

A.Y. 2021-22

DIRECT TAX

Volume-II

CONTENT

- ★ Depreciation
- ★ PGBP
- ★ AOP, FIRM & HUF
- ★ Clubbing of Income
- ★ Setoff of losses
- ★ Return
- ★ Advance Tax
- ★ TDS
- ★ TCS
- ★ SEZ Units
- ★ Exemptions
- ★ Alternate Minimum Tax
- ★ Co-operative Society
- ★ LLP
- ★ AOP Taxation
- ★ Political Parties
- ★ Assessment Procedure
- ★ ICDS



CA SURAJ AGRAWAL

CA Rank Holder, CPA (USA), B.COM (H)

Education is a Journey



25 Rank Holder from Tax Batch of
CA Suraj Agrawal Sir
YouTube CA SURAJ AGRAWAL-SATC

Congratulation



AIR-3

Parveen Dutt Sharma



AIR-7

Mohit Garg



AIR-11

Firoz Khan



AIR-13

Megha Singhal



AIR-17

Om Prakash Jha



AIR-22

Arun Shekher



AIR-22

Sachin Arora



AIR-23

Neeraj



AIR-24

Pradeep



AIR-25

Anurag Pant



AIR-26

Mohit Garg



AIR-27

Vivek Sharma



AIR-30

Varun Khattar



AIR-31

Sonu Singh



AIR-33

Rhythm Jain



AIR-35

Chetan Aggarwal



AIR-35

Sumit Saini



AIR-36

Vineet Kumar



AIR-38

Sonu Singh



AIR-42

Paras Jain



AIR-42

Anee Duivedi



AIR-43

Neha Vashisht



AIR-45

Bharat Bhusan



AIR-47

Arun Shekher



AIR-48

Tushar Sethi



Tax-84 Marks

Kamna Gupta

SURAJ AGRAWAL TAX CLASSES

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MRP: 600/-



**THIS BOOK HAS BEEN A REALITY
ONLY BECAUSE OF MY FAMILY &
STUDENTS.**

CA SURAJ AGRAWAL

Direct Tax - Volume II

**Updated as on 25.02.2021 (18th Edition) for CMA INTER JUN/DEC 2021 Exam – 1st Print
Assessment Year 2021-22 (Finance Act 2020)**

PREFACE

Taxation is a dynamic subject, which is not only a vast subject but also difficult to comprehend in view of frequent amendments. Yet it is the scoring subject of your syllabus. In addition, practice in the field of Taxation is also highly remunerative.

My association with the students has helped me to bring this book in its present form – simplified, comprehensive and easy to understand.

The present edition of this book (**VOLUME II**) is designed to bridge the gap between theory & applications and incorporates the following:

- ❖ **Updated with Finance Act 2020 (AY 2021-22)**
<https://youtu.be/cjIRIUrN0VE>
- ❖ **Updated with The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA, 2020] to the extent it is applicable**
<https://youtu.be/2QTeK8S3BDE>
- ❖ **Covers entire syllabus** with theoretical concepts, examples etc
- ❖ Contains more than 1000 practical problems with solutions
- ❖ Chapter-wise short notes (separate volume) for revision purpose.

Hope this book serves the purpose of the students. I shall be thankful to the readers for their suggestions, criticism and feedback if any.

Email: suraj.agrawal@hotmail.com

Contact: 8527230445 (11am to 6pm)

ACKNOWLEDGEMENT

This book is a result of sincere efforts of our family members, colleagues, associates, well-wishers and students, whose contribution cannot go unacknowledged.

Master Reyaan, my wife **CA Monika Agrawal** and my mother deserve special mention for the time (on which they had the first right) they allowed me for this book.

I dedicate this book to my beloved late grandparents & Papa.

CA Suraj Agrawal

Updated as on 25.02.2021 (18th Edition) for **CMA INTER JUN/DEC 2021 Exam – 1st Print Assessment Year 2021-22 (Finance Act 2020)**

“One more step towards success”

PROFILE – CA SURAJ AGRAWAL

CA Suraj Agrawal is a Commerce Graduate [B.Com (H)] from Kolkata University and has qualified CA in November 2005 in **First Attempt** from Kolkata. He has also secured All India **27th Rank in CA-Foundation** – 1st level (First Attempt – 70% marks).

Besides CA, he has completed **Certification Course of International Taxation** of the ICAI in 2009. He has also qualified **CPA (Certified Public Accountant) examination from AICPA (USA)** in 2009 with more than 90 Marks in each of four papers in First Attempt [**Presently, he is inspired to complete CIMA, London as well as LLM in International Taxation (UK) by Year 2024**]

He has started his career by joining Direct Tax Department of **Reliance Industries Limited, Mumbai** and worked for near 2 years in core tax team. He has also worked in Taxation Division of **Chaturvedi & Shah (Chartered Accountants), Delhi** followed by Tax Division of **Ernst & Young, Gurgaon, India** (A Leading Big 4 Firm having International Presence). During the working tenure of more than 4 years, he is exposed to in-depth theoretical and practical knowledge of Direct Taxation & has a consultancy exposure in various industries including Energy - Oil & Gas, Airlines, Retail, Infrastructure and Shipping Industries.

With the above academic and practical knowledge, he is in teaching profession from more than 11 years to serve professional students (taught 16,000 CA/CMA's Students till date). **His in-depth coverage of legal provisions in Tax with practical approach is very well recognized among the students.** He is also an associate member of ICAI and is also providing services as Tax Consultant to various organisations.

He was also a member in WTO, FEMA & International Tax Study Group of the NIRC of the ICAI for the year 2011-12 and was member of **International Taxation & FEMA Research Study Group of NIRC of the ICAI** for the year 2010-11. He is regularly contributing tax articles and various opinions on subjects of Direct Taxation including International Taxation in various leading magazines [Taxmann] and professional forums.

CA Suraj Agrawal

“CA Rank Holder, Qualified CPA (USA), B.Com (H)”

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Subjects: CA / CMA - DT & IDT (INTER & FINAL)

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<https://www.youtube.com/c/CASURAJAGRAWALSATC/videos>

<https://www.facebook.com/Surajagrawaltaxationclasses.satc>

“Thanks to all of you for making us proud”

Congratulations to all of you

CMA FINAL DT & IDT RESULT – DEC 2019 EXAM

SATC – 01147542530 / 8527230445

(NO FACE TO FACE CLASS IN CMA FINAL)

S. No.	Name	IDT Marks	DT Marks	Status	Remarks
1	Varun Khattar (BOTH)	66	40	now CMA	A.I.R. - 30
2	Deepesh Hoiyani	80	-	now CMA	IDT Highest in 4 Paper
3	Satish Jangra	72	-	now CMA	IDT 2nd Highest in 4 Paper
4	Pranshu Singhal	72	-	now CMA	IDT Highest in 4 Paper
5	Poonam Khemka	68	-	now CMA	IDT Highest in 4 Paper
6	Garima	68	-	now CMA	IDT Highest in 4 Paper
7	Tushar Khattar (BOTH)	63	43	now CMA	IDT Highest in all 8 Paper
8	Rahul Kumar Ojha	62	-	Now in Group 3	-
9	Amita Negi	60	-	Now in Group 3	IDT Highest in 4 Paper
10	Rohit Saini (BOTH)	60	58	now CMA	IDT Highest in all 8 Paper
11	Pooja Negi	-	59	now CMA	DT Highest in 4 Paper
12	Brijesh Kumar	54	-	Now in Group 3	-
13	Rinku Kumar Bind	-	54	Now in Group 4	DT Highest in 4 Paper
14	Apoorv Jaiswal	-	54	now CMA	-
15	Vikas Kumar Jha	53	-	now CMA	-
16	Shivcharan Singh S.	53	-	Now in Group 3	-
17	Prateek Kumar Masih	49	-	Now in Group 3	-
18	Shivam Garg (BOTH)	49	52	now CMA	-
19	Sachin Sharma (BOTH)	48	-	now CMA	-
20	Ashmeet	47	-	Now in Group 3	-

NOTICE: ALL ABOVE STUDENTS ARE REGISTERED STUDENTS OF SATC IN REGULAR CMA FINAL DT/IDT/BOTH PENDRIVE/VIDEO CLASS & NOT ONLY A YOUTUBE OR TELEGRAM CHANNEL SUBSCRIBER OR MERELY REFERRED OUR BOOKS.

CONGRATULATIONS

CMA FINAL INDIRECT TAX/GST RESULT FROM SATC

S. NO.	NAME OF STUDENTS	REGISTRATION NUMBER	MARKS IN IDT	EXAM
1	PARAS JAIN (AIR 42)	`04141009584	84	Jun-19
2	DEEPESH HOIYANI	`01171005959	80	Dec-19
3	AMARDEEP	`04151002203	79	Dec-18
4	SHREY GUPTA	`04151004191	77	Dec-18
5	VASUDEVAN KALASHASTHY	`04161004499	75	Jun-19
6	ASHISH SINGH	`04142005774	74	Dec-18
7	SATISH JANGRA	`04142010658	72	Dec-19
8	PRANSHU SINGHAL	`01171007386	72	Dec-19
9	PANKAJ TRIVEDI	14092006037	68	Jun-19
10	POONAM KHEMKA	`04161003969	68	Dec-19
11	GARIMA	`14101014557	68	Dec-19
12	VARUN KHATTAR (AIR 30)	`04141003976	66	Dec-19
13	RAVI GUPTA	`04132003787	65	Dec-18
14	SHUBHAM GUPTA	`04151001994	64	Dec-18
15	KETAN JAIN	`04112022182	64	Dec-17
16	JAVED AKHTAR	`04122012930	63	Dec-18
17	KAPIL SHARMA	`04152003027	63	Jun-19
18	MD. SAIF	`04142003895	63	Dec-17
19	TUSHAR KHATTAR	`04131000398	63	Dec-19
20	RAHUL KUMAR OJHA	`03122001946	62	Dec-19
21	MOHD. ADIL	`04142010375	61	Jun-18
22	MANISHA BHATIA	`04162001141	61	Jun-19
23	RAHUL YADAV	`04151003566	60	Jun-19
24	SYED SHABAD ALAM	`03151001485	60	Jun-19
25	AMITA NEGI	`04142011566	60	Dec-19

S. NO.	NAME OF STUDENTS	REGISTRATION NUMBER	MARKS IN IDT	EXAM
26	ROHIT SAINI	`04171006308	60	Dec-19
27	SHIVEK MADAAN	`04152000047	59	Jun-19
28	ANKITA NAGPURKAR	`04151008311	58	Jun-18
29	NIKHIL	`04152006069	58	Jun-19
30	VISHAL CHAUHAN	`04122005659	57	Dec-18
31	NAVEEN GOSWAMI	`0414100550	56	Jun-19
32	ANURAG PANT	`04132012214	56	Dec-17
33	NISHTHA AGRAWAL	`04121009440	55	Jun-18
34	HIMANSHU TYAGI	`04132000652	55	Jun-18
35	APOORV JAISWAL	`04142003143	55	Jun-19
36	SHILPA AGGARWAL	`04151003054	54	Jun-18
37	HIMANSHU JAIN	`04142010175	54	Jun-18
38	BRIJESH KUMAR	`04132003196	54	19-Dec
39	ANUP	`04121013398	53	Dec-18
40	MD. SHAHNAWAZ HUSSAIN	`04132009413	53	Dec-17
41	VIKAS KUMAR JHA	`04152004183	53	Dec-19
42	SHIVCHARAN SINGH S.	`12112040190	53	Dec-19
43	AMIT KR KASHYAP	`04142005646	52	Dec-18
44	SUMIT	`04131008313	49	Jun-19
45	PRATEEK KUMAR MASIH	`04141010163	49	Dec-19
46	SHIVAM GARG	`04162002400	49	Dec-19
47	SACHIN SHARMA	`04141002900	48	Dec-19
48	ASHMEET	-	47	Dec-19
49	AMIT YADAV	`04121000259	44	Jun-19

SURAJ AGRAWAL TAX CLASSES

LAXMINAGAR | 8527230445 , 01147542530

SURAJ AGRAWAL TAX CLASS

CONGRATULATIONS

CMA FINAL DT RESULT AT SATC

S. No.	Name	DT Marks at SATC	IDT Marks at SATC	Status
1	PARVEEN DUTT SHARMA (AIR 3)	67	-	NOW CMA
2	MOHIT GARG (AIR 7)	51	-	NOW CMA
3	ARUN SHEKHAR (AIR 22)	57	-	NOW CMA
4	SACHIN ARORA (AIR 22)	42	-	NOW CMA
5	ANURAG PANT (AIR 25)	61	56	NOW CMA
6	VARUN KHATTAR (AIR 30)	40	66	NOW CMA
7	SONU KUMAR (AIR 38)	51	-	NOW CMA
8	PARAS JAIN (AIR 42)	40	84	NOW CMA
9	BHARAT BHUSAN (AIR 45)	54	-	NOW CMA
10	RAHUL YADAV	-	60	NOW CMA
11	DIVYA KHANDELWAL	74	-	NOW CMA
12	RUCHI GOEL	72	-	NOW CMA
13	SANJAY	66	-	NOW CMA
14	JAVED AKHTAR	65	63	NOW CMA
15	HIMANSHU JAIN	65	54	NOW CMA
16	AVISH BAJAJ	65	-	NOW CMA
17	BHARTI BHATIA	65	-	NOW CMA
18	LAVI KUMBUJ	65	-	NOW CMA
19	MOHD. ADIL	65	61	NOW CMA
20	SANDEEP KUMAR	65	-	NOW CMA
21	SANDEEP MOHOR	65	-	NOW CMA
22	SIMAN SARKAR	65	-	NOW CMA
23	SUDHANSHU MITTAL	65	-	NOW CMA
24	NITU	64	-	NOW CMA
25	AQIB NAZAR	63	-	NOW CMA
26	HIMANSHU SHARMA	62	-	NOW CMA
27	LALIT SINGH JEENA	62	-	NOW CMA
28	RAHUL GARG	61	-	NOW CMA
29	SURAJ NATHANI	61	-	NOW CMA
30	ANIL SHARMA	60	-	NOW CMA
31	RICHA AGARAWAL	60	-	NOW CMA
32	RITU BHATT	60	-	NOW CMA
33	Pooja Negi	59	49	NOW CMA
34	ANITA SHARMA	59	-	NOW CMA
35	DIVYA SAINI	59	-	NOW CMA
36	SANKET GUPTA	59	-	NOW CMA
37	Rohit Saini	58	60	NOW CMA
38	SHREY GUPTA	57	77	NOW CMA
39	ANJALI RANA	57	-	NOW CMA

SURAJ AGRAWAL TAX CLASS

CONGRATULATIONS

CMA FINAL DT RESULT AT SATC

40	AMARDEEP	57	79	NOW CMA
41	ANKITA NAGPURKAR	56	58	NOW CMA
42	MEGHA SHARMA	56	-	NOW CMA
43	SHUBHAM GUPTA	56	-	NOW CMA
44	SHWETA KUMARI	56	-	NOW CMA
45	SUMEET KUMAR	56	-	NOW CMA
46	KETAN JAIN	55	64	NOW CMA
47	EKTA BATRA	55	-	NOW IN GROUP 4
48	GAURAV JINDAL	55	-	NOW CMA
49	KAPIL DHINGRA	55	-	NOW CMA
50	PRABHAKAR JOSHI	55	-	NOW CMA
51	SHALINI KAMBOJ	55	-	NOW CMA
52	SHEKAR KUMAR	55	-	NOW CMA
53	SURBHI PATHANIA	55	-	NOW CMA
54	Rinku Kumar Bind	54	-	NOW IN GROUP 4
55	Apoorv Jaiswal	54	55	NOW CMA
56	GAYATRI VAISHYA	54	-	NOW CMA
57	INDU SHARMA	54	-	NOW CMA
58	PRANSHU SINGHAL	53	72	NOW CMA
59	AJAY KAUSHIK	53	-	NOW CMA
60	MOHD. SHAHNAWAZ HUSSAIN	53	-	NOW CMA
61	Shivam Garg	52	49	NOW CMA
62	ABHISHEK GUPTA	52	-	NOW CMA
63	ABHISHEK KUMAR SINGH	52	-	NOW CMA
64	ABHISHEK VERMA	51	-	NOW CMA
65	UJJWAL JAIN	51	-	NOW CMA
66	VARUN GERA	51	-	NOW CMA
67	SYED SHABAD ALAM	50	60	NOW CMA
68	ANSHIKA TYAGI	50	-	NOW CMA
69	JYOTI GUPTA	50	-	NOW CMA
70	KAPIL	50	-	NOW CMA
71	KHUSHBOO MISHRA	50	-	NOW CMA
72	ROHAN KR SHARMA	50	-	NOW CMA
73	SUBHASH BAJAJ	50	-	NOW CMA
74	VISHAL CHAUHAN	49	57	NOW CMA
75	GARIMA	49	68	NOW CMA
76	AFROZ ALAM	49	-	NOW CMA
77	MUKUL BANSAL	49	-	NOW CMA
78	RAHUL KUMAR	49	-	NOW IN GR-4
79	SHUBHAM GUPTA	48	64	NOW CMA
80	NISHTHA AGRAWAL	48	55	NOW CMA

SURAJ AGRAWAL TAX CLASS

CONGRATULATIONS

CMA FINAL DT RESULT AT SATC

81	ABHISHEK YADAV	48	-	NOW CMA
82	SADAN KUMAR	48	-	NOW CMA
83	SHIVAM KESHARI	48	-	NOW CMA
84	VIKAS KUMAR JHA	47	53	NOW CMA
85	POONAM KHEMKA	47	68	NOW CMA
86	SHIVAM KAUSHAL	47	-	NOW CMA
87	MOHD. SAIF	46	63	NOW CMA
88	MANISHA BHATIA	46	61	NOW CMA
89	SAVITA	46	-	NOW CMA
90	VASUDEVAN	45	75	NOW CMA
91	AMIT KUMAR KASHYAP	45	52	NOW CMA
92	AKANSHA TYAGI	45	-	NOW CMA
93	ARCHANA SHAH	45	-	NOW CMA
94	BABITA	45	-	NOW CMA
95	LALIT SHARMA	45	-	NOW CMA
96	SONAM VERMA	45	-	NOW CMA
97	SUNIL	45	-	NOW CMA
98	NIKHIL	44	58	NOW CMA
99	ANUBHAV	44	-	NOW CMA
100	KUNJIT JAIN	44	-	NOW CMA
101	VINOD ARORA	44	-	NOW CMA
102	TUSHAR KHATTAR	43	63	NOW CMA
103	KAPIL SHARMA	43	63	NOW CMA
104	ANANT	43	-	NOW CMA
105	CHINU ARORA	43	-	NOW CMA
106	DEEPAK KR CHAUBEY	43	-	NOW CMA
107	PUSKAR SINGH	43	-	NOW CMA
108	V VARSHA	42	-	NOW CMA
109	SANJEEV	41	-	NOW CMA
110	HIMANSHU TYAGI	41	55	NOW CMA
111	SURAJ KANOJIA	41	-	NOW CMA
112	AVINASH RAJBHAR	41	-	NOW CMA
113	ROHAN KUMAR VAISHY	41	-	NOW CMA
114	PANKAJ KR TRIVEDI	40	68	NOW CMA
115	SHILPA AGGARWAL	40	54	NOW CMA
116	SALONI GOEL	40	-	NOW CMA
117	SHILPA SINGHAL	40	-	NOW CMA
118	VIKAS AHLAWAT	40	-	NOW CMA

YOUTUBE CHANNEL NAME - "CA SURAJ AGRAWAL - SATC"

CONGRATULATIONS

CMA INTER DT RESULT AT SATC

JUNE 2018 to DEC 2019 EXAM (LAST 4 EXAMs)

40+ Students have scored exemptions in DT Subjects (60+ marks)

S.NO	NAME	REG. NO	DT MATKS
1	MOHAMMAD ZOHAIB	`04181033459	77
2	VAISHALI CHAUHAN	`04171009980	72
3	SONALI	`04151008330	67
4	SIMRAN SINHA	`04171006940	67
5	RIDHI SINGH	`01452001869	67
6	DEEPAK KR PANDEY	`04131001662	67
7	DEEPAK KUMAR PANDEY	`04131001662	67
8	GURPREET SINGH	`01142000864	65
9	AYUSH DHOUNDIYAL	`04172018516	65
10	MOHD. SHAHBAZ	`04161000406	65
11	VIDYA P	-	65
12	VIKALP KUMAR	`04161000373	65
13	MOHAMMAD MOMIN	`04142002305	65
14	EKTA SINGH	`04171006108	65
15	RISHABH GOYAL	`04182641048	65
16	VARSHA	`04141006563	65
17	NISHITHA JAIN	`04181030186	65
18	ADARSH KUMAR UPADHYAY	`04152003297	65
19	ROHIT KUMAR	`04191050156	65
20	SIMPI GARG	`04151004924	64
21	RAHUL	`04151000891	64
22	SHIVAM SINGH	`04171006774	64
23	BHARTI	`04171014248	64
24	NEELABH SRIVASTAVA	`04151002871	64
25	MD. ZAYAUL HAQUE	`03151008179	64
26	MD. ZEYAU HAQUE	`03151008179	64
27	SUNNY	`04191055669	64
28	MIHIR KUMAR	`04172020200	63
29	DEEPANJALI	`04181035932	62
30	NEHA RANA	`0418131694	62
31	PUNEET TIWARI	`04162005106	62
32	GAGAN CHAUHAN	`04112021154	62
33	SURAJ BISHT	`04181025181	62
34	RAM SHARMA	`04151007483	62

35	SHEENA	`03152003100	61
36	PRAPTI BANSAL	`04151004685	61
37	MOHIT ARYA	`04172018239	61
38	PUNIT KUMAR	`14092007508	61
39	SHASHIKANT	-	61
40	DEEPAK KATHAYAT	`04152002482	61
41	KAVITA RAWAT	`04171006492	60
42	PURUSHOTAM KUMAR	`03152004176	60
43	MOHIT BATRA	`04182040268	60
44	AMIT GUPTA	`04152005292	59
45	KIRAN	`041562006169	59
46	VISHAL KESARWANI	`04171014398	59
47	ANKIT SHARMA	`04152003376	59
48	HIMANSHU SINGH BASNAL	`04181023904	59
49	NANCY JAIN	`04171012943	59
50	SAMARJEET SINGH	`04181027869	58
51	SHALENDER SEMWAL	`04142005213	58
52	ABHISHEK PARASHAR	`04171008310	58
53	ANURAG	`04171013969	58
54	OMKAR SINGH	`04112018993	57
55	ANURADHA MISHRA	`03162004159	57
56	NEHA SHARMA	`04162003239	57
57	PANKAJ	`04162002704	57
58	DEEPAK KR KAMAT	`04142006457	57
59	RAHUL NEGI	`04142001226	57
60	AMANDEEP	`04191056094	57
61	RAVINDRA KUMAR SHAKYA	`04191048134	57
62	VISHAL AGRAWAL	`04171010078	56
63	KARAN PANESHAR	`04171013462	56
64	OMKAR SINGH	`04151007144	56
65	RAHUL MAITHANI	`04151000047	56
66	RAHUL MAITHANI	`04151000047	56
67	NISHI RAWAT	`04191050973	56
68	AVINASH KUMAR	`04132003466	55
69	GARGI LATWAL	`04171012717	55
70	LAVKUSH MAURYA	`04191052370	55
71	KANCHAN JHA	`04191057402	55
72	ANURADHA MISHRA	`03162004159	54
73	KARAN PANESHAR	`04171013462	54
74	MANISH KR. MISHRA	`04182039272	54
75	TAUSIF ANSARI	`04152003211	53
76	KAVITA	`04151000769	53
77	NEHA KASHYAP	`04161002757	53
78	SAMPANN SALUJA	`04181025328	53

79	SHIVAM BHADALA	`04152005828	53
80	SUNAINA	`04171008399	53
81	VARUN MOR	`01172016485	52
82	VARUN MOR	`01172016485	52
83	SHIVAM CHAUHAN	`04181033342	52
84	DEEPANSHU SAINI	`04182041338	52
85	ANANT TYAGI	`04181023907	52
86	DEEPAK KUMAR RAWAT	`04142006457	51
87	PRIYA RAHI	`04162003080	51
88	BUNTI/VINAY	`04171007024	51
89	AKASH BHARDWAJ	`04181030641	51
90	SAURABH JAIN	`04151006110	50
91	ANKIT PARASHAR	`04152000664	50
92	AKSHAY VERMA	`04152000529	51
93	VINAY SHARMA	`04162000208	50
94	ISHIKA KHANDELWAL	`04181033400	50
95	DHARMESH SHARMA	`04152004215	50
96	MADHURI KUMARI	`04162000460	50
97	RAMAN KUMAR	`04182040490	50
98	SHUBHAM CHAUHAN	`04182045127	50
99	KISHAN KASHYAP	`04181023519	50
100	VIVEK GUPTA	`04151005101	49
101	AMRITA VIDWAN	`04161001976	49
102	VINAY PATHNEJA	`04191052148	49
103	ANKIT SINGH	`04131000362	48
104	GUNDEEP SINGH GILL	`04161006711	48
105	VARSHA	`04141006563	48
106	VIPUL KR. TIWARI	`04162003793	48
107	LOKESH KUMAR	`04161001512	48
108	KAJAL NEGI	`04161002549	47
109	PANKAJ RAWAT	`04162002704	45
110	PRIYA AGRAWAL	`04152002867	45
111	ARVIND KR. MAURYA	`04181023520	45
112	RAJIV KUMAR	`04151008445	44
113	BHARTI	`04171014248	42
114	MAYANK BATRA	`04171010401	42
115	KRISHNA HARI	`04152006557	41
116	SHIVANI RAWAT	`04161000302	40
117	SHUBHAM	`04182037106	40
118	SAMARTH SOOD	`04172019235	40
119	KOMAL PAL	`04151007518	40

YOUTUBE CHANNEL NAME - "CA SURAJ AGRAWAL - SATC"

CONGRATULATIONS

CMA INTER IDT RESULT AT SATC

JUNE 2018 to DEC 2019 EXAM (LAST 4 EXAMS)

85+ Students have scored exemptions in GST/IDT Subjects (60+ marks)

S.NO	NAME	REG. NO	IDT MATKS
1	PREETI RAWAT	`04171007477	79
2	ASHISH SHIYANI	`04151005102	76
3	CHANDA	`04161002144	75
4	RAJNESH GUPTA	`04151004925	74
5	NEHA VASHISHT (AIR 43)	`04191056393	74
6	GAURANG RAJPAL	`04152005198	73
7	MAYANK BATRA	`04171010401	73
8	ATUL JAYANT	`04132002741	71
9	MD.SHAHBAZ IDDRISI	`04161000406	71
10	AMIT SHARMA	`04161001090	70
11	ROHAN HEERA	`04152006198	70
12	PRADEEP SINGH KANDARI	`04171006214	69
13	ABHINAV PANNU	`04152006249	69
14	SOUVAGYA GERU	`04162003079	69
15	DEEPANJALI	`04181035932	69
16	GAURAV SINGH	`04161002697	69
17	VARUN GIRI	`04151000294	69
18	RAHUL	`04142005518	69
19	YASHODA RAWAT	`04181025326	69
20	MAHIMA THREJA	`04171007005	68
21	HITESHEE SHARMA	`04162000658	68
22	VIABHAV SRIVASTAVA	`04152003904	68
23	RAHUL KR. SONI	`04171006939	68
24	KARAN KHANDELWAL	`04171008770	68
25	PRIYA AGRAWAL	`04152002867	67
26	ANKUSH GUPTA	`04162003134	67
27	SHUBHAM	`04131000312	67
28	MINAKSHI SINGH	`04181031103	67
29	SNEHA	`04152003288	66
30	NEELABH SRIVASTAVA	`04151002871	66
31	RAJESH SHAH	`04171015785	66
32	SUMMI	`04121013160	66
33	YATIN BISHT	`04181023861	66
34	MOHIT UPADHYAY	`04171011775	65
35	NANCY JAIN	`04171012943	65
36	SANJOLI JAIN	`04151004777	65
37	MOHIT UPADHYAY	-	65
38	DHARMESH SHARMA	`04152004215	65
39	MD. ZEYAUH HAQUE	`03151008179	65
40	NANCY JAIN	`04171012943	65
41	NIKHIL SOLANKI	`04152004440	65

42	VAISHALI CHAUHAN	`04171009980	65
43	RAHUL RANJAN SINGH	`04162004494	65
44	RAHUL NEGI	`04142001226	64
45	AVINASH KUMAR	`04132003466	64
46	KARTIK BHATT	`04162003301	64
47	HIMANI AGGARWAL	`04171009548	64
48	SHIVAM SINGH	`04171006774	64
49	SWADHA CHITRANSH	`04162000395	64
50	KARAN PANESGAR	`04171013462	64
51	ANAMIKA DIXIT	`04171006352	64
52	AMRITA VIDWAN	`04161001976	63
53	ANKIT SINGH	`04131000362	63
54	PANKAJ RAWAT	`04162002704	63
55	AMAN GUPTA	`04171011461	63
56	ANURAG	`04171013969	63
57	SALONI MITTAL	`04171007814	63
58	ANKIT SINGH	`04131000362	63
59	PANKAJ	`04162002704	63
60	ABHISHEK PARASHAR	`04171008310	63
61	DEEPIKA KIROULA	-	63
62	NEHA SHARMA	`04162003239	62
63	KULDEEP RAWAT	`04152004253	62
64	ROHIT SATI	`04141004707	62
65	SHOBHIT KR. YADAV	`04162002512	62
66	DINESH SINGH	`04152004116	62
67	SAURABH JAIN	`04151006110	62
68	IRSHAD	`04161002726	62
69	RAVINDRA KUMAR SHAKYA	`04191048134	62
70	MOHD. IRASHAD	`04161002726	62
71	VAISHALI	`04181036455	62
72	FAHREEN NAAZ	`04171015009	61
73	OMKAR SINGH	`04112018993	61
74	NANDINI ANAND	`04171015462	61
75	FARHEEN NAAZ	`04171015009	61
76	KRATIKA KIRAR	`01142009362	61
77	RAM SHARMA	`04151007483	61
78	DIVYANSH VERMA	`04172017078	61
79	NEHA SINGH	`04151007353	61
80	KOMAL PAL	`04151007518	61
81	VINAY SHARMA	`04162000208	60
82	PARVEJ ALAM	`04162000312	60
83	VIVEK UPADHYAY	`04171006249	60
84	BHARTI	`04171014248	60
85	ANAND VALLABH OLI	`04161004350	60
86	DEEPAK KUMAR PANDEY	`04131001662	60
87	LOKESH KUMAR	`04161001512	60
88	NEHA SURATIYA	`04142001231	59
89	VIKALP KUMAR	`04161000373	59
90	PRINCE GOYAL	`04152006085	59
91	TAUSIF ANSARI	`04152003211	59

92	SHWETA RANI	`04181035559	59
93	ANURADHA MISHRA	`03162004159	58
94	NISHA KUMARI	`04142001150	58
95	KISHAN KASHYAP	`04181023519	58
96	KAMINI	`04161000149	57
97	ROHIT	`04181024640	57
98	APOORV GHILDIYAL	`04151004798	56
99	KRISHNA HARI	`04152006557	56
100	MOHAMMAD MOMIN	`04142002305	56
101	DEEPAK KR KAMAT	`04142006457	55
102	SIMRAN SINHA	`04171006940	54
103	VIVEK PRASAD	`04171009533	54
104	MOHINI AGRAWAL	`04152005687	53
105	SONALI	`04151008330	53
106	SAMPANN SALUJA	`04181025328	53
107	REETU	`04181028730	53
108	MOHIT ARYA	`04172018239	52
109	BUNTI/VINAY	`04171007024	52
110	VIKRANT JHA	`04162002126	52
111	KAVITA RAWAT	`04171006492	52
112	VIPUL KR. TIWARI	`04162003793	52
113	PUNEET TIWARI	`04162005106	51
114	SAURAV KUMAR	`04161001645	51
115	KAVITA	`04151000769	51
116	VISHAL KESARWANI	`04171014398	51
117	GARGI LATWAL	`04171012717	51
118	VARUN MOR	`01172016485	50
119	SHALENDER SEMWAL	`04142005213	49
120	ROHIT	`04181024640	49
121	PRIYA RAHI	`04162003080	48
122	NEHA KASHYAP	`04161002757	48
123	YOGESH	`04172018166	48
124	UJWAL CHAND RAMOLA	`04171007621	48
125	JAYED SAIFI	`04171011777	47
126	GUNDEEP SINGH GILL	`04161006711	46
127	RAHUL	`04151000891	45
128	RAMAN KUMAR	`04182040490	44
129	ANKIT KUMAR RAJPUT	`04182039949	43
130	NISHTHA JAIN	`04181030186	42
131	SHIVANGI BISHT	`04171008407	41
132	ARVIND KR. MAURYA	`04181023520	40

THANKS ALL FOR SUCH WONDERFUL PERFORMANCE

SURAJ AGRAWAL TAX CLASS

WHATSAPP/CALL - 8527230445

SURAJ AGRAWAL TAX CLASSES

ADMISSION/INQUIRY - 8527230445

CA/CMA - NOV/DEC 2019 EXAM RESULT (ONE EXAM RESULT)

EXEMPTION HI EXEMPTION (FROM REGISTERED STUDENTS BATCH)

