY FORWARD AND SET OFF OF LOSSES IN THE CASES OF CERTAIN COMPANIES

Section:- 79- Effective from A.Y. 2018-19

In the case of companies in which the public are not substantially interested (other than start-up company referred to in section 80-IAC), loss will not be carried forward and set off unless the shares of the company carrying not less than 51 per cent of the voting power were beneficially held by the same person(s) both on the last day of the previous year in which loss occurred and on the last day of the previous year in which brought forward loss is sought to be set off.

In the case of a company, not being a company in which the public are substantially interested but being an eligible start-up as referred to in section 80-IAC*, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if, all the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,—*

(i) *continue to hold those shares on the last day of such previous year; and*

(ii) *such loss has been incurred during the period of seven years beginning from the year in which such company is incorporated.*

Exceptions - The aforesaid restriction contained in section 79 shall not be applicable if change in voting power takes place in following two cases:

1. Where a change in voting power takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making the gift.

2. Where any change in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of a foreign company subject to the condition that fifty-one per cent shareholders of the amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company.

Remark:

This section is applicable to the losses and not to the unabsorbed allowances. Therefore, entire unabsorbed depreciation can be carried forward by closely held company irrespective of the change in shareholding pattern.- CIT v. Shri Subhulaxmi Mills Ltd. [2001] 249 ITR 795.

16 – ALTERNATE MINIMUM TAX

16.1 TAX CREDIT FOR ALTERNATE MINIMUM TAX

Section:- 115JD - Effective from A.Y. 2018-19

(A) Sub – Section (1)

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

(B) Sub – Section (2)

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

Provided that where the amount of tax credit in respect of any income-tax paid in any country or specified territory outside India under section 90 or section 90A or section 91, allowed against the alternate minimum tax payable, exceeds the amount of the tax credit admissible against the regular income-tax payable by the assessee, then, while computing the amount of credit under this sub-section, such excess amount shall be ignored. **(Amendment by Finance Act, 2017)**

(C) Sub – Section (3)

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

(D) Sub – Section (4)

The amount of tax credit determined under sub-section (2) shall be carried forward and set off in accordance with the provisions of sub-sections (5) and (6) but such carry forward shall not be allowed beyond the fifth assessment year **(Amendment by Finance Act, 2017)]** immediately succeeding the assessment year for which tax credit becomes allowable under sub-section (1).

(E) Sub – Section (5)

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

(F) Sub – Section (6)

If the amount of regular income-tax or the alternate minimum tax is reduced or increased as a result of any order passed under this Act, the amount of tax credit allowed under this section shall also be varied accordingly.

17 – ASSESSMENT OF HINDU UNDIVIDED FAMILY (HUF) -No Amendment

18 – TAXATION OF BUSINESS TRUST - No Amendment

19 – TAXATION OF TRUST/INSTITUTIONS AND POLITICAL PARTIES

19.1 DONATION TO ANOHTER CHARITABLE TRUST NOT TREATED AS APPLICATION OF INCOME IF MADE WITH A DIRECTION THAT IT SHALL FORM PART OF THE CORPUS OF THE TRUST.

Section:- 11(1) - Effective from A.Y. 2018-19

Donation of income to another charitable trust is also treated as application of income for the purpose of s. 11(1) **- CIT v. Sarladevi Sarabhai Trust (No. 2) [1988] 172 ITR 698 (Guj.)**

However, with effect from Assessment Year 2018-19, any donation (contribution) given to a trust or institution with a specific direction that they shall form part of the corpus of recipient trust or institution, then it shall not be treated as application of income for the donor trust or institution. - Vide explanation 2 to section 11(1). **[Amendment by Finance Act, 2017]**

Practical 1

A Charitable Public Trust derives income from voluntary contribution of Rs.25,00,000 (out of Rs.8,00,000 is for specific direction that is shall form part of corpus of the trust) for the year ending **31.3.2018.** It invests the entire corpus donations in Bank Deposits and does not spend at all. It accumulates Rs.10,00,000 out of Rs.25,00,000/- for construction of trust hospital and informs the Assessing Officer accordingly. Out of the balance, a sum of Rs.2,50,000 is spent for the objects of the Trust. Further, Rs. 50,000 was donated to PQR charitable trust having similar objects. Another Rs. 25,000 was donated to XYZ charitable trust with a direction that it will form part of corpus of XYZ charitable trust. Determine the taxable income of the Trust for the A.Y. **2018-19**. What will be the tax implication if the trust could spend only Rs.7,50,000 of the amount of accumulated upto **31.3.2023** and Rs.1,00,000 during the previous year **2023-24.**

Solution

Previous Year 2017-18

	Particulars	Rs.
	Voluntary Contribution (excluding corpus donations)	17,00,000
Less:	15% Set apart	2,55,000
	Balance	14,45,000
	Applied for the objects of trust {section 11(1)--> { Rs. 2,50,000 + Rs.50,000 donated to PQR charitable Trust} (Refer Note)	(3,00,000)
	Balance	**11,45,000**
Less:	Accumulation of income for construction of hospital {Section 11(2)}	(10,00,000)
	Total Income	**1,45,000**

Previous Year 2023-24

	Particulars	Rs.
	Amount to be spent for construction of hospital	10,00,000
Less:	Amount actually spent during previous year **2022-23 {fifth year}**	(7,50,000)
		2,50,000
Less:	Amount actually spend during previous year **2023-24 {sixth year}**	(1,00,000)
	Taxable Income	**1,50,000**

Readers Note: As per Explanation 2 to Section 11(1), any donation to another charitable trust with a direction that it shall form part of corpus of trust shall not be treated as application of income in the hands of donor trust. As a result, donation given to XYZ charitable trust amounting to Rs. 25,000 shall not be considered as application of income.

Practical 2

Will your answer differ if charitable trust, out of accumulation donated Rs.1,50,000 to another trust during previous year **2023-24?**

Solution

As per explanation to section 11(2), donation to other trusts out of accumulation shall not be taken to meet the requirements of section 11(2) and therefore same shall not be given credit. Therefore, answer will not differ.

Readers Note:

19.2 CONDITIONS FOR CLAIMING EXEMPTION UNDER SECTION 11 OF THE ACT

Section:- 12A(1) - Effective from A.Y. 2018-19

The income derived from property held under trust wholly for charitable or religious purposes is exempt from tax under section 11 subject to fulfillment of certain conditions.

The conditions are:

(i) The trust or institution shall be registered under section 12AA.

(ii) In a case, trust or institution has been granted registration under section 12AA, and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, then it shall be required to make an application, in the prescribed form and manner, within a period of thirty days from the date of said adoption or modification, to the Principal Commissioner or Commissioner and thereupon obtain fresh registration. **(Inserted by Finance Act, 2017 w.e.f. assessment year 2018-9)**

(iii) The accounts of the trust or institution for the previous year shall be audited if the total income before claiming exemption under section 11 and 12 exceeds exemption limit.

(iv) Trust or institution has furnished the return in accordance with the provisions of Section 139(4A), within the time allowed under that section. Referring the provisions of section 139(4A), conclusion is that the trust or institution shall furnish the return of income within the time limit given under section 139(1) of the Act. **(Inserted by Finance Act, 2017 w.e.f. assessment year 2018-19)**

19.3 INCOME OF POLITICAL PARTY

Section:- 13A - Effective from A.Y. 2018-19

(1) Political party means an AOP or BOI citizens of India registered or deemed to be registered with the Election Commission of India as a political party

(2) Following categories of income are not included in computing total income:

- **(a)** Income under the head “House Propery”, “Capital Gain” and “Other sources” are exempt from tax
- **(b)** Any income by way of voluntary contribution

(3) Conditions for availing the exemption:

- **(a)** The political party keeps and maintains such books of account and other documents as would enable the A.O. to properly deduce its income therefrom
- **(b)** The political party keeps and maintains a record of each voluntary contribution (except contribution by way of electoral bond) in excess of Rs. 20,000/- and of the names and addresses of persons who have made such contirbutions
- **(c)** The accounts of the political pary are audited by a chartered accountant or other qualified accountants.
- **(d)** The treasurer of a political party shall in each financial year prepare a report in respect of contribution received by the political pary in excess of Rs. 20,000/- from any person / company in that year and submit it (before due date of submission of return of income) to the Election Commission.
- **(e)** no donation exceeding Rs. 2,000 is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bond. (**inserted by Finance Act, 2017 w.e.f. A.Y. 2018—19)**
- **(f)** It shall furnish the return of income in accordance with the provisions of section 139(4B) on or before the due date under section 139(1) of the Act. (**inserted by Finance Act, 2017 w.e.f. A.Y. 2018—19)**

20 – RETURN, ASSESSMENT, REASSESSMENT AND RECTIFICATION

20.1 FEE FOR DEFAULT IN FURNISHING OF RETURN

Section:- 234F and 271F - Effective from A.Y. 2018-19

Section 234F

- Without prejudice to the provisions of this Act, where a person required to furnish a return of income under section 139, fails to file the same within the time prescribed under section 139(1), then he shall pay fee of,—

  (a) five thousand rupees, if the return is furnished on or before the 31st day of December of the assessment year

  (b) ten thousand rupees in any other case:

  However, if the total income of the person does not exceed five lakh rupees, the fee payable under this section shall not exceed one thousand rupees.
- The provisions of this section shall apply in respect of return of income required to be furnished for the assessment year commencing on or after the 1st day of April, 2018.
- This fee is in addition to the interest payable under section 234A

Section 271F

Because of the introduction of late fee under section 234 F of the Act, the provisions of penalty for failure to furnish return of income under section 271F shall not apply to the return of income required to be furnished for the assessment year commencing on or after the 1st day of April, 2018.

20.2 REVISED RETURN

Section:- 139(5) - Effective from A.Y. 2018-19

Conditions for filing revised return

(i) The original return must have been furnished under section 139(1) or section 139(4) and

(ii) The assessee discovers an omission or wrong statement therein.

then, the revised return under this section may be furnished before the end of the relevant assessment year or before the completion of assessment, whichever is earlier. **(modified by Finance Act, 2017)**

Important consequence once revised return is filed: As per various judicial pronouncements, once a return is furnished under this sub-section, all the provisions of the Income-tax Act, 1961 shall apply as if such return has been furnished u/s. 139(1)/(4).

Practical 1

Arjun's total income for Assessment Year 2018-19 is Rs.10 lakhs consisting of salary, capital gain and income from other sources. After considering TDS and advance tax, a sum of Rs. 50,000 towards tax is still payable. Because of various reasons he could not file his return of income within the prescribed time limit. Arjun approaches you for advice on the following issues:

(i) Whether he can file a return of income on 1st December, 2018?

(ii) Whether he will be able to revise his return of income, in case he discovers any omission or mistake in his return filed on 1-12-2018?