S.NO	NAME	REGISTRATION NO	MARKS	SUBJECT	COURSE
1	KUNAL AGGARWAL	623158	81	TAX	CA INTER
2	DEEPESH HOIYANI	`01171005959	80	IDT	CMA FINAL
3	YATIN BISHT	`04181023861	76	OM & SM	CMA INTER
4	NEHA VASHISHT (AIR 43)	`04191056393	74	IDT	CMA INTER
5	SATISH JANGRA	`04142010658	72	IDT	CMA FINAL
6	PRANSHU SINGAL	`01171007386	72	IDT	CMA FINAL
7	JAI PRAKASH GUPTA	523034	70	TAX	CA INTER
8	RAHUL	`04142005518	69	IDT	CMA INTER
9	YASHODA RAWAT	`04181025326	69	IDT	CMA INTER
10	KISHAN KASHYAP	`04181023519	69	OM & SM	CMA INTER
11	RAMAN KUMAR	`04182040490	68	OM & SM	CMA INTER
12	REETU	`04181028730	68	OM & SM	CMA INTER
13	POONAM KHEMKA	`04161003969	68	IDT	CMA FINAL
14	GARIMA	`14101014557	68	IDT	CMA FINAL
15	MINAKSHI SINGH	`04181031103	67	IDT	CMA INTER
16	ATUL VISHVAKARMA	522810	67	TAX	CA INTER
17	YATIN BISHT	`04181023861	66	IDT	CMA INTER
18	VARUN KHATTAR (AIR 30)	`04141003976	66	IDT	CMA FINAL
19	ADARSH KUMAR UPADHYAY	`04152003297	65	DT	CMA INTER
20	NISHITHA JAIN	`04181030186	65	DT	CMA INTER

21	ROHIT KUMAR	`04191050156	65	DT	CMA INTER
22	RAHUL RANJAN SINGH	`04162004494	65	IDT	CMA INTER
23	MINAKSHI SINGH	`04181031103	65	OM & SM	CMA INTER
24	NEHA VASHISHT	`04191056393	65	OM & SM	CMA INTER
25	ANAMIKA DIXIT	`04171006352	65	OM & SM	CMA INTER
26	SUNNY	`04191055669	64	DT	CMA INTER
27	ANAMIKA DIXIT	`04171006352	64	IDT	CMA INTER
28	TUSHAR KHATTAR	`04131000398	63	IDT	CMA FINAL
29	RITIKA		63	TAX	CA INTER
30	RAVINDRA KUMAR SHAKYA	`04191048134	62	IDT	CMA INTER
31	VAISHALI	`04181036455	62	IDT	CMA INTER
32	MOHD. IRSHAD	`04161002726	62	IDT	CMA INTER
33	RAHUL KUMAR OJHA	`03122001946	62	IDT	CMA FINAL
34	RAJAN KUMAR PANDEY	624360	62	TAX	CA INTER
35	MEENAKSHI JAIN	624144	62	TAX	CA INTER
36	KISHAN SHARMA	626257	62	TAX	CA INTER
37	DEEPAK KATHAYAT	`04152002482	61	DT	CMA INTER
38	KOMAL PAL	`04151007518	61	IDT	CMA INTER
39	LOKESH KUMAR	`04161001512	61	OM & SM	CMA INTER
40	KHUSHBOO BANSAL	620832	61	TAX	CA INTER
41	MOHIT BATRA	`04182040268	60	DT	CMA INTER
42	LOKESH KUMAR	`04161001512	60	IDT	CMA INTER
43	AMITA NEGI	`04142011566	60	IDT	CMA FINAL
44	ROHIT SAINI	`04171006308	60	IDT	CMA FINAL

YOUTUBE CHANNEL NAME - "CA SURAJ AGRAWAL - SATC"

CONGRATULATIONS

CA INTERMEDIATE/IPCC RESULT AT SATC

Students Successfully Completed Group 1 or Both Group (RESULT FROM MAY 2018)

S.NO	NAME	ROLL NUMBER	MARKS IN TAX
1	KUNAL AGGARWAL (NOV 2019 EXAM)	623158	81
2	MEGHA KUMARI SINGHAL (All India Rank - 13th)	341001	77
3	VAIBHAV SAINI	817284	70
4	OSIM AKHTAR	328098	70
5	JAI PRAKASH GUPTA	523034	70
6	RAGHAV MANGLA	651375	69
7	PUNEET	325987	67
8	ATUL VISHVAKARMA	522810	67
9	SUJIT KUMAR SHAH	508842	65
10	SURYANSH RASTOGI	804115	65
11	SAMIKSHA PANDEY	637869	65
12	RAJNISH PANDEY	345099	64
13	FATIMA	635666	64
14	SUNIL KUMAR	635526	64
15	VARUN MUNJAL	729537	64
16	MUSKAN MOURYA	336951	63
17	MUDASSIR	815904	63
18	NAVENDU SHARMA	815548	63
19	RITIKA		63
20	SHUBHAM GUPTA	343489	62
21	AKASH KUMAR	815849	62
22	DEVENDER	635594	62
23	ABHISHEK PANT	328056	62
24	KISHAN	520305	62
25	PRATEEK GUPTA	399180	62

26	MEENAKSHI JAIN	624144	62
27	RAJAN KUMAR PANDEY	624360	62
28	PRINCE TYAGI	344697	61
29	POOLKIT	815940	61
30	NIRAJ KR SINGH	636316	61
31	RAHUL SINGH	635669	61
32	KHUSHBOO BANSAL	620832	61
33	SALMAN AHMED	326069	60
34	NURUL HUDA	626749	59
35	PARAS KHURANA	813333	58
36	SANJAY KHADKA	520344	58
37	ROHIT KUMAR	621051	58
38	NIDHI UTREJA	352431	57
39	PRABIN GUPTA	344472	57
40	VIKASH KUMAR	336504	57
41	MUNNA KUMAR KAPOOR	343467	57
42	AJAY KUMAR	639946	57
43	FAISAL SAHID	639261	57
44	SONALI	623685	57
45	ANJAN KUMAR BHARTIA	344271	56
46	RADHIKA MODI	510990	56
47	VINEET KUMAR (All India Rank 36)	337925	56
48	DEEPANSHU GUPTA	346496	56
49	RAJAT GOYAL	814758	55
50	SUPRIYA CHAUHAN	330769	55
51	SEJAL	624571	55
52	PRAMOD KUMAR	431053	54
53	DIKSHA AGRAWAL	635923	54
54	FAIZ	328101	54
55	ASHUTOSH DIXIT	344503	53
56	ABHISHEK AWASTHI	339998	53
57	LALIT MOHAN JOSHI	816589	53

58	AMBIKA GARG	816052	53
59	AGAMLEEN KAUR	509284	52
60	SIDDHARTH JOSHI	344311	52
61	NIRAJAN KUMAR SHAH	346548	52
62	VIVEK KUMAR	346220	51
63	LAV KUMAR PATHAK	345956	51
64	VANSHIKA JAIN	623880	50
65	KUNAL GARG	343966	49
66	PRAKHAR GARG	346213	49
67	RIYA BHALLA	424268	49
68	KAMLESH MEHRA	636192	49
69	ADITYA KR JHA	643454	49
70	KRITI AWASTHI	341017	48
71	DEEPAK TIWARI	346638	48
72	RAJNISH DUBEY	330946	47
73	AMIT	522505	47
74	AMAN BANSAL	501643	46
75	RAVI KUMAR	525661	46
76	NISHITA JALAN	623633	46
77	KAMAL PRAJAPATI	360459	44
78	MANISH JAIN	624395	44
79	JAI KUMAR	816631	43
80	ATUL YADAV	674136	43

THANKS TO ALL OF YOU

SURAJ AGRAWAL TAX CLASSES

8527230445, 01147542530

VOLUME II – INDEX

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11	PGBP Practical Questions with Solution - SET A Practical Questions - SET B Solutions (SET B)	11.01 – 11.88 11A.01 – 11A.24 11B.01 – 11B.08 11C.01 – 11C.12
12	AOP [Section 40(ab)]	12.01 – 12.02
13	Firm [Section 40(b)] Practical Questions with Solution	13.01 – 13.06 13A.01 – 13A.04
14	HUF	14.01 – 14.08
15	Clubbing of Income Practical Questions - SET A Solutions (SET A) Practical Questions with Solution - SET B Practical Questions with Solution - SET C	15.01 – 15.22 15A.1 – 15A.4 15B.1 – 15B.8 15C.1 – 15C.4 15D.1 – 15D.8
16	Set-off, Carry Forward & Set-off of Losses Practical Questions - SET A Solutions (SET A) Practical Questions with Solution - SET B	16.01 – 16.34 16A.1 – 16A.4 16B.1 – 16B.6 16C.1 – 16C.28
17	Return of Income Practical Questions with Solution	17.01 – 17.24 17A.1 – 17A.6

18	Advance Tax & Interest u/s 234A, B & C Practical Questions	18.01 – 18.10 18A.1 – 18A.2
19	TDS TCS Practical Questions with Solution - SET A	19.01 – 19.56 19A.1 – 19A.12 19B.1 – 19B.18
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21	Exemptions under Section 10 Practical Questions with Solution	21.01 – 21.14 21A.01 – 21A.02
22	AMT (MAT is not in syllabus) Practical Questions with Solution	22.01 – 22.12 22A.01 – 22A.10
23	Co-Operative Society Practical Questions with Solution	23.01 – 23.08 23A.01 – 23A.04
24.	Taxation of LLP & Tax Incentives Practical Questions with Solution	24.01 – 24.08 24A.01 – 24A.06
25.	Taxation of AOP (Tax Rates) Practical Questions with Solution	25.01 – 25.08 25A.01 – 25A.10
26.	Political Parties & Electoral Trust	26.01 – 26.02
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Depreciation [Section 32]

FROM 18th EDITION – Assessment Year 2021-22
CMA INTER DT - Paper 7
(EXAM IN JUNE 2021 & DEC 2021)

The assets in respect of which depreciation is claimed must belong to either of the following categories, namely:

- (a) buildings, machinery, plant or furniture, ***being tangible assets***;
- (b) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, ***being intangible assets***.

No depreciation is allowable on the cost of the land. Goodwill is **now eligible** for Depreciation as Intangible Assets.

Some Important Points:

1) Beneficial owner: Assessee need not be a registered owner, even a beneficial owner can claim depreciation	2) Passive use vs. Active use: Use includes active use as well as passive use. Active use means actual use of the property for the purpose of business or profession. Whereas passive use includes "ready to use". It means, if a property was not actually used for business or profession but was ready to use in the PY, in such case, assessee can claim depreciation to such assets
3) Co-owner: In case of joint ownership, depreciation is allowed on proportionate basis.	
4) Property acquired on hire purchase: in case of hire purchase, the buyer can claim depreciation even though he does not get legal title of the asset till he pays the last installment. <ol style="list-style-type: none"> a. Depreciation can be claimed on cash price of such asset on the date of agreement b. Hire charges will be allowed as deduction under section 37(1). 	5) Partly used for business or profession: As per Sec. 38, if an asset is partly used for business or profession and partly used for personal purpose, then proportionate depreciation (as determined by the Assessing Officer) shall be allowed.
6) Capital expenditure on a property by the lessee: Where an assessee being a lessee of a property incurs any capital expenditure by way of improvement, extension, super construction, etc. on building being used for his business or profession, he is entitled to depreciation in respect of such capital expenditure.	7) House property let out to tenant for smooth running of the business: If an assessee lets out a property to his employee/others and where such letting out supports smooth flow of his business, then rent received from employees/others shall be chargeable under the head "PGBP" and such property shall be eligible for depreciation u/s 32.
8) Sec. 53A of Transfer Of Property Act: Possessor of an Immovable Property u/s 53A Of Transfer of Property Act can claim depreciation even though he is not the registered owner of the property.	9) Deduction on account of depreciation shall be made compulsorily, whether or not the assessee has claimed the deduction in computing his total income.

SIGNIFICANCE OF DATE OF PURCHASE (EFFECT OF TIME ON DEPRECIATION)

Where-

- (a) an asset is acquired by the assessee during the previous year, ***and***
- (b) is put to use in the **same previous year** for **less than 180 days**,

- **the depreciation in respect of such asset is restricted to 50% of the normal depreciation. [Both conditions should be satisfied together]** - **4th October onwards**

[There is no significance of date of sale for computation of depreciation]

DEPRECIATION FOR UNDERTAKINGS OTHER THAN POWER GENERATING UNITS

In respect of –

- (a) buildings, machinery, plant or furniture, ***being tangible assets***;
- (b) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, ***being intangible assets***;

owned, wholly or partly, by the assessee and used for the purpose of the business or profession, depreciation shall be allowed on the **Written Down Value of the block of assets** at such percentage as may be prescribed.

Block of Assets [Section 2(11)]:

A “block of assets” is defined as a group of assets falling within a class of assets comprising:

- (a) ***tangible assets*** being buildings, machinery, plant or furniture;
- (b) ***intangible assets*** being know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature,

in respect of which the same percentage of depreciation is prescribed.

[Note: Each class of Assets has been further divided into blocks with a particular rate of depreciation for each block. However, Intangible assets, have been granted into one block only with a depreciation rate of 25%.]

WRITTEN DOWN VALUE [Section 43(6)]

In the case of assets acquired by the assessee during the previous year, the WDV means the actual cost to the assessee.

In the case of assets acquired before the previous year, the WDV shall be worked out as follows:

WRITTEN DOWN VALUE OF BLOCK OF ASSETS

Opening value of the block at the beginning of the Previous Year	xxx
Add: ACTUAL COST of assets acquired during the Previous Year & falling within this block	xxx
Less: MONEYS PAYABLE (i.e. sale price & insurance compensation) in respect of asset, <i>which is sold, discarded, demolished or destroyed, together with the scrap value</i> , if any.	xxx
WDV for the purpose of depreciation	xxx
Depreciation at prescribed percentage	xxx
Closing value of the block	xxx

Notes:

- 1) The deduction of moneys payable shall only be to the extent that WDV becomes NIL
- 2) **MONEYS PAYABLE** means the sale price of the asset and includes any insurance, salvage or compensation payable in respect of the asset.
- 3) ***Depreciation will not be charged in the following two cases:***
 - a. When Money payable exceeds the amount of “Opening WDV + Assets acquired”
 - b. When block cease to exist (means when all the assets is sold).

RATES OF DEPRECIATION

PART A - TANGIBLE ASSETS

I Buildings			
Block 1.	Residential		5%
Block 2.	Non Residential		10%
Block 3.	Temporary Erections (Wooden Structure)		40%
II Furniture and Fittings			
	Furniture and fittings including electrical fittings		10%
III Plant & Machinery			
Block 1.	(a) Plant & machinery (General rate)	}	15%
	(b) Motor cars not used for hiring purpose except below		
Block 2.	Motor cars acquired during the period from 23.8.2019 to 31.03.2020 and put to use on or before 31.03.2020		30%
Block 3.	Motors buses, motor lorries, motor taxis used in a business of running them on hire except below	}	30%
Block 4.	If acquired during the period from 23.8.2019 to 31.03.2020 and put to use on or before 31.03.2020		
Block 5.	Energy Saving Devices (as specified)	}	40%
	Air, Water Pollution control equipments, Solid waste control equipment (Specified)		
	All Kind of Books		
	Computers (Laptops) <u>including computer printer & software</u>		
	Aeroplanes, aeroengines		
Block 6.	Ships or Vessels		20%

PART B INTANGIBLE ASSETS

Know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature	25%
Goodwill (as decided by the Supreme Court in case of Smifs Securities Ltd. v CIT) [‘Goodwill’ is treated as Intangible Asset & eligible for Deprecation]	25%

→ Now, there is no block with depreciation rate higher than 40%.

DIFFERENT SITUATION FOR DEPRECIATION CALCULATION:

1. Assets purchased and put to use for 180 days or more
2. Asset purchased and put to use for less than 180 days
3. Asset put to use for less than 180 days and the WDV is less than the actual cost of the asset purchased
4. Where any asset is sold at a price more than the WDV of the block of assets
5. When all the assets of block are sold at a price less than the WDV of the block of assets

Section 43(1) – ACTUAL COST

Where an assessee incurs any expenditure for acquisition of any asset in respect which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account or through such other electronic modes as may be prescribed, exceeds ₹ 10,000, such payment shall be ignored for the purposes of determination of “Actual Cost” of such asset.

Consequently, Depreciation/Additional Depreciation under Section 32 pertaining to such payment is not available. Moreover, such expenditure will not be considered for the purpose of Section 50.

The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay.

[CBDT Notification No. 8/2020 dated 29.01.2020].



COMPUTATION OF CAPITAL GAINS IN CASE OF DEPRECIABLE ASSETS**In the following 2 cases, the capital gains shall be calculated:**

- (1) When value of block ceases to exist; or
- (2) Block ceases to exist.

SECTION 50: SHORT-TERM CAPITAL GAINS SHALL BE COMPUTED AS UNDER:Full value of consideration received /receivable xxx**Less: Aggregate of following amounts:**

- Expenditure incurred wholly & exclusively for transfer xxx
- WDV of the block of assets at the Beginning of the Previous Year xxx
- Actual Cost of any asset falling within the block of assets acquired during the Previous Year xxx

Short-term capital gains (if positive)/Short-term capital loss (if negative) xxx**Notes:**

- 1) If Sec. 50 is not attracted than expenditure on transfer of assets from block of assets is allowable as business expenditure u/s 37(1).
- 2) Short term Capital Loss arises when relevant Block of Asset ceases to exist (i.e. all assets in a block are transferred).
- 3) Insurance compensation in respect of asset destroyed shall be deducted from WDV of Block under section 43(6) even if the same has not been actually received. **(Mercantile Basis)**
- 4) However, if STCG arises under section 50 because of insurance compensation then such STCG shall be taxable in the previous year in which insurance compensation is actually received as per section 45(1A).

Example:

- | | | |
|----|--|-----------|
| a. | Opening WDV of block as on 1-4-2020
(15%)(Assets A,B,C,D & E) | 5,00,000 |
| b. | Asset F acquired 30-6-2020 | 2,00,000 |
| c. | Asset A destroyed in fire on 31.12.2020 | |
| d. | <u>Insurance Compensation payable</u> | 10,00,000 |

Compensation is determined on 28.02.2021 and received on 31.12.2021.**Answer:****Assessment Year 2021-22**

Opening WDV as on 01.04.2020	5,00,000
Add: Actual cost of assets acquired during the P/Y	2,00,000
Less: Moneys payable in respect of insurance compensation receivable during the P/Y (Restricted to ₹ 7,00,000)	<u>7,00,000</u>
WDV	Nil

Assessment Year 2022-23**Short Term Capital Gain under section 50**

Insurance compensation Received	10,00,000
Less: Opening WDV as on 01.04.2020	5,00,000
Less: Assets acquired	<u>2,00,000</u>
Short Term Capital Gain	3,00,000

Note: Short Term Capital Gain u/s 50 shall be taxable in AY 2022-23, as per section 45(1A). As per Section 45(1A) the Capital gains shall be taxable in the year in which insurance compensation is received.

Example:

SATC Enterprises has WDV in building block (depreciation rate 10%) as on 1/4/20 ₹ 80,000. The block consists of two building X and Y. Compute depreciation u/s 32 for the AY 2021-22 in the following cases:

- Case A** Building X sold for ₹ 20,000 on 1/5/20
- Case B** Building X sold for ₹ 100,000 on 1/1/21
- Case C** Building X sold for ₹ 100,000 and building S purchased for ₹ 35,000 as on 1/7/20
- Case D** Building X sold for ₹ 10,000 and building S purchased for ₹ 40,000 as on 1/7/20
- Case E** Building X sold for ₹ 10,000 and building S purchased for ₹ 40,000 as on 1/11/20
- Case F** Building X sold for ₹ 200,000 and building S purchased for ₹ 40,000 as on 1/11/20
- Case G** Building X and building Y both sold for ₹ 10,000 and ₹ 35,000 respectively.
- Case H** Building X and building Y both sold for ₹ 10,000 and ₹ 35,000 respectively as on 1/11/20. New building T purchased for ₹ 5,000 as on 1/7/20.
- Case I** Building Z purchased for ₹ 40,000 on 1/7/20 and the same being put to use on 1/12/20.
- Case J** Building Q purchased for ₹ 50,000 on 1/7/20 but put to use on 1/11/21.
- Case K** Building S purchased for ₹ 10,000 on 1/7/20 but put to use on 1/11/20 and building X and Y sold for ₹ 10,000 and ₹ 6,000 respectively.
- Case L** Building R purchased for ₹ 30,000 on 1/7/20 and sold the same for ₹ 40,000 on 11/11/20.
- Case M** Sold building X and Y for ₹ 95,000 on 11/7/20 and purchased Building R for ₹ 30,000 on 11/11/20.

Assume in all cases new building is charged to depreciation @ 10%.

Solution:**Computation of depreciation for the AY 2021-22**

Particulars	Case A	Case B	Case C	Case D	Case E	Case F	Case G	Case H
Block: Building (Rate 10%)								
WDV as on 1/4/20	80000	80000	80000	80000	80000	80000	80000	80000
Add: Purchase	Nil	Nil	35000	40000	40000	40000	Nil	5000
	80000	80000	115000	120000	120000	120000	80000	85000
Less: Sale proceeds	20000	80000 [#]	100000	10000	10000	120000 [#]	45000	45000
WDV as on 31/3/2021	60000	Nil	15000	110000	110000	Nil	Nil	40000
Depreciation	6000	Nil	1500	11000	9000 ¹	Nil	Nil	4000
Short term capital gain		20000				80000		
Short term capital loss							(35000)	

[#] Sale proceeds cannot exceeds opening WDV as increased by actual cost of asset acquired during the previous year. Excess, if any, shall be considered as Short Term capital gain.

Computation of depreciation for the AY 2021-22

Particulars	Case I	Case J	Case K	Case L	Case M
Block: Building (Rate 10%)					
WDV as on 1/4/20	80000	80000	80000	80000	80000
Add: Purchase	40000	50000	10000	30000	30000
	120000	130000	90000	110000	110000
Less: Sale proceeds	Nil	Nil	16000	40000	95000
	120000	130000	74000	70000	15000
Depreciation	10000 ²	8000 ³	6900 ⁴	7000	750 ⁵
Short term capital gain					
Short term capital loss					

¹ (₹ 70000 * 10%) + (₹ 40000 * 10% * ½) ² (₹ 80000 * 10%) + (₹ 40000 * 10% * ½)

³ Though the asset is acquired in the current year but put to use in next year hence no depreciation on the same. (₹ 80,000 * 10%)

⁴ (₹ 10000 * 10% * ½) + (64000 * 10%) ⁵ (₹ 15000 * 10% * ½)

DEPRECIATION FOR POWER GENERATING UNDERTAKINGS

Assessee is in the business of generation or generation & distribution of power **have the option to claim depreciation on Straight Line Method on each asset or WDV method** on Block of Assets.

Depreciation under Straight Line Method (SLM) [Section 32(1)(i)]

An assessee in the business of generation or generation & distribution of power will be allowed Depreciation in respect of

- building, machinery, plant or furniture ***being tangible assets***;
- Know-how, patents, copyrights, trademarks etc. ***being intangible assets*** owned wholly or partly by the assessee and used for the purposes of business at the prescribed rates on actual cost of each asset on the basis of ***Straight Line Method*** of depreciation.

Note:

1. Assessee has to ***exercise such option before the due date of furnishing the ROI*** relevant to the Previous Year in which they begin to generate power.
2. The option once exercised shall be ***FINAL for all subsequent assessment years***.
3. The aggregate depreciation u/s. 32(1)(i) shall not exceed the actual cost of the assets.
4. ***Restriction of 50% of Depreciation*** shall apply if the asset is put to use for less than 180 days in the year of acquisition.
5. ***Additional depreciation under section 32(1)(ia) is also available to power generating undertakings following WDV methods.***

Terminal Depreciation [Section 32(1)(iii)]

In the case of any building, machinery, plant or furniture or intangible assets

- on which depreciation has been claimed and allowed u/s. 32(1)(i) i.e. under SLM and
- which is sold, discarded etc. in the Previous Year, and moneys payable for such assets is less than the WDV, then
- ***TERMINAL DEPRECIATION*** i.e. WDV of such asset (-) Moneys Payable for such assets,
- shall be allowed as deduction ***only if such loss is actually written off*** in the books.
- ***However, If asset is sold in the same Previous Year in which it was acquired, then there will be STCL under section 45(1)***

Balancing Charge [Section 41(2)]

In the case of any building, machinery, plant or furniture or intangible assets

- in respect of which depreciation is claimed and allowed under section 32(1)(i) i.e. under SLM and
- which is sold, discarded etc. in the Previous Year and moneys payable for such assets is more than the WDV, then
- ***BALANCE AMOUNT*** shall be chargeable to tax as PGBP ***to the extent it does not exceeds the amount of depreciation already allowed.***
- ***Even if business is no longer in existence, the above provisions shall apply.***
- If asset is sold in the same Previous Year in which it was acquired, then there will be STCG under section 45(1)

Special provision for COA in case of Depreciable Assets under SLM [Section 50A]

If an asset on which depreciation is allowed under SLM u/s. 32(1)(i) is sold during the Previous Year,

- then for computing Capital Gain, the ***WDV as adjustment is taken as COA.***
- ***WDV as adjusted should mean:***

WDV of asset

xxx

Add: Income assessed under section 41(2)

xxx

ADDITIONAL DEPRECIATION [ON PLANT & MACHINERY ACQUIRED BY AN INDUSTRIAL UNDERTAKING] - Section 32(1)(iia)

Additional depreciation is allowed on any **new machinery or plant** (other than ships and aircraft) **acquired and installed after 31.3.2005** by an assessee engaged in the business of manufacture or production of any article or thing **at the rate of 20% of the actual cost of such machinery or plant.**

Additional Depreciation will be restricted to 50% in case the asset is put to use for less than 180 days during the previous year.

Further, the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days, shall be allowed in the immediately succeeding previous year.

Such additional depreciation will not be available in respect of:

- (a) any machinery or plant which, before its installation by the assessee, was used within or outside India by any other person; or
- (b) any machinery or plant installed in office premises, residential accommodation, or in any guest house; or
- (c) office appliances or road transport vehicles; or
- (d) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise)
- (e) Ships and Aircrafts.

Note:

1. Additional depreciation is allowed even if the block has NIL value.
2. Additional depreciation is not available if the new plant and machinery is sold in the year of acquisition
3. Additional depreciation shall be subtracted while computing next year opening WDV.
4. An assessee engaged in the business of **Generation, Transmission or Distribution** of power shall also be allowed additional depreciation at the rate of 20% of actual cost of eligible new machinery or plant (other than ships and aircrafts) acquired and installed in a previous year. [Only in WDV Method]
5. The CBDT has clarified that the **business of printing or printing and publishing amounts to manufacture or production of an article or thing and is, therefore, eligible for additional depreciation under section 32(1)(iia).**
6. **Assesseees covered under Section 115BAC, 115BAD [115BA, 115BAA or 115BAB – CMA FINAL SYLLABUS] are not eligible for Additional Depreciation.**

Additional depreciation @35% to be allowed to assesseees setting up manufacturing units in notified backward areas of specified States and acquiring and installing of new plant & machinery [Proviso to section 32(1)(iia)]


No Enhanced rate of additional Depreciation (i.e. 35%) from AY 2021-22

- a) In order to encourage acquisition and installation of plant and machinery for setting up of manufacturing units in the **notified backward areas of the States of Andhra Pradesh, Bihar, Telangana and West Bengal**, a proviso has been inserted to section 32(1)(iia) to allow higher additional depreciation at the rate of 35% (instead of 20%) in respect of the actual cost of new machinery or plant (other than a ship and aircraft) acquired and installed during the period **between 1st April, 2015 and 31st March, 2020** by a manufacturing undertaking or enterprise which is set up in the notified backward areas of these specified States **on or after 1st April, 2015.**
- b) Such additional depreciation shall be **restricted to 17.5% (i.e., 50% of 35%),** if the new plant and machinery acquired is put to use for the purpose of business for **less than 180 days** in the year of acquisition and installation.
- c) The **balance 50% of additional depreciation (i.e., 50% of 35%)** would, however, be allowed in the **immediately** succeeding financial year.

Manufacturing industries set up in the notified backward areas of specified States to be eligible for a deduction @15% of the actual cost of new plant & machinery acquired and installed during the previous year [Section 32AD]

No New deduction from AY 2021-22 

1. **Section 32AD** has been inserted to provide for a deduction of an amount equal to 15% of the actual cost of new plant and machinery acquired and installed, if the following conditions are satisfied by the assessee –
 - a) The assessee sets up an undertaking or enterprise for manufacture or production of any article or thing **on or after 1st April, 2015 in any backward area notified by the Central Government in the State of Andhra Pradesh or Bihar or Telangana or West Bengal; and**
 - b) the assessee **acquires and installs** new plant and machinery for the purposes of the said undertaking or enterprise during the period **between 1st April, 2015 and 31st March, 2020** in the said backward areas.
2. **For the purposes of this section, “New plant and machinery” does not include—**
 - a) any ship or aircraft;
 - b) any plant or machinery, which before its installation by the assessee, was used either within or outside India by any other person;
 - c) any plant or machinery installed in any office premises or any residential accommodation, including accommodation in the nature of a guest house;
 - d) any office appliances including computers or computer software;
 - e) any vehicle;
 - f) any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head “Profits and gains of business or profession” of any previous year.
3. Further, if any new plant and machinery acquired and installed by the assessee is sold or otherwise transferred except in connection with the amalgamation or demerger or re-organisation of business, **within a period of 5 years from the date of its installation**, the amount allowed as deduction in respect of such new plant and machinery shall be **deemed to be the income** chargeable under the head “Profits and gains from business or profession” of the previous year in which such new plant and machinery is sold or transferred, in addition to taxability of gains, arising on account of transfer of such new plant and machinery.
4. However, this restriction shall not apply to the amalgamating or demerged company or the predecessor in a case of amalgamation or demerger or business reorganization referred to in section 47(xiii), 47(xiii b) and 47(xiv), within a period of five years from the date of its installation, **but shall continue to apply to the amalgamated company or resulting company or successor, as the case may be.**

*Higher additional depreciation @35% (instead of 20%) and deduction @15% under section 32AD is allowable in respect of the actual cost of new machinery or plant (other than a ship and aircraft) **acquired and installed during the period between 1st April, 2015 and 31st March, 2020** by a manufacturing undertaking or enterprise which is set up in the notified backward areas of these specified States, namely, Andhra Pradesh, Telangana, West Bengal and Bihar on or after 1st April, 2015.* 

*Therefore, in respect of new plant and machinery acquired and installed in such notified backward areas **on or after 1.4.2020**, deduction under section 32AD **is not allowable**. Further, additional depreciation is **not allowable at the enhanced rate of 35%**. Additional depreciation will be allowable @20% (if put to use for more than 180 days in that P.Y.) and @10% (if put to use for less than 180 days in that P.Y.).*

*However, in respect of new plant and machinery acquired and installed in such notified backward areas in the P.Y.2019-20 and put to use for less than 180 days in that year, **the balance additional depreciation @17.5% is allowable in the P.Y.2020-21 (i.e., A.Y.2021-22)***

Example: ABC Ltd. had set up a manufacturing unit in notified backward area of Andhra Pradesh in P.Y. 2019-20 and acquired and installed new plant and machinery of ₹ 20 crores in November, 2019. Higher additional depreciation @17.5%, being 50% of 35%, in addition to normal depreciation, would have been allowed to ABC Ltd. on ₹ 20 crore during the P.Y. 2019-20, since, unit had been set up in notified backward area of specified states and plant and machinery was put to use for less than 180 days in the year of acquisition.

During P.Y. 2020-21, balance additional depreciation @17.5% would be allowed to ABC Ltd. on ₹ 20 crore.

However, **if ABC Ltd. acquired and installed new plant and machinery during the P.Y. 2020-21,** additional depreciation @20% would be allowed on such plant and machinery if it is put to use for more than 180 days. If it is put to use for less than 180 days, additional depreciation @10% is allowable.

DEPRECIATION IN CASE OF SUCCESSION, AMALGAMATION, BUSINESS RE - ORGANISATION OR DEMERGER**Important: 4-5 Marks**

These provisions are applicable while determining depreciation if there is a change of ownership of assets because of the following:

- a) Conversion of firm or sole proprietary concern into company [by satisfying conditions of section 47(xiii)/(xiv)];
- b) Conversion of private company/unlisted public company into LLP by satisfying condition of section 47(xiii); and
- c) Succession to business other than on death – business of HUF taken over by a member, business of a firm taken over by a partner, conversion of HUF concern into company;
- d) Amalgamation of a company;
- e) Demerger of a company etc

In the year in which change of ownership takes place because of the aforesaid reasons, depreciation shall be calculated as under:

1. Compute depreciation of the previous year in which ownership of assets changes (because of the aforesaid reasons) **on the assumption that the succession, amalgamation or demerger has not taken place.**
2. **The amount of depreciation so determined shall be appropriated between the** (a) predecessor and (b) successor, as the case may be, **in ratio of number of days for which the assets are used by them during the previous year in which ownership changes.**

DEPRECIATION IN CASE OF COMPOSITE INCOME (TEA, RUBBER, COFFEE etc)**Important: 4-5 Marks**

Explanation 7 to Section 43(6) provides that in cases of 'composite income', for the purpose of computing written down value of assets acquired before the previous year, **the total amount of depreciation shall be computed as if the entire composite income of the assessee is chargeable under the head "Profits and Gains of business or profession"**. The depreciation so computed shall be deemed to have been "actually allowed" to the assessee.

Explanation 7 to Section 43(6) - "Where the income of an assessee is derived, in part from agriculture and in part from business chargeable to income-tax under the head "Profits and gains of business or profession", for computing the written down value of assets acquired before the previous year, **the total amount of depreciation shall be computed as if the entire income is derived from the business of the assessee under the head "Profits and gains of business or profession" and the depreciation so computed shall be deemed to be the depreciation actually allowed under this Act.**"

Example:

Mr. X, a grower and manufacturer of tea, purchased machinery (15%) on 10-04-2019 for ₹ 10 lakh. He computed depreciation for A.Y. 2021-22 as given below; needs your comment on his working:

Particulars	Amount
Opening W.D.V. as on 1/4/2019	Nil
Add: Assets purchased during the year	10,00,000
	10,00,000
Less: Depreciation for the P.Y. 2019-20 [₹ 10,00,000 * 15% * 40%] (As he is engaged in the business of growing and manufacturing tea; hence 60% is considered as part of agricultural income)	60,000
Opening W.D.V. as on 1/4/2020	9,40,000
Less: Depreciation for the P.Y. 2020-21 [₹ 9,40,000 * 15% * 40%]	56,400
Opening W.D.V. as on 1/4/2021	8,83,600

Further, compute his business income for A.Y. 2021-22 assuming that his income before depreciation and without reducing element of agricultural income is ₹ 8,00,000/-

Solution:

The method of computation of depreciation followed by Mr. X is not correct as Expl. 7 to sec.43(6) provides that: "Where the income of an assessee is derived, in part from agriculture and in part from business chargeable to income-tax under the head "Profits and gains of business or profession", for computing the written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire income is derived from the business of the assessee under the head "Profits and gains of business or profession" and the depreciation so computed shall be deemed to be the depreciation actually allowed under this Act."