(iii) What amount of interest, penalty, fee, he will be subjected to for the defaults, if any, for the relevant assessment year.

Solution

(i) As per section 139(4), a belated return for any previous year may be furnished at any time -

(a) before the end of the relevant assessment year; or

(b) before the completion of the assessment,

whichever is earlier.

Since Arjun has not filed his return of income within the specified due date under section 139(1), he can file a belated return of income u/s 139(4) for A.Y. 2018-19 on 1st December, 2019, provided the assessment has not been completed till date.

(ii) Considering the provisions of section 139(5), in case Mr. Arjun found an omission in the belated return filed by him for A.Y. 2018-19 on 01.12.2018, he can file a revised return u/s 139(5) on or before the end of A.Y. (i.e. 31.3.2019) or before the completion of assessment, whichever is earlier.

(iii) The quantum of interest and penalty which he will be subjected to for the defaults for the A.Y. 2018-19 are as follows:

For default in filing return of income on or before the due date - Interest under section 234A would be attracted for such default.

Since Mr. Arjun is not liable to tax audit under section 44AB, the due date for filing of return for A.Y. 2018-19 is 31.07.2018. Arjun has filed his return on 1.12.2018, therefore, interest under section 234A will be payable for 5 months (from 1.8.2018 to 1.12.2018) @ 1% per month or part of month on the amount of tax payable on the total income, as reduced by TDS and advance tax paid i.e., tax payable after considering TDS and advance tax.

Interest u/s 234A = Rs. 50,000 x 1% x 5 = Rs.2,500

For default in payment of advance tax - Interest under section 234B would be attracted for default in payment of advance tax.

Considering that advance tax paid by Mr. Arjun would be less than 90% of the assessed tax, Mr. Arjun would be liable to pay interest under section 234B @1% per month or part of the month on the amount of shortfall (i.e., Rs. 50,000 in this case) for 9 months from 1st April, 2018 to 1st December, 2018.

Accordingly, interest under section 234B is 1% × 9 × Rs.50,000 = Rs.4,500

Mr. Arjun is also liable to pay interest under section 234C for deferment of advance tax.

Penalty under section 271F *is not attracted since the provisions of this section shall not apply in respect of A.Y. 2018-19 onwards* ***(Amendment made by Finance Act, 2017). However, late fee under section 234 F shall be payable Rs. 5,000.***

Readers Note:

20.3 QUOTING OF AADHAAR NUMBER

Section:- 139AA - Effective from 01.04.2017

(1) Every person who is eligible to obtain Aadhaar number shall, on or after the 1st day of July, 2017, quote Aadhaar number—
(i) in the application form for allotment of permanent account number;
(ii) in the return of income:

(2) However, where the person does not possess the Aadhaar Number, the Enrolment ID of Aadhaar application form issued to him at the time of enrolment shall be quoted in the application for permanent account number or, as the case may be, in the return of income furnished by him.

(3) Every person who has been allotted permanent account number as on the 1st day of July, 2017, and who is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to such authority in such form and manner as may be prescribed, on or before a date to be notified by the Central Government in the Official Gazette:
In case of failure to intimate the Aadhaar number, the permanent account number allotted to the person shall be deemed to be invalid and the other provisions of this Act shall apply, as if the person had not applied for allotment of permanent account number.

(4) The provisions of this section shall not apply to such person or class or classes of persons or any State or part of any State, as may be notified by the Central Government in this behalf, in the Official Gazette.

- **Notification No. 37/2017, F. No. 370133/6/2017-TPL**
  As per Notification No. 37/2017, the provisions of section 139AA shall not apply to an individual who does not possess the Aadhaar number or the Enrolment ID and is:-
  (i) residing in the States of Assam, Jammu and Kashmir and Meghalaya;
  (ii) a non-resident as per the Income-tax Act, 1961;
  (iii) of the age of eighty years or more at any time during the previous year;
  (iv) not a citizen of India

20.4 SELF – ASSESSMENT TAX

Section:- 140A - Effective from A.Y. 2018-19

- An assessee is required to submit his return of income under section 139 or 142 or 148 or 153A.
- Self-Assessment tax payable by the assessee shall be worked out in the following manner:-

Particulars	Rs.
Compute Total Income under Income Tax Act	XXX
Compute tax on total income as per rates in force together with SC and EC	XXX
Less: TDS / TCS /Advance tax/relief under section 90,91, 90A/Tax credit under sec.115JAA / Tax credit under section 115JD (AMT)	XXX
Add: Interest u/s 234A/ 234B/ 234C	XXX
Add: Late Fee u/s 234F	XXX
Self-Assessment tax payable (Amount Refundable)	XXX

- The return of income is to be accompanied by proof of payment of tax together with interest and fee.
- Where the amount paid by the assessee falls short of the aggregate of tax, interest and fee (fee under section 234F of the Act), the amount so paid shall first be adjusted towards the fee payable and thereafter towards interest and the balance, if any, shall be adjusted towards tax.
- After a regular assessment u/s 143 or 144 or an assessment u/s 153A has been made, any amount paid under section 140A shall be deemed to have been paid towards such regular assessment.
- If any assessee fails to pay whole or any part of such tax, interest or fee in accordance with this section, he shall be deemed to be an assessee in default and all the provision of the Act shall apply accordingly.

20.5 INTIMATION / POPULARLY KNOWN AS SUMMARY ASSESSMENT

Section:- 143(1) - Effective from A.Y. 2018-19

(1) Where a return has been made under section 139, or in response to a notice under section 142(1), such return shall be processed in the following manner, namely:-

(a) the total income or loss shall be computed after making the following adjustments, namely;

i. any arithmetical error in the return or
ii. any incorrect claim, if such incorrect claim is apparent from any information in the return;
iii. disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
iv. disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
v. disallowance of deduction claimed under sections 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub-section (1) of section 139; or
vi. addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

Provided that no such adjustments shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode:

Provided further that the response received from the assessee, if any, shall be considered before making any adjustment, and in a case where no response is received within thirty days of the issue of such intimation, such adjustments shall be made.

(b) the tax , interest and **fee** shall be computed on the basis of the total income computed under clause (a) above;

(c) the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the tax, interest and **fee**, if any, computed under clause (b) above by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate allowable under Part A of Chapter VIII, any tax paid on self-assessment and any amount paid otherwise by way of tax , interest and fee;

(d) the intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable, or the amount of refund due to, the assessee after aforesaid corrections;

(e) the amount of refund due to the assessee shall be granted to him.

Provided that intimation shall also be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted but no tax, interest or fee is payable by, or no refund is due to him.

Time limit

No intimation shall be sent under this section after the expiry of one year from the end of the financial year in which the return is made. The acknowledgment of return shall be deemed to be the intimation in a case where no sum is payable by, or refundable to the assessee, and where no adjustment has been made.

Meaning of incorrect claim

It means such claim on the basis of an entry, in the return-

(a) of an item, which is inconsistent with another entry of the same or some other item in such return;

(b) in respect of which, information required to be furnished to substantiate such entry, has not been furnished;

(c) in respect of a deduction, where such deduction exceeds specified statutory limits which may have been expressed as monetary amount or percentage or ratio or fraction.

(1A) For the purpose of processing the returns as mentioned above, the Board may make a scheme for centralized processing of returns with a view to expeditiously determining the tax payable by, or the refund due to, the assessee.

(1B) For the purpose of giving effect to the scheme, the Central Government may, by notification, direct that any of the provisions of the Act relating to processing of returns shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in that notification. Further, such notification may be issued at any time but not after 31st March, 2012.

(1C) Every such notification shall be laid before each house of Parliament.

(1D) Notwithstanding anything contained in section 143(1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under section 143(2).

Provided that the provisions of this sub-section shall not apply to any return furnished for the assessment year commencing on or after the 1st day of April, 2017.

20.6 SCRUTINY / REGULAR ASSESSMENT

Section:- 143(3) - Effective from 01.06.2016

The amended provisions are as under:

(i) The Assessing Officer shall take into account all relevant material gathered by him and also the evidence produced by the assessee.

(ii) On this basis, he shall make an assessment of the total income or loss of the assessee.

(iii) On the basis of such assessment, he shall determine the sum payable by the assessee or refund due to him.

Practical 2 **SECTION 143(1)–Section 143(1D)-Section 143(3)-GEB's Case**

Mr. X, filed return for ***A.Y. 2018-19*** on ***31/8/18.*** He received notice for scrutiny on ***31/12/18*** requiring him to produce books of accounts on ***15/1/19.***He responded and during the course of hearing, A.O. found error in rate of depreciation charged on plant and machinery. Therefore, assessing officer would like to issue intimation of demand u/s 143(1). Advice assessing officer.

Solution

Position before amendment made by Finance Act, 2017

As discussed in earlier Practical, 143(1) is merely intimation while 143(3) is an assessment. Therefore income assessed u/s 143(3) prevails over income determined/ processed u/s 143(1).

Further, **Supreme Court in case of CIT v. Gujarat Electricity Board 260 ITR 84 (2003)** held that Once a regular assessment proceeding has been commenced under section 143(2), there is no need for a summary proceeding under section 143(1).

Considering the above, the assessing officer is advised not to issue intimation under section 143(1) but to make addition in relation to depreciation while passing order under section 143(3).

Position after amendment made by Finance Act, 2017

Section 143(1D), however has been amended and it states that the return shall be processed under section 143(1) even though notice under section 143(2) has been issued.

Considering the amendment, the assessing officer is advised to issue intimation under section 143(1) before passing order under section 143(3) of the Act.

Readers Note:

20.7 TIME LIMIT FOR COMPLETION OF ASSESSMENTS AND CERTAIN PERIODS ARE EXCLUDED FROM THE TIME LIMIT FOR PASSING ASSESSMENT ORDERS

Section:- 153(1), 153(4) and Explanation 1 to Section 153 - Effective from 01.06.2016

1. ***Time limit for completion of assessment under section 143(3)/ 144***

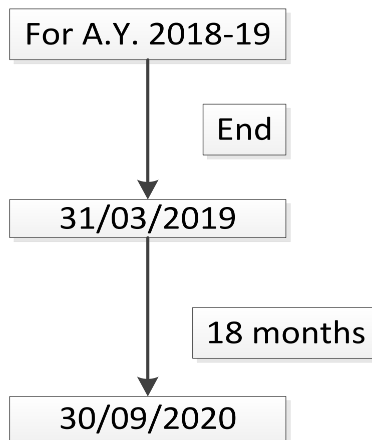
   Within 21 months ***from*** the end of relevant assessment year.

2. ***The abovementioned time limit for completion of assessment has been modified by Finance Act, 2017 as under:***

Assessment Year	Abovementioned time limit of 21 months shall be substituted by
2018-19	18 months
2019-20 and onwards	12 months

3. Time limit mentioned at Sr. No. 1 and 2 shall be extended by further twelve months, in case where reference is made to TPO under section u/s 92CA (1).

Let's take an illustration that for the assessment year **2018-19,** the assessing officer shall complete the assessment under section 143(3) or 144 on or before



20.8 TIME LIMIT FOR COMPLETION OF ASSESSMENTS AND CERTAIN PERIODS ARE EXCLUDED FROM THE TIME LIMIT FOR PASSING ASSESSMENT ORDERS

Section:- 153(2), 153(4) and Explanation 1 to Section 153 - Effective from 01.06.2016

Time limit for completion of assessment u/s 147

(1) Within 9 months from the end of financial year in which the notice under section 148 was served.

(2) The abovementioned time limit for completion of assessment has been modified by Finance Act, 2017 as under:

Where notice under section 148 is Served	Abovementioned time limit of 9 months shall be substituted by
On or after 1st April, 2019	12 months

(3) Time limit mentioned at Sr. No. 1 and 2 shall be extended by further twelve months, in case where reference is made to TPO under section u/s 92CA (1).

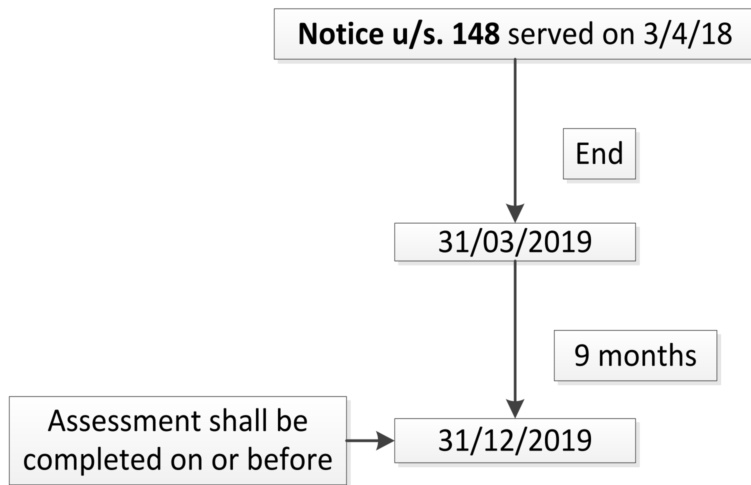
Practical 3

A.O. issued notice u/s 148 requiring assessee to file return for ***A.Y. 2011-12.*** Notice was dated ***31/3/18*** and sent to Post Office on the same day. But it was served to assessee on ***3/4/18***. Discuss validity of notice issued u/s 148. Also find out the maximum time limit by which assessment u/s 147 shall be completed?

Solution

Supreme Court in case of R.K.Upadhyaya v. Shanabhai P. Patel [1987] 166 ITR 163 held that the time-limits prescribed under section 149 are relevant for "issue of notice" and not for "service of notice". Therefore, if the Assessing Officer issues notice within the time-limit prescribed under section 149 of the Act, it is a valid notice even if "service of notice" takes place after such time-limit.
Considering the above, notice issued by A.O. is valid, subject to fulfillment of other conditions.

Time limit for completing assessment under section 147 is 9 months from the end of financial year in which notice u/s 148 is served.



Readers Note:

21 – APPEALS

21.1 QUALIFICATIONS, TERMS AND CONDITIONS OF SERVICE OF PRESIDENT, VICE-PRESIDENT AND MEMBER

Section:- 252A - Effective from A.Y. 2018-19

Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the President, Vice-President and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act:
Provided that the President, Vice-President and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be governed by the provisions of this Act, and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

21.2 APPEALS TO TRIBUNAL

Section:- 253 - Effective from 01.04.2017

- **Appealable Orders**

  (A) Appeal by assesse [Section 253(1)]

  (a) An order passed by a Commissioner (Appeals) u/s 154, section 250, section 271, section 271A or section 272A or

  (b) An order passed by a Commissioner under section 12AA or u/c (vi) of section 80G(5) or under section 263 [or section 271 (w.e.f. 1-6-2002)] or under sections 272A or an order passed by him under section 154 amending his order under section 263 or an order passed by a Chief Commissioner or a Director General or a Director under section 272A

  (c) An order passed by Assessing Officer under section 115VZC(1)-Expulsion from Tonnage Taxation Scheme.

  (d) An order passed by an Assessing Officer under section 143(3) or section 147 or section 153A or section 153C in pursuance of the directions of the Dispute Resolution Panel or an order passed under section 154 in respect of such order.

  (e) An order passed by the prescribed authority under Section 10(23C) **(iv) or (v)** or (vi) or (via).

  (B) Appeal by Commissioner[Section 253(2)]

  Order passed by Commissioner (Appeals) under section 154 or 250.

- **Time limit for presenting appeal [Section 253(3)]**

  Within 60 days of the date on which order sought to be appealed against is communicated to the assessee/ Commissioner.

22 – REVISION

No Amendment

23 – ASSESSMENT ON REMAND

23.1 TIME LIMIT FOR COMPLETION OF FRESH ASSESSMENT

Section:- 153(3) - Effective from 01.06.2016

If fresh assessment is made in pursuance of an order under sections 254, 263 or 264 setting aside or canceling an assessment, then, the below mentioned time limit under section 153(3) of the Act is applicable:

Nature of order	Time-limit for completion of "Fresh Assessment"
• If assessment is set aside or cancelled by virtue of an order under section 254	Fresh assessment shall be completed within **9 months** from the end of the financial year in which order u/s 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be.
• If assessment is set aside or cancelled by virtue of an order under section 263 or 264	Fresh assessment shall be made within **9 months** from the end of the financial year in which order under section 263 or 264 is passed by the Principal Commissioner or Commissioner.
• During the course of the proceedings for the fresh assessment of total income if a reference u/s 92CA(1) is made	Then above time limits shall be extended by 12 months i.e. **21 months instead of 9 months.**

The above time limit has been modified by the **Finance Act, 2017** in respect of above orders either passed by or received by Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner on or after 1st April 2019. In this situation, time limit of 9 months mentioned above shall be substituted by 12 months and 21 months shall be substituted by 24 months.

Practical 1

The assessments of Samip Chemicals Ltd. for the assessment year **2015-16** was completed under section 143(3). The Principal Commissioner found the order of assessing officer erroneous and prejudicial to the interest of revenue since it was passed without conducting any inquiry. The Principal Commissioner, therefore, while acting under section 263 of the Act, set aside the whole assessment order and directed the assessing officer to pass the order afresh. This order of Principal Commissioner was dated **10-07-2018**.

Based on the above facts, answer following questions:

(a) What is the scope of assessment proceedings at the time of fresh assessment after the order of Principal Commissioner?

(b) What is the time limit for completion of above assessment?

Solution

(a) Considering the ratio laid down in **Kundanlal Maru v. CIT (1982) 135 ITR 84 (MP)** and the **Rambilas Chandran v. CIT (1985) 156 ITR 344 ,** where the Principal Commissioner sets aside the whole assessment and directs the assessing officer to pass the order afresh without imposing any restrictions or limitations as to how the fresh proceedings to be conducted by the Assessing Officer, then the Assessing Officer has the same powers in making such fresh assessment as he had originally when making an assessment under section 143(3) / 144 of the Act.

(b) Time limit for completion of "fresh assessment" is now governed by section 153(3). Considering the provisions of this section, the assessing officer shall complete the "fresh assessment" within 9 months form the end of financial year in which order under section 263 was passed by the Principal Commissioner.

Readers Note:

24 – INCOME TAX AUTHORITIEIS AND THEIR POWERS

24.1 POWER TO CALL FOR INFORMATION

Section:- 133 - Effective from 01.04.2017

The Assessing Officer, Joint Commissioner, Commissioner (Appeals) may require to furnish the following details:

Sub- Section	Assessee	Information
(1)	Firm	Names, addresses of the partners of the firms and their respective shares.
(2)	HUF	Names, addresses of the manager and the members of the family
(3)	Trustee, guardian, agent	Names of the persons for or of whom he is trustee, guardian or agents and their addresses
(4)	Any assessee	Name and addresses of persons to whom the following payments are made exceeding Rs. 1,000 or such higher amount as may be prescribed - Rent, - interest, - commission, - royalty, - brokerage, - annuity not being taxable under the head “Salaries”
(5)	Broker, agent or any person concerned in the management of stock or commodity exchange	Names and addresses of all persons to whom any sum has been paid or received for transfer by way of sale, exchange or otherwise of assets together with particulars of all such payments and receipts.
(6)	Any person, including a banking company or any officer thereof.	Statements of accounts and affairs verified in a specified manner in relation to such matters or points as, in the opinion of the authority will be useful for or relevant to any enquiry or proceedings under the Act.

However, the powers referred to in section 133(6) may also be exercised by the Principal Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director and the Principal Commissioner or Commissioner or **the Joint Director or Deputy Director or Assistant Director** (Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017).

Provided further that the power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner **other than the Joint Director or Deputy Director or Assistant Director**

(Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017) without the prior approval of the Principal Director or Director or, as the case may be, the Principal Commissioner or Commissioner.

Practical 1

The Assessing Officer issued notices under section 133 to four banks requiring particulars relating to a customer in a specific format duly verified in a prescribed manner. One of the banks refused to part with the information on the ground that the letter did not specify about any proceeding pending against the said customer under the Income-tax Act, 1961. Discuss the correctness of action of the bank in refusing to furnish the particulars as required by the Assessing Officer.

Solution

- As per section 133(6), power is given to an Assessing Officer to issue notice, for the purposes of the Act, requiring any person, including a banking company, to furnish information in respect of such points or matters or to furnish statement of accounts and affairs verified in the manner specified by the Assessing Officer, as may be useful for, or relevant to, any enquiry or proceeding under the Act. Therefore, the provisions of this section can be invoked even in case of any enquiry and it is not necessary that any proceeding should be pending against the customer for the same.
- However, in respect of an enquiry, this power can be exercised by any Income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner only after getting the prior approval of the Principal Director or Director or Principal Commissioner or Commissioner, as the case may be.
- Therefore, the Assessing Officer can issue notice under section 133(6) asking for particulars relating to a customer in the specified format duly verified in the prescribed manner from the banking company, even if no proceeding is pending against such customer, provided he has obtained the prior approval of the Principal Director or Director or the Principal Commissioner or Commissioner, as the case may be. **[As per amendment made by Finance Act, 2017, no prior approval is required if assessing officer is Joint Director or Deputy Director or Assistant Director].** This view was affirmed in case of **Kathiroor Service Cooperative Bank Ltd. Vs. Commissioner Of Income Tax (CIB) Ors. (2014) 360 ITR 0243 (SC).**
- Hence, in such a case, the action of bank in refusing to furnish particulars relating to a customer as required by the Assessing Officer on the ground that no proceeding was pending against the customer, is not correct.