The correct computation of depreciation is as follow:

Particulars	Amount
Opening W.D.V. as on 1/4/2019	Nil
Add: Assets purchased during the year	10,00,000
	10,00,000
Less: Depreciation for the P.Y. 2019-20 [₹ 10,00,000 * 15%] (Considering the entire income as taxable income)	1,50,000
Opening W.D.V. as on 1/4/2020	8,50,000
Less: Depreciation for the P.Y. 2020-21 [₹ 8,50,000 * 15%]	1,27,500
Opening W.D.V. as on 1/4/2021	7,22,500

Computation of business income of Mr. X for A.Y. 2021-22

Particulars	Amount
Income before depreciation and without reducing element of agricultural income	8,00,000
Less: Depreciation	1,27,500
	6,72,500
Less: Agricultural Income being 60% of above	4,03,500
Profits and Gains of Business or Profession	2,69,000

QUESTIONs for Practice - SET 'A'

1. M/s. Dollar Ltd., a manufacturing concern, furnishes the following particulars:

	(₹)
(i) Opening Writing Down Value of plant and machinery (15% block)	5,00,000
(ii) Purchase of plant and machinery (put to use before 01.10.2020)	2,00,000
(iii) Sale proceeds of plant and machinery which became obsolete- the plant and machinery was purchased on 01-04-2018 for ₹ 5,00,000.	5,000

Further, out of purchase of plant and machinery:

(a) Plant and machinery of ₹ 20,000 has been installed in office.

(b) Plant and machinery of ₹ 20,000 was used previously for the purpose of business by the seller.

Compute depreciation and additional depreciation as per Income-tax Act, 1961 for the AY 2021-22.

2. M/s Sidhant & Co., a sole proprietary concern is converted into a company, Sidhant Co. Ltd. with effect from November 29, 2020. The written down value of assets as on April 1, 2020 is as follows:

Items	Rate of Depreciation	WDV as on 1st April, 2020
Building	10%	₹ 3,50,000
Furniture	10%	₹ 50,000
Plant and Machinery	15%	₹ 2,00,000

Further, on October 15, 2020, M/s Sidhant & Co. purchased a plant for ₹ 1,00,000 (rate of depreciation 15%). After conversion, the company added another plant worth ₹ 50,000 (rate of depreciation 15%).

Compute the depreciation available to (i) M/s Sidhant & Co. and (ii) Sidhant Co. Ltd. for Assessment Year 2021-22.

3. What are intangible assets? Give four examples. What is the rate of depreciation on a block of intangible assets?

4. Gopichand Industries furnishes you the following information:

	(₹)
Block I WDV of Plant and machinery (consisting of 10 looms)	5,00,000
Rate of depreciation	15%
Acquired on 5-07-2020 – 5 looms for	4,00,000
Sold on 7-12-2020 – 15 looms for	10,00,000
Acquired on 10-01-2021 – 2 looms for	3,00,000
Block II WDV of Buildings (consisting of 3 buildings)	12,50,000
Rate of depreciation	10%

Compute depreciation claim for the Assessment year 2021-22.

5. Honest Industry furnishes you the following details pertaining to the financial year 2020-21:

Description	Plant & Machinery	Building	Intangible Assets (patents)
➤ Rate of depreciation	15%	10%	25%
➤ Opening balance as on 01-04-2020	14,50,000	25,00,000	15,00,000
➤ Acquired before 30-09-2020	12,00,000	Nil	5,00,000
➤ Acquired after 01-12-2020	4,00,000	18,00,000	Nil
➤ Transferred in March 2021, one of the patents held for the past 2 years	-	-	3,00,000

A machinery acquired in July 2020 original cost ₹ 1,50,000 was destroyed by fire and the assessee received compensation of ₹ 50,000 from the insurance company. Newly acquired building given above includes value of land of ₹ 3,00,000.

Calculate the eligible depreciation claim for the assessment year 2021-22. Note: Ignore additional/accelerated depreciation.

6. Determine the tax consequences in following cases for AY 2021-22:

- (a) X Co., an undertaking established in 2006 for generation and distribution of power, has opted for SLM method of depreciation. The written down value of its machinery as on 1.4.2020 was ₹ 5,10,000. The machinery is sold for ₹ 4,60,000 on 1.5.2020.
- (b) A Co. a power-generating unit (opted for SLM) has purchased machinery on 1-5-2020 for ₹ 5,10,000 which is destroyed by fire on 15-09-2020 and an insurance claim of ₹ 3,00,000 is received on 31-1-2021.
- (c) X Co., an undertaking established in 2008 for generation of power, has opted for SLM method of depreciation. The company had purchased machinery for ₹ 4,50,000. The written down value of its machinery as on 1.4.2020 is ₹ 3,00,000. The machinery is sold for ₹ 4,60,000 on 1-10-2020.

7. An industrial undertaking which commenced the manufacturing activity with effect from 1st September, 2020 has acquired the following assets during the previous year 2020-21:

Assets	Date of acquisition	Date when put to use	Cost of acquisition (₹)
Factory buildings	04.04.2020	01.09.2020	50,00,000
Plant and Machinery:			
Air pollution control equipment	04.05.2020	01.09.2020	400,000
Machinery A	05.05.2020	01.09.2020	200,000
Machinery B	07.06.2020	01.09.2020	500,000
Machinery C	30.08.2020	01.09.2020	10,00,000
Machinery D	01.09.2020	31.10.2020	400,000
Machinery E	01.01.2021	28.02.2021	300,000
Machinery F (second hand)	11.01.2021	13.01.2021	200,000
Motor car	01.07.2020	01.02.2021	500,000
Air conditioner (installed in the office)	01.02.2021	02.02.2021	100,000

Compute depreciation allowable for AY 2021-22 and the WDV as on 1-4-2021.

8. X starts a new business on April 10, 2020 and he purchases the following assets.

	Cost (₹ in lakh)
Building A - Office building	60.70
Building B - Residential building for manager	40.10
Building C - Factory building	70.40
Plant and machinery A - Office computer	1.20
Plant and machinery B - Fax machine	0.60
Plant and machinery C - Cars	6.10
Plant and machinery D - Air pollution control equipment	2.40
Plant and machinery E - PABX telephone system	1.10
Plant and machinery F - Air-conditioners	6.80
Plant and machinery G - Scooters for employees	1.90
Furniture - Office furniture	2.85
Furniture - Furniture for welfare centre of employees	4.10
Know-how - Know-how to manufacture goods	18.70

Categorise these asset in different blocks of assets.

9. Singhania & Co. own six machines, put in use for business in March, 2020. The depreciation on these machines is charged @ 15%. The written down value of these machines as on 1st April, 2020 was ₹ 8,50,000. Three of the old machines were sold on 10th June, 2020 for ₹ 11,00,000. A new plant was bought for ₹ 8,50,000 on 30th November, 2020.

You are required to:

- (a) determine the claim of depreciation for Assessment Year 2021-22.
- (b) compute the capital gains liable to tax for Assessment Year 2021-22.
- (c) If Singhania & Co. had sold the three machines in June, 2020 for ₹ 21,00,000, will there be any difference in your above workings? Explain.

10. The written down value of the block of assets of Rosy Ltd. as on 1st April, 2020 was ₹ 5 lakh. An asset of the same block was acquired on 11th May, 2020 for ₹ 3 lakh. There was a fire on 18th September, 2020 and the assets were destroyed by fire and the assessee received a sum of ₹ 11 lakh from the insurance company.

Compute the capital gain assuming

- (a) All the assets were destroyed by fire; and
 (b) Part of the block of assets was destroyed by fire.

What will be the answer if assessee received ₹ 6 lakh from insurance company instead of ₹ 11 lakhs? Ignore Additional Depreciation!

11. X owns the following assets on April 1, 2020 (rate of depreciation: 15 per cent)

Assets	Written down value on April 1, 2020 ₹	Date of acquisition
Plant A	3,00,000	April 1, 1976
Plant B	2,00,000	May 10, 1975
Plant C	5,00,000	March 13, 1988

During the previous year 2020-21, the following plants are purchased/sold by X:

Assets	Rate of Depreciation	Date of purchase/sale	Selling price ₹	Cost price ₹	Date when the asset is put to use
Plant D (office air conditioner)	15%	March 10, 2021		4,08,000	March 30, 2021
Plant E (old)	15%	March 1, 2021		20,000	March 31, 2021
Plant A	15%	April 1, 2020	6,00,000		
Building A	10%	June 10, 2020		2,00,000	July 5, 2020
Plant C	15%	May 10, 2020	12,50,000		-
Plant F (second-hand)	40%	June 10, 2020		15,00,000	December 31, 2020

Determine the amount of depreciation and capital gain/loss for the assessment year 2021-22 (expenditure incurred on sale of plants A and C is ₹ 10,000). Assume that additional depreciation is not available.

SOLUTION – SET A

1. Computation of written down value of Plant and Machinery of M/s. Dollar Ltd. for the A.Y. 2021-22

Particulars	₹
Opening written down value (as on 01.04.2020)	5,00,000
Add: Purchase of plant and machinery during the previous year	2,00,000
	7,00,000
Less: Sale proceeds of obsolete plant and machinery sold during the year	5,000
Closing Written Down Value (as on 31.03.2021)	6,95,000

Computation of Depreciation and Additional Depreciation for A.Y. 2021-22 as per section 32 of the Income-tax Act, 1961

Particulars	₹
Normal Depreciation (₹ 6,95,000 x 15%)	1,04,250
Additional Depreciation (Refer Note 2) (₹ 2,00,000 – ₹ 20,000 – ₹ 20,000) x 20%	32,000
Depreciation on Plant and Machinery	1,36,250

Notes:-

- (1) Since the new plant and machinery was purchased and put to use before 1.10.2020, it was put to use for more than 180 days in the year. Hence, full depreciation is allowable for A.Y. 2021-22.
- (2) As per section 32(1)(ia), additional depreciation is allowable in the case of any new machinery or plant acquired by an assessee engaged, inter alia, in the business of manufacture or production of any article or thing, at the rate of 20% of the actual cost of such machinery or plant.

However, additional depreciation shall not be allowed in respect of, inter alia, –

- (i) any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;
- (ii) any machinery or plant installed in office premises, residential accommodation or in any guest house.

In view of the above provisions, additional depreciation cannot be claimed in respect of -

- (i) Plant and machinery of ₹ 20,000 used previously for the purpose of business by the seller.
- (ii) Plant and machinery of ₹ 20,000, installed in office.

Therefore, in the given case additional depreciation has to be provided only on ₹ 1,60,000 (i.e., ₹ 2,00,000 - ₹ 40,000).

2. In the case of conversion of sole proprietary concern into a company as per section 47(xiv), the depreciation should be first calculated for the whole year assuming that no succession had taken place. Thereafter, the depreciation should be apportioned between the sole proprietary concern and the company in the ratio of the number of days for which the assets were used by them. It is assumed that in this case, the conditions specified in section 47(xiv) are satisfied.

Computation of depreciation allowable to Sidhant & Co. for A.Y. 2021-22

Particulars	₹	₹
Building		
WDV as on 1.4.2020	3,50,000	
Depreciation @ 10%		35,000
Furniture	50,000	
WDV as on 1.4.2020		5,000
Depreciation @ 10%		
Plant and Machinery		
WDV as on 1.4.2020	2,00,000	
Add: Additions during the year (purchased on 15.10.2020)	1,00,000	
	3,00,000	
Depreciation for the year (15% of ₹ 2,00,000 + 50% of 15% of ₹ 1,00,000) (₹ 30,000 + ₹ 7,500)		37,500
(Depreciation on new machinery is restricted to 50% of eligible)		

depreciation, since the asset is put to use for less than 180 days in that year)		
Total depreciation for the year		77,500
Proportionate depreciation allowable to Sidhant & Co. for 242 days On existing assets (i.e. 1.4.2020 to 28.11.2020) (i.e. $242/365 \times ₹ 70,000$)	46,411	
On new machine for 45 days i.e., $45/168 \times ₹ 7,500$	2,009	48,420

Computation of depreciation allowable to Sidhant Co. Ltd. for A.Y. 2021-22

Particulars	₹
(i) Depreciation on the assets on conversion Proportionately for 123 days i.e. after conversion period $(123/365 \times ₹ 70,000) + (123/168 \times ₹ 7,500) = ₹ 23,589 + ₹ 5,491$	29,080
(ii) Depreciation @ 50% of normal rate of 15% on ₹ 50,000, being the value of plant purchased after conversion, which was put to use for less than 180 days	3,750
Depreciation allowable to Sidhant Co. Ltd.	32,830

Note: Since it has not been specifically mentioned that M/s Sidhant & Co. and Sidhant Co. Ltd. are manufacturing concerns or companies engaged in the business of generation or generation and distribution of power, additional depreciation is not provided for.

3. Intangible assets are assets which are not corporeal i.e., not capable of being touched. Such assets are represented by rights of the persons through them. According Section 32(1), the following are intangible assets :

- (i) Know-how
 - (ii) Patents
 - (iii) Copyrights
 - (iv) Trade Marks
 - (v) Licences
 - (vi) Franchises
 - (vii) Any other business or commercial rights of similar nature.
- They are to be depreciated at the rate of 25%.

4.

Computation of depreciation for Gopichand Industries for A.Y. 2021-22

Particulars	₹	₹
Block I: Plant & machinery (Rate of depreciation – 15%)		
WDV as on 1st April (10 looms)	5,00,000	
Add: Additions during the year		
- 5 looms acquired on 5th July	4,00,000	
- 2 looms acquired on 10th January	<u>3,00,000</u>	
	12,00,000	
Less : Assets sold during the year		
- 15 looms sold on 7th December	<u>10,00,000</u>	
W.D.V. as on 31st March (2 looms)	2,00,000	
Depreciation on ₹ 2 lakhs @ 15% (limited to 50%)		15,000
Block II: Buildings (Rate of depreciation – 10%)	12,50,000	
WDV as on 1st April (3 buildings)		1,25,000
Depreciation on ₹ 12,50,000 @ 10%		
Total depreciation for the year		1,40,000

Notes:

- (i) Closing balance of Block I: Plant and machinery represents the looms acquired on 10th January. These looms have been put to use or less than 180 days during the previous year, and therefore, only 50% of normal depreciation is permissible.
- (ii) No additional depreciation @ 20% of the cost of new plant and machinery is provided for **assuming that all conditions contained in the section 32(1)(ia) have not been fulfilled [Students may choose to claim AD]**

5.

Computation of depreciation allowable to Honest Industry for the A.Y. 2021-22

Particulars	Plant & Machinery	Building	Intangible assets (patents)	Total (₹)
Rate of depreciation	15%	10%	25%	
Opening Balance as on 1.04.2020	14,50,000	25,00,000	15,00,000	
Add: Assets acquired during the year	16,00,000	15,00,000	5,00,000	
	30,50,000	40,00,000	20,00,000	
Less: Moneys payable in respect of asset sold or destroyed	50,000	-	3,00,000	
W.D.V as on 31.03.2021	30,00,000	40,00,000	17,00,000	
Asset held for less than 180 days	4,00,000	15,00,000	-	
Depreciation@50% of applicable rate	30,000	75,000	-	1,05,000
Asset held for more than 180 days	26,00,000	25,00,000	17,00,000	
Depreciation at the applicable rates	3,90,000	2,50,000	4,25,000	10,65,000
Total Depreciation allowable				11,70,000

Note - Land is not a depreciable asset. Therefore, ₹ 3 lacs, being the value of land, has been reduced from ₹ 18 lacs, being the value of building acquired during the year, for the purpose of computing depreciation.

6. **The tax consequences in aforesaid cases shall be as follows -**

- (a) In this case, moneys payable is less than written down value of the asset. So, deduction for terminal depreciation shall be allowed. Terminal Depreciation u/s 32(1)(iii) = 5,10,000 - 4,60,000 = ₹ 50,000.
- (b) In this case, machine is destroyed in the same previous year in which it is first brought into use. So, no terminal depreciation will be allowed. The deficiency of ₹ 2,10,000 [₹ 5,10,000 - ₹ 3,00,000] shall be treated as Short-Term Capital Loss
- (c) In this case moneys payable exceed actual cost.
So, Balancing Charge u/s 41(2) = [(Lower of 4,50,000 or 4,60,000) - 3,00,000] = ₹ 1,50,000; and Capital Gains = 4,60,000 - 4,50,000 = ₹ 10,000 ignoring indexation.

7. **Computation of the depreciation allowable for the Assessment Year 2021-22 and the written down value as on 1st April, 2021-**

Nature of Asset	Actual Cost	Rate of dep.	Normal Depreciation	Additional Depreciation	WDV as on 1-4-2021
Factory buildings	50,00,000	10%	500,000	0	4500000
Plant & machinery:					
Air pollution control equipment	400,000	40%	160,000	80,000	160,000
Machinery A, B & C	17,00,000	15%	255,000	340,000	1105000
Machinery D & E (used for less than 180 days)	700,000	15%	52,500	70,000	577500
Machinery F, motor car & AC (used for less than 180 days)	800,000	15%	60,000	Not Eligible	740000

8.

Block 1- Building (rate of depreciation: 5%)

Building B- Residential building 40.10

Block 2- Building (rate of depreciation: 10%)

Building A- Office building 60.70

Building C- Factory building 70.40

Total **131.10**

Block 3- Plant and machinery (rate of depreciation 15%)

Plant B- Fax machine 0.60

Plant E- PBAX telephone 1.10

Plant F- Air-conditioner 6.80

Plant G- Scooters 1.90

Plant C- Cars 6.10

Total **16.50**

Depreciation**SATC****10B.4****Block 4- Plant and machinery (rate of depreciation 40%)**

Plant A- Office Computer	1.20
Plant D- Air Pollution control equipment	2.40

Block 5- Furniture (rate of depreciation: 10%)

Office furniture	2.85
Furniture for welfare centre	4.10
Total	6.95

Block 6- Know-how (rate of depreciation: 25%)

Know-how to manufacture goods	18.70
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9.

(i) Computation of depreciation for A.Y. 2021-22

Particulars	₹
W.D.V. of the block as on 1.4.2020	8,50,000
Add: Purchase of new plant during the year	<u>8,50,000</u>
	17,00,000
Less: Sale consideration of old machinery during the year	
W.D.V of the block as on 31.03.2021	<u>11,00,000</u>
	6,00,000

Since the value of the block as on 31.3.2021 comprises of a new asset which has been put to use for less than 180 days, depreciation is restricted to 50% of the prescribed percentage of 15% i.e. depreciation is restricted to 7½%. Therefore, the depreciation allowable for the year is ₹ 45,000, being 7½% of ₹ 6,00,000.

Note: It is assumed that the firm is not eligible for additional depreciation under section 32(1)(iia).

- (ii) The provisions under section 50 for computation of capital gains in the case of depreciable assets can be invoked only under the following circumstances:
- When one or some of the assets in the block are sold for consideration more than the value of the block.
 - When all the assets are transferred for a consideration more than the value of the block.
 - When all the assets are transferred for a consideration less than the value of the block.

Since in the first two cases, the sale consideration is more than the written down value of the block, the computation would result in short term capital gains.

In the third case, since the written down value exceeds the sale consideration, the resultant figure would be a short term capital loss.

In the given case, capital gains will not arise as the block of asset continues to exist, and some of the assets are sold for a price which is lesser than the written down value of the block.

- (iii) If the three machines are sold in June, 2020 for ₹ 21,00,000, then short term capital gains would arise, since the sale consideration is more than the aggregate of the written down value of the block at the beginning of the year and the additions made during the year.

Particulars	₹	₹
Sale consideration		21,00,000
Less:		
W.D.V. of the machines as on 1.4.2020	8,50,000	
Purchase of new plant during the year	8,50,000	17,00,000
Short term capital gains		4,00,000

10.**(1) Compensation received is ₹ 11 lakh: Computation of Capital gains**

Written down value of the block on 1/4/20	5,00,000
Add: Asset acquired during the year	<u>3,00,000</u>
	8,00,000
Less: Sum received from the insurance company - ₹ 11 Lakh Maximum	<u>8,00,000</u>
WDV for Depreciation	NIL

Note : In case (i) and (ii), both, i.e. whether the block is fully destroyed or partly destroyed by fire, there will be STCG of ₹ 3,00,000, since the sum received is more than the WDV of the block.

If compensation received is ₹ 6 lakh:

- (i) **If the block is fully destroyed:** The difference between WDV of ₹ 8 lakh and insurance money of ₹ 6 lakh will be short-term capital loss.
- (ii) **If the block is partly destroyed:** There will be no capital gains. Since the block and WDV both exist therefore, the balance WDV of ₹ 2 lakh will be eligible for depreciation.

11.**First block: Plant (rate of depreciation: 15%)**

Depreciated value of the block on April 1, 2020 (₹ 3,00,000 + ₹ 2,00,000 + ₹ 5,00,000)	10,00,000	₹
Add : Cost of plant (falling in this block) acquired during the previous year 2020-21 (i.e., Plant D : ₹ 4,08,000 + Plant E : ₹ 20,000)	4,28,000	
	<u>14,28,000</u>	
Less : Sale consideration of plants A and C sold during the previous year 2020-21 (i.e., ₹ 6,00,000 + ₹ 12,50,000 ; subject to a maximum of ₹ 14,28,000)	14,28,000	

Written down value	Nil
Depreciation on first block	Nil

Capital gain on sale of plants A and C

Sale consideration	18,50,000
Less : Cost of acquisition	₹
• Depreciated value of the block on April 1, 2020	10,00,000
• Cost of assets falling in the block acquired during the previous year	4,28,000
• Expenses on transfer	10,000
	<u>14,38,000</u>
Short-term capital gain	412,000

Depreciation on other assets will be determined as under :

	Second block	Third block
Name of assets	Plant	Building
Rate of depreciation	40%	10%
	₹	₹
	Nil	Nil
Add : Cost of assets purchased during 2020-21	15,00,000	2,00,000
Less : Sale consideration of assets transferred during the year	—	—
Written down value	<u>15,00,000</u>	<u>2,00,000</u>
Depreciation (*50% of 40% of ₹ 15,00,000, as Plant F is purchased during the previous year and put to use for less than 180 days]	3,00,000	20,000

INCOME UNDER THE HEAD "PGBP"

[Chapter IV-D | SECTION 28 to 44DB]

FROM 18th EDITION – Assessment Year 2021-22

CMA INTER STUDENTS

(EXAM IN JUNE 2021 & DEC 2021)

The tax payable by an assessee on his income under this head is in respect of the profits and gains of any business or profession, carried on by him or on his behalf during the previous year.

MEANING OF 'BUSINESS' AND 'PROFESSION'

Business	Profession
The term "business" has been defined in section 2(13) to "include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture".	The term "profession" has not been defined in the Act. It means an occupation requiring some degree of learning. The term 'profession' includes vocation as well [Section 2(36)]

Thus, a painter, a sculptor, an author, an auditor, a lawyer, a doctor, an architect and even an astrologer are persons **who can be said to be carrying on a profession** but not business.

However, it is not material whether a person is carrying on a 'business' or 'profession' or 'vocation' since for purposes of assessment, **profits from all these sources** are treated and taxed alike.

Business necessarily means a continuous exercise of an activity; nevertheless, profit from a **single venture in the nature of trade** may also be treated as business.

COMPUTATION OF INCOME FROM BUSINESS [SECTION 29]

Income under the head PGBP (referred to in Section 28) shall be computed in accordance with provisions contained in **Sec. 30 to 43D**

Sample Format

Net profit as per Profit & Loss Account	xxx
Add: Non-allowable expenses debited to Profit & Loss Account (P&L)	xxx
Add: Expenses allowable under any other head or Capital Exp./Personal Exp.	xxx
Add: Income chargeable under this head but not credited to P/L	xxx
Less: Expenses allowable under this head but not debited to P&L	xxx
Less: Income credited to P & L A/c but not chargeable under this head	xxx
Profits & Gains from Business or Profession	xxx

Section 28 – CHARGING SECTION**INCOME CHARGEABLE UNDER THIS HEAD**

The various items of income chargeable to tax as income under the head 'profits and gains of business or profession' are as under:

1. Income from business or profession

Income arising to any person by way of profits and gains from the business or profession carried on by him at any time during the previous year.

2. Any compensation or other payment due to or received by:

- a. any person, by whatever name called, managing the whole or substantially the whole of-
 - i. the affairs of an Indian company or
 - ii. the affairs in India of any other companyat or in connection with the **termination of his management or office or the modification** of any of the terms and conditions relating thereto;
- b. any person, by whatever name called, **holding an agency in India** for any part of the activities relating to the business of any other person, at or **in connection with the termination of the agency or the modification** of any of the terms and conditions relating thereto;
- c. any person, for or in connection with the **vesting in the Government** or in any corporation owned or controlled by the Government under any law for the time being in force, **of the management of any property or business;**
- d. any person, by whatever name called, **at or in connection with the termination or modification** of the terms and conditions, of any contract relating to his business.

3. INCOME OF TRADE OR PROFESSIONAL ASSOCIATION

Income derived by **any trade, professional or similar associations** from specific services rendered by them ***to their members***.

4. EXPORT INCENTIVES: In case of an assessee engaged in the business of export/import:

- Profits on sale of an **Import Entitlement licence** granted
- **Cash assistance** received or receivable by any person against exports under any scheme of the Government of India
- Any **Customs duty or Excise duty drawback repaid or repayable** against export
- **Profit on transfer of Duty Entitlement Pass Book Scheme or Duty Free Replenishment Certificate**

5. GIFTS OR PERQUISITES FROM CLIENTS

The value of any benefit or perquisite whether convertible into money or not, arising from business or the exercise of any profession

6. PAYMENTS RECEIVED BY A PARTNER FROM A PARTNERSHIP FIRM

Any interest, salary, bonus, commission or remuneration, by whatever name called, due to or received by a partner of a firm from such firm.

However, where any interest, salary, bonus, commission or remuneration by whatever name called, or any part thereof **has not been allowed to be deducted under section 40(b)**, in the computation of the income of the firm, the income to be taxed shall be adjusted to the extent of the amount disallowed.

7. SUMS RECEIVED UNDER A KEYMAN INSURANCE POLICY

Any sum received by employer under a Keyman insurance policy including the sum allocated by way of bonus on such policy.

8. Conversion of Stock in Trade into Capital Asset [Also refer CG Notes]

Fair market value of inventory on the date of its conversion or treatment as capital asset, determined in the prescribed manner, would be chargeable to tax as business income.

9. Sum received on account of capital asset referred under section 35AD

*Any sum received or receivable, in cash or kind, **on account of any capital asset (other than land or goodwill or financial instrument)** being demolished, destroyed, discarded or transferred if the whole of the expenditure on such capital asset has been allowed as a deduction under Section 35AD.*

10. Any sum whether received or receivable, in cash or kind, under an agreement


- a) for not carrying out any activity in relation to any Business **or Profession**; or
- b) not to share any know-how, patent, copyright, trade mark, license, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services.

However, the above sub-clause (a) shall not apply to any sum receivable on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business **or Profession**, which is **chargeable under the head “Capital gains”**;

SPECULATION BUSINESS including Speculative Transactions

Refer ‘Setoff of loss’ Chapter

Expenditures allowed on Cash Basis [SECTION 43B]

Deduction in respect of following expenses are allowed **only if payment is made on or before the due date for furnishing return of income u/s 139(1) of the previous year in which such liability is incurred [i.e. before 31st July / 31st October / 30th Nov]**: 

- a) Any **sum payable by way of Tax, Duty, Cess or Fee**, by whatever name called, under any law for the time being in force.
- b) **Interest on** any loan or advances **from a scheduled bank or a cooperative bank** on actual payment basis.
- c) Any sum payable by the assessee as **interest on any loan or borrowing** from
 - any public financial institution or
 - a State Financial Corporation or
 - a State Industrial Investment Corporation.
- d) **Any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing,**
***[Meaning of systemically important non-deposit taking non-banking financial Company-
A non-banking financial company which is not accepting or holding public deposits and having total assets of not less than ₹ 500 crore as per the last audited balance sheet and is registered with the RBI under the provisions of the Reserve Bank of India Act, 1934.]***
- e) **Bonus or Commission** (for services rendered) **payable to employees.**
- f) **Leave encashment payable to employees.**
- g) Any sum payable by the **assessee as an employer** by way of **contribution to any Provident Fund or Superannuation Fund or Gratuity Fund or any other fund for the welfare of employees.**
- h) **Any sum payable to the Indian Railways for the use of railway assets**

Note:

1. If the payment is not made before the date mentioned above, then no allowance shall be allowed in respect of the outstanding liability. ***Deduction can, however, be claimed in the year of payment.***
2. Section 43B is applicable only if the assessee is following mercantile system of accounting.
3. **The above provisions are applicable on Employers contribution to PF, ESI etc and not employee contributions recovered by the employer which is being paid subsequently as per respective Acts.**
4. **Cooperative banks excludes Primary Agriculture Credit Society or a primary co-operative agriculture & rural development Bank**
5. **No deduction for interest converted into loan/advance:** Any interest falling under (b), (c) & (d), which has been converted into a loan or borrowing or advance, ***shall not be regarded as "actually paid" and shall not be allowed as deductions.***

Example:

Debit side of the profit and loss account of Mayank Ltd. shows the following expenses, which have been due but are outstanding as on 31-3-2021

Payment outstanding on 31-3-2021		First payment		Second payment	
Particulars	Amount	Date	Amount paid	Date	Amount paid
Leave encashment expenses	65000	1-6-2021	15000	25-12-2021	50000
Excise duty payable	14000	10-6-2021	3000	13-12-2021	11000
Sales tax payable	48000	5-10-2021	48000	-	-
Bonus payable to employees	87000	2-5-2021	30000	31-10-2021	57000
Interest payable to LIC loan	75000	13-5-2021	50000	10-01-2022	25000

Due date for filing of return of income is 31-10-2021

Find out the previous years in which the aforesaid payments are deductible. The company maintains books of accounts on the basis of mercantile system of accounting.

Solution:

As per provision of sec. 43B following payment if made before due date of filing of return (i.e. 31/10/2021) then only it shall be allowed.

Particulars	Amount paid	Deduction allowed in the previous year	
		2020-21	2021-22
Leave encashment expense	65,000	15,000	50,000
Excise duty payable	14,000	3,000	11,000
Sales tax payable	48,000	48,000	-
Bonus payable to employees	87,000	87,000	-
Interest payable to LIC loan	75,000	50,000	25,000

Example:

An analysis of the profit and Loss Account and the Balance Sheet of Kapil as at March 31, 2021 reveals that the following expenses which were due, were though debited to Profit and Loss account, but have been paid after 31-3-2021:

- Sales tax ₹ 50000 (₹ 20000 paid on 14-10-2021; and ₹ 30000 paid on 15-12-2021)
- Excise duty ₹ 120000 (₹ 40000 paid on 14-10-2021; ₹ 40000 paid on 15-12-2021; and ₹ 40000 paid on 24-12-2021)
- Bonus to staff ₹ 60000 (₹ 58000 paid on 10-10-2021; and ₹ 2000 paid on 15-12-2021)
- Employers contribution to provident fund ₹ 55,000 (₹ 25000 paid on 15-7-2021; ₹ 10000 paid on 30-10-2021; and ₹ 20000 paid on 15-12-2021)

The due date for filing of return is 31-10-2021. In which previous years can the above payments be claimed as a deduction?

Solution

As per Sec. 43B certain expenditure (like sales tax, excise duty, bonus to staff, etc.) are not allowed if payment is not made before the due date of furnishing return of income. Deduction can, however, be claimed in the year of payment.

Statement showing previous year in which deduction can be claimed.

Particulars	Amount	Previous year in which deduction can be claimed
<u>Sales tax</u>		
• Paid on 14-10-2021	20000	2020-21
• Paid on 15-12-2021	30000	2021-22
<u>Excise duty</u>		
• Paid on 14-10-2021	40000	2020-21
• Paid on 15-12-2021	40000	2021-22
• Paid on 24-12-2021	40000	2021-22
<u>Bonus to staff</u>		
• Paid on 10-10-2021	58000	2020-21
• Paid on 15-12-2021	2000	2021-22
<u>Employers contribution to provident fund</u>		
• Paid on 15-07-2021	25000	2020-21
• Paid on 30-10-2021	10000	2020-21
• Paid on 15-12-2021	20000	2021-22

Cash payments in excess of ₹ 10,000 / ₹ 35,000 – Section 40A(3) & 40A(3A) read with Rule 6DD

- 1) Where the assessee incurs any expenditure, in respect of which **payment or aggregate of payments made to a person in a day** otherwise than by **an account payee cheque or by an account payee bank draft** or use of electronic system through bank account **or through such other prescribed electronic modes** exceeds ₹ 10,000, **such expenditure [100%] shall not be allowed as a deduction.** [Section 40A(3)]

The prescribed electronic modes are credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2020 dated 29.01.2020]. ★

- 2) Further, In case of an assessee following mercantile system of accounting, **if an expenditure has been allowed as deduction in any previous year on due basis**, and payment has been made in a subsequent year otherwise than by account payee cheque or account payee bank draft or use of electronic system through bank account **or through such other prescribed electronic modes**, then the payment so made **shall be deemed to be the income of the subsequent year if such payment or aggregate of payments made to a person in a day exceeds ₹ 10,000.**Section 40A(3A)
- 3) This limit of ₹ 10,000 has been raised to ₹ 35,000 in case of **payment made to transport operators for plying, hiring or leasing goods carriages.**
- 4) Section 40A(3) & Section 40A(3A) is applicable only for computing income under PGBP and IOS.
- 5) The provisions regarding payments by account payee cheque or draft apply equally to payments made for goods purchased on credit.
- 6) If **aggregate payment in a day** (otherwise than by an account payee cheque/draft) to the same person in respect of an expenditure exceeds ₹ 10,000, it will be disallowed under section 40A(3), even if none of each payment in the day exceeds ₹ 10,000.
- 7) If an assessee makes payment of **two different bills** (none of them exceeds ₹ 10,000) at the same time in cash or by bearer cheque, section 40A(3) is not applicable even if the aggregate payment is more than ₹ 10,000. **In other words unless the amount of the bill and the amount of payment exceed ₹ 10,000, section 40A(3) is not applicable.**
- 8) Where the assessee makes payment over ₹ 10,000 at a time, partly by an account payee cheque **and partly in cash or bearer cheque or crossed cheque to some parties** but the payment in cash (or by bearer cheque or crossed cheque) alone at one time does not exceed ₹ 10,000, section 40A(3) is not attracted.
- 9) Provision of section 40A(3) does not apply in respect of an expenditure which is not to be claimed as deduction u/s 30 to 37.