Readers Note:

24.2 POWER TO SURVEY

Section:- 133A - Effective from 01.04.2017

Survey in connection with business or profession [Section 133A(1)]

(i) Place of survey:

a) Any place within the limits of the area assigned to the income tax authority,
b) Any place occupied by any person in respect of whom the income tax authority exercises jurisdiction,

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

at which a business or profession or **an activity for charitable purpose** is carried on, whether such place be the principal place or not of such business or profession or **of such activity for charitable purpose** (Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017)

Explanation.—For the purposes of this sub-section, a place where a business or profession or **activity for charitable purpose** is carried on shall also include any other place, whether any business or profession or **activity for charitable purpose** is carried on therein or not, in which the person carrying on the business or profession or **activity for charitable purpose** states that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession or **activity for charitable purpose** are or is kept. (Bold words added by **Finance Act, 2017** w.e.f. 1st April, 2017)

(ii) Time to enter the place of survey:-

Place of Survey	Time of Survey
Place of business or profession	During the hours at which such place is open for the conduct of business or profession or an activity for charitable purpose.
At any other place	Only after sunrise and before sunset

Practical 2

The Assessing Officer within his jurisdiction surveyed Charitable trust in afternoon for the purpose of collecting information which may be useful for the purposes of the Income-tax Act, 1961. The Charitable Trust is kept open for its activity every day between 10 a.m. to 6 p.m. The trustee of the Charitable trust claimed that the Assessing Officer could not enter because it is not a business place but a place where charitable activity is conducted.

Solution

With effect from 1st April, 2017, the Assessing Officer is further empowered under section 133A to enter any place at which an activity for charitable purpose is carried during the hours at which such place is open for an activity for charitable purpose.

Therefore, the claim made by the trustee to the effect that the Assessing Officer could not enter the place where charitable activity is conducted is not in accordance with law.

Readers Note:

24.3 INQUIRY BY PRESCRIBED INCOME-TAX AUTHORITY

Section:- 133C - Effective from 01.04.2017

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

For this purpose, the Board may make a scheme for centralised issuance of notice and for processing of information or documents and making available the outcome of the processing to the Assessing Officer. **(inserted by Finance Act, 2017 w.e.f. 1-4-2017)**

Practical 3

The assessing officer is in receipt of the outcome of processing of information under section 133C of the Act. The outcome reveals that certain income has escaped in case of Mr. Jagat for the A.Y. 2014-15 though he has furnished the return of income. Advise assessing officer for the next course of action.

Solution

For the purpose of section 147, following shall be deemed to be the cases where income chargeable to tax has escaped assessment**:**

Situation	**Deeming escapement**
where a return of income has not been furnished by the assessee or **a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, section 133C (2)**	**It is noticed by the Assessing Officer that** the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be**, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.**

Considering the abovementioned provisions of deeming escapement, the assessing officer shall proceed under section 147 of the Act and for that purpose, he is advised to issue notice under section 148 of the Act after recording the necessary reasons.

Readers Note:

25 – ASSESSMENT IN CASE OF SEARCH OR REQUISITION

25.1 ASSESSMENT IN CASE OF SEARCH OR REQUISITION

Section:- 153A (1) - Effective from 01.04.2017

1. This section has an overriding effect over section 139, 147, section 148, section 149, section 151 and section 153 of the Act.
2. In the case of any person, a search is initiated u/s 132 or requisition is made u/s 132A, the Assessing Officer shall issue a notice to such person requiring him to furnish a return of income in respect of each of the assessment years falling within six assessment years immediately preceding the assessment year relevant to the previous year in which such **search is conducted or requisition is made.**
3. The assessee shall furnish return of income in response to the above notice within the time period specified in the notice and the provisions of the Act shall apply as if such were a return required to be furnished under section 139 of the Act.
4. The assessing officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years.
5. Any assessment or reassessment relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search u/s 132 or making of requisition u/s 132A shall abate.
6. The income determined under this section shall be taxed at the rates or rates applicable to each of the relevant assessment years.
7. However the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made.

Notification No. 42/2012 dated 4.10.2012

In exercise of the powers conferred by section 153A and 153C, the Central Government has, through this notification, inserted a new Rule 112F which shall come into force from the 1st July, 2012.

The said Rule provides that the Assessing Officer is not required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, in the following cases:

(i) where as a result of a search under section 132(1) or a requisition made under section 132A, a person is found to be in possession of any money, bullion, jewellery or other valuable articles or things, whether or not he is the actual owner of the same, and

(ii) where, such search is **conducted or such requisition is made in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued**

under section 30 read with section 56 of the Representation of the People Act, 1951, **or where the assets so seized** or requisitioned are **connected in any manner to the ongoing election** in an assembly or parliamentary constituency.

However, this Rule is not applicable to cases where such search under section 132 or such requisition under section 132A has taken place after the hours of poll so notified.

8. **In respect of the search initiated under section 132 or the requisition made under section 132A on or after the 1st day April, 2017,** the assessing officer is empowered to issue notice under section 153A and further empowered to assess or reassess total income for the aforementioned six assessment years and "for the relevant assessment year or years" (i.e. beyond six years).

The expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

However, for this purpose, following conditions must be satisfied:

a. Assessing officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant 4 assessment years (which are falling beyond sixth assessment years);
b. the abovementioned income has escaped assessment for such year or years;
c. the abovementioned income is represented in the form of asset. For this purpose, asset shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

25.2 TIME LIMIT FOR COMPLETION OF ASSESSMENT U/S 153A

Section:- 153B - Effective from 01.04.2017

1. The time available for completion of assessment or reassessment in respect of each assessment year falling within six assessment years shall be ***21 months*** from the end of the financial year in which the last of the authorizations for **search** u/s 132 or for **requisition** u/s 132A **was executed.**

2. In respect of the assessment year relevant to the previous year in which search is conducted u/s 132 or requisition is made u/s 132A, a period of ***21 months*** from the end of the financial year in which the last of the authorizations for **search** u/s 132 or for **requisition** u/s 132A was **executed** shall be allowed.

3. The time limit mentioned at Sr. No. 1 and Sr. No. 2has been modified by the Finance Act, 2017, the summary of which is as under:

Date where the last authorization for search under section 132 or for requisition under section 132A was executed	Abovementioned time limit of 21 months shall be substituted by:
During financial year 2018-19	18 months
During financial year commencing on or after 1st April, 2019	12 months

4. A proviso to sub-section (1) of section 153B provides that in case of such other person, the time limit for making assessment or reassessment shall be the either:
   (a) ***21 months*** from the end of the financial year in which the last of authorisations for search under section 132 or for requisition under section 132A was executed; or
   (b) ***9 months*** from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person,

   whichever is later.
5. The time limit mentioned at Sr.No.4 has been modified by the Finance Act, 2017, the summary of which is as under:

Date where the last authorization for search u/s 132 or for requisition u/s 132A was executed	Abovementioned time limit of 21 months at Sr. No. 4(a) shall be substituted by:	Abovementioned time limit of 9 months at Sr. No. 4(b) shall be substituted by:
During financial year 2018-19	18 months	12 months
During financial year commencing on or after 1st April, 2019	12 months	12 months

6. The above time limit at Sr. No. 1, 2, 3 and 4 shall be extended by further twelve months when reference is made to TPO u/s 92CA (1) during the course of proceedings under this chapter.
7. For the purpose of this section, the search shall be construed to have been executed only on the conclusion of the search as recorded in the last panchanama drawn. In the case of requisition u/s 132A, the requisition shall be construed as executed only on the actual receipt of the books of account or other documents or assets by the authorised officer.

Practical 1

A search was carried out at the business premises of Ms. Mansi on **10.12.2016** and it was concluded on the same day. Answer the following questions.

(a) Mention the assessment years for which the Assessing Officer shall issue notice under section 153A of the Act requiring the Mansi to file the returns.

(b) What will be the status of assessment proceeding of A.Y**2014-15** which is pending on the date of search?

(c) What is time limit for the completion of above assessments?

(d) Does your answer differ for the question (a) above, if search was carried out on **10.12.2017** instead of **10.12.2016?**

Solution

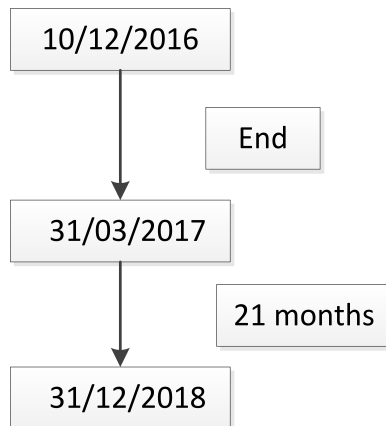
(a)

	P.Y.	A.Y.
(1)	10-11	11-12
(2)	11-12	12-13
(3)	12-13	13-14
(4)	13-14	14-15
(5)	14-15	15-16
(6)	15-16	16-17

10/12/16 ⟶ Search Date

(b) As per the provisions of section 153A, any assessment or reassessment falling within six assessment years pending on the date of search shall abate (stop). As a result thereof, the assessment proceedings for the **A.Y. 2014-15** shall abate.

(c) As per the provisions of section 153B, the time available for completion of assessment or reassessment in respect of each assessment year falling within six assessment years shall be ***21 months*** from the end of the financial year in which the last of the authorizations for **search** u/s 132 **was executed.**



Therefore, the assessing officer shall complete the assessments in the hands of Ms. Mansi on or before **31/12/2018.**

(d) In view of the amendment made by Finance Act, 2017, the assessing officer is empowered to issue notice under section 153A and further empowered to assess or reassess total income for the aforementioned six assessment years and "for the relevant assessment year or years" (i.e. beyond six years).

However, for this purpose, following conditions must be satisfied:

a. Assessing officer has in his possession books of account or other documents or evidence which reveal that the income which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in one year or in aggregate in the relevant 4 assessment years (which are falling beyond sixth assessment years);
b. the abovementioned income has escaped assessment for such year or years;
c. the abovementioned income is represented in the form of asset.

Readers Note:

26 - COLLECTION AND RECOVERY OF TAX

No Amendment

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27 – TAX DEDUCTION AND COLLECTION AT SOURCE

27.1 PAYMENT OF RENT BY CERTAIN INDIVIDUALS / HUFs

Section:- 194 – IB - Effective from 1st June, 2017

(A) Person liable to deduct tax at source:- Any person, being an individual or a Hindu undivided family (other than those who are covered under section 194-I) , responsible for paying to a resident any income by way of rent, shall deduct an amount equal to five per cent of such income as income-tax thereon.

The provisions of this section shall not be applicable to the individual or Hindu undivided family who are liable to deduct tax at source under section 194-I.