10) **Amended Rule 6DD**

“Cases and circumstances in which a payment or aggregate of payments **exceeding ten thousand rupees may be made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed in rule 6ABBA”**

No disallowance under sub-section (3) of section 40A shall be made and no payment shall be deemed to be the profits and gains of business or profession under sub-section (3A) of section 40A where 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 account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as prescribed under rule 6ABBA, **exceeds ten thousand rupees**, in the cases and circumstances specified hereunder, namely :—

- (a) where the payment is made to—
- (i) the Reserve Bank of India or any banking company;
 - (ii) the State Bank of India;
 - (iii) any co-operative bank or land mortgage bank;
 - (iv) any primary agricultural credit society or any primary credit society;
 - (v) the Life Insurance Corporation of India;
- (b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;
- (c) where the payment is made by—
- i. any letter of credit arrangements through a bank;
 - ii. a mail or telegraphic transfer through a bank
 - iii. a book adjustment from any account in a bank to any other account in that or any other bank
 - iv. a bill of exchange made payable only to a bank
 - ~~v. the use of electronic clearing system through a bank account~~
 - ~~vi. a credit card~~
 - ~~vii. a debit card~~
- (d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;
- (e) where the payment is made for the purchase of—
- (i) agricultural or forest produce; or
 - (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or
 - (iii) fish or fish products; or
 - (iv) the products of horticulture or apiculture,
- to the cultivator, grower or producer of such articles, produce or products;
- (f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
- (g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;

- (h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;
- (i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee—
 - (i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
 - (ii) does not maintain any account in any bank at such place or ship;
- (j) ~~where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike;~~
- (k) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;
- (l) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travellers cheques in the normal course of his business

Cases where disallowances would not be attracted:

1. **Loan transactions:** It does not apply to loan transactions because advancing of loans or repayments of the principal amount of loan does not constitute an expenditure deductible in computing the taxable income.

However, interest payments of amounts exceeding ₹ 10,000 at a time are required to be made by account payee cheques or drafts or electronic clearing system or through such other prescribed electronic modes such as *credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay* as interest is a deductible expenditure.

2. **Payment made by commission agents:** This requirement does not apply to payment made by commission agents for goods received by them for sale on commission or consignment basis because such a payment is not an expenditure deductible in computing the taxable income of the commission agent.

For the same reason, this requirement does not apply to advance payment made by the commission agent to the party concerned against supply of goods.

However, where commission agent **purchases goods on his own account** but not on commission basis, the requirement will apply. The provisions regarding payments by account payee cheque or draft or electronic clearing system or through such other prescribed electronic modes such as *credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay* apply equally to payments made for goods purchased on credit.

Question:

Determine the amount of disallowances in the cases given below-

1. Generally X pays salary to his employees by account payee cheques. Salary of December 2020 is, however, paid to three employees A, B and C by bearer cheques (payment being ₹ 6,000, ₹ 10,000 and ₹ 10,500 respectively).
2. X Ltd. purchases goods on credit from Y Ltd. on May 6, 2020 for ₹ 86,000 which is paid as follows –
 - a) ₹ 5,000 in cash on May 11, 2020;
 - b) ₹ 40,000 by a bearer cheque on May 31, 2020;
 - c) ₹ 41,000 by an account payee cheque on May 16, 2020.
3. Z Ltd. purchases goods on credit from A Ltd. on May 10, 2020 for ₹ 6,000 and on May 30, 2020 for ₹ 5,000. The total payment of ₹ 11,000 is made by a crossed cheque on June 1, 2020.
4. A Ltd. purchases goods on credit from a relative of a director on June 20, 2020 for ₹ 50,000 (market value: ₹ 42,000). The amount is paid in cash on June 25, 2020.
5. B Ltd. purchases raw material on credit from A who holds 20% equity share capital in B Ltd. (the amount of bill being ₹ 36,000, market price being ₹ 9,000). It is paid in cash on July 26, 2020.

Solution:

1. ₹ 10,500, being 100% of salary paid by bearer cheque to C, will be disallowed.
2. Nothing will be disallowed out of the payment of ₹ 5,000 in cash on May 11, 2020, as the payment does not exceed ₹ 10,000. 100% of ₹ 40,000 will be disallowed. Nothing will be disallowed out of ₹ 41,000.
3. Though the amount of payment exceeds ₹ 10,000, nothing shall be disallowed. To attract disallowances, the amount of bill as well as the amount of payment should be more than ₹ 10,000.
4. Out of the payment of ₹ 50,000, ₹ 8,000 (being the excess payment to a relative) shall be disallowed u/s 40A(2). As the payment is made in cash and the remaining amount exceeds ₹ 10,000, 100% of the balance (i.e., ₹ 42,000) shall be disallowed u/s 40A(3).
5. Out of the payment of ₹ 36,000, ₹ 27,000 (being the excess payment to a person holding a substantial interest) shall be disallowed u/s 40A(2). The remaining amount (i.e., ₹ 9,000) does not exceed ₹ 10,000. Nothing shall be disallowed u/s 40A(3) even if the payment is made in cash.

ADMISSABLE DEDUCTIONS**RENT, RATES, REPAIRS AND INSURANCE FOR BUILDINGS [Section 30]**

- **Business Use:** Section 30 allows deduction in respect of the **rent, rates, taxes, repairs and insurance** of buildings used by the assessee for the purpose of his business or profession.

However, where the **premises are used partly for business and partly for other purposes**, only a proportionate part of the expenses attributable to that part of the premises used for purposes of business will be allowed as a deduction.

- **Notional Rent:** Rent paid to proprietor is disallowed **but rent paid by firm to its partner for using his premises is an allowed expenditure**.
- **Current Repairs Vs Capital Repair:** This section allows deductions in respect of expenses incurred on account of **current repairs [Revenue in Nature]** to building in case where (i) the assessee is the owner of the building or (ii) the assessee is a tenant who has undertaken to bear the cost of repairs to the premises.

But if capital Expenditure is incurred on repair:

- **By the owner:** then, it shall be added to the cost of building & Depn. shall be allowed u/s. 32(1)(ii)
- **By the tenant:** then, the depreciation shall be allowed as per Explan. 1 to Section 32(1).
- **Municipal Taxes:** By virtue of section 43B, rates and taxes are deductible on cash basis.

REPAIRS AND INSURANCE OF MACHINERY, PLANT AND FURNITURE [Section 31]

- **Business Use of Asset:** Section 31 allows deduction in respect of the expenses on **current repairs (not being capital expenditure) and insurance** of machinery, plant and furniture used for the purposes of business or profession carried on by the assessee.
- Capital Expenditure incurred on repair shall be added to the cost of plant & machinery or furniture and depreciation shall be allowed under Section 32.
- **Rent payable for use of above assets** is not covered by section 31, but shall be allowed as deduction under section 37(1).
- Replacement of old frames for efficient functioning of machines without breakdowns, is allowable as deduction u/s 37 and not u/s 31 because it is not current repairs, **but accumulated repairs**

ACTUAL COST [SECTION 43(1)]

The expression "actual cost" means the actual cost of the asset to the assessee as reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority.

PURCHASE PRICE	XXX
Add: Interest on loan borrowed for period up to the date of put to use [Sec. 36(1)(iii)]	XXX
Add: Expenses incurred for freight/insurance/loading/Unloading	XXX
Add: Trial Run Expenses, if any	XXX
Less: Amount met by any authority or other person by way of subsidy etc. Section 43(1)	XXX
Less: <i>Adjustment as per explanation 1 to 13 to Sec. 43(1), if applicable</i>	XXX
ACTUAL COST TO BE ADDED IN THE RELEVANT BLOCK OF ASSETS	XXX

Where an assessee incurs any expenditure for acquisition of any asset in respect which a payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account or through such other prescribed electronic mode, exceeds ₹ 10,000, such payment shall be ignored for the purposes of determination of "Actual Cost" of such asset.

Consequently, Depreciation/Additional Depreciation under Section 32 pertaining to such payment is not available. Moreover, such expenditure will not be considered for the purpose of Section 50.

The prescribed electronic modes are credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2020 dated 29.01.2020].

Actual cost in certain special situations [Explanations to section 43(1)]**READING PURPOSE** 

1. **Asset used for business after it ceases to be used for scientific research:** Where an asset is used for the purposes of business after it ceases to be used for scientific research related to that business, the actual cost to the assessee for depreciation purposes shall be the actual cost to the assessee as reduced by any deduction allowed under section 35(1)(iv)(i.e. **NIL**) [Explanation 1].
2. **Inventory converted into capital asset and used for business or profession:** Where inventory is converted or treated as a capital asset and is used for the purpose of business or profession, the fair market value of such inventory as on the date of its conversion into capital asset determined in the prescribed manner, shall be the actual cost of such capital asset to the assessee [Explanation 1A].
3. **Asset is acquired by way of gift or inheritance:** Where an asset is acquired by way of gift or inheritance, its actual cost shall be the actual cost to the previous owner minus depreciation allowable to the assessee as if asset was the only asset in the relevant block of assets [Explanation 2].

Further, any expenditure incurred by the assessee such as expenditure on freight, installation etc. of such asset would also be includible in the actual cost.
4. **Second hand asset:** Where, before the date of its acquisition by the assessee, the asset was at any time used by any other person for the purposes of his business or profession, and the Assessing Officer is satisfied that the main purpose of the transfer of the asset directly or indirectly to the assessee was the reduction of liability of income-tax directly or indirectly to the assessee (by claiming depreciation with reference to an enhanced cost) the actual cost to the assessee shall be taken to be such an amount which the Assessing Officer may, with the previous approval of the Joint Commissioner, determine, having regard to all the circumstances of the case [Explanation 3].
5. **Re-acquisition of asset:** Where any asset which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, is re-acquired by him, the actual cost to the assessee shall be-
 - a. the actual cost when he first acquired the asset minus depreciation allowable to the assessee as if asset was the only asset in the relevant block of assets; or
 - b. the actual price for which the asset is re-acquired by him**whichever is less [Explanation 4].**
6. **Acquisition of asset previously owned by any person to whom such asset is given on lease, hire or otherwise:** Where before the date of acquisition by the assessee say, Mr. A, the assets were at any time used by any other person, say Mr. B, for the purposes of his business or profession and depreciation allowance has been claimed in respect of such assets in the case of Mr. B and such person acquires on lease, hire or otherwise, assets from Mr. A, then, the actual cost of the transferred assets, in the case of Mr. A, shall be the same as the written down value of the said assets at the time of transfer thereof by Mr. B [Explanation 4A]. Here, **Explanation 4A overrides Explanation 3.**

Example:

A person (say "A") owns an asset and uses it for the purposes of his business or profession. A has claimed depreciation in respect of such asset. The said asset is transferred by A to another person (say "B"). A then acquires the same asset back from B on lease, hire or otherwise. B being the new owner will be entitled to depreciation. **In the above situation, the cost of acquisition of the transferred assets in the hands of B shall be the same as the written down value of the said assets at the time of transfer.**

- 7. Building previously the property of the assessee:** Where a building which was previously the property of the assessee is brought into use for the purposes of the business or profession, its actual cost to the assessee shall be the actual cost of the building to the assessee, as reduced by an amount equal to the **depreciation calculated at the rates in force** on that date that would have been allowable had the building been used for the purposes of the business or profession since the date of its acquisition by the assessee [Explanation 5].
- 8. Capitalization of interest paid or payable in connection with acquisition of an asset:** Certain taxpayers have, with a view to obtain more tax benefits and reduce the tax outflow, resorted to the method of capitalising interest paid or payable in connection with acquisition of an asset relatable to the period after such asset is first put to use.

This capitalisation implies inclusion of such interest in the 'Actual Cost' of the asset for the purposes of claiming depreciation, investment allowance etc. under the Income-tax Act, 1961. This was never the legislative intent nor was it in accordance with recognised accounting practices. Therefore, with a view to counter-acting tax avoidance through this method and placing the matter beyond doubt, Explanation 8 to section 43(1) provides that any amount paid or payable as interest in connection with the acquisition of an asset and relatable to period after asset is first put to use **shall not be included** and shall be deemed to have never been included in the actual cost of the asset [Explanation 8].

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

However, where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee [Explanation 10].

- 10. Asset is acquired outside India by an assessee, being a non-resident and such asset is brought by him to India:** Where an asset is acquired outside India by an assessee, being a non-resident and such asset is brought by him to India and used for the purposes of his business or profession, **the actual cost of asset to the assessee shall be the actual cost the asset to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date of its acquisition by the assessee** [Explanation 11].
- 11. Capital asset on which deduction is allowable under section 35AD:** Explanation 13 to section 43(1) provides that the actual cost of any capital asset, on which deduction has been allowed or is allowable to the **assessee (or previous owner in case of gift, death, amalgamation etc)** under section 35AD, **shall be nil**.

However, where an asset, in respect of which deduction is claimed and allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of section 35AD(7B) (on account of asset, being used for a purpose other than specified business under section 35AD), the actual cost of the asset to the assessee shall be actual cost to assessee **as reduced** by the amount of depreciation allowable had the asset been used for the purpose of business, calculated at the rate in force, since the date of its acquisition.

[Proviso to Explanation 13 to section 43(1)].

Example: Compute the amount of depreciation allowable in the following cases - Dr. Jolly purchased a house property on 1-12-2018 for ₹ 10,00,000. Till 1-6-2020, the same was self-occupied as a residence. On this date, the building was brought into use for his medical profession. Rate of depreciation on buildings at the time of purchase of house property was 15 %.

Solution: Explanation 5 to section 43(1) provides mode of computation of actual cost when a building initially used for personal purposes is brought into business use. The rate of depreciation to be applied is the rate in force in the year in which building is brought into business use i.e. 10%.

Computation of the amount of depreciation allowable (amounts in ₹)

WDV as on 31.3.2019	10,00,000
Less: Depreciation @ (10% x 50%) of ₹ 10,00,000 (use for less than 180 days)	<u>50,000</u>
WDV as on 1.04.2019	9,50,000
Less: Depreciation (10% of ₹ 9,50,000)	<u>95,000</u>
WDV as on 1.4.2020 (Actual cost of building)	855,000
Depreciation for the current year (10% of ₹ 8,55,000)	85,500

Example: A Car purchased by S on 10.08.2015 for ₹ 3,25,000 for personal use is brought into the business of the assessee on 1.12.2020, when its market value is ₹ 1,50,000. Compute the actual cost of the car and the amount of depreciation for the AY 2021-22 assuming the rate of depreciation to be 15%.

Answer: Computation of actual cost and depreciation [for the AY 2021-22]

Actual cost as on 1.12.2020 (in the business) (see note)	3,25,000
Less: Depreciation [as the asset is acquired and put to use in the business for less than 180 days, 50% of the normal depreciation is allowable] 50% x [15% x ₹ 3,25,000]	<u>24,375</u>
WDV as on 31.3.2021 (after Depreciation)	<u>3,00,625</u>

Note: In this case, car was purchased for personal use on 10.8.2015 for ₹ 3,25,000 and subsequently brought into the business of the assessee on 1.12.2020. The 'actual cost' of car is ₹ 3,25,000.

TREATMENT OF EXCHANGE RATE FLUCTUATIONS IN CASE OF PURCHASE OF AN ASSET FROM OUTSIDE INDIA [SECTION 43A]

- The assessee has acquired any capital asset from abroad on credit or on deferred payment or from money representing in foreign currency
- subsequently, after the date of acquisition, there is a change in **increase or reduction in the liability at the time of making the payment** towards the cost of the asset or repayment of money borrowed in any foreign currency along with interest due to foreign exchange rate fluctuation
- Such increase or reduction shall be added to or reduced from the cost of the assets.

[Refer Class notes for example]

Example:

Narang Textiles Ltd. purchased a machinery from Germany for Euro 1,00,000 on 03-09-2019 through a term loan from Fortune Bank Ltd. The exchange rate on the date of acquisition was Rs 65. The assessee took a forward exchange rate on 05-10-2020 when the rate specified in the contract was Rs 67 per Euro. Compute depreciation for the assessment years 2020-21 and 2021-22. Ignore additional depreciation.

Solution:**Computation of Depreciation**

Particulars	Amount
Opening W.D.V. as on 1/4/2019	Nil
Add: Assets purchased during the year [Euro 1,00,000 * 65]	65,00,000
	65,00,000
Less: Depreciation for the P.Y. 2019-20 [Rs 65,00,000 * 15%]	9,75,000
Opening W.D.V. as on 1/4/2020	55,25,000
Add: Difference in Conversion rate [Euro 1,00,000 * 2]	2,00,000
	57,25,000
Less: Depreciation for the P.Y. 2020-21 [Rs 57,25,000 * 15%]	8,58,750
Opening W.D.V. as on 1/4/2021	48,66,250

DEDUCTION IN RELATION TO TEA/COFFEE/RUBBER DEVELOPMENT ACCOUNT [Section 33AB] / SITE RESTORATION FUND [Section 33ABA]

<u>Particulars</u>	Tea, Coffee & Rubber Development A/c [Section 33AB]	Site Restoration Fund [Section 33ABA]
Business	Growing & Manufacturing Tea or Coffee or Rubber in India	Prospecting for or extraction/production of petroleum or natural gas or both in India as per agreement with CG
A/c in which amounts to be deposited	(i) Special Account with NABARD; or (ii) Deposit account (framed as per scheme of Board)	(i) Special account opened with SBI; or (ii) Site Restoration Account, opened in accordance with relevant scheme
Time Limit for Deposit	Before the <u>expiry of six months</u> from the end of the previous year or <u>before the due date of furnishing ROI</u> , whichever is earlier	Before the end of the Previous Year
Amount of Deduction	Lower of the following: (i) Amount Deposited or, (ii) 40% of the profits of such business before deduction u/s 33AB	Lower of the following: (i) Amount Deposited or, (ii) 20% of the profits of such business before deduction u/s 33ABA

Amount withdrawn and utilised for purchase of specified assets would be chargeable to tax as business income:

Where the sum standing to the credit of the assessee in the Special account or in the Deposit account is released by the National Bank or is withdrawn by the assessee from the Deposit account and is utilised for the purchase of:

- a. Any machinery or plant installed in any office premises or residential accommodation including a guest house.
 - b. Any office appliances (other than computers)
 - c. Any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head 'Profits and gains of business or profession' of any one previous year;
 - d. Any new machinery or plant to be installed in an industrial undertaking for the purpose of the business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.
- the whole of such amount so utilised will be treated as taxable profits of that year and taxed accordingly.**

Withdrawal from account:

During continuation of business: The amount credited to such special account shall be withdrawn only for the purpose(s) specified in respective schemes. If the amount so withdrawn is not utilised for the specified purpose **in the same previous year** then the amount not so utilised shall be treated as income of the year.

On closure of business [Section 33AB]: Apart from the specified purpose(s) of scheme, the amount deposited may be withdrawn in the following circumstances: -

<u>Case</u>	<u>Tax Treatment</u>
Closure of business	Fully taxable
Dissolution of firm	Fully taxable
Death of the tax payer	Not taxable
Partition of Hindu Undivided Family	Not taxable
Liquidation of company	Not taxable

On closure of business [Section 33ABA]: Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is withdrawn on closure of the account during any previous year by the assessee, the amount so withdrawn from the account **as reduced by** the amount, if any, payable to the Central Government by way of profit or production share as provided in the agreement referred to in section 42, shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year.

Audit of books of accounts: This deduction shall not be allowed unless the accounts of such business of the assessee for the previous year have been audited by a chartered accountant **before the date specified in section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1), and the assessee furnishes by that date** the report of such audit in the prescribed form duly signed and verified by such accountant.

However, where the assessee is required by any other law to get his accounts audited it shall be sufficient compliance with the provision of this section if such assessee gets the accounts of such business audited under any such law and furnishes the report of the audit and a further report in the prescribed form under this section.

Question: X Ltd. is engaged in the business of growing and manufacturing tea in India. During the previous year 2019-20, it deposits ₹ 100 lakhs in the "special account" and claims the same as deduction u/s 33AB (i.e., 40% of the business profit: ₹ 250 lakhs). During 2020-21, the company withdraws ₹ 35 lakhs from the "special account" which is utilized as follows –

- ₹ 25 lakhs on December 31, 2020 for the purpose of the scheme framed by the Tea Board; and
- ₹ 4 lakhs for other purpose on January 27, 2021.
- 6 lakhs is not utilized up to 31 March, 2021.

Find out the amount chargeable to tax for the AY 2021-22.

Question: Business profit of T Ltd. a tea growing and manufacturing company, is ₹ 120 lakhs (before deduction u/s 33AB for the AY 2021-22. It deposits ₹ 50 lakhs with NABARD for claiming deduction under section 33AB. It wants to claim set-off of brought forwards business loss of ₹ 40 lakhs. Find out the taxable income of T Ltd. for the AY 2021-22.

Answer:

Computation of Taxable Income of T Ltd. for Assessment Year 2021-22

	(₹ In Lakhs)
Profit before deduction u/s 33AB	120
Less: Deduction u/s 33AB (40% of ₹ 120 lakhs or deposit of ₹ 50 lakhs with NABARD, whichever is lower)	48
Balance	72
Non-agriculture income as per Rule (40% of ₹ 72 lakhs)	28.8
Less: Brought forward business loss of ₹ 40 lakhs will be adjusted and balance ₹ 11.2 lakhs will be carried forward	28.8
Net Income	Nil

EXPENDITURE ON SCIENTIFIC RESEARCH [Section 35]

Sec 35	Expenditure incurred	Deduction	Conditions / Remarks
(1)(i)	<p>1. Revenue expenditure on scientific research incurred after commencement of business.</p> <p>2. Subject to conditions, Expenditure on scientific research <u>before commencement of business</u> by way of</p> <p>a. Purchase of materials; or</p> <p>b. Salary (except perquisite) of employees</p>	<p>Amount of expenditure incurred</p> <p>[100%]</p>	<p><u>Expenditure incurred within 3 years immediately preceding the date of commencement of business</u> is allowed as deduction in the year of commencement of business to the extent certified by the prescribed authority.</p>
(1)(ii)	<p>Sum paid to a Research Association, University, College or Institution whose object is undertaking of scientific research</p> <p>➤ 150% from AY 18-19 to AY 20-21</p> <p>➤ 100% from AY 21-22</p>	<p>100% x Sum paid</p>	<p>➤ Such association, university college or institution must be approved and notified by the CG.</p> <p>➤ Deduction is allowed even if research is not related to business.</p>
(1) (iia)	<p><u>Sum paid to a company</u> to be used by it for scientific research</p>	<p>100% x Sum paid</p>	<p>Such company is registered in India, is approved by prescribed authority and has the main object of 'scientific research and development'</p>
(1)(iii)	<p><u>Sum paid for Social Science or Statistical Research</u> to a Research Association which has as its object the undertaking of research in social science or statistical science or to a University, College or Institution</p>	<p>100% x Sum paid</p>	<p>➤ Such association, university college or institution must be approved and notified by the CG.</p> <p>➤ Deduction is allowed even if research is not related to business.</p>
(2)	<p>➤ Capital expenditure (except expenditure on the purchase of land) on scientific research related to business.</p> <p>➤ Capital expenditure (except expenditure on the purchase of land) incurred within 3 years immediately preceding the date of commencement of business.</p>	<p>Amount of expenditure incurred</p>	<p>➤ Pre-commencement expenditure is allowed in the year of the commencement of the business.</p> <p>➤ No depreciation is allowable.</p>
(2AA)	<p>Sum paid to -</p> <p>a. a National Laboratory; or</p> <p>b. a University; or</p> <p>c. an Indian Institute of technology; or</p> <p>d. a specified person</p> <p>➤ 150% from AY 18-19 to AY 20-21</p> <p>➤ 100% from AY 21-22</p>	<p>100% x Sum paid</p>	<p>➤ Sum is paid with a <u>specific direction that it shall be used for scientific research undertaken under a programme approved</u> in this behalf by prescribed authority.</p>

(2AB)	<p>Expenditure <u>(not being in nature of cost of any land or buildings)</u> incurred on scientific research on in-house research and development facility incurred <u>by a company engaged in the business of biotechnology, or, any business of manufacture or production of any article or thing, not being an article or thing specified in the list of the Eleventh Schedule</u></p> <p>[Cost of building shall be allowed u/s 35(1)(iv) @100%]</p> <ul style="list-style-type: none"> ➤ 150% from AY 18-19 to AY 20-21 ➤ 100% from AY 21-22 	Amount of expenditure incurred	<ul style="list-style-type: none"> ➤ Such Research and development facility is approved by prescribed authority. ➤ Such assessee should enter into an agreement with prescribed authority for co-operation in such Research and development facility and audit of accounts maintained for that facility. ➤ No deduction shall be allowed in respect of such sum under any other provision of the Act. ➤ No deduction shall be allowed in this sub-section to a company approved u/s 35(1)(ia).
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Other points:

1. **Deduction not to be denied even if approval withdrawn subsequently** : The deduction allowable under this section shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee-
 - (a) the approval granted to association, university, college, other institution referred to u/s 35(1)(ii)/ (iii), **or to a company referred to u/s 35(1)(ia) (effective from 01-06-2020 AY 2022-23)** or, the Laboratory or specified person referred to u/s 35(2AA) has been withdrawn; or
 - (b) the approval granted to the programme undertaken by the National Laboratory, University, Indian Institute of Technology or specified person, has been withdrawn.
2. **Actual use for scientific research during the previous year - not necessary:**
Deduction under section 35(1)(iv) is available only if the asset was acquired during the previous year for the purposes of scientific research. There is no further requirement that asset must be put to use in the relevant previous year.
3. **In case of sale of assets used for research purpose & on which deduction is allowed u/s 35, money payable on sale will be considered as deemed income u/s 41(3) u/h PGBP to the extent deduction is allowed. Amount in excess of Cost of such asset will be liable for Capital Gain.**
4. **SET OFF OF UNABSORBED CAPITAL EXPENDITURE:**
The treatment for Set off and carry forward of unabsorbed scientific research capital expenditure shall be done in the same manner as that of unabsorbed depreciation.
5. **Deduction under Section 35(1)(ii), 35(1)(ia), 35(1)(iii) & 35(2AA) is not available to Individual & HUF in case they opts for Section 115BAC.**

Question: K Bio-medicals Ltd. is engaged in the business of manufacture of bio-medical items. The following expenses were incurred in respect of activities connected with scientific research:

Year ended	Item	Amount (₹)
31.03.2018	Land	12,00,000
(Incurred after 01.09.2017)	Building	28,00,000
31.03.2019	Plant & Machinery	7,00,000
31.03.2020	Raw materials (allowed by prescribed authority)	3,20,000
31.03.2021	Raw materials and salaries (After commencement)	2,80,000

The business was commenced on 01.09.2020. In view of availability of better model plant and machinery, the existing plant and machinery were sold for ₹ 10,00,000 on 01.03.2021.

Discuss the implication of the above for the AY 2021-22 alongwith brief computation of deduction permissible under section 35 at 150% on eligible items.

SOLUTION:**Expenditure allowed**

	₹
Land	Not Allowed
Building	28,00,000
Plant and machinery	7,00,000
Raw materials	3,20,000
Raw materials and salaries (2,80,000 × 100%)	2,80,000

On sale of existing P&M, ₹ 7,00,000 will be deemed to be business profits under section 41(3)

Short term capital gains on sale of plant and machinery

Full value of consideration	10,00,000
Less: cost of acquisition	<u>7,00,000</u>
Short term capital gains	3,00,000

Question: A Ltd. furnishes the following particulars for the PY 2020-21. Compute the deduction allowable under section 35 for AY 2021-22, while computing its income under the head "PGBP":

	Particulars	₹
1.	Amount paid to Indian Institute of Science, Bangalore, for scientific research	2,00,000
2.	Amount paid to IIT, Delhi for an approved scientific research programme	3,00,000
3.	Amount paid to X Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority	6,00,000
4.	Expenditure incurred on in-house research and development facility as approved by the prescribed authority	
	(a) Revenue expenditure on scientific research	4,00,000
	(b) Capital expenditure (including cost of acquisition of land ₹ 5,00,000) on scientific research	8,00,000

Solution: Computation of deduction under section 35 for the AY 2021-22

Particulars	₹	Section	% of weighted deduction	Amount of deduction (₹)
Payment for scientific research				
Indian Institute of Science	2,00,000	35(1)(ii)	100%	2,00,000
IIT, Delhi	3,00,000	35(2AA)	100%	3,00,000
X Ltd.	6,00,000	35(1)(ia)	100%	6,00,000
Expenditure incurred on in-house research and development facility				
Revenue expenditure	4,00,000	35(2AB)	100%	4,00,000
Capital expenditure (excluding cost of acquisition of land ₹ 5,00,000)	3,00,000	35(2AB)	100%	3,00,000
Deduction allowable u/s 35				18,00,000

Deduction in respect of donations for scientific research and rural development [Section 80GGA]

- 1) Any assessee not having income u/h "PGBP".
- 2) **No Deduction for cash donations/contributions exceeding ₹ 2,000 ~~₹ 10,000~~ (amended w.e.f. 01.06.2020)**

No deduction shall be allowed under this section in respect of donation of any sum exceeding ₹ 2,000 (w.e.f. 01.06.2020) unless such sum is paid by any mode other than cash.
- 3) **100% deduction of contribution made to:**
 - a) Research association/University/College/Other Institution approved u/s 35(1)(ii) for scientific research;
 - b) Research association/University/College/Other Institution approved u/s 35(1)(iii) for research in social science or statistical research
 - c) Public Sector Company/Local Authority/Association or institution (approved by the National Committee) for carrying out any eligible project or scheme approved under section 35AC
 - d) Association/Institution which undertaking any programme of rural development u/s 35CCA or which has undertaking training of persons for implementation of such programmes.
 - e) **National Rural Development Fund or National Urban Poverty Eradication Fund (NUPEF)** set up and notified under section 35CCA.

Explanation: For the removal of doubts, it is hereby declared that the claim of the assessee for a deduction in respect of any sum referred to in this Section in the return of income for any assessment year filed by him, shall be allowed on the basis of information relating to such sum furnished by the payee to the prescribed income-tax authority or the person authorised by such authority, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

[Inserted by Finance Act 2020, w.e.f. 01.06.2020]

Expenditure for obtaining licence to operate telecommunication services**[Section 35ABB]:**

1. Where any **capital expenditure has been incurred for acquiring any right** to operate telecommunication services **and for which payment has actually been made** (paid basis) to obtain a licence, **a deduction will be allowed in equal annual installments over the relevant previous years.**
2. "Relevant previous years" means:
 - (i) **If the payment is made before the commencement of the business:** the previous years beginning with the previous year in which such business commenced;
 - (ii) **In any other case:** the previous years beginning with the previous year in which the licence fee is actually paid,
and the subsequent previous year or years during which the licence shall be in force.
3. Where **such licence is transferred in full**, any loss (Sales < WDV) shall be allowed as business loss [Full] in respect of the previous year in which the licence is transferred.
4. **Where a part of the licence is transferred** in a previous year and Sales consideration < WDV, than balance shall be allowed as deduction during the remaining number of PYs.
5. Where the **whole or any part of the license is transferred** and Sales Consideration > WDV, then amount to the extent of deduction already allowed in PYs shall be treated as PGBP.

Capital Gain Treatment: The excess of sale consideration over Original Cost is taxable as CG u/s 45.

6. **Where such licence is transferred in a scheme of amalgamation or demerger**
The amalgamated company or resulting company (being Indian company) as the case may be shall be entitled to claim deduction u/s 35ABB for the residual period as if the amalgamating or demerged company had not transferred the licence.

Example: X Ltd., a company providing telecommunication service, obtains a telecom license on April 20, 2020 for a period of 10 years which ends on March 31, 2030 (license fee being ₹ 18 lakhs). Find out the amount of deduction u/s 35ABB if –

- a. The entire amount is paid on May 6, 2020; or
- b. The entire amount is paid on April 1, 2021; or
- c. The entire amount is paid in three equal installments on April 30, 2020, April 30, 2021 and April 30, 2022.

Expenditure for obtaining right to use Spectrum for Telecommunication Services [Section 35ABA]:

W.e.f. AY 17-18, Where any capital expenditure has been incurred for acquiring any right to use Spectrum for Telecommunication Services and for which payment has actually been made (paid basis) to obtain such right, a deduction will be allowed in equal annual installments over the relevant previous years.

Example:

Tweety Enterprises has acquired telecom licence. Details in respect of this licence are as under:

Particulars		Particulars	
Acquisition cost	₹ 3,00,000	Life of licence	7 years
Date of purchase	14/7/2017	Licence sold	40%
Payment terms	Lump sum	Date of sale of licence	12/12/2020
Date of first payment	14/7/2018	Sale value	₹ 1,20,000

State the tax consequence in the several previous years up to 2020-21 related to such transactions.

Solution:**Tax consequence u/s 35ABB in several previous years up to 2020-21**

Particulars	Amount
Deduction u/s 35ABB(1) in previous year:	
2017-18	Nil ¹
2018-19	50,000 ¹
2019-20	50,000 ¹
2020-21	20,000 ²
Business income on sale of licence u/s 35ABB in the P.Y. 2020-21	Nil
Capital gain on sale of licence in the P.Y.2020-21	Nil

Note:

1. Though licence was acquired in the previous year 2017-18 but payment was made in the previous year 2018-19, hence deduction shall be available u/s 35AAB(1) in 6 years (7 year – 1 year) starting from the year 2018-19. Amount of deduction will be ₹ 3,00,000/6 = ₹ 50,000.

2. Sale of part of licence

Particulars	Details	Amount
Balance of licence as on 1/4/2020	₹ 3,00,000 – ₹ 1,00,000	2,00,000
Less: Sale of licence		1,20,000
Balance value		80,000
Balance life	4 years	
Deduction in the previous year 2020-21	₹ 80,000 / 4	20,000

Section 35AD - DEDUCTION IN RESPECT OF EXPENDITURE ON SPECIFIED BUSINESS - Optional now - effective from AY 2020-21 (FA 2020)



Deduction under Section 35AD is not available to Ind. & HUF in case they opts for Sec. 115BAC.

A. Specified business – Deduction u/s 35AD is available only in the case of a “specified business”:

W.e.f 01/04/2009

- (1) Setting up and operating a cold chain facility
- (2) setting up and operating a warehousing facility for storage of agriculture produce;
- (3) laying and operating a cross-country natural gas (w.e.f.01/04/2007) or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network (only Company)

W.e.f 01/04/2010

- (4) building and operating, anywhere in India, a hotel of two-star or above category;
[Owner of Hotel is eligible for deduction even if owner transfers the operation of the hotel to another person]
- (5) building and operating, anywhere in India, a hospital with atleast 100 beds for patients;
- (6) developing and building a housing project under a scheme for slum redevelopment or rehabilitation;

W.e.f 01/04/2011

- (7) developing and building a housing project under a scheme for affordable housing
- (8) Production of fertilizer in India

W.e.f 01/04/2012

- (9) Setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962
- (10) Bee-keeping and production and production of honey and beeswax; and
- (11) Setting up and operating a warehousing facility for storage of sugar

W.e.f 01/04/2014

- (12) Laying & Operating a slurry pipeline for the transportation of iron ore
- (13) Setting up and operating a semiconductor wafer fabrication manufacturing unit, if notified

W.e.f 01/04/2017 [AY 18-19]

- (14) Developing or Operating & Maintaining or Developing, Operating & Maintaining any **Infrastructure facility (Port, Airport, Rail system, Road, Highway Projects, Water Supply, Sewerage system, Solid waste management system etc) [Approved company assessee or Govt bodies]**

B. Specified business should be new business:

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

(2) It should not be set up by the transfer of old plant and machinery.

(a) 20% old machinery is permitted:

If the value of the transferred assets does not exceed 20% of the total value of the machinery or plant used in the business, this condition is deemed to have been satisfied.

(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 never used in India.
- (ii) Such machinery or plant is imported into India from any other Country.
- (iii) No deduction on account of depreciation in respect of such machinery or plant has been allowed to any assessee previously.

C. **Audit of the books of account** – Books of account of the assessee should be audited.

D. **AMOUNT OF DEDUCTION:**

1. **100% of capital expenditure is deductible if assessee is opting for deduction under Section 35AD. [Amended by Finance Act 2020 w.r.e.f AY 2020-21]** 

2. **Any expenditure in respect which payment (or aggregate of payments made to a person in a day), otherwise than by an account payee cheque/draft/use of electronic clearing system through a bank account or through such other prescribed electronic mode, exceeds ₹ 10,000, no deduction shall be allowed in respect of such payment under section 35AD.**

The prescribed electronic modes include **credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [Notification No. 8/2020 dated 29.01.2020]**


3. **Expenditure incurred on the acquisition of any land or goodwill or financial instrument** is not eligible for any deduction u/s 35AD.

4. Expenditure incurred prior to the commencement of operation, wholly and exclusively, for the purpose of any specified business, shall be allowed as deduction during the previous year in which the assessee commences the operation of his specified business, **if the amount is capitalized in the books of account of the assessee on the date of commencement of operation.**

CONSEQUENCES OF CLAIMING DEDUCTION U/S 35AD:

(i) If deduction is claimed and allowed u/s 35AD, the assessee shall not be allowed any deduction in respect of the specified business **under Section 10AA** or under the provisions of Chapter VIA [u/s 80-IA to 80RRB] for the same or any other assessment year.

(ii) **No deduction allowable under the Act in respect of expenditure for which deduction allowed under this section:**

*The assessee cannot claim deduction in respect of such expenditure incurred for specified business under any other provision of the Income-tax Act, 1961 in the current year or under this section for any other year, **if the deduction has been claimed or opted by him and allowed to him under section 35AD.*** 

(iii) Any **loss computed in respect of the specified business u/s 35AD** shall not to be set off except against profits and gains, if any, of other specified business u/s 73A (whether or not eligible for deduction u/s 35AD). To the extent the loss is unabsorbed, the same will be carried forward for set off against profits and gains from any specified business in the following assessment year and so on (no time-limit for carry forward such loss).

(iv) Any **sum received or receivable on account of any capital asset**, in respect of which deduction has been allowed u/s 35AD, being demolished, destroyed, discarded, or transferred shall be treated as income of the assessee and chargeable to income tax under the head "Profits and gains of business or profession".

(v) Section **35AD(7A)** provides that any asset in respect of which a deduction is 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.

(vi) **Sub-section (7B) has been inserted** to provide that if such asset is used for any purpose other than the specified business, the total amount of deduction so claimed and allowed in any previous year in respect of such asset, **as reduced by the amount of depreciation allowable** in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, **shall be deemed to be income** of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the asset is so used.

(vii) However, the deeming provision under sub-section (7B) shall not be applicable to a Sick company.

Example:

Mr. Arnav is a proprietor having two units – Unit A carries on specified business of setting up and operating a warehousing facility for storage of sugar; Unit B carries on non-specified business of operating a warehousing facility for storage of edible oil.

Unit A commenced operations on 1.4.2019 and it claimed deduction of ₹ 100 lacs incurred on purchase of two buildings for ₹ 50 lacs each (for operating a warehousing facility for storage of sugar) under section 35AD for A.Y. 2020-21. However, in February, 2021, Unit A transferred one of its buildings to Unit B.

Examine the tax implications of such transfer in the hands of Mr. Arnav.

Solution:

Since the capital asset, in respect of which deduction of ₹ 50 lacs was claimed under section 35AD, has been transferred by Unit A carrying on specified business to Unit B carrying on non-specified business in the P.Y. 2020-21, the deeming provision under section 35AD(7B) is attracted during the A.Y. 2021-22.

Particulars	₹
Deduction allowed under section 35AD for A.Y. 2020-21	50,00,000
Less: Depreciation allowable u/s 32 for A.Y. 2020-21 [10% of ₹ 50 lacs]	5,00,000
Deemed income under section 35AD(7B)	45,00,000

Mr. Arnav, however, by virtue of proviso to Explanation 13 to section 43(1), can claim depreciation under section 32 on the building in Unit B for A.Y. 2021-22. For the purpose of claiming depreciation on building in Unit B, the actual cost of the building would be:

Particulars	₹
Actual cost to the assessee	50,00,000
Less: Depreciation allowable u/s 32 for A.Y. 2020-21 [10% of ₹ 50 lacs]	5,00,000
Actual cost in the hands of Mr. Arnav in respect of building in its Unit B	45,00,000

Example: On April 1, 2020, X Ltd. commences the operation of a warehousing facility in Andhra Pradesh for storage of Sugar. The following information is available from the records of company –

Expenses incurred prior to April 1, 2020

Purchase of land for warehouse	₹ 50,00,000
Construction cost of warehouse	8,00,000
Purchase of know-how for warehouse	10,00,000
Salary to staff	78,000

These expenses are capitalized on March 31, 2020.

Expenses incurred during PY 2020-21

Construction cost of warehouse	60,00,000
Purchase of old plant and machinery (from domestic market)	2,00,000
Purchase of old plant and machinery (from Germany)	4,00,000
Purchase of new plant and machinery	9,00,000
Purchase of goodwill	3,50,000

Profit and loss account for the year PY 2020-21

Depreciation of building (@ 5%)	₹ 3,40,000	Amount collected from persons using warehouse	₹ 78,00,000
Depreciation of machinery (@ 23.333%)	3,50,000		
Cost of know-how (amount written off)	10,00,000		
Other operating expenses	7,51,000		
Donation to a political party	10,000		
Net Profit	<u>53,49,000</u>		
	78,00,000		78,00,000

Out of other operating expenses, a payment of ₹ 40,000 is made in cash. Other operating expenses are deductible u/s 37. **Find out the taxable income of X Ltd. for the AY 2021-22 on the assumption that X Ltd. has opted for deduction u/s 35AD & has the following income from other sources – income from the**

business of commission agency: ₹ 20,15,000 (computed under the provision of the Income-tax Act) and dividend from a foreign company (Holding – 15%): ₹ 50,000

Solution:**Amount deductible u/s 35AD.**

Expenditure incurred prior to the commencement of operation of operation (to the extent these are capitalized)

Purchase of land (not qualified for deduction)	Nil
Construction cost of warehouse	8,00,000
Purchase of know-how	10,00,000
Salary to staff	78,000

Expenditure incurred during the previous year

Construction cost or warehouse	60,00,000
Purchase of machinery (₹ 2,00,000 + ₹ 4,00,000 + ₹ 9,00,000)	<u>15,00,000</u>
Amount deductible u/s 35AD	93,78,000

Computation of income from warehouse

Net profit as per profit and loss account **53,49,000**

Add: Depreciation of building (not deductible as cost of building is eligible for deduction u/s 35AD) 3,40,000

Add: Depreciation of machinery (not deductible as cost of machinery is qualified for deduction u/s 35AD) 3,50,000

Add: Cost of Know-how (not deductible as deduction is available u/s 35AD) 10,00,000

Add: Amount paid in cash (operating expenses) 40,000

Add: Donation to political party 10,000

Less: Deduction u/s 35AD (-)93,78,000

Loss from warehouse **(-)22,89,000**

Computation of Income

	₹	₹
Commission agency business	20,15,000	
Warehouse Business	<u>(-)22,89,000</u>	

Business income (Set off not permissible) 20,15,000

Income from other sources (dividend from foreign company) 50,000

Gross total income **20,65,000**

Less: Deduction u/s 80GGB (donation to a political party) 10,000

Net income **20,55,000**

Notes:

1. Second hand imported machinery is taken as new machinery. The business of operating warehouse is formed by using new machinery of ₹ 13,00,000 and old machinery of ₹ 2,00,000. Value of old plant and machinery does not exceed 20% of the total value of plant & machinery. **Other conditions of section 35AD are satisfied X Ltd. is, therefore, eligible for deduction u/s 35AD.**

2. Loss from operating warehouse (by virtue section 73A) can be set off only against profit and gains, if any, of any other business specified u/s 35AD. In this case, X Ltd. does not have any other specified business. **Loss will be carried forward (without any time-limit) for being set off against income from operating warehouse or any other specified business u/s 35AD.**

Example: XYZ Ltd. commenced operations of the business of laying and operating a cross-country natural gas pipeline network for distribution on 1st April, 2020. The company incurred capital expenditure of ₹ 32 lakh during the period January to March, 2020 exclusively for the above business, and capitalized the same in its books of account as on 1st April, 2020.

Further, during the financial year 2020-21, it incurred capital expenditure of ₹ 95 lakh (out of which ₹ 60 lakh was for acquisition of land) exclusively for the above business. Compute the deduction under section 35AD for the AY 2021-22, assuming that XYZ Ltd. has fulfilled all the conditions specified in section 35AD.

Answer:

The amount of deduction allowable under section 35AD for AY 2021-22 would be:

Particulars	₹
Capital expenditure incurred during the PY 2020-21 (excluding the expenditure incurred on acquisition of land) = ₹ 95 lakh – ₹ 60 lakh	35 lakh
Capital expenditure incurred prior to 1.4.2020 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2020	32 lakh
Total deduction under section 35AD for AY 2021-22	67 lakh

Contributions for Rural Development Program [Section 35CCA]

1. This section allows a deduction of the following expenditure incurred by the assessee during the previous year:
 - a) Payment to an association or institution, having the objective of undertaking programmes of rural development. Such payment must be used for carrying out any programme of rural development approved by the prescribed authority.
 - b) Payment to an association or institution having as its object the training of persons for implementing rural development programme.
 - c) Payment to a National Rural Development Fund set up and notified by the Central Government.
 - d) Payments made to “National Urban Poverty Eradication Fund” (NUPEF) set up and notified by the Central Government.
2. **Certificate**: The deduction shall not be allowed in respect of expenditure by way of payment of any sum to any association or institution as referred in (a) & (b) above, unless the assessee furnishes a certificate from such association or institution in the prescribed manner.
3. **Deduction for the sum paid shall not be denied** if the approval granted to above programme/association/institution has been withdrawn subsequent to the payment by the assessee.

Weighted deduction for exp. on notified Agriculture Extension Project [Sec 35CCC]

Where **an assessee** incurs any expenditure (**not being expenditure in the nature of cost of any land or building**) on any notified agriculture extension project in accordance with the prescribed guidelines, then, such assessee can claim a **weighted deduction of 150%** of such expenditure.

Deduction is now restricted to 100% w.e.f. AY 21-22

Weighted deduction for expenditure on notified Skill Development Project [Sec 35CCD]

Where **a company** incurs any expenditure (**not being expenditure in the nature of cost of any land or building**) on any notified skill development project, then such company can claim a **weighted deduction of 150%** of such expenditure.

Deduction is now restricted to 100% w.e.f. AY 21-22

Question: ABC Limited is a company engaged in the business of biotechnology. The net profit of the company for the financial year ended 31-03-2021 is ₹ 15,25,890 after debiting the following items:

S. No.	Particulars	Amended ₹
(1)	Purchase price of the raw material used for the purpose of in-house research and development	1,80,000
(2)	Purchase price of assets used for in-house research and development wrongly debited to profit and loss account:	
	(a) Land	5,00,000
	(b) Building	3,00,000
(3)	Expenditure incurred on notified agricultural extension project	1,50,000
(4)	Expenditure on notified skill development project:	
	(a) Purchase of land	2,00,000
	(b) Expenditure on training for skill development	2,50,000
(5)	Expenditure incurred on advertisement in the souvenir published by a political party	75,000

Compute the income under the head "Profit and gains of business or profession" for the A.Y. 2021-22 of ABC Ltd.

Solution: Computation of income under the head "Profits and business or profession" for the A.Y. 2021-22:

Particulars	₹	₹
Net profit as per Profit and Loss A/c		15,25,890
Add: Item debited to P&L A/c, but to be disallowed –		
Purchase price of land used in in-house research and development [WN-1]	5,00,000	
Purchase price of building used in in-house research and development [WN -2]	-	
Expenditure incurred on purchase of land for notified skill development project [WN-4]	2,00,000	
Expenditure incurred on advertisement in the souvenir publication by a political party [WN-6]	75,000	7,75,000
Profit and gains from business		23,00,890

Working Notes:

- (1) Purchase price of land is not allowed as deduction under section 35(2AB).
- (2) Cost of building, being capital expenditure, 100% deduction shall be allowed under section 35(1)(iv) read with section 35(2).
- (3) Purchase of land does not qualify for deduction under section 35CCD.
- (4) The expenditure incurred on advertisement in the souvenir published by a political party is disallowed as per section 37(2B) while computing income under the head "Profit and Gains of Business or Profession" but the same would be allowed as deduction under sections 80GGB from the gross total income of the company.
- (5) The expenditure incurred on raw material qualifies for 100% deduction under section 35(2AB). Since, it is already debited to P&L A/c, no adjustment is needed.

AMORTISATION OF PRELIMINARY EXPENSES [Section 35D]

- (a) Section 35D provides for the amortisation of preliminary expenses incurred by ***Indian companies and other resident non-corporate taxpayers*** for the establishment of business concerns or the expansion of the business of existing concerns.
- (b) This section applies **in the case of new companies**, to expenses incurred before the commencement of the business or **in the case of extension of an existing undertaking**, to expenses incurred till the extension is completed or till the setting up a new unit.
- (c) Such preliminary expenditure incurred **shall be amortised over a period of 5** successive PYs beginning with the PY in which the business commences or, the PY in which the extension of the undertaking is completed or new unit commences production.
- (d) **Eligible expenses - The following expenditure are eligible for amortisation:**

(1) Expenditure in connection with-

- (a) the preparation of feasibility report / project report;
- (b) conducting market survey or any other business survey;
- (c) engineering services relating to the business;
- (d) legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up to conduct the business of assessee.

Provided the above work must be carried out by the assessee himself or by a concern which is for the time being approved in this behalf by the Board.

(2) Where the assessee is a company, in addition to the above, expenditure incurred:

- (a) by way of legal charges for drafting the MOA/AOA of the company and on its printing;
- (b) by way of fees for registering the company under the Companies Act;
- (c) in connection with the issue, for public subscription, of the shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, printing and advertisement of the prospectus;

(e) Maximum Expenditure allowed to be amortized:

In case of Indian Company	<u>Higher of the following:</u> (a) 5% of the Capital Employed, or (b) 5% of the Cost of project.
Other Assessee	5% of the cost of the project

- (f) **'Cost of the project' means:** Actual cost of the fixed assets shown in the books **as on the last day of the previous year.**

- (g) **"Capital Employed" means:** Issued share capital + Debentures + **Long-term borrowings (7 years or more)** as on the last day of the previous year

(h) Audit of accounts:

*In cases where the assessee is a person **other than a company or a co-operative society**, the deduction would be allowable only if the accounts of the assessee for the year or years in which the expenditure is incurred have been audited by a Chartered Accountant and the assessee furnishes, along with his return of income for the first year in which the deduction under this section is claimed, the report of such audit **before the date specified in section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1); and the assessee has, by that date, furnished for the first year in which the deduction is claimed, the report of such audit** in the prescribed form duly signed and verified by the auditor and setting forth such other particulars as may be prescribed.*

- (i) **No other deduction under any provision of the Act:** It has been clarified that in case where a deduction under this section is claimed and allowed for any assessment year in respect of any item of expenditure, the expenditure in respect of which deduction is so allowed shall not qualify for deduction under any other provision of the Act for the same or any other assessment year.

Important Note:

- ✓ Expenditure on issue of shares which is not covered by section 35D is not allowable as revenue expenditure.
Therefore expenses incurred on –
- Issue of Right shares
 - Fees paid to ROC for enhancement of authorized share capital
 - Issue of shares to public
- Will not be ALLOWED IF IT IS NOT COVERED BY SECTION 35D.
- ✓ **HOWEVER EXPENDITURE INCURRED ON ISSUE OF BONUS SHARES IS ALLOWABLE AS REVENUE EXPENDITURE.**
- ✓ **Discount on issue of debentures & premium on redemption of debentures** can be claimed as deduction proportionately during the period of life of debentures.

Example: X Ltd. is incorporated in Bangalore on September 6, 2020. It commences production on March 15, 2021. The following expenses are incurred by the company before commencement of business:

- a. Expenses on incorporation, issue of shares, etc. : ₹ 82,000
- b. Preparation of feasibility report, project report and conducting market survey (the work is completed by the taxpayer itself): ₹ 1,50,000.
- c. Engineering services (work is carried on by a concern which is not approved by the Board): ₹ 1,50,000.

Determine the amount of deduction u/s 35D assuming the following figures of fixed assets and capital on March 31, 2021 (i.e., the last day of the year in which the taxpayer starts production) –

	₹ In lakhs
Cost of fixed asset	45
Share capital	50
Debentures	12
Long-term borrowing from a financial institution (repayable for not less than 7 years)	8

Solution:

	₹
Cost of project	45,00,000
Capital employed (i.e., ₹ 50lakhs + ₹ 12 lakhs + ₹ 8 lakhs)	70,00,000
Maximum qualifying expenditure [i.e., 5% of ₹ 45 lakhs or ₹ 70 lakhs, whichever is higher] (a)	3,50,000

Qualifying expenditure

Expenditure on incorporation	82,000
Preparation of feasibility report, project report and conducting market survey	1,50,000
Total (b)	2,32,000
Amount eligible for amortisation [(a) or (b), whichever is lower]	2,32,000
Amount deductible in 5 years for the assessment years 2021-22 to 2025-26	46,400

Note: Expenditure on engineering services in this case is not qualified for deduction u/s 35D. These expenses may be capitalized by the tax payer to claim depreciation.

AMORTISATION OF EXPENSES FOR AMALGAMATION/DEMERGER [Section 35DD]

An Indian company, incurred expenditure wholly and exclusively for the purpose of amalgamation or demerger, shall be allowed a deduction equal to **one-fifth of such expenditure for 5 successive previous years** beginning with the previous year in which amalgamation or demerger takes place.

AMORTISATION OF EXPENDITURE INCURRED UNDER VOLUNTARY RETIREMENT SCHEME [Section 35DDA]

- a) This Section applies to an assessee who has incurred expenditure in any previous year in the form of payment **to any employee in connection with his voluntary retirement** [VRS Payment]
- b) The amount of deduction **allowable is one-fifth of the amount paid for that previous year**, and the balance in four equal installments in the four immediately succeeding previous years.
- c) In case of Amalgamation/Demerger (Transferee must be Indian Company) or Business Reorganisation being succession of business [Section 47(xiii)/47(xiiib)/47(xiv)] during the intervening period of the said 5 years, **the benefit of deduction will be available to the "New Company/LLP" for the balance period including the year in which such amalgamation/demerger/reorganisation or succession takes place.**

Amortisation of expenses for prospecting and development of certain minerals [Section 35E]

A. Eligible assessee:

This provision applies only to expenditure incurred by an Indian company or other resident non-corporate taxpayer. In order to qualify for amortisation, the assessee **should be engaged in any operations relating to prospecting for or the extraction or production of any mineral.**

B. Eligible expenses:

The nature and kind of expenditure qualifying for amortisation are-

- i. It must have been incurred during the year of commercial production and any one or more of the four years immediately preceding that year,
- ii. It must be incurred wholly and exclusively on any operations relating to the prospecting for any mineral or group of certain minerals listed in the Seventh Schedule of the Income-tax Act, 1961 or on the development of a mine or other natural deposit of any mineral or group of associated minerals.

C. Expenditure not allowed for deduction

Any portion of the expenditure which is met directly or indirectly by any other persons or authority and the sale, salvage, compensation or insurance moneys realised by the assessee in respect of any property or rights brought into existence as a result of the expenditure **should be excluded** from the amount of expenditure qualifying for amortisation.

Further, specific provision has been made to the effect that the following items of expenses do not qualify for amortisation at all viz.:

- a. Expenditure incurred on the acquisition of the site of the source of any minerals or group of associated minerals stated above or of any right in or over such site;
- b. Expenditure on the acquisition of the deposits of minerals or group of associated minerals referred to above or to any rights in or over such deposits; or
- c. Expenditure of a capital nature in respect of any building, machinery, plant or furniture for which depreciation allowance is permissible under section 32.

D. Amount of deduction

The assessee will be allowed for each of ten relevant previous years, **a deduction of an amount equal to one-tenth** of the aggregate amount of the qualifying expenditure.

Thus, the deduction to be allowed for any relevant previous year is

- i. one-tenth of the expenditure or
- ii. such amount as will reduce to nil the income of the previous year arising from the commercial exploration of any minerals or other natural deposit of the mineral or minerals in a group of associated minerals in respect of which the expenditure was incurred,

whichever figure is less.

The amount of the deduction admissible in respect of any relevant previous year to the extent to which it remains unallowed, shall be carried forward and added to the installment relating to the previous year next following and shall be deemed to be a part of the installment and so on, for ten previous years beginning from the year of commercial production.

E. Meaning of certain terms:

Term	Meaning
Operation relating to prospecting	Any operation undertaken for the purpose of exploiting, locating or proving deposits of any minerals and includes any such operation which proves to be infructuous or abortive.

Year of commercial production	The previous year in which as a result of any operation relating to prospecting or commercial production of any material or one or more of the minerals in a group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule to Act actually commences.
Relevant previous year	Ten previous years beginning with the year of commercial production

F. Audit of accounts:

*In cases where the assessee is a person other than a company or a co-operative society, the deduction would be allowable only if the accounts of the assessee for the year or years in which the expenditure is incurred have been audited by a Chartered Accountant **before the date specified in section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1); and the assessee has, by that date, furnished for the first year in which the deduction is claimed, the report of such audit in the prescribed form duly signed and verified by the auditor and setting forth such other particulars as may be prescribed.***

G. Special provisions for amalgamation or demerger:

In the case of amalgamation, such deduction would continue to be admissible to the amalgamated company as if the amalgamation had not taken place.

Likewise, in case of demerger where such deduction can be availed of by the resulting company as if the demerger had not taken place.

Further, no deduction will be admissible to the amalgamating/ demerged company in the year of amalgamation/ demergers.

H. No other deduction allowed in respect of the expenditure for which deduction is claimed under this section:

Where a deduction is claimed and allowed on account of amortisation of the expenses under section 35E in any year in respect of any expenditure, the expenditure in respect of which deduction is so allowed shall not again qualify for deduction from the profits and gains under any other provisions of the Act for the same or any other assessment year.

ALLOWABLE DEDUCTION IN COMPUTING PGBP

PREMIUM PAID FOR INSURANCE OF STOCK IN TRADE [Section 36(1)(i)]

If insurance policy has been taken out against risk, damage or destruction of the stock of the business or profession, the **premium paid** is deductible.

Insurance premia paid by a Federal Milk Co-operative Society [Section 36(1)(ia)]

Deduction is allowed in respect of the amount of premium paid by a Federal Milk Co-operative Society to effect or to keep in force an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supply of milk raised by its members to such Federal Milk Co-operative Society. The deduction is admissible without any monetary or other limits.

PREMIUM PAID BY EMPLOYER FOR HEALTH INSURANCE OF EMPLOYEES [SECTION 36(1)(ib)] -

A deduction is allowed to an employer in respect of **premium paid by him by any mode of payment other than cash** to effect or to keep in force an insurance on the health of his employees in accordance with a scheme framed by (i) the GIC and approved by the CG; or (ii) any other insurer and approved by the IRDA.

BONUS & COMMISSION [Section 36(1)(ii)]

Deduction is allowed in respect of the sum paid to the employees as bonus or commission (Other than in lieu of profit or dividend).

Note:

1. Deduction is subject to the provisions of Section 43B & 40A(2).
2. Voluntary payments are deductible if it is for service rendered.
3. Any bonus exceeding the statutory amount is allowed if such excess payment has been made on account of commercial expediency.

INTEREST ON BORROWED CAPITAL [Section 36(1)(iii)]

Amount of interest paid in respect of capital borrowed **for the purposes of** business or profession shall be allowed as deduction.

Conditions:

1. The assessee must have borrowed money
2. The money so borrowed must have been used for business or profession
3. The assessee must have incurred interest on borrowed amount.

Other Points:

1. Capital may be borrowed either to incur revenue expenditure or to incur capital expenditure.
2. The scope of the expression 'for the purposes of business' is very wide. Capital may be borrowed in the course of the existing business as well as for acquiring assets for extension of existing business.
3. As per proviso to section 36(1)(iii), deduction in respect of any amount of interest paid, in respect of capital borrowed for acquisition of new asset (whether capitalised in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset till the date on which such asset was first put to use shall not be allowed.
4. Section 43(1) clarifies that interest relating to a period after the asset is first put to use cannot be capitalised. Interest in respect of capital borrowed for any period from the date of borrowing to the date on which the asset was first put to use should, therefore, be capitalised.
5. **Interest on own capital is not deductible. Interest to member in case of AOP is not deductible. However, Interest to partner's are deductible.**
6. Deduction of interest is subject to Section 43B & Section 40(a)(i) & 40(a)(ia)
7. In the case of genuine business borrowings, the department cannot disallow any part of the interest on the ground that the rate of interest is unreasonably high except in cases falling under section 40A.
8. Interest on money borrowed for payment of Income tax or interest on late payment of advance tax or for late filing of return is not deductible.
9. Interest paid by the assessee on money borrowed for payment of dividends is an allowable deduction.

DEDUCTIBILITY OF DISCOUNT ON ZERO COUPON BONDS [Sec 36(1)(iiia)]

Section 36(1)(iiia) provides deduction for the discount on ZCB on pro rata basis having regard to the period of life of the bond.

Example: C Ltd. (an infrastructure company) issued ZCB on 1/8/2020 @ ₹ 45 (face value ₹ 100) redeemable at par after 125 months. Public subscribed for 50,000 bonds, find amount allowed as deduction u/s 36(1)(iiia).

Solution Deduction allowed u/s 36(1)(iiia)

Total amount of discount	50000*(₹ 100 - ₹ 45)	₹ 2750000
Period of life of the bond		125 months
Cost per month	₹ 2750000/125 months	₹ 22000
No. of months in the PY 2020-21 for which the bonds remains outstanding	Period from 01/08/2020 to 31/03/2021	8 months
Amount allowed as deduction in the PY 2020-21	₹ 22000 * 8 months	₹ 176000

Section 36(1)(iva) – Deduction of expenses in the nature of Employer’s contribution towards a pension scheme as referred in Section 80CCD

Section 36(1)(iva) provides that any sum paid by the assessee as an employer by way of contribution towards a pension scheme, as referred to in section 80CCD on account of an employee *to the extent it does not exceed 10% of the salary of the employee* in the previous year, shall be allowed as deduction.

[“Salary” means Basic Salary + DA (forming part of retirement benefits)].

Example: X Ltd. contributes 20% of basic salary to the account of each employee under a pension scheme referred to in section 80CCD. Dearness Allowance is 40% of basic salary and it forms part of pay of the employees. Compute the amount of deduction allowable under section 36(1)(iva), if the basic salary of the employees aggregate to ₹ 10 lakh. Would disallowance under section 40A(9) be attracted, and if so, to what extent?

Computation of deduction allowable under section 36(1)(iva) and disallowance under section 40A(9)

Basic Salary	10,00,000
Dearness Allowance @40% of basic salary [DA forms part of pay]	4,00,000
Salary for the purpose of section 36(1)(iva) (Basic Salary + DA)	14,00,000
Actual contribution (20% of basic salary i.e. 20% of ₹ 10 lakh)	2,00,000
Less: Permissible deduction under Section 36(1)(iva)	
(10% of basic salary plus dearness pay = 10% of ₹ 14,00,000 = ₹ 1,40,000)	<u>1,40,000</u>
Excess contribution disallowed under Section 40A(9)	<u>60,000</u>

Allowance for Animals [Section 36(1)(vi)]

This clause grants an allowance in respect of animals which have died or become permanently useless. The amount of the allowance is the difference between the actual cost of the animals and the price realized on the sale of the animals themselves or their carcasses.

The allowance under the clause would thus recoup to the assessee the entire capital expenditure in respect of animal.

DEDUCTIONS IN RESPECT OF BAD DEBTS [Section 36(1)(vii) and sub-section (2)]

These can be deducted subject to the following conditions:

- a. The debts or loans should be in respect of a business which was carried on by the assessee during the relevant previous year.
- b. The debt should have been taken into account in computing the income of the assessee of the previous year **in which such debt is written off** or of an earlier previous year or should represent money lent by the assessee in the ordinary course of his business of banking or money lending.
- I. **Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable**
 - (i) Under section 36(1)(vii), deduction is allowed in respect of the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year.
 - (ii) Therefore, write off in the books of account is an essential condition for claim of bad debts under section 36(1)(vii).
 - (iii) Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable.

If a debt, **which has not been recognized in the books of account** as per the requirement of the accounting standards but has been taken into account in the computation of income as per the notified ICDSs, has become irrecoverable, it can still be claimed as bad debts under section 36(1)(vii) since **it shall be deemed that the debt has been written off as irrecoverable in the books of account by virtue of the second proviso to section 36(1)(vii).**

This is because some ICDSs require recognition of income at an earlier point of time (prior to the point of time such income is recognised in the books of account). ***Consequently, if the whole or part of such income recognised at an earlier point of time for tax purposes becomes irrecoverable, it can be claimed as bad debts on account of the second proviso to section 36(1)(vii).***

II. **Deduction of differential amount of debts due as bad debts in the year of recovery, to the extent of deficiency in recovery**

If on the final settlement the amount recovered in respect of any debt, where deduction had already been allowed, **falls short of the difference between the debt due and the amount of debt allowed**, the deficiency can be claimed as a deduction from the income of the previous year in which the ultimate recovery out of the debt is made.

It is permissible for the Assessing Officer to allow deduction in respect of a bad debt or any part thereof in the assessment of a particular year and subsequently to allow the balance of the amount, if any, in the year in which the ultimate recovery is made, that is to say, when the final result of the process of recovery comes to be known.

III. **Recovery of a bad debt subsequently [Section 41(4)]**

If a deduction has been allowed in respect of a bad debt under section 36, and subsequently the amount recovered in respect of such debt is more than the amount due after the allowance had been made, the excess shall be deemed to be the profits and gains of business or profession and will be chargeable as income of the previous year in which it is recovered, whether or not the business or profession in respect of which the deduction has been allowed is in existence at the time.

IV. **Provisions for bad debt are not allowed as deduction.**

V. Bad debt is not allowed as deduction to the assessee who maintains accounts on cash basis.

VI. **Successor of Business:**

The Successor to the business is entitled to deduction in respect of the debt incurred by the predecessor if the business is not dissolved and the identity of business after succession remains the same. **Deduction for bad debt is allowed business wise and not the assessee-wise.**

Example:

X, a trader, sells goods on credit to Y (outstanding balance on April 1, 2020: ₹ 40,000 and total bills issued during 2020-21: ₹ 60,000. Out of ₹ 1,00,000, he recovers only ₹ 10,000 from Y during 2020-21. On March 31, 2021, he writes off ₹ 32,000 as bad debt. However, on December 19, 2021, X receives from Y as full and final payment (a) ₹ 15,000, or (b) ₹ 55,000, or (c) ₹ 70,000. Find out the tax consequences for different assessment years.