(B) Time of tax deduction – Tax is deductible at the time of credit of rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

(C) Threshold limit – Tax is deductible if rent is exceeding fifty thousand rupees for a month or part of a month during the previous year**.**

(D) Rate of TDS- Tax is deductible at the rate of 5 per cent of Rent

(E) Ceiling on TDS :- In a case where the tax is required to be deducted as per the provisions of section 206AA (i.e. if payee does not provide PAN), such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be

(F) Meaning of Rent:- For the purposes of this section, "rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or building or both.

Practical 1

Mr. Madhukant is an employee of M/s. PQR Ltd. He had taken property on rent from Mr. Suresh, resident, for his residential purpose for the monthly rent of Rs. 70,000 w.e.f. **1st February, 2018**. He claims that he is not required to deduct tax at source since (i) he is not an assessee covered by tax audit under section 44AB(a)/(b) (ii) rent for the financial year 2017-18 does not exceed Rs. 1,80,000 (limit prescribed under section 194-I).Advise him with regard to his TDS obligation.

Solution

- The contention of Mr. Madhukant is true with regard to provisions of Section 194-I. However, with effect from 1st June, 2017, section 194-IB has been inserted by Finance Act, 2017 requiring individual or a Hindu undivided family (other than those referred to in the second proviso to section 194-I), to deduct tax at source at the rate of five percent if he or it is responsible for paying rent to

a resident any income by way of rent exceeding fifty thousand rupees for a month or part of a month during the previous year.

- Therefore, Mr. Madhukant is required to deduct tax at source under section 194IB in the month of March, 2018 on Rs.1,40,000 at the rate of 5%.

Reader's Note:

Practical 2

Mr. Ramakant, senior Chief Financial officer of M/s. DANGAR Ltd. He had taken property on rent from Mr. Ganesh, resident, for his residential purpose for the monthly rent of Rs. 1,50,000 w.e.f. **1st July, 2018**. Advise Mr. Ramakant for deduction of tax under section 194-IB with regard to the time of deduction and the amount, assuming that Mr. Ganesh does not provide PAN.

Solution

- With regard to the time of deduction, Mr. Ramakant shall deduct tax at source annually in the last month of the financial year (i.e. March, 2018) on total rent of Rs. 13,50,000 (i.e. 1,50,000 X 9 months). However, rate of TDS shall be 20% since Mr. Ganesh has not provided PAN.
- With regard to amount of TDS, it shall be ideally Rs. 2,70,000 (20% of Rs.13,50,000). But the rent of last month is only Rs. 1,50,000. Therefore, as per the ceiling suggested under section 194 IB, Mr. Ramakant shall not exceed tax more than the rent of last month i.e. Rs. 1,50,000.

Reader's Note:

Practical 3

Mr. Jaykant runs proprietorship in the name and style M/s. MASIKOTAR TRADING. He pays shop rent to Mr. Shrenik, resident Rs. 20,000 p.m. with effect from 1st April 2017. Advise him with regard to TDS obligation under following alternatives:

(a) Total turnover of M/s. MASIKOTAR TRADING for the previous year 2016-17 was Rs. 2.5 Cr.

(b) Total turnover of M/s. MASIKOTAR TRADING for the previous year 2016-17 was Rs. 95 Lakhs.

Solution

Alternative (a):

- Since turnover for the previous year 2016-17 exceeded monetary limit for tax audit under section 44AB(a), Mr. Jaykant is subject to Section 194-I. Under this section, he is not required to deduct tax at source on rent, if rent paid during the financial year does not exceed Rs. 1,80,000.
- In the present case, annual rent is Rs. 2,40,000, (it exceeded limit of Rs. 1,80,000). Therefore, Mr. Jaykant shall deduct tax at source at 10% under section 194-I, at the time of credit to Mr. Shrenik or at the time of payment whichever is earlier.

Alternative (b):

- Since turnover for the previous year 2016-17 has not exceeded monetary limit for tax audit under section 44AB(a), Mr. Jaykant is not governed by the provisions of Section 194-I but his case falls under the provisions of section 194-IB.
- However, provision of section 194-IB is made applicable only when rent is exceeding fifty thousand rupees for a month or part of a month during the previous year.
- In the present case, monthly rent is Rs. 20,000 (not exceeding Rs. 50,000), Mr. Jaykant is not required to deduct tax at source under section 194-IB also.

Reader's Note:

27.2 TAX DEDUCTION AT SOURCE ON PURCHASE OF IMMOVABLE PROPERTY

Section:- 194 – IC - Effective from 1st April, 2017

(A) Person liable to deduct tax at source:- Any person responsible for paying to a resident any sum by way of consideration under the specified agreement under section 45(5A), shall deduct tax at source.

(B) Time of tax deduction – Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time or payment thereof, whichever is earlier.
For this purpose, "payment" can be in cash or by issue of a cheque or draft of by any other mode.

(C) Threshold limit – Nil

(D) Rate of TDS - Tax is deductible at the rate of 10 per cent of Rent

(E) No Tax is deductible:- Tax deduction at source shall not be made in respect of that part of consideration which is in kind under the specified agreement.

(F) Meaning of "Specified agreement":- "specified agreement" means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.

27.3 TAX DEDUCTION AT SOURCE ON FEES FOR PROFESSIONAL OR TECHNICAL SERVICES

Section:- 194 J - Effective from 1st June, 2017

(A) Person liable to deduct tax at source:- Any person, not being an individual or a HUF, who is responsible for paying to a resident any sum by way of -

(a) fees for professional services, or
(b) fees for technical services or
(c) any remuneration or fees or commission by whatever name called, other than those on which tax is deductible under section 192, to a director of a company or
(d) royalty or
(e) any sum referred to in section 28 (va) ;

shall deduct tax at source under this section.

An individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (*a*) or clause (*b*) of section 44AB during the financial year immediately preceding the financial year in which abovementioned sum is credited or paid, shall be liable to deduct income-tax under this section.

However, no tax deduction under this section is required on sum by way of fees for professional services in case such sum is exclusively for personal purposes of such individual or any member of Hindu Undivided Family.

(B) Time of deduction:- Tax shall be deducted under this section, either at the time of credit to the account of the payee or at the time of payment thereof, whichever is earlier.

For this purpose, credit to "Suspense account" or any other name shall be deemed to be a credit of such income to the account of the payee.

For this purpose, "payment" can be in cash or by issue of a cheque or draft or by any other mode.

(C) Threshold limit:- No tax is deductible if the amount credited or paid or likely to be credited or paid during the financial year to the account of the payee **does not exceed**-

Nature of Payment	Separate Threshold limit (In Rs.)
Professional services	30,000
Fees for technical services	30,000
Royalty	30,000
Sum referred to in section 28(va)	30,000

(D) Tax rate:- 10%. (2% in case of payee engaged only in the business of operations of call centre- Amendment with effect from 1st June, 2017)

27.4 PAYMENT WITHOUT TAX DEDUCTION OR WITH DEDUCTION AT LOWER RATE

Section:- 197A - Effective from 1st June, 2017

If a declaration (form no. 15G and 15 H) is submitted under section 197A by the recipient to the payer, then no tax is deductible in a few cases.

The payer shall submit the declaration to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, on or before the seventh day of the month next following the month in which the declaration is furnished to him.

Conditions for submitting declaration

	Section 192A	**Interest on securities [Sec. 193]**	**Dividend [Sec. 194] and NSS [Section 194EE]**	**Interest other than interest on securities [Sec. 194A]**	**Insurance Commission [Sec. 194D]**	**Section 194DA**	**Section 194-I Rent [w.e.f. 01.06.2016]**
Condition 1 - Who is recipient?	Other than a company or firm	Other than a company or firm	Resident individual	Other than a company or firm	Other than a company or firm	Other than a company or firm	Other than a company or firm
Condition 2 - What is tax on estimated total income of the previous year?	Nil	Nil	Nil	Nil	Nil	Nil	Nil

Condition 3 - How much is total of income covered by sections 192A,193, 194, 194A, 194EE, 194D, 194DA and 194I?	Not to exceed the amount of exemption limit

Condition 3 is not applicable from June 1,2003 if the recipient is a resident individual who is 60 years or more at any time during the financial year.

Practical 4

Mr. Jagat, aged 55 years, provides following estimation for the previous year **2017-18**

(a) F.D. interest from State Bank of India- Rs. 1,00,000

(b) Income under the head "PGBP" - Rs. 2,22,000

(c) Contribution to P.P.F.- Rs.1,10,000

He wants to submit Form No. 15G to State Bank of India. Advise him.

Solution

Particulars	**Rs.**
Income under the head "PGBP"	2,22,000
FD interest with SBI	1,00,000
Gross Total Income (GTI)	3,22,000
Less: Deduction u/s 80C-Contribution to PPF	(1,10,000)
Total Income	2,12,000
Tax on estimated income	Nil

In this case FD interest Income (covered by Sec 194A) is Rs.1,00,000 which doesn't exceed exemption limit. Therefore, all the conditions of section 197A are satisfied. Hence, Mr. Jagat can submit form No. 15G to SBI in duplicate.

Reader's Note:

Practical 5

Consider following changes in above Practical.

"Instead of income under the head "PGBP", interest on debentures from Reliance Industries Limited is given".

Can Jagat submit Form No. 15G to State Bank of India as well as Reliance Industries Limited?

Solution

Here, total of [FD interest (sec 194A) and interest from Reliance industries Ltd. (section 193)] is Rs.3,22,000 [1,00,000+2,22,000] which exceeds Rs. 2,50,000 [exemption limit]. Therefore, condition 3 is not satisfied. Hence, Mr. Jagat cannot submit form 15G to SBI as well as Reliance Industries Limited.

Reader's Note:

27.5 TAX COLLECTION AT SOURCE

Section:- 206C - Effective from 1st April, 2017

(A) Section 206 C(1)

(1) Every person, being a seller, shall collect, from the buyer of following goods, income tax at the rates mentioned in corresponding column.

Nature of goods	Percentage of rate of TCS
1. Alcoholic liquor for human consumption (other than Indian made foreign liquor)	1
2. Indian made foreign liquor	1
3. Tendu leaves	5
4. Timber obtained under a forest lease	2.50
5. Timber obtained by any mode other than under a forest lease	2.50
6. Any other forest produce (not being timber or tendu leaves)	2.50
7. Scrap	1
8. Minerals, being coal or lignite or iron ore	1

(2) Tax has to be collected by the seller at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time or receipt of such amount from the buyer in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.

(3) “Seller” means-

- **(a)** the Central Government,
- **(b)** a State Government
- **(c)** any local authority
- **(d)** corporation
- **(e)** authority established by or under a Central, State or Provincial Act
- **(f)** any company
- **(g)** firm
- **(h)** Co – operative society.
- **(i)** Individual or a HUF whose books of account are required to be audited under section 44AB (a)/ (b) during the financial year immediately preceding the financial year in which goods are sold.

(4) “Buyer” means a person who obtains in any sale, by way of auction, tender or any other mode, goods of the nature specified in the Table in section 206C(1) or the right to receive any such goods. However, buyer does not include the following:

- **(a)** a public sector company, the Central Government, a State Government, and an Embassy, a High Commission, Legation, Commission, Consulate and the trade representation, of a foreign State and a club.
- **(b)** a buyer in the retail sale of such goods purchased by him for personal consumption.

(5) “Scrap” means waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons.

Accordingly, following would not be covered within the meaning of scrap and therefore not subject to tax collection at source.

a. Scrap or waste not arising from manufacture or mechanical working of material. (e.g. old newspapers)
b. Scrap or waste which is usable as such.

(6) No collection of tax shall be made from a resident buyer who purchases goods (which are to be utilized) for the purposes of manufacturing, processing or producing any article or thing or for the purpose of generation of power and not for the purpose of trading. For this purpose, resident buyer shall give a declaration in Form No. 27 C to the seller in duplicate.

The seller shall deliver one copy to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner on or before the seventh day of the month next following the month in the declaration is furnished to him.

(B) Section 206C (1C)

(1) Every person, who grants a lease or a license or enters into a contract or otherwise, transfers any right or interest in

(a) any parking lot or
(b) toll plaza or
(c) mine or quarry,

to another person (hereafter referred to as "licensee or leasee") for the use of such parking lot or toll plaza or mine or quarry, for the purpose of business, shall collect tax at source at two percent.

The provisions of this section shall not apply to mining and quarrying of mineral oil, petroleum and natural gas.

The provisions of this section shall not apply if the licensee or lessee is a public sector company.

(2) Tax has to be collected by the seller at the time of debiting of the amount payable by the licensee or leasee to the account of the licensee or leasee or at the time or receipt of such amount from the licensee or leasee in cash or by issue of cheque or draft, or by any other mode, whichever is earlier.

(C) Section 206C(1F)

(1) Every person, being seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ten lakh rupees, shall collect tax from buyer at one percent of sale consideration. – Applicable from 1st June, 2016

(2) Tax shall be collected at the time of receipt of amount from the buyer.

(3) "Seller" means- Seller as defined in **Para 27.8 (3)**

(4) Buyer means buyer of motor vehicle of the value exceeding ten lakh rupees.

However, the tax collection at source shall not be made in relation to sale of motor vehicle of the value exceeding ten lakh rupees to the following class or classes of buyers, namely:-

(a) the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State
(b) a local authority
(c) a public sector company which is engaged in the business of carrying passengers.

Practical 6

ABC Ltd., a manufacturer of automobiles, sells high value cars (each of value exceeding Rs. 10 lakh) to its dealers across the country. Discuss whether the manufacturers are liable to collect tax at source under section 206C.

Also, discuss the liability, if any, of dealers to collect tax at source on sale of these cars to the retail customers, if no part of the consideration is received in cash?

Solution

- Section 206C(1F) provides for collection of tax at source@1% by the seller from the buyer, at the time of receipt of consideration for sale of motor vehicle, the value of which exceeds Rs. 10 lakhs. CBDT Circular No.22/2016 dated 8.6.2016 clarifies that sub-section (1F) was inserted by the Finance Act, 2016 to cover all transactions of retail sales and accordingly, it will not apply to sale of motor vehicles by manufacturers to dealers.
- Hence, car manufacturers are not liable to collect tax at source under section 206C(1F). In respect of sale of high value cars (each of value exceeding Rs. 10 lakhs) by dealers to retail customers, tax has to be collected at source@1% under section 206C(1F), even if no part of the consideration is received in cash.

Reader's Note:

27.6 MANDATORY REQUIREMENT OF FURNISHING PAN

Section:- 206CC - Effective from 1st April, 2017

Section 206CC has been inserted **(w.e.f. 1st April, 2017)** to provide that any person whose payments are subject to tax collection at source i.e. the collectee, shall mandatorily furnish his PAN to the collector failing which the collector shall collect tax at source at **higher of the following rates** –

(a) At twice the applicable rate of TCS or

(b) at the rate of 5%

This section further provides as under:

- No certificate under section 206C (9) will be granted by the Assessing Officer unless the application contains the PAN of the applicant.
- Tax is required to be collected at the rates (as suggested under this section) also in cases where the collectee files a declaration in Form 27C [[under section 206C(1A)] but does not provide his PAN.
- If the PAN provided to the collector is invalid or it does not belong to the collectee, it shall be deemed that the collecctee has not furnished his PAN to the collector. Accordingly, tax would be collectible at the highest of the two rates specified above.
- Both the collector and the collectee have to compulsorily quote the PAN of the collectee in all correspondence, bills, vouchers and other documents exchanged between them.
- The provisions of this section shall not apply to Non-resident who does not have permanent establishment in India. For this purpose, the expression "permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

28 – ADVANCE TAX

28.1 INSTALMENTS OF ADVANCE TAX AND DUE DATES

Section:- 211

Due date of instalment	**Amount payable in case of all assessee (except an eligible assessee referred to in section 44AD or 44ADA of the Act)**	**Amount payable in case of an eligible assessee in respect of an eligible business referred to in section 44AD or 44ADA of the Act**
On or before June 15 of the previous year	Upto 15 percent of advance tax payable	NA
On or before September 15 of the previous year	Upto 45 percent of advance tax payable	NA
On or before December 15 of the previous year	Upto 75 percent of advance tax payable	NA
On or before March 15 of the previous year	Upto 100 percent of advance tax payable	**Upto 100 percent of advance tax payable**

Any payment of advance tax made on or before 31st day of March shall also be treated as advance tax paid during the financial year

29 – INTEREST U/S 234A, 234B, 234C & 234D

29.1 INTEREST FOR DEFERMENT OF ADVANCE TAX.

Section:- 234C

(1) Period for which and amount on which interest is payable

(A) Eligible assessee under section 44AD or 44ADA of the Act

Dates of Installment	*Advance Tax Paid Till Date*	*Advance Tax Payable*	*Amount on which interest is payable [(3)-(2)]*	*Period for which interest is payable*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
15.03.**18**		100%		1 month

(B) Other assessee

Dates of Installment	*Advance Tax Paid Till Date*	*% of "tax due on returned income"*	*Amount on which interest is payable [(3)-(2)]*	*Period for which interest is payable*
(1)	*(2)*	*(3)*	*(4)*	*(5)*
15.06.**17**		15%		3 months
15.09.**17**		45%		3 months
15.12.**17**		75%		3 months
15.03.**18**		100%		1 month

However, no interest under section 234 C shall be levied for the first and second instalment, if advance tax paid by the assessee is not less than 12% or 36% of tax due on returned income.

(2) Points to remember

(a) Meaning of "Tax due on returned income"

Particulars	**Rs.**
Tax on returned income	xxx
Less: TDS or TCS/ Relief u/s 90, 90A, 91/MAT credit u/s 115JAA/ AMT credit u/s 115JD	(xxx)
Tax due on returned income	**xxxx**

(b) Calculation of interest under section 234C is always with reference to "tax due on returned Income". Therefore interest under section 234C will not undergo change even if assessing officer may complete the assessment at higher figure under section 143(1) / 143(3) / 144 / 147 / 153A, as the case may be.

(3) Short payment of advance tax in case of capital gains/lottery income etc.

No interest will be levied in respect of any shortfall in the payment of advance tax due on the returned income where such shortfall is on account of under-estimate or failure to estimate-

(a) the amount of capital gains; or

(b) income of the nature referred to in section 2(24)(ix) (i.e., winning from lottery, crossword puzzle income, races including horse race etc.); or

(c) income under the head "PGBP" in cases where the income accrues or arises under that head for the first time

(d) income of the nature referred to in section 115BBDA (i.e. dividends received from domestic companies in excess of Rs. 10 lakhs during the year),

and the assesse has paid the whole of the amount of tax payable in respect of such income, as part of the remaining instalments of advance tax which are due or if no such instalments are due, then such tax is paid by the 31st day of March of the financial year.

Practical 1

Zandu & Co, a partnership firm submits the following information for the previous year **2017-18**.

Income under the head "PGBP"	5,00,000
LTCG on sale of land dated 1st November, 2017	99,515

You are required to compute the minimum amount of advance tax payable by Zandu & Co. for each of the installments in such a way that it will not attract interest liability under section 234C.

Solution

Particulars	Minimum amount of advance tax (Rs.)
1st Instalment of advance tax payable {15.06.2017} [upto 12%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 x 12%	**18,540**
2nd Instalment of advance tax payable { 15.09.2017} [upto 36%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 x 36%	**37,080** **[55,620-18,540]**
3rd Instalment of advance tax payable {15.12.2017} [upto 75%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 Add: Tax on LTCG Rs. 99,515 @ 20.60% =Rs. 20,500 Total Tax =Rs.1,75,000 x 75%	**75,630** **[1,31,250-18,540-37,080]**

4th Instalment of advance tax payable {15.03.2018} [100%] Tax on PGBP Income Rs.5,00,000 @30.90% =Rs.1,54,500 Add: Tax on LTCG Rs. 99,515 @ 20.60% =Rs. 20,500 Total Tax =Rs.1,75,00 x 100%	**43,750** **[1,75,000-18,540-37,080-75,630]**

Readers Note:

30 – SETTLEMENT OF CASES

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31 – ADVANCE RULINGS

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32 – REQUIREMENT AS TO MODE OF ACCEPTANCE PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX

32.1 MODE OF UNDERTAKING TRANSACTIONS

Section:- 269ST - Effective from 1st April, 2017

No person shall receive an amount of two lakh rupees or more—

(a) in aggregate from a person in a day; or

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account:

Provided that the provisions of this section shall not apply to—

(i) any receipt by—

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(ii) transactions of the nature referred to in section 269SS;

(iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.

Practical 1

From the given information, ascertain the violation of provisions of section 269STof the Act, if any.

(a) ABC Private Limited made following cash sales on "15th August"" to following customers.

Name of the Customer	Bill No.	Rs.
Mr. Hasmukh	32	60,000
Mr. Mansukh	35	80,000
Mr. Hasmukh	48	1,50,000
Mr. Mansukh	59	40,000

(b) PQR Private Limited has made credit Sales to Mr. Narendra for Rs. 8,00,000 on 1st August, 2017. Mr. Narendra discharged his liability in following manner :-

Date of Payment	Mode of Payment	Rs.
5th August, 2017	Account Payee Cheque	3,00,000
18th August, 2017	Cash	1,50,000
19th September,2017	Bearer Cheque	1,60,000
10th October, 2017	RTGS (ECS)	1,90,000

(c) Mr. Jagga received following payments in cash from Mr. Shetty on the occasion of marriage of Anushka (daughter of Mr. Shetty):

Date of Payment	Work undertaken by Mr. Jagga	Amount
18th August, 2017	Decoration	1,45,000
20th August, 2017	Video Shooting	1,05,000

Solution

(a) The provisions of section 269ST restrict acceptance of Rs. two lakh or more in aggregate from a person in a day otherwise than by an account payee cheque or an account payee draft or ECS. However, this limit is person-wise day-wise. Therefore, ABC Private limited committed violation of section 269ST in respect of cash sales made to Mr. Hasmukh since aggregate amount exceeded Rs.2,00,000 .