Solution:

AY 2021-22 During the previous year 2020-21, X writes off ₹ 32,000 as bad debt. It is, therefore, deductible for the AY 2021-22.

AY 2022-23: Tax treatment, when recovery is made during the previous year 2021-22, will be as follows:

Amount of debt as on April 1, 2021 (i.e., ₹ 1 lakhs – ₹ 10,000 – ₹ 32,000 being the amount written off) (1) ₹	Amount recovered as full and final payment (2) ₹	Deduction/Income (2) – (1) ₹
a) 58,000	15,000	(-) 43,000
b) 58,000	55,000	(-) 3,000
c) 58,000	70,000	<u>12,000 [Sec 41(4)]</u>

In situation (a) ₹ 43,000 is deductible as bad debts if he writes off ₹ 43,000 in his books of account as bad debt during the previous year 2021-22. Likewise, in situation (b) ₹ 3,000 is deductible as bad debts if X writes off ₹ 3,000 in his books of account for the year ending March 31, 2022. **In situation (c), however, ₹ 12,000, being the excess recovery, is taxable as business income by virtue of section 41(4) for the previous year 2021-22 [irrespective of the fact whether the business is in existence during the previous year 2021-22 or not].**

Special provision for bad and doubtful debts in cases of Banks etc [Section 36(1)(viiia)]

	Amount deductible in respect of provision for bad and doubtful debts.		
	<i>In the case of a scheduled bank [other than a foreign bank] and a non-scheduled bank & Co-operative Bank</i>	<i>In case of public financial institution, State financial corporation, State industrial investment corporation</i>	<i>In the case of a foreign bank</i>
➤ Total income (computed before this deduction and amount deductible u/s 80C to 80U)	8.5% of such income	5% of such income	5% of such income
➤ <u>Aggregate average advances by rural branches</u>	10% of such advances	-	-

Example: XY Ltd., a public financial institution, is eligible for claiming deduction u/s 36(1)(viiia). Its business income (before claiming this deduction) for the previous year 2020-21 is ₹ 160 lakhs. Provision for bad and doubtful debts account has an opening balance of ₹ 1 lakhs on April 1, 2020. XY Ltd. wants to write off ₹ 14 lakhs during 2020-21 on account of bad debts. Compute the amount of deduction u/s 36(1)(vii)(viiia). What are the formalities the taxpayer is required to complete?

Solution: The amount of bad debt, i.e., ₹ 14 lakhs should be debited to "Provision for bad and doubtful debt" account as follows –

Provision for bad and doubtful debt account

	(₹ In lakhs)		(₹ In lakhs)
March 31, 2021 To debtor a/c (being bad debt the tax payer wants to write off)	14	April 1, 2020 By balance b/d	1
		March 31, 2021 By P & L a/c <u>[being deduction eligible u/s 36(1)(viiia)]</u> , i.e., 5% of ₹ 160lakhs]	8
		March 31, 2021 By P & L a/c <u>[being deduction u/s 36(1)(vii)]</u>	5
Total	14		14

The following conclusion, one can draw –

1. The amount of deduction u/s 36 is as follows –

- provision for bad and doubtful debts u/s 36(1)(viiia): ₹ 8 lakhs (being 5% of ₹ 160 Lakhs);
- bad debts u/s 36(1)(vii): ₹ 5 lakhs.

2. The amount of bad debt (i.e., ₹ 14 lakhs) should be debited to the provision for bad and doubtful debts account and only if such amount is more than the credit balance in the provision for bad and doubtful debts account (i.e., ₹ 1 lakhs + ₹ 8 lakhs), the excess is eligible for deduction u/s 36(1)(vii).

Example:

The following are the particulars in respect of a scheduled bank incorporated in India -

	Particulars	₹ in lakh
(i)	Provision for bad and doubtful debts under section 36(1)(viiia) upto A.Y. 2020-21	100
(ii)	Gross Total Income of A.Y. 2021-22 [before deduction under section 36(1)(viiia)]	800
(iii)	Aggregate average advances made by rural branches of the bank	300
(iv)	Bad debts written off (for the first time) in the books of account (<i>in respect of urban advances only</i>) during the previous year 2020-21	210

Compute the deduction allowable under section 36(1)(vii) for the A.Y. 2021-22.

Answer

Particulars	₹ in lakh	
Bad debts written off (for the first time) in the books of account		210
Less: Credit balance in the “Provision for bad and doubtful debts” under section 36(1)(viia) as on 31.3.2021		
(i) Provision for bad and doubtful debts under section 36(1)(viia) upto AY 2020-21	100	
(ii) Current year provision for bad and doubtful debts under section 36(1)(viia) [8.5% of ₹ 800 lakhs + 10% of ₹ 300 lakhs]	98	
Deduction under section 36(1)(vii) in respect of bad debts written off for AY 2021-22		198
		12

DEDUCTION IN RESPECT OF SPECIAL RESERVE [Sec. 36(1)(viii)]

Deduction is allowed in respect of any special reserve created and maintained by a specified entity in respect of reserve created from the specified business.

The amount of deduction shall be least of the following:

- Amount transferred to the reserve account during the previous year; or
- 20% of the profits derived from the specified business of providing long-term finance; or
- twice the amount of the paid-up share capital and the general reserve **less aggregate amount carried to Special Reserve account.**

Notes:

Meaning of specified entity and specified business:

Specified Entity	Specified Business means the business of providing long-term finance for
A financial corporation u/s 2(72) of the Companies Act, 2013 or a financial corporation which is a public sector company or a banking company or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank	<ol style="list-style-type: none"> industrial or agricultural development; development of infrastructure facility in India; or development of housing in India
A housing finance company	Construction or purchase of houses in India for residential purposes.
Any other financial corporation including a public company	Development of infrastructure facility in India

Long-term finance means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a **period of not less than 5 years.**

Treatment on withdrawal from Special Reserve Account

As per sec. 41(4A), if a deduction has been allowed in respect of any special reserve created under this section, any amount subsequently withdrawn from such special reserve shall be deemed to be profits or gains of business or profession and shall be taxable in the year of such withdrawal. **The above rule holds good even if the business is no longer in existence in the year of such withdrawal.**

EXPENSES ON FAMILY PLANNING [Section 36(1)(ix)] – ADMISSABLE ONLY TO COMPANIES

- Any expenditure of revenue nature *bona fide* incurred by a company for the purpose of promoting family planning amongst its employees will be allowed as a deduction in computing the company's business income;
- Where the expenditure is of a capital nature, one-fifth of such expenditure will be deducted in the previous year in which it was incurred and in each of the four immediately succeeding previous years.
- This deduction is allowable **only to companies** and not to other assessees.
- The assessee would be entitled to carry forward and set off the unabsorbed part of the allowance in the same way as unabsorbed depreciation.
- The capital expenditure on promoting family planning will be treated in the same way as capital expenditure for scientific research for purposes of dealing with the profit or loss on the sale or transfer of the asset including a transfer on amalgamation.

DEDUCTION OF BANKING CASH TRANSACTION TAX PAID [Section 36(1)(xiii)]

Any amount of Banking Cash Transaction Tax paid by assessee during the previous year on the taxable banking transactions entered shall be allowed as deduction.

DEDUCTION OF SECURITIES TRANSACTION TAX PAID [Section 36(1)(xv)]

The amount of STT paid by the assessee during the year in respect of taxable securities transactions entered into in the course of business shall be allowed as deduction. ***[In CG, benefit of STT is not available to investor]***

DEDUCTION OF COMMODITIES TRANSACTION TAX PAID [Section 36(1)(xvi)]

The amount of CTT paid by the assessee during the year in respect of taxable commodities transactions entered into in the course of business shall be allowed as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession".

Residuary Expenses [Section 37]

Revenue expenditure incurred for purposes of carrying on the business, profession or vocation:

- This is a residuary section under which only business expenditure is allowable but not the business losses, e.g., those arising out of embezzlement, theft, destruction of assets, misappropriation by employees etc. (Business Losses are allowable under section 29 as losses incidental to the business).
- The deduction is limited only to the amount actually expended and does not extend to a reserve created against a contingent liability.

Conditions for allowance:

- a) The expenditure should not be of the nature described in sections 30 to 36.
- b) It should have been incurred by the assessee in the accounting year.
- c) It should be in respect of a business carried on by the assessee the profits of which are being computed and assessed.
- d) It must have been incurred after the business was set up.
- e) It should not be in the nature of any personal expenses of the assessee.
- f) It should have been laid out or expended wholly and exclusively for the purposes of such business.
- g) It should not be in the nature of capital expenditure.
- h) The expenditure should not have been incurred by the assessee for any purpose which is an offence or is prohibited by law.

Allowable Expenditure u/s 37 under specific instructions of CBDT:

- a) Diwali and Muharat Expenses.
- b) Telephone Deposit paid under Tatkal Telephone Deposit Scheme
- c) Expenditure on Fluorescent Tubes including wiring and fitting expenditure - Initial expenditure is of capital nature but all replacement expenditure should be treated as revenue nature.
- d) Insurance Premium paid on account of loss of profits.
- e) Lagan or mahamai contribution collection by the Trade Association from their Members, on the business transactions.
- f) Annual Listing Fees paid to Stock Exchange.
- g) Commitment Charges paid by Borrower to Lender.
- h) Training Expenditure.
- i) Expenditure incurred by business concern on civil defence measures.
- j) Professional Tax paid.

LOSSES ALLOWABLE AS DEDUCTION:

- a) Loss on account of embezzlement, in the previous year in which embezzlement is discovered.
- b) Loss caused by forfeiture of Security Deposits given at the time of submission of tenders for supply of goods.
- c) Loss of Stock-in-Trade by fire and other natural calamities, or due to negligence of the employees or due to enemy action, or in transit.
- d) Loss on account of robbery or theft, provided it is in the course of business and incidental to the trade whichever trade it is.
- e) Loss caused by non-recovery of advances made in course of business, provided it is a Trading Loss
- f) Loss caused on account of fluctuations in exchange rate, at the time of remitting the money for purchase of raw material,
- g) Loss caused due to breach of contract for delivery of goods by either party.

LOSSES NOT ALLOWABLE AS DEDUCTION:

- 1) Loss relating to any business or profession discontinued before the commencement of the previous year.
- 2) Violation of law is not a normal incident of trade and an expense incurred by way of penalty for infraction of laws is not deductible.
- 3) Loss incurred due to damage, destruction, etc. of capital assets.
- 4) Loss which is not incidental to the carrying on of the business of the assessee
- 5) Loss due to sale of securities held as Investments.
- 6) Loss caused by forfeiture of advances given for purchase of Capital Assets.
- 7) Anticipated losses of subsequent years cannot be allowed as a deduction in the current year.

DEDUCTIBILITY OF PENALTIES & INTEREST UNDER VARIOUS LAWS

1. **Penalty for infraction of any law:** Not deductible

Exception:

- a) **If penalty is in nature of compensation** – Allowable as deduction
 - b) **Penalty for breach of Contract** – Allowable as deduction since there is no infraction of any law.
2. **Interest paid under any other law** – Allowable as a deduction if interest is compensatory in nature
– If interest is in nature of penalty then no deduction is allowable.

Note: Penal interest paid to bank is allowable as deduction since penal interest is payable as per the agreement between banker and borrower. There is no infraction of law.

3. **Interest paid under Income-tax Act – Not allowable as deduction**
4. **Interest on loan taken to pay the income-tax is not allowable as deduction.**

ALLOWABILITY OF CERTAIN EXPENSES

1. Dividend and Dividend distribution tax u/s 115O is not allowed as deduction.
2. Income tax, surcharge & education cess is not allowable as deduction.
3. Provision for unascertained liability is not allowable as deduction.
4. Prior period expenses are not allowable as deduction, but they are allowable if liability to pay crystallized during the previous year. (Ex: Increased salary is paid in current year under increased pay commission policy).

Advertisements in Publication of political parties – SECTION 37(2B)

Section 37(2B) disallows any deduction on account of expenditure incurred on advertisement in any souvenir, brochure, tract or the like published by any political party, whether it is registered with the Election Commission of India or not, made by any person carrying on business or profession in computing the profits and gains of the business or profession.

However, a deduction for the same or/and similar expenditure is allowed under Section 80GGB and 80GGC.

Deduction to Indian Companies for Donation to Political Parties etc [Section 80GGB]

In computing the total income of an assessee, being an Indian company, there shall be deducted any sum contributed by it (100% deduction), in the previous year to any political party or an electoral trust:

Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash.

Explanation- For the removal of doubts, it is hereby declared that for the purposes of this section, the word "contribute", with its grammatical variation, **has the meaning assigned to it under section 293A of the Companies Act, 1956.**

Accordingly, it includes the amount of expenditure incurred on advertisement in a brochure of a political party. [No such deduction under Section 80GGC]

Deduction to Any Person for Donation to Political Parties etc [Section 80GGC]

In computing the total income of an assessee, being any person, except local authority and every artificial juridical person wholly or partly funded by the Government, there shall be deducted any amount of contribution made by him (100% deduction), in the previous year, to a political party or an electoral trust :

Provided that no deduction shall be allowed under this section in respect of any sum contributed by way of cash.

Example:

During the P.Y. 2020-21, ABC Ltd., an Indian company,

- (1) contributed a sum of ₹ 2 lakh to an electoral trust; and
- (2) incurred expenditure of ₹ 25,000 on advertisement in a brochure of a political party.

Is the company eligible for deduction in respect of such contribution/expenditure, assuming that the contribution was made by cheque? If so, what is the quantum of deduction?

Solution

An Indian company is eligible for deduction under section 80GGB in respect of any sum contributed by it in the previous year to any political party or an electoral trust. Further, the word "contribute" in section 80GGB has the meaning assigned to it in Companies Act, and accordingly, it includes the amount of expenditure incurred on advertisement in a brochure of a political party.

Therefore, ABC Ltd. is eligible for a deduction of ₹ 2,25,000 under section 80GGB in respect of sum of ₹ 2 lakh contributed to an electoral trust and ₹ 25,000 incurred by it on advertisement in a brochure of a political party.

It may be noted that there is a specific disallowance under section 37(2B) in respect of expenditure incurred on advertisement in a brochure of a political party. Therefore, the expenditure of ₹ 25,000 would be disallowed while computing business income/gross total income.

However, the said expenditure incurred by an Indian company is allowable as a deduction from gross total income under section 80GGB.

Disallowance of CSR expenditure

- (i) For the purposes of Section 37(1), any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility referred to in Section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence, **shall not be allowed as deduction** under section 37.
- (ii) The rationale behind the disallowance is that CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business.
- (iii) However, ***CSR expenditure, which is of the nature described in sections 30 to 36, shall be allowed as deduction under those sections subject to fulfillment of conditions, if any, specified therein.***

Inadmissibility of expenses incurred in providing freebies to medical practitioner by pharmaceutical and allied health sector industry [Circular No. 5/2012 dated 1-8-2012]

Section 37(1) provides for deduction of any revenue expenditure (other than those falling under sections 30 to 36) from the business income if such expense is laid out or expended wholly or exclusively for the purpose of business or profession. However, the Explanation 1 below section 37(1) denies claim of any such expenses, if the same has been incurred for a purpose which is either an offence or prohibited by law.

The CBDT, considering the fact that the claim of any expense incurred in providing freebies to medical practitioner is in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 has clarified that the expenditure so incurred shall be inadmissible u/s 37(1), being an expense prohibited by the law. The disallowance shall be made in the hands of such pharmaceutical or allied health sector industry or other assessee which has provided aforesaid freebies and claimed it as a deductible expense in its accounts against income.

This circular has also clarified that a sum equivalent to value of freebies enjoyed by the aforesaid medical practitioner or professional associations is also taxable as business income or income from other sources, as the case may be, depending on the facts of each case.

INADMISSIBLE DEDUCTIONS [SECTION 40]**Section 40(a)(i)–Non-compliance of provisions of TDS where payment is made to Non-Resident or to any person outside India**

- No Deduction will be allowed where any Interest, Royalty, Fees for technical services or other sum chargeable under this Act, which is payable, -
- (i) outside India;
 - (ii) in India to a Non-Resident, not being a Company or to a Foreign Company,
- on which tax is deductible at source and **such tax has not been deducted or, after deduction, has not been paid on or before the due date specified in section 139(1).**
- However, it is provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in Section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.
- In case, assessee fails to deduct the whole or any part of tax on any such sum but is not deemed as assessee in default under the first proviso to section 201(1) by reason that such payee –
- i. has furnished his return of income under section 139;
 - ii. has taken into account such sum for computing income in such return of income; and
 - iii. has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in such form as may be prescribed,

it would be deemed that the assessee has deducted and paid the tax on such sum on the date on which return of income has been furnished by the payee.

Note: Since the date of furnishing the return of income by the payee is taken to be the date on which the payer has deducted tax at source and paid the same, such expenditure/payment in respect of which the payer has failed to deduct tax at source shall be disallowed under section 40(a)(i) in the year in which the said expenditure is incurred. However, such expenditure will be allowed as deduction in the subsequent year in which the return of income is furnished by the payee, since tax is deemed to have been deducted and paid by the payer in that year.

Example:

Date on which TDS should have been deducted	Actual Date of Deduction	Time limit as per section 200(1)	Date of Payment of TDS	Previous year in which deductible
26.06.2020	26.06.2020	07.07.2020	07.07.2020	2020-2021
26.07.2020	26.07.2020	07.08.2020	02.09.2020	2020-2021
31.03.2021	31.03.2021	30.04.2021	30.04.2021	2020-2021
31.03.2021	31.03.2021	30.04.2021	30.12.2021	2021-2022
16.05.2020	16.05.2020	07.06.2020	Not Deposited	Not Deductible
10.06.2020	20.04.2021	07.07.2020	20.07.2023	2023-2024

Section 40(a)(ia) – Non-compliance of provisions of TDS where payment is made to Resident in India

30% of any sum payable (paid or payable during the PY) to a Resident on which tax is deductible at source, shall be disallowed if-

- (i) such tax has not been deducted; or
- (ii) such tax, after deduction, **has not been paid on or before the due date specified in section 139(1).**

Tax Points:

- 1) However, it is provided that where in respect of any such sum, tax has been deducted in any subsequent year, or has been deducted during the previous year but paid after the due date specified in Section 139(1), **30% of such sum** shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.
- 2) If tax has not been deducted & the deductor is able to establish that the payee has furnished the return of income by including such income in his return and paid tax due on income declared by him in such return of income, **it shall be deemed that the assessee has deducted and paid tax on such income on the date of furnishing return of income by the resident payee**

Example:

XYZ Ltd. made the following payments in the month of March 2021 to residents without deduction of tax at source. What would be the tax consequence for A.Y. 2021-22, assuming that the resident payees in all the cases mentioned below, have not paid the tax, if any, which was required to be deducted by XYZ Ltd.?

Particulars	Amount in ₹
Salary to its employees	15,00,000
Non-compete fees to Mr. X	70,000
Directors' remuneration	25,000

Would your answer change if XYZ Ltd. has deducted tax on the above in April, 2021 from subsequent payments made to these persons and remitted the same in July, 2021?

Answer

Non-deduction of tax at source on any payment on which tax is deductible as per the provisions of Chapter XVII-B would attract disallowance under section 40(a)(ia). Therefore, non-deduction of tax at source on salary payment on which tax is deductible under section 192 and non-compete fees and directors' remuneration on which tax is deductible under section 194J, would attract disallowance@30% of sum paid under section 40(a)(ia). Therefore, the amount to be disallowed under section 40(a)(ia) while computing business income for A.Y. 2021-22 is as follows –

Particulars	Amount paid	Disallowance u/s 40(a)(ia) @ 30% of sum paid
(1) Salary [tax is deductible under section 192]	15,00,000	4,50,000
(2) Non-compete fees to Mr. X [tax is deductible under section 194J]	70,000	21,000
(3) Directors' remuneration [tax is deductible under section 194J without any threshold limit]	25,000	7,500
Disallowance under section 40(a)(ia)		4,78,500

If the tax is deducted and paid in the next year i.e., P.Y. 2021-22, the amount of ₹ 4,78,500 would be allowed as deduction while computing the business income of A.Y. 2022-23.

Section 40(a)(iii)

Any sum which is chargeable under the head 'Salaries' shall be disallowed **if it is payable outside India or to a non-resident in India** and if the tax has not been paid thereon nor deducted there from within the time prescribed under the Act.

[Once paid without deduction of TDS, deduction can never be claimed even if tax is later deducted and paid]

Section 40(a)(v)– Any Tax on the value of perquisite provided to the employee paid by the employer u/s 10(10CC), shall not be allowed as deduction.

EXPENSES OR PAYMENTS NOT DEDUCTIBLE IN CERTAIN CIRCUMSTANCES [SECTION 40A]

Excess Payments to Relatives and Associates – Section 40A(2)

A. Where the assessee incurs any expenditure in respect of which a payment has been or is to be made **to Specified Person**, so much of the expenditure as is considered to be **excessive or unreasonable** (having regard to FMV of goods, services / Legitimate needs of business) shall be disallowed by the Assessing Officer.

B. **Specified person means:**

For the Assessee	Specified Person means
An Individual	Relative A person in whose business/profession the individual has substantial interest
A Company /Firm/AOPs/HUF	Any director of the company, partner of the firm, or member of the association or family, or any relative of such director, partner or member A person in whose business/profession the assessee or above individuals have substantial interest
Any Assessee	<ul style="list-style-type: none"> - An <u>individual who has a substantial interest</u> in the business or profession or any relative of such individual - a Company, Firm, AOPs or HUF <u>having a substantial interest in the business or profession of the assessee</u> or any director, partner or member of such Company, Firm, AOPs or HUF, or any relative of such director, partner or member, <u>or any other company carrying on business or profession in which the first mentioned company has substantial interest</u> - a Company, Firm, AOPs or HUF <u>of which a director, partner or member, as the case may be, has a substantial interest in the business or profession of the assessee;</u> or any director, partner or member of such company, firm, association or family or any relative of such director, partner or member;

C. The word “relative” as defined in the section 2(41) of the Act, means, **in relation to individual**, the spouse, brother or sister or any lineal ascendant or descendant of that individual.

D. **A person shall be deemed to have a substantial interest in a business or profession if:**

- in a case where the **business or profession is carried on by a company**, such person is, **at any time** during the previous year, the beneficial owner of equity shares carrying **not less than 20% of the voting power and**
- **in any other case such person is, at any time** during the previous year, beneficially entitled to **not less than 20% the profits** of such business or profession.

E. Amount disallowed under section 40A(2) is however taxable as income in the hands of recipient.

SECTION 41 – DEEMED INCOME/PROFITS CHARGEABLE TO TAX

EXCEPTION TO THE RULE THAT INCOME FROM BUSINESS CAN BE ASSESSED ONLY IF THE BUSINESS IS CARRIED ON DURING THE PREVIOUS YEAR:

Section 41(1): Recovery against any deduction**A. Conditions:**

1. Where an **allowance or deduction is allowed** in any assessment year in **respect of loss, expenditure or trading liability** incurred by the assessee **and**
2. **subsequently during any previous year** such assessee has obtained, whether in cash or in any other manner whatsoever, any amount in respect of **such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof,**

B. Treatment: the amount obtained or benefit accrued shall be **deemed to be profits and gains of business or profession** and accordingly chargeable to income-tax as the income of that previous year.

C. Tax Points: Where such benefit has been **obtained by the successor in business,** such benefit shall be taxable in the hands of successor.

Section 41(2) – Balancing Charges

Section 41(3) –Any amount realised on transfer of an asset used for scientific research is taxable as business income to the extent of deduction allowed u/s 35 in the year in which the transfer takes place.

Section 41(4) –Any amount recovered by the assessee against bad debt earlier allowed as deduction shall be taxed as income in the year in which it is received.

Section 41(4A) - The withdrawal from special reserve created and maintained under section 36(1)(viii) will be deemed to be profits and gains of business and charged accordingly in the year of withdrawal. Even if the business is closed, it will be deemed to be in existence for this purpose.

Section 41(5)- Adjustment of loss - Generally, loss of a business cannot be carried forward after 8 years. An exception is, however, provided by section 41(5), This exception is applicable if the following condition are satisfied:

Condition 1	The business or profession is discontinued.
Condition 2	Loss of such business or profession pertaining to the year in which it is discontinued could not be set-off against any other income.
Condition 3	Such business is not speculation business.
Condition 4	After discontinued of such business or profession, there is a receipt which is deemed as business income under section 41(1), (3), (4) or (4A).

The unabsorbed loss pertaining to the year in which business/profession was discontinued is permitted to be set off against notional business income under section 41(1), (3), (4) or (4A) even after 8 years. It can be set off even if the return of the loss is not submitted in time.

Ques: A business (not being a speculation business) is discontinued on December 10, 1988. At the time there is unadjusted business loss of ₹ 35,000 (i.e., ₹ 10,000 of the previous year 1987-88 and ₹ 25,000 pertaining to the period commencing on April 1, 1988 and ending on December 10, 1988). On May 20, 2020, the assessee recovers a debt of ₹ 48,000 from a debtor which was allowed as bad debt in 1987-88. Find out the notional profit chargeable to tax for the previous year 2020-21 under section 41.

Solution:

Recovery of bad debt earlier allowed as bad debt [chargeable to tax under Section 41(4)

In spite of the fact that the business was discontinued on December 10, 1987] 48,000

Less: Unabsorbed business loss of the previous year in which the business was discontinued

(i.e., April 1, 1988 to December 10, 1988) by virtue of section 41(5) 25,000

Business income chargeable to tax for the assessment year 2021-22 23,000

CONTRIBUTIONS TO PROVIDENT AND OTHER FUNDS

CONTRIBUTION TO THE EMPLOYEES' PROVIDENT AND OTHER FUNDS ARE ALLOWABLE SUBJECT TO THE FOLLOWING CONDITIONS: [36(1)(iv) & (v)]

- (i) In case of Provident or a superannuation or a Gratuity Fund, it should be one recognised or approved under the Income-tax Act.
- (ii) The amount contributed should be periodic payment and not an adhoc payment to start the fund.
- (iii) The fund should be for exclusive benefit of the employees.

The nature of the benefit available to the employees from the fund is not material; it may be pension, gratuity or provident fund.

Provisions of Section 43B will be applicable while allowing deduction.

AMOUNT RECEIVED BY ASSESSEE AS CONTRIBUTION FROM HIS EMPLOYEES TOWARDS THEIR WELFARE FUND TO BE ALLOWED ONLY IF SUCH AMOUNT IS CREDITED ON OR BEFORE DUE DATE:

Section 36(1)(va) and Section 57 provide that deduction in respect of any sum received by the taxpayer as contribution from his employees towards any welfare fund of such employees [Such sum is income u/s 2(24)] **will be allowed**

"only if such sum is credited by the taxpayer to the employee's account in the relevant fund on or before the due date. [Within 15 days of the close of every month. No Grace Period]"

DISALLOWANCE OF PROVISION FOR GRATUITY – SECTION 40A(7)

Section 40A(7) provides any provision for Gratuity made by the assessee is not allowed deduction.

However, no such disallowance would be made if

- (a) it is made towards **contribution to an approved gratuity fund or,**
- (b) for the purpose of making payment of any gratuity that has **become payable**

[However, the deduction allowed shall be subject to the provisions of Section 43B]

CONTRIBUTIONS BY EMPLOYERS TO FUNDS, TRUST ETC. [SECTIONS 40A (9) TO (11)]

No deduction will be allowed where the assessee pays in his capacity as an employer, any sum towards setting up or formation of or as contribution to any fund, trust, company, association of persons, body of individuals, society etc. other than **funds covered by sections 36(1)(iv), 36(1)(iva) and 36(1)(v), then the deduction will not be denied.**

MAINTENANCE OF BOOKS OF ACCOUNTS [SECTION 44AA & Rule 6F]

A. In case of Notified Professionals: [Subject to Section 44ADA]

- (i) Every person carrying on the specified profession shall keep and maintain the specified books of account:
- a) if his gross receipts **exceed ₹ 1,50,000 in each of the 3 years** immediately preceding the previous year; or
 - b) if, where the profession has been newly set up in the previous year, his gross receipts are likely **to exceed ₹ 1,50,000 in that year.**

(ii) Notified Professions are:

(a) Legal	(b) Accountancy	(c) Company Secretary
(d) Medical	(e) Engineering	(f) Architectural
(g) Information Technology	(h) Interior Decorator	(i) Film Artist
(j) Technical Consultancy	(k) Authorised Representative	

Here, Film Artists includes actor, camera man, director, music director, art director, editor, singer, lyricist, story writer, screen play writer, dialogue writer and dress designer.

(iii) Specified Books of Accounts:

- a) a Cash Book;
- b) a journal, if mercantile basis is being followed.
- c) a ledger;
- d) Carbon copies of bills and receipts issued where sums exceeds ₹ 25;
- e) Original bills for expenditure exceeding ₹ 50.
- f) **In case of a person carrying on medical profession, he will be required to maintain the following in addition to the list given above:**
 - I. a Daily Cash Register in Form 3C.
 - II. Inventory records of drugs, medicines and other consumable accessories used for his profession.

Place at which books to be kept and maintained:

The books and documents shall be kept and maintained at the place where the person is carrying on the profession, or where there is more than one place, at the principal place of his profession. However, if he maintains separate set of books for each place of his profession, such books and documents may be kept and maintained at the respective places.

Period for which the books of account and other documents are required to be kept and maintained by notified professions:

The Central Board of Direct Taxes has also been empowered to prescribe, by rules, the period for which the books of account and other documents are required to be kept and maintained by the taxpayer.

The above books of account and documents shall be kept and maintained **for a minimum of 6 years from the end of the relevant assessment year.**

B. In case of Other Profession or Business:

Every taxpayer carrying on any business or profession (other than the professions specified above) must maintain the books of account prescribed by the CBDT in the following circumstances:

- I. **Existing Business or Profession:** in cases where the income from the business or profession exceeds ₹ 1,20,000 or the total sales turnover or gross receipts, as the case may be, in the business or profession exceed ₹ 10,00,000 in any one of three years immediately preceding the accounting year; or

For an Individual/HUF assessee, the above limit is ₹ 250,000 & ₹ 25,00,000.

- II. **Newly Setup Business or Profession:** in cases where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed ₹ 1,20,000 or his total sales turnover or gross receipts, as the case may be, in the business or profession are likely to exceed ₹ 10,00,000 during the previous year

For an Individual/HUF assessee, the above limit is ₹ 250,000 & ₹ 25,00,000.

- III. **Showing lower income as compared to income computed on presumptive basis under section 44AE or section 44BB or section 44BBB: (Section 44BB & Section 44BBB are at Final level)**

Where profits and gains from the business are calculated on a presumptive basis under section 44AE (or section 44BB or section 44BBB) and the assessee has claimed that his income is lower than the profits or gains so deemed to be the profits and gains of his business.

- IV. **Where the provisions of section 44AD(4) are applicable in his case and his income exceeds the basic exemption limit in any previous year:**

In cases, where an assessee not eligible to claim the benefit of the provisions of section 44AD(1) for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of 44AD(1) and his income exceeds the basic exemption limit during the previous year.

COMPULSORY AUDIT OF ACCOUNTS [SECTION 44AB]

1. **Applicability:** It is obligatory in the following cases for a person carrying on business or profession to get his accounts audited:

a) **Business:** if the total sales, turnover or gross receipts in business exceeds ₹ 1 Crores in any previous year; or

However, in case of person carrying on such business whose

i. aggregate cash receipts in the relevant PY < 5% of total receipts (incl. receipts for sales, turnover, gross receipts); and

ii. aggregate cash payments in the relevant PY < 5% of total payments (incl. amount incurred for expenditure)

If his total sales, turnover or gross receipts in business exceeds ₹ 5 crore in the relevant PY

Note: The requirement of audit u/s 44AB does not apply to a person who declares profits and gains on presumptive basis u/s 44AD and his total sales, turnover, or gross receipts does not exceed ₹ 2 crore.

b) **Business where Section 44AD(4) is applicable:**

Where the provisions of Section 44AD(4) are applicable & Income exceeds the maximum amount which is not chargeable to income-tax in any PY

c) **Business covered u/s 44AE/44BB/44BBB:** if the assessee claims that his income is lower than the profits and gains computed on a presumptive basis.

d) **Profession:** if the gross receipts in profession exceeds ₹ 50 lakh in any previous year; or

e) **Profession covered u/s 44ADA:** If he claims that his income is lower than the profits and gains computed on a presumptive basis and his income exceeds the basic exemption limit.

2. **Report & Form:** The Assessee is required to get his accounts of such previous year audited by a Chartered Accountant **before the specified date** and report thereof is furnished in prescribed forms.

For this purpose, the Board has prescribed under Rule 6G, Forms 3CA/3CB/3CD containing forms of audit report and particulars to be furnished therewith.

Accounts audited under other statutes are considered: In cases where the accounts of a person are required to be audited by or under any other law before the specified date, it will be sufficient if the person gets his accounts audited under such other law before the specified date and also furnish by the said date the report of audit in the prescribed form in addition to the report of audit required under such other law.

Thus, for example, the provision regarding compulsory audit does not imply a second or separate audit of accounts of companies whose accounts are already required to be audited under the Companies Act, 2013. The provision only requires that companies should get their accounts audited under the Companies Act, 2013 before the specified date and in addition to the report

required to be given by the auditor under the Companies Act, 2013 furnish a report for tax purposes in the form to be prescribed in this behalf by the CBDT.

Specified Date:

The expression “specified date” in relation to the accounts of the previous year or years relevant to any assessment year means the date one month prior to the due date for furnishing the return of income under section 139(1).