(b) The provision of section 269ST restrict acceptance of Rs. two lakh or more in respect of single transaction otherwise than by an account payee cheque or an account payee draft or ECS. Therefore, PQR private limited committed violation of section 269ST in respect of single transaction done with Mr. Narendra by accepting Rs. 3,10,000 (Rs. 1,50,000 in cash and Rs. 1,60,000 bearer cheque).

(c) The provisions of section 269ST restrict acceptance of Rs. two lakh or more in aggregate in respect of transactions relating to one event or occasion from a person otherwise than by an account payee cheque or an account payee draft or ECS. Therefore, Mr. Jagga committed violation of section 269ST in respect of transactions relating to marriage event of Anushka by accepting Rs. 2,50,000 (Rs. 1,45,000 for decoration and Rs. 1,05,000 for video shooting) in cash.

Readers Note:

32.2 PRESS RELEASE, CIRCULARS AND NOTIFICATIONS

1. Press release dated 5th April 2017

The CBDT has issued a press release dated 5th April 2017 by which it has provided important clarification regarding the restriction imposed on cash transaction by sections 269ST & 271DA inserted by the Finance Act 2017 to the Income-tax Act. These sections provide that no person (other than those specified therein) shall receive an amount of two lakh rupees or more (a) in aggregate from a person in a day; (b) in respect of a single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account. **The CBDT has clarified that the said cash transaction limit of Rs 2 lakh will not apply to withdrawal from banks, cooperative bank and post offices.**

2. **Circulars**

Circular No. 22 of 2017 Dated 03rd July, 2017

Clarifications in respect of section 269ST of the Income-tax Act, 1961

(a) Representations have been received from non-banking financial companies (NBFCs) and housing finance companies (HFCs) as to whether the provisions of section 269ST of the Act shall apply to one instalment of loan repayment or the whole amount of such repayment.

(b) In this context, it is clarified that in respect of receipt in the nature of repayment of loan by NBFCs or HFCs, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

32.3 PENALTY FOR FAILURE TO COMPLY WITH PROVISIONS OF SECTION 269ST

Section:- 271DA – Effective from 1st April, 2017

Nature of default	Penalty leviable	Competent IT Authority to levy penalty
Person receives any sum in contravention of provisions of section 269ST.	Amount equal to the sum so received	Joint Commissioner

33 – PENALTIES

33.1 FURNISHING INCORRECT INFORMATION IN ANY REPORT OR CERTIFICATE BY AN ACCOUNTANT OR A MERCHANT BANKER OR A REGISTERED VALUER

Section:- 271J – Effective from 1st April, 2017

Nature of default	Penalty leviable	Competent IT Authority to levy penalty
Where the Assessing Officer or the Commissioner (Appeals), finds that an accountant or a merchant banker or a registered valuer has furnished incorrect information in any report or certificate furnished under any provision of this Act or the rules made thereunder.	Rs. 10,000 for each such report or certificate.	Assessing Officer / CIT(A)

33.2 PENALTY NOT TO BE IMPOSED IN CERTAIN CASES

Section:- 273B – Effective from 1st April, 2017

No penalty is imposable for any failure under sections 271(1)(b), 271A, 271AA, 271B, 271BA, 271BB, 271C, 271CA, 271D, 271E, 271F, 271FA, 271FAB, 271FB, 271G, 271GA, 271GB, 271H, 271-I, **271J (inserted by Finance Act,2017),** 272A(1)(c) or (d), 272A(2), 272AA(1), 272B, 272BB(1), 272BB(1A), 272BBB(1), 273(1)(b), 273(2)(b) and 273(2)(c) if the person or assessee proves that there was reasonable cause for such failure.

34 – PROSECUTIONS

No Amendment

35 – CONVERSION OF FIRM INTO COMPANY

No Amendment

36 – CONVERSION OF SOLE PROPRIETARY BUSINESS INTO COMPANY

No Amendment

37 – AMALGAMATION

No Amendment

38 – SET-OFF OF LOSSES OF A BANKING COMPANY AGAINST THE PROFIT OF A BANKING INSTITUTION UNDER A SCHEME OF AMALGAMATION

No Amendment

39 – DEMERGER

-

40 – AMALGAMATION OR DEMERGER OF CO-OPERATIVE BANK

No Amendment

41 – CORPORATISATION AND DEMUTUALISATION OF STOCK EXCHANGE

No Amendment

42 – CONVERSION OF UNLISTED COMPANY INTO LIMITED LIABILITY PARTNERSHIP

No Amendment

43 – TRANSFER OF ASSETS BETWEEN HOLDING AND SUBSIDIARY COMPANY

No Amendment

44 – SLUMP SALE

No Amendment

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45 – DEPRECIATION

45.1 MEANING OF ACTUAL COST

Section:- 43(1) and Explanation to section 43(1) - Effective from A.Y.2018-19

Proviso to section 43(1) inserted by Finance Act, 2017

"Actual cost" means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority.

Following proviso has been inserted by Finance Act, 2017

Where the assessee incurs any expenditure for acquisition of any asset or part thereof in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs.10,000, such expenditure shall be ignored for the purposes of determination of actual cost.

Consequently, one cannot claim depreciation/additional depreciation under section 32 and investment allowance under section 32AD pertaining to such payment.

Practical 1

Zig Ltd. is engaged in manufacturing of computer hardware. It provides following information for the previous year 2017-18.

Particulars of Block – Plant and Machinery	
Rate of depreciation	60%
Depreciated value of the block of April 1, 2017 (Consisting of 85 computers)	Rs. 4,00,000
Purchased 101 computers of uniform cost on 22nd June, 2017 and put to use on the same day. (Rs.20,00,000 was paid by account payee cheque and balance in cash)	Rs. 20,20,000
Sold out 80 computers on 10th March, 2018	Rs. 25,20,000

Find out the amount of depreciation, additional depreciation and capital gains, if any.

Solution

(a) Computation of Amount of Depreciation

Particulars	**Rs.**
Depreciated value of the block consisting of 45 computers on April 1, 2017	4,00,000
Add: Actual Cost of 100 computers	20,00,000
Less: Sale proceeds of 80 computers	(-)25,20,000
Written down value of the block for the previous year 2017-18	Nil
Less: Depreciation for the previous year 2017-18 (60% on Nil)	**Nil**
Less: Additional Depreciation for the previous year 2017-18	4,00,000
Depreciated value of the block consisting of 65 computers	Nil

(b) Computation of Additional Depreciation

Particulars	Rs.
Actual cost of 100 computers	20,00,000
Additional Depreciation (20% of Rs.20,00,000)	**4,00,000**

Note:

(c) Computation of Capital Gains

Here block becomes Nil due to sale of assets and therefore, section 50 is attracted and therefore, short term capital gain shall be worked out as under:

Particulars	Rs.
Full value of consideration	25,20,000
Less: Cost of Block of Assets (Opening W.D.V Rs.4,00,000 + Addition Rs.20,00,000)	24,00,000
Short Term Capital Gain under section 50	**1,20,000**

Readers Note:

Proviso to Explanation 13 of section 43(1) inserted by Finance Act,2017

As per explanation 13 to section 43(1) of the Act, if assessee has claimed benefit of section 35AD in respect of asset, then actual cost of such asset shall be taken to be NIL in the hands of assessee.

Following proviso has been inserted to above explanation which read as under:

Provided that where any capital asset in respect of which deduction or part of deduction allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of section 35 AD (7B), the actual cost of the asset to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used for the purpose of business since the date of its acquisition.

Provisions of section 35AD(7B) of the Act.

(a) An asset (in respect of which a deduction has been claimed and allowed under section 35AD) shall be used only for the specified business for a period of 8 years beginning with the previous year in which such asset is acquired or constructed.

(b) If such asset is used for any purpose other than the specified business during the abovementioned 8 years, then following shall be deemed to be income of the assesse of the previous year in which the asset is so used. [Section 35AD(7B)]

Particulars	Rs. in lakhs
Total amount of deduction claimed under section 35AD	XXXXX
Less: Amount of depreciation allowable in accordance with the provisions of section 32, as if no deduction had been allowed under section 35AD	(XXX)
Deemed income under section 35AD (7B)	XXXXX

(c) However, this provision will not apply to a company which has become a sick industrial company, under section 17(1) of the Sick Industrial Companies (Special Provisions) Act within the time period of above mentioned 8 years.

(d) If any sum received or receivable on account of any capital asset, in respect of which deduction has been claimed u/s 35AD, being demolished, destroyed, discarded or transferred then same shall be treated as income and chargeable to tax under the head "Profits and gains of business or profession". [Sec. 28(vii)]

Practical 2

ABC Ltd. set up warehousing unit for storage of agricultural produce on **10.06.2015.** The construction cost of warehouse was Rs. 75 lacs on which deduction was claimed under section 35AD. However, it started using this warehouse for storage of edible oils with effect from **01.04.2017.** Discuss tax consequences for the assessment year **2018-19** in the hands of ABC Ltd.

Solution

Since the warehouse of specified business has been used for non-specified business (for storage of edible oils) in the **P.Y.2017-18**, the deeming provision under section 35AD(7B) shall be applicable.

Particulars	Rs.
Total amount of deduction claimed under section 35AD [150% of Rs. 75 Lacs)	1,12,50,000
Less: Depreciation allowable u/s 32 (Refer working note)	14,25,000
Deemed income under section 35AD(7B)	**98,25,000**

Working Note: Computation of depreciation allowable u/s32 for earlier years had deduction u/s 35AD not claimed.

	Particulars	Rs.
	Cost of Building	75,00,000
Less:	Depreciation for the previous year **2015-16** [10%]	7,50,000
		67,50,000
Less:	Depreciation for the previous year **2016-17** [10%]	6,75,000
	Actual cost as per proviso to explanation 13 to Sec. 43(1)	**60,75,000**
	Total Depreciation [Rs.7,50,000 + Rs.6,75,000]	**14,25,000**

Reader's Note:

Practical 3

What would have been your answer in the above practical if ABC Ltd had sold out this warehouse building for Rs. 82 lacs on **01.04.2017**?