(a) Where the assessee has under taken any international transaction as per Section 92B or specified domestic transaction as per section 92BA:

31st October of the relevant AY
(ROI Due date is 30th November)

(b) In any other case:

30th September of the relevant AY
(ROI Due date is 31st October)

*[Example: The due date for filing return of income in case of assesseees (other than companies) who are required to get their accounts audited is **31st October** of the relevant assessment year. Hence, the specified date for tax audit would be **30th September** of the relevant assessment year]*

3. Consequence for non-compliance:

Section 271B provides for penal action for not getting the accounts audited and for not filing the audit report by the **specified date**. **Penalty being lower of the following:**

(a) ½ percent of turnover or gross receipt; or

(b) ₹ 150,000.

4. This Section does not apply to a person who derives income of the nature referred to in sections 44B and 44BBA

PRESUMPTIVE INCOME IN CASE OF SPECIFIC BUSINESS OR PROFESSION [Section 44AD / Section 44AE]

	44AD	44AE
Eligible Assessee	Resident Individual/HUF/Firm, but not a LLP & has not claimed deduction u/s 10AA or other Income Based Deduction under chapter VIA	Any Assessee
Eligible Business	Any business except the business of Section 44AE; & whose turnover/gross receipts does not exceed ₹ 2 Crores	Business of Plying, hiring or leasing of Good carriage where the Assessee is owning not more than 10 Goods Carriage at any time during the previous year.
Amount of Presumptive Income	<p>8% of total turnover or gross receipts or higher sum</p> <p>[6% in case payment is received by account payee cheque/draft/use of electronic clearing system through a bank account or through such other prescribed electronic modes [credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay] AND payment is received during the year or before the due date of ROI]</p>	<p>In case of HEAVY GOODS VEHICLE (Gross Vehicle Weight exceeds 12000 kilograms)</p> <p>₹ 1,000 per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month during which the heavy goods vehicle is owned by the assessee in the previous year</p> <p><u>OTHER THAN HEAVY GOODS VEHICLE:</u></p> <p>₹ 7,500 for every month or part of a month</p> <p><u>[For each vehicle owned by Assessee-Hire Purchase/installment]</u></p> <p>“A higher income can also be declared as per books”</p>
Provisions of Advance Tax	Advance tax is required to be paid by 15 th March – 100% in 1 installment)	Applicable
Effect if the assessee declares lower Income:	<p>If Section 44AD(4) is applicable, he will have to:</p> <p>a. Maintain books of account and other documents as required u/s 44AA if his total income exceeds the maximum exemption limit; and</p> <p>b. Get his accounts audited and furnish a report of such audit as prescribed u/s 44AB if his total income exceeds the maximum exemption limit. [Section 44AD(5)]</p>	<p>An assessee can declare his income lower than the prescribed, he will have to:</p> <p>a. Maintain books of account and other documents as required u/s 44AA and</p> <p>b. Get his accounts audited and furnish a report of such audit as prescribed u/s 44AB</p>

Common Note:

1. **Deduction u/s 30 to 38:** The assessee will be deemed to have been allowed the deductions under sections 30 to 38. No further Deduction is allowed.
2. **Deduction u/s 40(b) for assessee covered u/s 44AE:** Where the assessee is a firm, the salary and interest paid to its partners shall be deducted from the income computed above subject to the conditions and limits specified in clause (b) of section 40. **[No Such Deduction from AY 17-18 to assessee covered u/s 44AD & 44ADA]**
3. **Depreciation:** Depreciation is deemed to have been allowed. The WDV of asset will be calculated, as if depreciation has been allowed.
4. **Section 44AD & 44AE overrides Section 28 to 43C but does not override Chapter VI & Chapter VIA:** Therefore, the set off of current year losses & brought forward losses and deductions under chapter VIA are available against the income deemed under this section.
However, current year and brought forward depreciation cannot be set off against the deemed income since that is governed by section 32.
5. **The provisions of Section 44AD is not applicable in following cases:**
 - a. A person carrying on ***specified profession*** as referred to in Section 44AA;
 - b. A person earning ***income in the nature of commission or brokerage***; or
 - c. A person carrying on any ***Agency Business***.
6. Where an eligible assessee declares profit for any PY as per this section and he declares profit for **any of the 5 consecutive AYs relevant to the PY succeeding such PY not as per Section 44AD, he shall not be eligible to claim the benefit of the provisions of this section for 5 AYs subsequent to the AY relevant to the PY in which the profit has not been declared as per the Sec 44AD** **[Sec 44AD (4)]**
7. An eligible assessee to whom the provisions of Section 44AD(4) are applicable **and whose total income exceeds the maximum amount which is not chargeable to income-tax**, shall be required to keep and maintain such books of account and other documents as required under section 44AA and get them audited and furnish a report of such audit as required under section 44AB. **[Sec 44AD (5)]**

1. Example:

Let us consider the following particulars relating to a resident individual, Mr. A, being an eligible assessee whose gross receipts do not exceed ₹ 2 crore in any of the assessment years between A.Y. 2021-22 to A.Y. 2023-24:

Particulars	A.Y. 2021-22	A.Y. 2022-23	A.Y. 2023-24
Total turnover (₹)	1,80,00,000	1,90,00,000	2,00,00,000
Amount received through prescribed electronic modes on or before 31 st October of the A.Y.	1,60,00,000	1,45,00,000	1,80,00,000
Income offered for taxation (₹)	11,20,000	12,30,000	10,00,000
% of gross receipts	6% on ₹ 1.60 crore and 8% on ₹ 20 lakhs	6% on ₹ 1.45 crore and 8% on ₹ 45 lakhs	5% on ₹ 2 crore
Offered income as per presumptive taxation scheme u/s 44AD	Yes	Yes	No

In the above case, Mr. A, an eligible assessee, opts for presumptive taxation under section 44AD for A.Y. 2021-22 and A.Y. 2022-23 and offers income of ₹ 11.20 lakh and ₹ 12.30 lakh on gross receipts of ₹ 1.80 crore and ₹ 1.90 crore, respectively.

However, for A.Y. 2023-24, he offers income of only ₹ 10 lakh on turnover of ₹ 2 crore, which amounts to 5% of his gross receipts. He maintains books of account under section 44AA and gets the same audited under section 44AB. Since he has not offered income in accordance with the provisions of section 44AD(1) for five consecutive assessment years, after A.Y. 2021-22, he will not be eligible to claim the benefit of section 44AD for next five assessment years succeeding A.Y. 2023-24 i.e., from AY 2024-25 to AY 2028-29.

2. Mr. Praveen engaged in retail trade, reports a turnover of ₹ 1,98,50,000 for the financial year 2020-21. His income from the said business as per books of account is ₹ 13,20,000 computed as per the provisions of Chapter IV-D “Profits and gains from business or Profession” of the Income-tax Act, 1961. Retail trade is the only source of income for Mr. Praveen. A.Y. 2020-21 was the first year for which he declared his business income in accordance with the provisions of presumptive taxation under section 44AD.

- (i) Is Mr. Praveen also eligible to opt for presumptive determination of his income chargeable to tax for the assessment year 2021-22?
- (ii) If so, determine his income from retail trade as per the applicable presumptive provision assuming that whole of the turnover represents cash receipts.
- (iii) In case Mr. Praveen does not opt for presumptive taxation of income from retail trade, what are his obligations under the Income-tax Act, 1961?
- (iv) What is the due date for filing his return of income under both the options?

Solution:

- (i) Yes. Since his total turnover for the F.Y. 2020-21 is below ₹ 200 lakhs, he is eligible to opt for presumptive taxation scheme under section 44AD in respect of his retail trade business.
- (ii) His income from retail trade, applying the presumptive tax provisions under section 44AD, would be ₹ 15,88,000, being 8% of ₹ 1,98,50,000.
- (iii) Mr. Praveen had declared profit for the previous year 2019-20 in accordance with the presumptive provisions and if he does not opt for presumptive provisions for any of the five consecutive assessment years i.e., A.Y. 2021-22 to A.Y. 2025-26, he would not be eligible to claim the benefit of presumptive taxation for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance the presumptive provisions i.e. if he does not opt for presumptive taxation in say P.Y. 2020-21 relevant to A.Y. 2021-22, then he would not be eligible to claim the benefit of presumptive taxation for A.Y. 2022-23 to A.Y. 2026-27.

Consequently, Mr. Praveen is required to maintain the books of accounts and get them audited under section 44AB, since his income exceeds the basic exemption limit.

- (iv) In case he opts for the presumptive taxation scheme under section 44AD, the due date would be 31st July, 2021.

In case he does not opt for presumptive taxation scheme, he is required to get his books of account audited, in which case the due date for filing of return of income **would be 31st October, 2021.**

PRESUMPTIVE INCOME IN CASE OF NOTIFIED PROFESSIONALS

SECTION 44ADA

Eligible Assessee	Resident Assessee engaged in <u>Notified Profession</u> as per Section 44AA
Eligible profession	Total Gross receipts does not exceed <u>₹50 Lakhs</u>
Amount of Presumptive Income	<u>50% of gross receipts or higher sum</u>
Requirement of maintenance of books of account u/s 44AA and audit u/s 44AB	If eligible assessee declares profits and gains in accordance with the provisions of section 44ADA, he is not required to maintain books of account u/s 44AA or get them audited u/s 44AB.
Effect if the assessee declares lower Income:	<p>a. Maintain books of account and other documents as required u/s 44AA <u>if his total income exceeds the maximum exemption limit</u>; and</p> <p>b. Get his accounts audited and furnish a report of such audit as prescribed u/s 44AB <u>if his total income exceeds the maximum exemption limit</u>.</p>

Common Note:

- Deduction u/s 30 to 38:** The assessee will be deemed to have been allowed the deductions under sections 30 to 38. No further Deduction is allowed.

Note: Even in case of a firm, salary and interest paid to partners is **not** deductible.

- Depreciation:** Depreciation is deemed to have been allowed. The WDV of asset will be calculated, as if depreciation has been allowed.
- Section 44ADA overrides Section 28 to 43C but does not override Chapter VI & Chapter VIA:** Therefore, the set off of current year losses & brought forward losses and deductions under chapter VIA are available against the income deemed under this section.

However, current year and brought forward depreciation cannot be set off against the deemed income since that is governed by section 32.

- Advance Tax provisions are applicable (similar to Section 44AD)**
Advance tax is payable to the extent of the whole amount of such advance tax during each financial year on or before the 15th March (only 1 installment of 100%)

Computation of income under the head "Profits and gains of business or profession" for transfer of immovable property in certain cases [Sec. 43CA]

1. **Section 43CA** provides that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the SDV shall be deemed to be the full value of the consideration for the purposes of computing income under the head "Profits and gains of business or profession".

*Provided that where the value adopted or assessed or assessable by the authority for the purpose of payment of stamp duty **does not exceeds 110% 105%** (Amended by Finance Act 2020, w.e.f. AY 2021-22) of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of computing profits and gains from transfer of such asset, be deemed to be the full value of the consideration.*

2. **When date of agreement and date of registration are not same:**

SDV may be taken as on the date of the agreement for transfer and not as on the date of registration for such transfer if amount of consideration (or a part thereof) for the transfer has been received **by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or through such other prescribed electronic modes** on or before the date of the agreement.

The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2020 dated 29.01.2020].

3. **Can an assessee challenge stamp duty valuation** – Yes. In that case, VO will be appointed.

Method of Accounting [Section 145]

1. Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of sub-section (2), be computed in accordance with ***either cash or mercantile system of accounting regularly employed by the assessee.***
2. The Central Government may notify in the Official Gazette from time to time **Income Computation and Disclosure Standards (ICDSs)** to be followed by any class of assessees or in respect of any class of income.
3. Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), **the Assessing Officer may make an assessment in the manner provided in section 144.**

Taxability of certain income [Section 145B]

1. Notwithstanding anything to the contrary contained in Section 145, the ***interest received by an assessee on any compensation or on enhanced compensation***, as the case may be, **shall be deemed to be the income of the previous year in which it is received.**
2. ***Any claim for escalation of price in a contract or export incentives*** shall be deemed to be the income of the previous year **in which reasonable certainty of its realisation is achieved.**
3. The income referred to in **sub-clause (xviii) of clause (24) of section 2** shall be deemed to be the income of the previous year in which it is received, if not charged to income-tax in any earlier previous year.

Income as referred in Section 2(24)(xviii)

Assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement (by whatever name called) by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee other than-

- a. the subsidy or grant or reimbursement **which is taken into account for determination of the actual cost of the asset** in accordance with the provisions of Explanation 10 to clause (1) of section 43; or
- b. the subsidy or grant **by the Central Government** for the purpose of the **corpus of a trust or institution established by the Central Government or a State Government**, as the case may be;

Method of accounting in certain cases [Section 145A]

For the purpose of determining the income chargeable under the head "Profits and gains of business or profession",—

- i. the **valuation of inventory** shall be made **at lower of actual cost or net realisable value** computed in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145;
- ii. the **valuation of purchase and sale of goods or services** and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee (by whatever name called) actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation;
- iii. the **inventory being securities not listed on a recognised stock exchange, or listed but not quoted** on a recognised stock exchange with regularity from time to time, shall be valued at **actual cost** initially recognised in accordance with notified ICDSs;
- iv. the **inventory being securities other than those referred to in clause (iii)**, shall be valued at lower of **actual cost or net realisable value** in accordance with the notified ICDSs

Provided that the **inventory being securities held by a scheduled bank or public financial institution** shall be valued in accordance with the notified ICDSs after taking into account the extant guidelines issued by the Reserve Bank of India in this regard:

Provided further that the comparison of actual cost and net realisable value of securities shall be made category-wise.

Deduction in respect of Marked to Market loss

Section 36(1)(xviii)

"**Marked to Market loss or other expected loss** as computed in accordance with the ICDSs notified under **Section 145(2)**" shall be allowed as deduction in computing the income referred to in **Section 28**.

Section 40A(13)

No deduction or allowance shall be allowed in respect of any marked to market loss or other expected loss, **except as allowable under clause (xviii) of sub-section (1) of section 36**.

Section 43AA: Taxation of Foreign Exchange Fluctuation:

1. Subject to the provisions of Section 43A, **any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss**, as the case may be, and such gain or loss shall be computed in accordance with the ICDSs notified under sub-section (2) of section 145.
2. For the purposes of sub-section (1), **gain or loss arising on account of the effects of change in foreign exchange rates shall be in respect of all foreign currency transactions**, including those relating to—
 - i. Monetary items and Non-monetary items;
 - ii. Translation of Financial statements of foreign operations;
 - iii. Forward exchange contracts;
 - iv. Foreign Currency translation reserves.

Section 43CB: Computation of Income from Construction and Service Contracts.

1. The profits and gains arising from a **Construction Contract** or a **Contract for Providing Services** shall be determined on the basis of **Percentage of Completion Method** in accordance with the income computation and disclosure standards notified under sub-section (2) of section 145:

Provided that profits and gains arising from a Contract for providing services,—

- i. with duration of **not more than ninety days** shall be determined **on the basis of project completion method**;
 - ii. involving **indeterminate number of acts over a specific period of time** shall be determined on the basis of **straight line method**.
2. **For the purposes of percentage of completion method, project completion method or straight line method referred to in sub-section (1)-**
 - i. the contract revenue **shall include retention money**;
 - ii. the **contract costs shall not be reduced** by any incidental income in the nature of interest, dividends or capital gains.

Special Provision in case of income of Public Financial Institutions, Public companies etc. [Section 43D]

1. In the case of
 - a public financial institution or
 - a scheduled bank or
 - a co-operative bank other than primary agricultural credit society or a primary cooperative
 - agricultural and rural development bank or
 - a State financial corporation or
 - a State industrial investment corporation or
 - **a deposit taking non-banking financial company or**
 - **systemically important non-deposit taking non-banking financial company**the income by way of interest on such categories of bad and doubtful debts, as may be prescribed having regard to the guidelines issued by the Reserve Bank of India in relation to such debts,
2. **In the case of a public company**, the income by way of interest in relation to such categories of bad and doubtful debts as may be prescribed having regard to the **guidelines issued by the National Housing Bank established under the National Housing Bank Act, 1987** in relation to such debts,

shall be chargeable to tax in the previous year in which it is credited to the profit and loss account by the said institutions or public company for that year or in the previous in which it is actually received by it, whichever is earlier.

QUESTIONs *for* Practice - SET A

1. Mr. X, a proprietor engaged in manufacturing business, furnishes the following particulars:

	Particulars	₹
(1)	Opening WDV of plant and machinery as on 1.4.2020	30,00,000
(2)	New plant and machinery purchased and put to use on 08.06.2020	20,00,000
(3)	New plant and machinery acquired and put to use on 15.12.2020	8,00,000
(4)	Computer acquired and installed in the office premises on 2.1.2021	3,00,000

Compute the amount of depreciation and additional depreciation as per the Income- tax Act, 1961 for the A.Y. 2021-22. **Assume that all the assets were purchased by way of account payee cheque.**

Solution:

Computation of depreciation and additional depreciation for A.Y. 2021-22

Particulars	Plant & Machinery (15%)	Computer (40%)
Normal depreciation @15% on ₹ 50,00,000 [See Working Notes 1 & 2]	7,50,000	-
@7.5% (50% of 15%, since put to use for less than 180 days) on ₹ 8,00,000	60,000	-
@20% (50% of 40%, since put to use for less than 180 days) on ₹ 3,00,000	-	60,000
Additional Depreciation @20% on ₹ 20,00,000 (new plant and machinery put to use for more than 180 days)	4,00,000	-
@10% (50% of 20%, since put to use for less than 180 days) on ₹ 8,00,000	80,000	-
Total depreciation	12,90,000	60,000

Working Notes:

1. Computation of written down value of Plant & Machinery as on 31.03.2021

Particulars	Plant & Machinery (₹)	Computer (₹)
Written down value as on 1.4.2020	30,00,000	-
Add: Plant & Machinery purchased on 08.6.2020	20,00,000	-
Add: Plant & Machinery acquired on 15.12.2020	8,00,000	-
Computer acquired and installed in the office premises	-	3,00,000
Written down value as on 31.03.2021	58,00,000	3,00,000

2. Composition of plant and machinery included in the WDV as on 31.3.2021

Particulars	Plant & Machinery (₹)	Computer (₹)
Plant and machinery put to use for 180 days or more [₹ 30,00,000 (Opening WDV) + ₹20,00,000 (purchased on 8.6.2020)]	50,00,000	
Plant and machinery put to use for less than 180 days	8,00,000	-
Computers put to use for less than 180 days	-	3,00,000
	58,00,000	3,00,000

Notes:

1. As per the second proviso to section 32(1)(ii), where an asset acquired during the previous year is put to use for less than 180 days in that previous year, the amount of deduction allowable as normal depreciation and additional depreciation would be restricted to 50% of amount computed in accordance with the prescribed percentage.

Therefore, normal depreciation on plant and machinery acquired and put to use on 15.12.2020 and computer acquired and installed on 02.01.2021, is restricted to 50% of 15% and 40%, respectively.

The additional depreciation on the said plant and machinery is restricted to ₹ 80,000, being 10% (i.e., 50% of 20%) of ₹ 8 lakh

2. As per third proviso to section 32(1)(ii), the balance additional depreciation of ₹ 80,000 being 50% of ₹ 1,60,000 (20% of ₹ 8,00,000) would be allowed as deduction in the A.Y. 2022-23.
3. As per section 32(1)(ia), additional depreciation is allowable in the case of any new machinery or plant **acquired and installed after 31.3.2005** by an assessee engaged, inter alia, in the business of manufacture or production of any article or thing, @20% of the actual cost of such machinery or plant.

However, additional depreciation shall not be allowed in respect of, inter alia, any machinery or plant installed in office premises, residential accommodation or in any guest house.

Accordingly, additional depreciation is not allowable on computer installed in the office premises.

2. **A car purchased by Dr. Soman on 10.08.2017 for ₹ 5,25,000 for personal use is brought into professional use on 1.07.2020 by him, when its market value was ₹ 2,50,000.**

Compute the actual cost of the car and the amount of depreciation for the assessment year 2021-22 assuming the rate of depreciation to be 15%.

Solution:

As per section 43(1), the expression "actual cost" would mean the actual cost of asset to the assessee.

The purchase price of ₹ 5,25,000 is, therefore, the actual cost of the car to Dr. Soman. Market value (i.e. ₹ 2,50,000) on the date when the asset is brought into professional use is not relevant.

Therefore, amount of depreciation on car as per section 32 for the A.Y.2021-22 would be ₹ 78,750, being ₹ 5,25,000 x 15%.

Note: Explanation 5 to section 43(1) providing for reduction of notional depreciation from the date of acquisition of asset for personal use to determine actual cost of the asset **is applicable only in case of building** which is initially acquired for personal use and later brought into professional use. It is not applicable in respect of other assets.

3. **A newly qualified Chartered Accountant Mr. Dhaval, commenced practice and has acquired the following assets in his office during F.Y. 2020-21 at the cost shown against each item. Calculate the amount of depreciation that can be claimed from his professional income for A.Y. 2021-22. Assume that all the assets were purchased by way of account payee cheque.**

Sl. No.	Description	Date of acquisition	Date when put to use	Amount ₹
1.	Computer including computer software	27 Sept., 20	1 Oct., 20	35,000
2.	Computer UPS	2 Oct., 20	8 Oct., 20	8,500
3.	Computer printer	1 Oct., 20	1 Oct., 20	12,500
4.	Books (other than annual publications are of ₹ 12,000)	1 Apr., 20	1 Apr., 20	13,000
5.	Office furniture (Acquired from a practicing C.A.)	1 Apr., 20	1 Apr., 20	3,00,000
6.	Laptop	26 Sep., 20	8 Oct., 20	43,000

Solution:**Computation of depreciation allowable for A.Y. 2021-22**

Asset	Rate	Depreciation (₹)
Block 1 Furniture [See working note below]	10%	30,000
Block 2 Plant (Computer including computer software, Computer UPS, Laptop, Printers and Books)		
[See working note below]	40%	34,500
Total depreciation allowable		64,500

Working Note:**Computation of depreciation**

Block of Assets	₹
Block 1: Furniture – [Rate of depreciation - 10%] Put to use for more than 180 days [₹ 3,00,000 @ 10%]	30,000

Block 2: Plant [Rate of depreciation- 40%]	
(a) Computer including computer software (put to use for more than 180 days) [₹ 35,000 @ 40%]	14,000
(b) Computer UPS (put to use for less than 180 days) [₹ 8,500 @ 20%] [See note below]	1,700
(c) Computer Printer (put to use for more than 180 days) [₹ 12,500 @ 40%]	5,000
(d) Laptop (put to use for less than 180 days) [₹ 43,000 @ 20%] [See note below]	8,600
(e) Books (being annual publications or other than annual publications) (Put to use for more than 180 days) [₹ 13,000 @ 40%]	5,200
	34,500

Note - Where an asset is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than 180 days, the deduction on account of depreciation would be restricted to 50% of the prescribed rate. In this case, since Mr. Dhaval commenced his practice in the P.Y. 2020-21 and acquired the assets during the same year, the restriction of depreciation to 50% of the prescribed rate would apply to those assets which have been put to use for less than 180 days in that year, namely, laptop and computer UPS.

4. Mr. Gamma, a proprietor started a business of manufacture of tyres and tubes for motor vehicles on 1.1.2020. The manufacturing unit was set up on 1.5.2020. He commenced his manufacturing operations on 1.6.2020. The total cost of the plant and machinery installed in the unit is ₹ 120 crore. The said plant and machinery included second hand plant and machinery bought for ₹ 20 crore and new plant and machinery for scientific research relating to the business of the assessee acquired at a cost of ₹ 15 crore.

Compute the amount of depreciation allowable under section 32 of the Income-tax Act, 1961 in respect of the assessment year 2021-22. **Assume that all the assets were purchased by way of account payee cheque and Mr. Gamma has not opted for the provisions of section 115BAC.**

Solution:**Computation of depreciation allowable for the A.Y. 2021-22 in the hands of Mr. Gamma**

Particulars		₹ in crore	
Total cost of plant and machinery		120.00	
Less: Used for Scientific Research (Note 1)		15.00	
		105.00	
Normal Depreciation at 15% on ₹ 105 crore			15.75
Additional Depreciation:			
Cost of plant and machinery		120.00	
Less: Second hand plant and machinery (Note 2)	20.00		
Plant and machinery used for scientific research, the whole of the actual cost of which is allowable as deduction under section 35(1)(iv) read with section 35(2)(ia) (Note 2)	15.00	35.00	
Additional Depreciation at 20%		85.00	17.00
Depreciation allowable for A.Y. 2021-22			32.75

Notes:

- As per section 35(2)(iv), no depreciation shall be allowed in respect of plant and machinery purchased for scientific research relating to assessee's business, since deduction is allowable under section 35 in respect of such capital expenditure.
- As per section 32(1)(ia), additional depreciation is allowable in the case of any new machinery or plant **acquired and installed after 31.3.2005** by an assessee engaged in, inter alia, the business of manufacture or production of any article or thing, at the rate of 20% of the actual cost of such machinery or plant.

However, additional depreciation shall not be allowed in respect of, inter alia, –

- any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person;
- any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profit and gains of business or profession" of any one previous year.

In view of the above provisions, additional depreciation cannot be claimed in respect of -

- Second hand plant and machinery;
- New plant and machinery purchased for scientific research relating to assessee's business in respect of which the whole of the capital expenditure can be claimed as deduction under section 35.

- Mr. A, furnishes the following particulars for the P.Y. 2020-21. Compute the deduction allowable under section 35 for A.Y. 2021-22, while computing his income under the head "Profits and gains of business or profession"

	Particulars	₹
1.	Amount paid to notified approved Indian Institute of Science, Bangalore, for scientific research	1,00,000
2.	Amount paid to IIT, Delhi for an approved scientific research programme	2,50,000
3.	Amount paid to X Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority	4,00,000
4.	Expenditure incurred on in-house research and development facility as approved by the prescribed authority	
	(a) Revenue expenditure on scientific research	3,00,000
	(b) Capital expenditure (including cost of acquisition of land ₹ 5,00,000) on scientific research	7,50,000

Solution:**Computation of deduction under section 35 for the A.Y. 2021-22**

Particulars	₹	Section	% of weighted deduction	Amount of deduction (₹)
Payment for scientific research				
Indian Institute of Science	1,00,000	35(1)(ii)	100%	1,00,000
IIT, Delhi	2,50,000	35(2AA)	100%	2,50,000
X Ltd.	4,00,000	35(1)(iia)	100%	4,00,000
Expenditure incurred on in- house research and development facility				
Revenue expenditure	3,00,000	35(1)(i)	100%	3,00,000
Capital expenditure (excluding cost of acquisition of land ₹ 5,00,000)	2,50,000	35(1)(iv) read with 35(2)(ia)	100%	2,50,000
Deduction allowable under section 35				13,00,000

Note: Only company assessee are entitled to weighted deduction @150% under section 35(2AB) in respect of in-house research and development expenditure incurred. However, in this case, the assessee is an individual. Therefore, he would be entitled to deduction@100% of the revenue expenditure incurred under section 35(1)(i) and 100% of the capital expenditure incurred under section 35(1)(iv) read with section 35(2), assuming that such expenditure is laid out or expended on scientific research related to his business.

6. Mr. A commenced operations of the businesses of setting up a warehousing facility for storage of food grains, sugar and edible oil on 1.4.2020. He incurred capital expenditure of ₹ 80 lakh, ₹ 60 lakh and ₹ 50 lakh, respectively, on purchase of land and building during the period January, 2020 to March, 2020 exclusively for the above businesses, and capitalized the same in its books of account as on 1st April, 2020. The cost of land included in the above figures is ₹ 50 lakh, ₹ 40 lakh and ₹ 30 lakh, respectively. During the P.Y. 2020-21, he incurred capital expenditure of ₹ 20 lakh, ₹ 15 lakh & ₹ 10 lakh, respectively, for extension/ reconstruction of the building purchased and used exclusively for the above businesses.

Compute the income under the head “Profits and gains of business or profession” for the A.Y. 2021-22 and the loss to be carried forward, assuming that Mr. A has fulfilled all the conditions specified under section 35AD and wants to claim deduction under section 35AD and has not claimed any deduction under Chapter VI-A under the heading “C – Deductions in respect of certain incomes”.

The profits from the business of setting up a warehousing facility for storage of food grains, sugar and edible oil (before claiming deduction under section 35AD and section 32) for the A.Y. 2021-22 is ₹ 16 lakhs, ₹ 14 lakhs and ₹ 31 lakhs, respectively. Also, assume in respect of expenditure incurred, the payments are made by account payee cheque or use of ECS through bank account.

Solution:**Computation of profits and gains of business or profession for A.Y. 2021-22**

Particulars	₹ (in lakhs)
Profit from business of setting up of warehouse for storage of edible oil (before providing for depreciation under section 32)	31
Less: Depreciation under section 32	
10% of ₹ 30 lakh, being (₹ 50 lakh – ₹ 30 lakh + ₹10 lakh)	3
Income chargeable under “Profits and gains from business or profession”	28

Computation of income/loss from specified business under section 35AD

Particulars	Food Grains	Sugar	Total
	(in lakhs)		
A. Profits from the specified business of setting up a warehousing facility (before providing deduction under section 35AD)	16	14	30
Less: Deduction under section 35AD			
B. Capital expenditure incurred prior to 1.4.2020 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2020 (excluding the expenditure incurred on acquisition of land) = ₹ 30 lakh (₹ 80 lakh – ₹ 50 lakh) and ₹ 20 lakh (₹ 60 lakh – ₹ 40 lakh)	30	20	50
C. Capital expenditure incurred during the P.Y. 2020-21	20	15	35
D. Total capital expenditure (B + C)	50	35	85
E. Deduction under section 35AD 100% of capital expenditure (food grains/sugar)	50	35	85
F. Total deduction u/s 35AD for A.Y. 2021-22	50	35	85
G. Loss from the specified business of setting up and operating a warehousing facility (after providing for deduction under section 35AD) to be carried forward as per section 73A (A-E)	(34)	(21)	(55)

Notes:

- (i) Deduction of 100% of the capital expenditure is available under section 35AD for A.Y. 2021-22 in respect of specified business of setting up and operating a warehousing facility for storage of sugar and setting up and operating a warehousing facility for storage of agricultural produce where operations are commenced on or after 01.04.2012 or on or after 01.04.2009, respectively.
 - (ii) However, since setting up and operating a warehousing facility for storage of edible oils is not a specified business, Mr. A is not eligible for deduction under section 35AD in respect of capital expenditure incurred in respect of such business.
 - (iii) Mr. A can, however, claim depreciation@10% under section 32 in respect of the capital expenditure incurred on buildings. It is presumed that the buildings were put to use for more than 180 days during the P.Y. 2020-21.
 - (iv) Loss from a specified business can be set-off only against profits from another specified business. Therefore, the loss of ₹ 55 lakh from the specified businesses of setting up and operating a warehousing facility for storage of food grains and sugar cannot be set-off against the profits of
 - (v) ₹ 28 lakh from the business of setting and operating a warehousing facility for storage of edible oils, since the same is not a specified business. Such loss can, however, be carried forward indefinitely for set-off against profits of the same or any other specified business.
7. Mr. Suraj, a proprietor, commenced operations of the business of a new three-star hotel in Madurai, Tamil Nadu on 1.4.2020. He incurred capital expenditure of ₹ 50 lakh during the period January, 2020 to March, 2020 exclusively for the above business, and capitalized the same in his books of account as on 1st April, 2020. Further, during the P.Y. 2020-21, he incurred capital expenditure of ₹ 2 crore (out of which ₹ 1.50 crore was for acquisition of land) exclusively for the above business.

Compute the income under the head “Profits and gains of business or profession” for the A.Y. 2021-22, assuming that he has fulfilled all the conditions specified under section 35AD and opted for claiming deduction under section 35AD; and he has not claimed any deduction under Chapter VI-A under the heading “C – Deductions in respect of certain incomes”.

The profits from the business of running this hotel (before claiming deduction under section 35AD) for the A.Y. 2021-22 is ₹ 25 lakhs.

Assume that he also has another existing business of running a four-star hotel in Coimbatore, which commenced operations fifteen years back, the profits from which are ₹ 120 lakhs for the A.Y. 2021-22. Also, assume that payments for capital expenditure were made by net banking.

Solution:

Computation of profits and gains of business or profession for A.Y. 2021-22

Particulars	₹
Profits from the specified business of new hotel in Madurai (before providing deduction under section 35AD)	25 lakh
Less: Deduction under section 35AD	
Capital expenditure incurred during the P.Y. 2020-21 (excluding the expenditure incurred on acquisition of land) = ₹ 200 lakh – ₹ 150 lakh	50 lakh
Capital expenditure incurred prior to 1.4.2020 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2020	50 lakh
Total deduction under section 35AD for A.Y. 2021-22	100 lakh
Loss from the specified business of new hotel in Madurai	(75 lakh)
Profit from the existing business of running a hotel in Coimbatore	120 lakh
Net profit from business after set-off of loss of specified business against profits of another specified business under section 73A	45 lakh

8. Delta Ltd. credited the following amounts to the account of resident payees in the month of March, 2021 without deduction of tax at source. What would be the consequence of non-deduction of tax at source by Delta Ltd. on these amounts during the financial year 2020-21, assuming that the resident payees in all the cases mentioned below, have not paid the tax, if any, which was required to be deducted by Delta Ltd.?

	Particulars	Amount in ₹
(1)	Salary to its employees (credited and paid in March, 2021)	12,00,000
(2)	Directors' remuneration (credited in March, 2021 and paid in April, 2021)	28,000

Would your answer change if Delta Ltd. has deducted tax on directors' remuneration in April, 2021 at the time of payment and remitted the same in July, 2021?

Solution:

Non-deduction of tax at source on any sum payable to a resident on which tax is deductible at source as per the provisions of Chapter XVII-B would attract disallowance u/s 40(a)(ia).

Therefore, non-deduction of tax at source on any sum paid by way of salary on which tax is deductible u/s 192 or any sum credited or paid by way of directors' remuneration on which tax is deductible under section 194J, would attract disallowance @30% u/s 40(a)(ia).

Whereas in case of salary, tax has to be deducted u/s 192 at the time of payment, in case of directors' remuneration, tax has to be deducted at the time of credit of such sum to the account of the payee or at the time of payment, whichever is earlier.