Solution

As per section 28(vii), entire amount received Rs. 82 lac on sale of building is deemed to be the business income for the **A.Y.2018-19.**

Reader's Note:

46 – TAX PLANNING

No Amendment

47 – TONNAGE TAXATION SCHEME

No Amendment

48 – INCOME COMPUTATION AND DISCLOSURE SCHEME (ICDS)

No Amendment

49 – LIABILITY IN SPEICAL CASES

No Amendment

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50 – REFUND

50.1 WITHHOLDING OF REFUND IN CERTAIN CASES

Section:- 241A - Effective from 1st April, 2017

For every assessment year commencing on or after the 1st day of April, 2017, where refund of any amount becomes due to the assessee under section 143(1) of the Act and the Assessing Officer is of the opinion, having regard to the fact that a notice has been issued under section 143 (2) of the Act in respect of such return, that the grant of the refund is likely to adversely affect the revenue, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or Commissioner, as the case may be, withhold the refund up to the date on which the assessment is made.

50.2 INTEREST ON REFUNDS

Section:- 244A(1B) – Effective from 1st April, 2017

Where refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XVII-B (TDS Provisions), such deductor shall be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one-half per cent for every month or part of a month comprised in the period, from the date on which—

(a) claim for refund is made in the prescribed form; or

(b) tax is paid, where refund arises on account of giving effect to an order under section 250 or section 254 or section 260 or section 262,

to the date on which the refund is granted.

51 – TAXATION OF MUTUAL CONCERNS

No Amendment

52 – TAXATION OF SUBSIDIES/GRANT

No Amendment

53 – MISCELLENEOUS

No Amendment

54 – TAXATION OF NON-RESIDENT

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55 - DOUBLE TAXATION RELIEF

-

56 - ADVANCE RULINGS

Refer Chapter 31

57 - TRANSFER PRICING AND OTHER ANTI-AVOIDANCE MEASURES

57.1 SPECIFIED DOMESTIC TRANSACTIONS

Section:- 92BA –w.r.e.f A.Y. 2017-18

Section 92BA has been inserted with effect from the assessment year 2013-14. It provides the meaning of "specified domestic transaction" with reference to which the income is to be computed under section 92, having regard to arm's length price. The following transactions are covered within the meaning of "specified domestic transactions" if the aggregate of these transactions entered into by the assesse in a previous year exceeds Rs. 5 crore ***[Rs. 20 crore w.e.f A.Y. 2016-17 as amended by Finance Act, 2015]***.

(a) ~~any expenditure in respect of which payment has been made or is to be made to a person referred to in section 40A(2)(b)~~; **Omitted w.e.f. A.Y. 2017-18**
(b) any transaction referred to in section 80A;
(c) any transfer of goods or services referred to in section 80-IA(8);
(d) any business transacted between the assessee and other person as referred to in section 80-IA(10);
(e) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions section 80-IA(8)/(10) are applicable; or
(f) any other transaction as may be prescribed,

Any allowance for an expenditure or interest or allocation of any cost or expense or any income in relation to the above domestic transactions shall be computed having regard to the arm's length price. For this purpose, arm's length price shall be determined within the parameters of sections 92 to 92F.

Practical 1

Ganga Ltd., a domestic company, has two units Chambal and Damodar. The Chambal unit, which commenced business two years back, is engaged in the business of developing an irrigation project. The Damodar unit is carrying on the business of trading in water pumps. During the previous year 2017-18, the Damodar unit transferred water pumps amounting to Rs. 19.5 crores to the Chambal unit.
Further, Ganga Ltd hires vehicles owned by Mr. Krishna's daughter and paid hiring charges of Rs. 1.5 crores during the previous year 2017-18. Mr. Krishna, a resident Indian, holds 30% equity share capital in Ganga Ltd.
Discuss whether the above transactions fall within the meaning of "specified domestic transaction"?

Solution

The Chambal Unit is eligible for deduction@100% of the profits derived from its eligible business (i.e., the business of developing an infrastructure facility, being an irrigation project) under section 80-IA. However, the Damodar Unit is not engaged in any "eligible business". Since the Damodar Unit has transferred water pumps to the Chambal Unit, it is an inter-Unit transfer of goods between eligible business and other business. Therefore, this transaction falls within the meaning of "specified domestic transaction" to attract transfer pricing provisions.
The payment of hiring charges has been made to a related person referred to in section 40A(2)(b) i.e., relative (i.e., daughter) of Mr. Krishna, who has substantial interest in the business of Ganga Ltd. **However, due to amendment made by Finance Act, 2017, this transaction does not fall within the meaning of "specified domestic transaction" under section 92BA.**
It is imperative to note here that; abovementioned transactions would be treated as a "specified domestic transaction" to attract transfer pricing provisions only if the aggregate of such transactions as specified in section 92BA during the year by Ganga Ltd. exceeds a sum of Rs. 20 crore.
Since aggregate of these transactions is Rs. 19.5 crore which is not exceeding Rs. 20 crore. Therefore, the said transactions are outside the purview of "specified domestic transaction".

Readers Note:

57.2 SECONDARY ADJUSTMENT IN CERTAIN CASES

Section:- 92CE – Effective from A.Y. 2018-19

(1) Meaning

"primary adjustment" to a transfer price, means the determination of transfer price in accordance with the arm's length principle resulting in an increase in the total income or reduction in the loss, as the case may be, of the assessee;

"secondary adjustment" means an adjustment in the books of account of the assessee and its associated enterprise to reflect that the actual allocation of profits between the assessee and its associated enterprise are consistent with the transfer price determined as a result of primary adjustment, thereby removing the imbalance between cash account and actual profit of the assessee.

(2) Applicability of secondary adjustment :- [Section 92CE(1)]

Where a primary adjustment to transfer price,—

(i) has been made suo motu by the assessee in his return of income;

(ii) made by the Assessing Officer has been accepted by the assessee;

(iii) is determined by an advance pricing agreement entered into by the assessee under section 92CC;

(iv) is made as per the safe harbour rules framed under section 92CB; or

(v) is arising as a result of resolution of an assessment by way of the mutual agreement procedure under an agreement entered into under section 90 or section 90A for avoidance of double taxation,

the assessee shall make a secondary adjustment:

(3) When Secondary adjustment not required [Proviso to section 92CE(1)]

Secondary adjustment not required if,—

(i) the amount of primary adjustment made in any previous year does not exceed one crore rupees; and

(ii) the primary adjustment is made in respect of an assessment year commencing on or before the 1st day of April, 2016.

(4) Quantification of Secondary Adjustment [Section 92 CE(2)]

Where, as a result of primary adjustment to the transfer price, there is an increase in the total income or reduction in the loss, as the case may be, of the assessee, the excess money which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be deemed to be an advance made by the assessee to such associated enterprise and the interest on such advance, shall be computed in such manner as may be prescribed.

For the purpose of this section, "excess money" means the difference between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken.

Practical 2

Infybim Private Limited (IPL) is an Indian company in which Moon Inc.(Foreign Company) holds 26% equity. IPL provides following information:

(a) IPL provides system support services to Moon Inc.

(b) During the year 2017-18, IPL provided services to the tune of Rs. 12 crore.

(c) However, assessing officer determines arm’s length price at Rs.15.25 Crore and the same is accepted by IPL.

You are required to discuss the concept of “Primary adjustment” and “Secondary adjustment” assuming that excess money is not repatriated to India by Moon Inc.

Solution

The addition made by assessing officer to the total income of IPL is Rs. 3.25 crore – It is called primary adjustment.

Since this excess Rs. 3.25 crore has not been repatriated by Moon Inc. to IPL, it would be termed as deemed advance (a secondary adjustment) made by IPL to Moon Inc. Thereafter, interest shall be charged on such deemed advance in such manner as may be prescribed.

Reader’s Note:

57.3 LIMITATION ON INTEREST DEDUCTIBLE

Section:- 94B – Effective from A.Y. 2018-19

Sub - Section (1):- Excess Interest shall not be deductible

Notwithstanding anything contained in this Act, where an Indian company, or a permanent establishment of a foreign company in India,

being the borrower,

incurs any expenditure by way of interest or of similar nature exceeding one crore rupees which is deductible in computing income chargeable under the head "Profits and gains of business or profession" in respect of any debt issued by a non-resident, being an associated enterprise of such borrower,

the interest shall not be deductible in computation of income under the said head to the extent that it arises from excess interest, as specified in sub-section (2) :

Sub - Section (2):- Determination of Excess Interest

For the purposes of sub-section (1), the excess interest shall mean

(a) an amount of total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year or

(b) interest paid or payable to associated enterprises for that previous year,

whichever is less.

Sub - Section (3):- Non- applicability of section 94B(1)

Nothing contained in sub-section (1) shall apply to an Indian company or a permanent establishment of a foreign company which is engaged in the business of banking or insurance.

Sub - Section (4):- Carry forward of the excess interest

Where for any assessment year,

the interest expenditure is not wholly deducted against income under the head "PGBP",

so much of the interest expenditure as has not been so deducted,

shall be carried forward to the following assessment year or assessment years,

and

it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with sub-section (2):

Provided that no interest expenditure shall be carried forward under this sub-section for more than eight assessment years immediately succeeding the assessment year for which the excess interest expenditure was first computed.

Sub - Section (5):- Meaning of Certain terms

"Debt" means any loan, financial instrument, finance lease, financial derivative, or any arrangement that gives rise to interest, discounts or other finance charges that are deductible in the computation of income chargeable under the head "Profits and gains of business or profession";

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Deemed debt as per proviso to section 94B(1) : Where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.

"permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.

Practical 3

TATU MFG Ltd. is an Indian subsidiary of JAGUAR Limited, UK based Company. TATU MFG Ltd. has borrowed from JAGUAR Limited. From the following information, find out disallowance to be made under section 94B of the Income Tax Act for the assessment years 2018-19.

Particulars	Rs. (in crore)
Earnings before interest, taxes, depreciation and amortisation	20
Interest to associated enterprise	5
Interest to others	2

Solution

Computation of Excess Interest (disallowance) under section 94 B of the Act for the A.Y. 2018-19

Sr. No.	Lower of	Amount (Rs. in crore)
(a)	Total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year **(Refer working Note)**	1
(b)	Interest paid or payable to associated enterprises for that previous year	5
(c)	**Excess Interest to be disallowed [Lower of (a) or (b)]**	**1**

Working Note:

Sr. No.	Particulars	Amount (Rs. in crore)
(a)	Total Interest (i.e. Interest to associated enterprise plus Interest to others)	7
(b)	30% of Earnings before interest, taxes, depreciation and amortization	6
(c)	**Total interest paid or payable in excess of thirty per cent of earnings before interest, taxes, depreciation and amortisation of the borrower in the previous year (a-b)**	**1**

Note:- Such excess interest of Rs. 1 Cr. shall be carried forward to the following assessment year or assessment years (maximum 8 years), and it shall be allowed as a deduction against the profits and gains, if any, of any business or profession carried on by it and assessable for that assessment year to the extent of maximum allowable interest expenditure in accordance with section 94B (2).

Reader's Note:

58 - TAXATION OF EQUALISATION LEVY

No Amendment