Therefore, in both the cases i.e., salary and directors' remuneration, tax is deductible in the P.Y. 2020-21, since salary was paid in that year and directors' remuneration was credited in that year. Therefore, the amount to be disallowed u/s 40(a)(ia) while computing business income for A.Y. 2021-22 is as follows –

Particulars	Amount paid in ₹	Disallowance u/s 40(a)(ia) @30%
(1) Salary [tax is deductible under section 192]	12,00,000	3,60,000
(2) Directors' remuneration [tax is deductible under section 194J without any threshold limit]	28,000	8,400
Disallowance under section 40(a)(ia)		3,68,400

If the tax is deducted on directors' remuneration in the next year i.e., P.Y. 2021-22 at the time of payment and remitted to the Government, the amount of ₹ 8,400 would be allowed as deduction while computing the business income of A.Y. 2022-23.

9. During the financial year 2020-21, the following payments/expenditure were made/ incurred by Mr. Yuvan Raja, a resident individual (**whose turnover during the year ended 31.3.2020 was ₹ 99 lacs**):

- (i) Interest of ₹ 45,000 was paid to Rehman & Co., a resident partnership firm, without deduction of tax at source;
- (ii) ₹ 3,00,000 was paid as salary to a resident individual without deduction of tax at source;
- (iii) Commission of ₹ 16,000 was paid to Mr. Vidyasagar, a resident, on 2.7.2020 without deduction of tax at source.

Briefly discuss whether any disallowance arises under the provisions of section 40(a)(ia) of the Income-tax Act, 1961 assuming that the payees in all the cases mentioned above, have not paid the tax, if any, which was required to be deducted by Mr. Raja?

Solution:

Disallowance under section 40(a)(ia) of the Income-tax Act, 1961 is attracted where the assessee fails to deduct tax at source as is required under the Act, or having deducted tax at source, fails to remit the same to the credit of the Central Government within the stipulated time limit.

- (i) The obligation to deduct tax at source from interest paid to a resident arises under section 194A in the case of an individual, **whose total turnover in the immediately preceding previous year, i.e., P.Y.2019-20 exceeds ₹ 100 lakhs**. Thus, in present case, since the turnover of the assessee is less than ₹ 100 lakhs, he is not liable to deduct tax at source. Hence, disallowance under section 40(a)(ia) is not attracted in this case.
- (ii) The disallowance of 30% of the sums payable under section 40(a)(ia) would be attracted in respect of all sums on which tax is deductible under Chapter XVII-B. Section 192, which requires deduction of tax at source from salary paid, is covered under Chapter XVII-B. The obligation to deduct tax at source under section 192 arises, in the hands all assessee-employer **even if the turnover amount does not exceed ₹ 100 lakhs in the immediately preceding previous year**.

Therefore, in the present case, the disallowance under section 40(a)(ia) is attracted for failure to deduct tax at source under section 192 from salary payment. However, only 30% of the amount of salary paid without deduction of tax at source would be disallowed.

- (iii) The obligation to deduct tax at source under section 194-H from commission paid in excess of ₹ 15,000 to a resident arises in the case of an individual, **whose total turnover in the immediately preceding previous year, i.e., P.Y.2019-20 exceeds ₹ 1 crore**. Thus, in present case, since the turnover of the assessee is less than ₹ 1 crore, he is not liable to deduct tax at source u/s 194-H. Mr. Raja is not required to deduct tax at source u/s 194M also since the aggregate of such commission to Mr. Vidyasagar does not exceed ₹ 50 lakh during the P.Y. 2020-21. Therefore, disallowance under section 40(a)(ia) is not attracted in this case.

10. Hari, an individual, carried on the business of purchase and sale of agricultural commodities like paddy, wheat, etc. He borrowed loans from Andhra Pradesh State Financial Corporation (APSFC) and Indian Bank and has not paid interest as detailed hereunder:

		₹
(i)	Andhra Pradesh State Financial Corporation (P.Y. 2019-20 & 2020-21)	15,00,000
(ii)	Indian Bank (P.Y. 2020-21)	30,00,000
		45,00,000

Both APSFC and Indian Bank, while restructuring the loan facilities of Hari during the year 2020-21, converted the above interest payable by Hari to them as a loan repayable in 60 equal installments. During the year ended 31.3.2021, Hari paid 5 installments to APSFC and 3 installments to Indian Bank.

Hari claimed the entire interest of ₹ 45,00,000 as an expenditure while computing the income from business of purchase and sale of agricultural commodities. Examine whether his claim is valid and if not what is the amount of interest, if any, allowable.

Solution:

According to section 43B, any interest payable on the term loans to specified financial institutions and any interest payable on any loans and advances to, inter alia, scheduled banks shall be allowed only in the year of payment of such interest irrespective of the method of accounting followed by the may be converted into loan. Such conversion of unpaid interest into loan shall not be construed as payment of interest for the purpose of section 43B. The amount of unpaid interest so converted as loan shall be allowed as deduction only in the year in which the converted loan is actually paid.

In the given case of Hari, the unpaid interest of ₹ 15,00,000 due to APSFC and of ₹ 30,00,000 due to Indian Bank was converted into loan. Such conversion would not amount to payment of interest and would not, therefore, be eligible for deduction in the year of such conversion. Hence, claim of Hari that the entire interest of ₹ 45,00,000 is to be allowed as deduction in the year of conversion is not tenable. The deduction shall be allowed only to the extent of repayment made during the financial year.

Accordingly, the amount of interest eligible for deduction for the A.Y. 2021-22 shall be calculated as follows:

	Interest outstanding	Number of Instalments	Amount per instalment	Instalments paid	Interest allowable
APSFC	15 lakh	60	25,000	5	1,25,000
Indian Bank	30 lakh	60	50,000	3	1,50,000
Total amount eligible for deduction					2,75,000

11. Vinod is a person carrying on profession as film artist. His gross receipts from profession are as under:

	₹
Financial year 2017-18	1,15,000
Financial year 2018-19	1,80,000
Financial year 2019-20	2,10,000

What is his obligation regarding maintenance of books of accounts for Assessment Year 2021-22 under section 44AA of Income-tax Act, 1961?

Solution:

Section 44AA(1) requires every person carrying on any profession, notified by the Board in the Official Gazette (in addition to the professions already specified therein), to maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act, 1961.

As per Rule 6F, a person carrying on a notified profession shall be required to maintain specified books of accounts:

- (i) if his gross receipts in all the three years immediately preceding the relevant previous year has exceeded ₹ 1,50,000; or
- (ii) if it is a new profession which is setup in the relevant previous year, it is likely to exceed ₹ 1,50,000 in that previous year.

In the present case, Vinod is a person carrying on profession as film artist, which is a notified profession. Since his gross receipts have not exceeded ₹ 1,50,000 in financial year 2017-18, the requirement under section 44AA to compulsorily maintain the prescribed books of account is not applicable to him.

Mr. Vinod, however, required to maintain such books of accounts as would enable the Assessing Officer to compute his total income.

12. Mr. X commenced the business of operating goods vehicles on 1.4.2020. He purchased the following vehicles during the P.Y. 2020-21. Compute his income under sec. 44AE for A.Y. 2021-22.

	Gross Vehicle Weight (in kilograms)	Number	Date of purchase
(1)	7,000	2	10.04.2020
(2)	6,500	1	15.03.2021
(3)	10,000	3	16.07.2020
(4)	11,000	1	02.01.2021
(5)	15,000	2	29.08.2020
(6)	15,000	1	23.02.2021

Would your answer change if the goods vehicles purchased in April, 2020 were put to use only in July, 2020?

Solution:

Since Mr. X does not own more than 10 vehicles at any time during the previous year 2020-21, he is eligible to opt for presumptive taxation scheme under section 44AE. ₹ 1,000 per ton of gross vehicle weight or unladen weight per month or part of the month for each heavy goods vehicle and ₹ 7,500 per month or part of month for each goods carriage other than heavy goods vehicle, owned by him would be deemed as his profits and gains from such goods carriage.

Heavy goods vehicle means any goods carriage, the gross vehicle weight of which exceeds 12,000 kg.

(1)	(2)	(3)	(4)
Number of Vehicles	Date of purchase	No. of months for which vehicle is owned	No. of months × No. of vehicles [(1) × (3)]
For Heavy goods vehicle			
2	29.08.2020	8	16
1	23.02.2021	2	2
			18
For goods vehicle other than heavy goods vehicle			
2	10.4.2020	12	24
1	15.3.2021	1	1
3	16.7.2020	9	27
1	2.1.2021	3	3
			55

The presumptive income of Mr. X under section 44AE for A.Y. 2021-22 would be -

₹ 6,82,500, i.e., 55 × ₹ 7,500, being for other than heavy goods vehicle + 18 × ₹ 1,000 × 15 ton being for heavy goods vehicle .

The answer would remain the same even if the two vehicles purchased in April, 2020 were put to use only in July, 2020, since the presumptive income has to be calculated per month or part of the month for which the vehicle is owned by Mr. X.

13. Miss Vivitha, a resident and ordinarily resident in India, has derived the following income from various operations (relating to plantations and estates owned by her) during the year ended 31-3-2021:

S. No.	Particulars	₹
(i)	Income from sale of centrifuged latex processed from rubber plants grown in Darjeeling.	3,00,000
(ii)	Income from sale of coffee grown and cured in Tamil Nadu.	1,00,000
(iii)	Income from sale of coffee grown, cured, roasted and grounded, in Colombo. Sale consideration was received at Chennai.	2,50,000
(iv)	Income from sale of tea grown and manufactured in Shimla.	4,00,000
(v)	Income from sapling and seedling grown in a nursery at Cochin. Basic operations were not carried out by her on land.	80,000

You are required to compute the business income and agricultural income of Miss Vivitha for the assessment year 2021-22.

Solution:

**Computation of business income and agricultural income of
Ms. Vivitha for the A.Y. 2021-22**

Sr. No.	Source of income	Gross (₹)	Business income		Agricultural income
			%	₹	₹
(i)	Sale of centrifuged latex from rubber plants grown in India.	3,00,000	35%	1,05,000	1,95,000
(ii)	Sale of coffee grown and cured in India.	1,00,000	25%	25,000	75,000
(iii)	Sale of coffee grown, cured, roasted and grounded outside India. (See Note 1 below)	2,50,000	100%	2,50,000	-
(iv)	Sale of tea grown and manufactured in India	4,00,000	40%	1,60,000	2,40,000
(v)	Saplings and seedlings grown in nursery in India (See Note 2 below)	80,000		Nil	80,000
	Total			5,40,000	5,90,000

Notes:

- Where income is derived from sale of coffee grown, cured, roasted and grounded by the seller in India, 40% of such income is taken as business income and the balance as agricultural income. However, in this question, these operations are done in Colombo, Sri Lanka. Hence, there is no question of such apportionment and the whole income is taxable as business income. Receipt of sale proceeds in India does not make this agricultural income. In the case of an assessee, being a resident and ordinarily resident, the income arising outside India is also chargeable to tax.
- Explanation 3 to section 2(1A) provides that the income derived from saplings or seedlings grown in a nursery would be deemed to be agricultural income whether or not the basic operations were carried out on land.

14. Mr. Venus., engaged in manufacture of pesticides, furnishes the following particulars relating to its manufacturing unit at Chennai, for the year ending 31-3-2021:

	(₹ in lacs)
Opening WDV of Plant and Machinery	20
New machinery purchased on 1-9-2020	10
New machinery purchased on 1-12-2020	8
Computer purchased on 3-1-2021	4

- All assets were purchased by A/c payee cheque.
- All assets were put to use immediately.
- New machinery purchased on 1-12-2020 and computer have been installed in the office.
- During the year ended 31-3-2020, a new machinery had been purchased on 31-10-2019, for ₹ 10 lacs. Additional depreciation, besides normal depreciation, had been claimed thereon.
- Depreciation rate for machinery may be taken as 15%.

Compute the depreciation available to the assessee as per the provisions of the Income-tax Act, 1961 and the WDV of different blocks of assets as on 31-3-2021.

Solution:

Computation of written down value of block of assets of Venus Ltd. as on 31.3.2021

Particulars	Plant & Machinery (₹ in lacs)	Computer (₹ in lacs)
Opening written down value (as on 01.04.2020)	20	Nil
Add: Actual cost of new assets acquired during the year		
New machinery purchased on 1.9.2020	10	-
New car purchased on 1.12.2020	8	-
Computer purchased on 3.1.2021	-	4
TOTAL	38	4
Less: Assets sold/discarded/destroyed during the year	Nil	Nil
Closing Written Down Value (as on 31.03.2021)	38	4

Computation of Depreciation for A.Y. 2021-22

	Particulars	Plant & Machinery (₹ in lacs)	Computer (₹ in lacs)
I.	Assets put to use for more than 180 days, eligible for 100% depreciation calculated applying the eligible rate of normal depreciation and additional depreciation		
	<u>Normal Depreciation</u>		
	- Opening WDV of plant and machinery (₹ 20 lacs x 15%)	3.00	-
	- New Machinery purchased on 1.9.2020 (₹ 10 lacs x 15%)	1.50	-
	(A)	4.50	-
	<u>Additional Depreciation</u>		
	New Machinery purchased on 1.9.2020 (₹ 10 lakhs x 20%)	2.00	-
	Balance additional depreciation in respect of new machinery purchased on 31.10.2019 and put to use for less than 180 days in the P.Y. 2019-20 (₹ 10 lakhs x 20% x 50%)	1.00	
	(B)	3.00	
II.	Assets put to use for less than 180 days, eligible for 50% depreciation calculated applying the eligible rate of normal depreciation and additional depreciation, if any		
	<u>Normal Depreciation</u>		
	New machinery purchased on 1.12.2020 [₹ 8 lacs x 7.5% (i.e., 50% of 15%)]	0.60	-
	Computer purchased on 3.1.2021 [₹ 4 lacs x 20% (50% of 40%)]	-	0.80
	(C)	0.60	0.80
	Total Depreciation (A+B+C)	8.10	0.80

Notes:

- (1) As per section 32(1)(ia), additional depreciation is allowable in the case of any new machinery or plant acquired and installed after 31.3.2005, by an assessee engaged, inter alia, in the business of manufacture or production of any article or thing, at the rate of 20% of the actual cost of such machinery or plant.

However, additional depreciation shall not be allowed in respect of, inter alia,–

- ✓ any office appliances or road transport vehicles;
- ✓ any machinery or plant installed in, inter alia, office premises.

In view of the above provisions, additional depreciation cannot be claimed in respect of -

- ✓ Car purchased on 1.12.2020 and
- ✓ Computer purchased on 3.1.2021, installed in office.

- (2) As per third proviso to section 32(1)(ii), balance 50% of additional depreciation on new plant or machinery acquired and put to use for less than 180 days in the year of acquisition which has not been allowed in that year, shall be allowed in the immediately succeeding previous year.

Hence, in this case, the balance additional depreciation@10% (i.e., ₹ 1 lakhs, being 10% of ₹ 10 lakhs) in respect of new machinery which had been purchased during the previous year 2019-20 and put to use for less than 180 days in that year can be claimed in P.Y. 2020-21 being immediately succeeding previous year.

15. Mr. Abhimanyu is engaged in the business of generation and distribution of electric power. He always opts to claim depreciation on written down value for income-tax purposes. From the following details, compute the depreciation allowable as per the provisions of the Income-tax Act, 1961 for the assessment year 2021-22:

	(₹ in lacs)
(i) Opening WDV of block (15% rate)	42
(ii) New machinery purchased on 12-10-2020	10
(iii) Machinery imported from Colombo on 12-4-2020.	9
This machine had been used only in Colombo earlier and the assessee is the first user in India.	
(iv) New computer installed in generation wing unit on 15-7-2020	

All assets were purchased by A/c payee cheque.

Solution:

Computation of depreciation under section 32 for A.Y. 2021-22

Particulars	₹	₹
Normal Depreciation		
Depreciation@15% on ₹ 51,00,000, being machinery put to use for more than 180 days [Opening WDV of ₹ 42,00,000 + Purchase cost of imported machinery of ₹ 9,00,000]	7,65,000	
Depreciation@7.5% on ₹ 10,00,000, being new machinery put to use for less than 180 days	75,000	
	8,40,000	
Depreciation@40% on computers purchased ₹ 2,00,000	80,000	9,20,000
Additional Depreciation (Refer Note below)		
Additional Depreciation@10% of ₹ 10,00,000 [being actual cost of new machinery purchased on 12-10-2020]	1,00,000	
Additional Depreciation@20% on new computer installed in generation wing of the unit [20% of ₹ 2,00,000]	40,000	1,40,000
Depreciation on Plant and Machinery		10,60,000

Note:-

The benefit of additional depreciation is available to new plant and machinery acquired and installed in power sector undertakings. Accordingly, additional depreciation is allowable in the case of any new machinery or plant acquired and installed by an assessee engaged, inter alia, in the business of generation, transmission or distribution of power, at the rate of 20% of the actual cost of such machinery or plant.

Therefore, new computer installed in generation wing units eligible for additional depreciation @20%.

Since the new machinery was purchased only on 12.10.2020, it was put to use for less than 180 days during the previous year, and hence, only 10% (i.e., 50% of 20%) is allowable as additional depreciation in the A.Y. 2021-22. The balance additional depreciation would be allowed in the next year.

However, additional depreciation shall not be allowed in respect of, inter alia, any machinery or plant which, before its installation by the assessee, was used either within or outside India by any other person. Therefore, additional depreciation is not allowable in respect of imported machinery, since it was used in Colombo, before its installation by the assessee.

16. Examine with reasons, the allowability of the following expenses incurred by Mr. Manav, a wholesale dealer of commodities, under the Income-tax Act, 1961 while computing profit and gains from business or profession for the Assessment Year 2021-22.

- (i) Construction of school building in compliance with CSR activities amounting to ₹ 5,60,000.
- (ii) Purchase of building for the purpose of specified business of setting up and operating a warehousing facility for storage of food grains amounting to ₹ 4,50,000.
- (iii) Interest on loan paid to Mr. X (a resident) ₹ 50,000 on which tax has not been deducted. The sales for the previous year 2019-20 was ₹ 202 lakhs.
- (iv) Commodities transaction tax paid ₹ 20,000 on sale of bullion.

Solution:

Allowability of the expenses incurred by Mr. Manav, a wholesale dealer in commodities, while computing profits and gains from business or profession

(i) Construction of school building in compliance with CSR activities

Under section 37(1), only expenditure not being in the nature of capital expenditure or personal expense and not covered under sections 30 to 36, and incurred wholly and exclusively for the purposes of the business is allowed as a deduction while computing business income.

However, any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence, shall not be allowed as deduction under section 37.

Accordingly, the amount of ₹ 5,60,000 incurred by Mr. Manav, towards construction of school building in compliance with CSR activities shall not be allowed as deduction under section 37.

(ii) Purchase of building for setting up and operating a warehousing facility for storage of food grains

Mr. Manav, would be eligible for investment-linked tax deduction under section 35AD @100% in respect of amount of ₹ 4,50,000 invested in purchase of building for setting up and operating a warehousing facility for storage of food grains which commences operation on or after 1st April, 2009 (P.Y. 2020-21, in this case).

Therefore, the deduction under section 35AD while computing business income of such specified business would be ₹ 4,50,000.

(iii) Interest on loan paid to Mr. X (a resident) ₹ 50,000 on which tax has not been deducted

As per section 194A, Mr. Manav, being an individual is required to deduct tax at source on the amount of interest on loan paid to Mr. X, **since his turnover during the previous year 2019-20 exceeds the monetary limit of ₹ 100 lacs. (Reference of Tax audit is removed now)**

Therefore, ₹ 15,000, being 30% of ₹ 50,000, would be disallowed under section 40(a)(ia) while computing the business income of Mr. Manav for non-deduction of tax at source under section 194A on interest of ₹ 50,000 paid by it to Mr. X.

The balance ₹ 35,000 would be allowed as deduction under section 36(1)(iii), assuming that the amount was borrowed for the purposes of business.

(iv) Commodities transaction tax of ₹ 20,000 paid on sale of bullion

Commodities transaction tax paid in respect of taxable commodities transactions entered into in the course of business during the previous year is allowable as deduction, provided the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession".

Taking that income from this commodities transaction is included while computing the business income of Mr. Manav, the commodity transaction tax of ₹ 20,000 paid is allowable as deduction under section 36(1)(xvi).

17. Examine with reasons, for the following sub-divisions, whether the following statements are true or false having regard to the provisions of the Income-tax Act, 1961:

- (i) For a dealer in shares and securities, securities transaction tax paid in a recognized stock exchange is permissible business expenditure.
- (ii) Where a person follows mercantile system of accounting, an expenditure of ₹ 25,000 has been allowed on accrual basis and in a later year, in respect of the said expenditure, assessee makes the payment of ₹ 25,000 through a cheque crossed as "& Co., ₹ 25,000 can be the profits and gains of business under section 40A(3A) in the year of payment.
- (iii) It is mandatory to provide for depreciation under section 32 of the Income-tax Act, 1961, while computing income under the head "Profits and Gains from Business and Profession".
- (iv) The mediclaim premium paid to GIC by Mr. Lomesh for his employees, by a draft, on 27.12.2020 is a deductible expenditure under section 36.
- (v) Under section 35DDA, amortization of expenditure incurred under eligible Voluntary Retirement Scheme at the time of retirement alone, can be done.
- (vi) An existing assessee engaged in trading activities, can claim additional depreciation under section 32(1)(iia) in respect of new plant acquired and installed in the trading concern, where the increase in value of such plant as compared to the approved base year is more than 10%.

Solution:

- (i) **True:** Section 36(1)(xv) allows a deduction of the amount of securities transaction tax paid by the assessee in respect of taxable securities transactions entered into in the course of business during the previous year as deduction from the business income of a dealer in shares and securities.
- (ii) **True:** As per section 40A(3A), in the case of an assessee following mercantile system of accounting, if an expenditure has been allowed as deduction in any previous year on due basis, and payment exceeding ₹ 10,000 has been made in the subsequent year otherwise than by an account payee cheque or an account payee bank draft or use of ECS through a bank account or through such other prescribed electronic modes, then the payment so made shall be deemed to be the income of the subsequent year in which such payment has been made.
- (iii) **True:** According to the Explanation 5 to section 32(1), allowance of depreciation is mandatory. Therefore, depreciation has to be provided mandatorily while calculating income from business/profession whether or not the assessee has claimed the same while computing his total income.
- (iv) **True:** Section 36(1)(ib) provides deduction in respect of premium paid by an employer to keep in force an insurance on the health of his employees under a scheme framed in this behalf by GIC or any other insurer. The medical insurance premium can be paid by any mode other than cash, to be eligible for deduction under section 36(1)(ib).
- (v) **False:** Expenditure incurred in making payment to the employee in connection with his voluntary retirement either in the year of retirement or in any subsequent year, will be entitled to deduction in 5 equal annual installments beginning from the year in which each payment is made to the employee.
- (vi) **False:** Additional depreciation can be claimed only in respect of eligible plant and machinery acquired and installed by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or transmission or distribution of power.

In this case, the assessee is engaged in trading activities and the new plant has been acquired and installed in a trading concern. Hence, the assessee will not be entitled to claim additional depreciation under section 32(1)(iia).

18. Examine, with reasons, the allowability of the following expenses under the Income-tax Act, 1961 while computing income from business or profession for the Assessment Year 2021-22:

- (i) Provision made on the basis of actuarial valuation for payment of gratuity ₹ 5,00,000. However, no payment on account of gratuity was made before due date of filing return.
- (ii) Purchase of oil seeds of ₹ 50,000 in cash from a farmer on a banking day.
- (iii) Tax on non-monetary perquisite provided to an employee ₹ 20,000.
- (iv) Payment of ₹ 50,000 by using credit card for fire insurance.
- (v) Salary payment of ₹ 4,00,000 to Mr. X outside India by a company without deduction of tax assuming Mr. X has not paid tax on such salary income.
- (vi) Payment made in cash ₹ 30,000 to a transporter in a day for carriage of goods

Solution:

- (i) **Not allowable as deduction:** As per section 40A(7), no deduction is allowed in computing business income in respect of any provision made by the assessee in his books of account for the payment of gratuity to his employees except in the following two cases:
- where any provision is made for the purpose of payment of sum by way of contribution towards an approved gratuity fund or;
 - where any provision is made for the purpose of making any payment on account of gratuity that has become payable during the previous year.

Therefore, in the present case, the provision made on the basis of actuarial valuation for payment of gratuity has to be disallowed under section 40A(7), since, no payment has been actually made on account of gratuity.

Note: It is assumed that such provision is not for the purpose of contribution towards an approved gratuity fund.

- (ii) **Allowable as deduction:** As per Rule 6DD, in case the payment is made for purchase of agricultural produce directly to the cultivator, grower or producer of such agricultural produce, no disallowance under section 40A(3) is attracted even though the cash payment for the expense exceeds ₹ 10,000.

Therefore, in the given case, disallowance under section 40A(3) is not attracted since, cash payment for purchase of oil seeds is made directly to the farmer.

- (iii) **Not allowable as deduction:** Income-tax of ₹ 20,000 paid by the employer in respect of non-monetary perquisites provided to its employees is exempt in the hands of the employee under section 10(10CC). As per section 40(a)(v), such income-tax paid by the employer is not deductible while computing business income.

- (iv) **Allowable as deduction:** Payment for fire insurance is allowable as deduction under section 36(1). Since payment by credit card is covered under Rule 6DD, which contains the exceptions to section 40A(3), disallowance under section 40A(3) is not attracted in this case.

- (v) **Not allowable as deduction:** Disallowance under section 40(a)(iii) is attracted in respect of salary payment of ₹ 2,00,000 outside India by a company without deduction of tax at source.

- (vi) **Allowable as deduction:** The limit for attracting disallowance under section 40A(3) for payment otherwise than by way of account payee cheque or account payee bank draft or use of ECS through a bank account or through such other prescribed electronic mode is ₹ 35,000 in case of payment made for plying, hiring or leasing goods carriage. Therefore, in the present case, disallowance under section 40A(3) is not attracted for payment of ₹ 30,000 made in cash to a transporter for carriage of goods.

19. Examine with reasons, whether the following statements are true or false, with regard to the provisions of the Income-tax Act, 1961:

- (a) Payment made in respect of a business expenditure incurred on 16th February, 2021 for ₹ 25,000 through a cheque duly crossed as "& Co." is hit by the provisions of section 40A(3).
- (b)
- (i) It is a condition precedent to write off in the books of account, the amount due from debtor to claim deduction for bad debt.
- (ii) Failure to deduct tax at source in accordance with the provisions of Chapter XVII-B, inter alia, from the amounts payable to a non-resident as rent or royalty, will result in disallowance while computing the business income where the non-resident payee has not paid the tax due on such income.

Solution:

- (a) **True:** In order to escape the disallowance specified in section 40A(3), payment in respect of the business expenditure ought to have been made through an account payee cheque. Payment through a cheque crossed as "& Co." will attract disallowance under section 40A(3).
- (b)
- (i) **True:** It is mandatory to write off the amount due from a debtor as not receivable in the books of account, in order to claim the same as bad debt under section 36(1)(vii). However, where the debt has been taken into account in computing the income of the assessee on the basis of ICDSs notified under section 145(2), without recording the same in the accounts, then, such debt shall be allowed in the previous year in which such debt becomes irrecoverable and it shall be deemed that such debt or part thereof has been written off as irrecoverable in the accounts for the said purpose.
- (ii) **True:** Section 40(a)(i) provides that failure to deduct tax at source from rent or royalty payable to a non-resident, in accordance with the provisions of Chapter XVII-B, will result in disallowance of such expenditure, where the non-resident payee has not paid the tax due on such income.

20. Mr. Sivam, a retail trader of Cochin gives the following Trading and Profit and Loss Account for the year ended 31st March, 2021:

Trading and Profit and Loss Account for the year ended 31.03.2021

Particulars	₹	Particulars	₹
To Opening stock	90,000	By Sales	1,12,11,500
To Purchases	1,10,04,000	By Closing stock	1,86,100
To Gross Profit	3,03,600		-
	1,13,97,600		1,13,97,600
To Salary	60,000	By Gross profit b/d	3,03,600
To Rent and rates	36,000	By Income from UTI	2,400
To Interest on loan	15,000		
To Depreciation	1,05,000		
To Printing & stationery	23,200		
To Postage & telegram	1,640		
To Loss on sale of shares (Short term)	8,100		
To Other general expenses	7,060		
To Net Profit	50,000		
	3,06,000		3,06,000

Additional Information:

- (i) It was found that some stocks were omitted to be included in both the Opening and Closing Stock, the values of which were:
 Opening stock ₹ 9,000
 Closing stock ₹ 18,000
- (ii) Salary includes ₹ 10,000 paid to his brother, which is unreasonable to the extent of ₹ 2,000.

- (iii) The whole amount of printing and stationery was paid in cash by way of one time payment.
- (iv) The depreciation provided in the Profit and Loss Account ₹ 1,05,000 was based on the following information:
The written down value of plant and machinery is ₹ 4,20,000 as on 01.04.2020. A new plant falling under the same block of depreciation was bought on 01.7.2020 for ₹ 70,000. Two old plants were sold on 1.10.2020 for ₹ 50,000.
- (v) Rent and rates includes GST liability of ₹ 3,400 paid on 7.4.2021.
- (vi) Other general expenses include ₹ 2,000 paid as donation to a Public Charitable Trust.

You are required to compute the profits and gains of Mr. Sivam under presumptive taxation under section 44AD and profits and gains as per normal provisions of the Act **assuming he has not opted for the provisions of section 115BAC.**

Assume that the whole of the amount of turnover received by account payee cheque or use of electronic clearing system through bank account during the previous year.

Solution:

Computation of business income of Mr. Sivam for the A.Y. 2021-22

Particulars	₹	₹
Net Profit as per profit and loss account		50,000
Add: Inadmissible expenses/ losses		
Under valuation of closing stock	18,000	
Salary paid to brother – unreasonable [Section 40A(2)]	2,000	
Printing and stationery -whole amount of printing& stationary paid in cash would be disallowed, since such amount exceeds ₹ 10,000 [Section 40A(3)]	23,200	
Depreciation (considered separately)	1,05,000	
Short term capital loss on shares	8,100	
Donation to public charitable trust	2,000	1,58,300
		2,08,300
Less: Deductions items:		
Under valuation of opening stock	9,000	
Income from UTI [Chargeable under the head "Income from Other Sources"]	2,400	11,400
Business income before depreciation		1,96,900
Less: Depreciation (See Note 1)		66,000
PGBP		1,30,900

Computation of business income as per section 44AD -

As per section 44AD, where the amount of turnover is received, inter alia, by way of account payee cheque or use of electronic clearing system through bank account or through such other prescribed electronic modes, the presumptive business income would be 6% of turnover, i.e., ₹ 1,12,11,500 x 6 /100 = ₹ 6,72,690

Notes:

1. Calculation of depreciation

Particulars	₹
WDV of the block of plant & machinery as on 1.4.2020	4,20,000
Add : Cost of new plant & machinery	70,000
	4,90,000
Less : Sale proceeds of assets sold	50,000
WDV of the block of plant & machinery as on 31.3.2021	4,40,000
Depreciation @ 15%	66,000

No additional depreciation is allowable as the assessee is not engaged in manufacture or production of any article.	
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2. Since GST liability has been paid before the due date of filing return of income under section 139(1), the same is deductible.

21. Mr. Sukhvinder is engaged in the business of plying goods carriages. On 1st April, 2020, he owns 10 trucks (out of which 6 are heavy goods vehicles, the gross vehicle weight of such goods vehicle is 15,000 kg each). On 2nd May, 2020, he sold one of the heavy goods vehicles and purchased a light goods vehicle on 6th May, 2020. This new vehicle could however be put to use only on 15th June, 2020.

Compute the total income of Mr. Sukhvinder for the assessment year 2021-22, taking note of the following data:

Particulars	₹	₹
Freight charges collected		12,70,000
Less : Operational expenses	6,25,000	
Depreciation as per section 32	1,85,000	
Other office expenses	15,000	8,25,000
Net Profit		4,45,000
Other business and non- business income		70,000

Solution:

Section 44AE would apply in the case of Mr. Sukhvinder since he is engaged in the business of plying goods carriages and owns not more than ten goods carriages at any time during the previous year.

Section 44AE provides for computation of business income of such assessee on a presumptive basis. The income shall be deemed to be ₹ 1,000 per ton of gross vehicle weight or unladen weight, as the case may be, per month or part of the month for each heavy goods vehicle and ₹ 7,500 per month or part of month for each goods carriage other than heavy goods vehicle, owned by the assessee in the previous year or such higher sum as declared by the assessee in his return of income.

Mr. Sukhvinder's business income calculated applying the provisions of section 44AE is ₹ 13,72,500 (**See Notes 1 & 2 below**) and his total income would be ₹ 14,42,500.

However, as per section 44AE(7), Mr. Sukhvinder may claim lower profits and gains if he keeps and maintains proper books of account as per section 44AA and gets the same audited and furnishes a report of such audit as required under section 44AB. If he does so, then his income for tax purposes from goods carriages would be ₹ 4,45,000 instead of ₹ 13,72,500 and his total income would be ₹ 5,15,000.

Notes:

1. Computation of total income of Mr. Sukhvinder for A.Y. 2021-22

Particulars	Presumptive income ₹	Where books are maintained ₹
Income from business of plying goods carriages [See Note 2 Below]	13,72,500	4,45,000
Other business and non-business income	70,000	70,000
Total Income	14,42,500	5,15,000

2. Calculation of presumptive income as per section 44AE

Type of carriage	No. of months	Rate per ton per month/ per month	Ton	Amount ₹
(1)	(2)		(3)	(4)
Heavy goods vehicle				
1 goods carriage upto 1 st May	2	1,000	15	30,000
			(15,000/ 1,000)	
5 goods carriage held throughout the	12	1,000	15	9,00,000

year				
			(15,000/ 1,000)	
Goods vehicle other than heavy goods vehicle				
1 goods carriage from 6 th May	11	7,500	-	82,500
4 goods carriage held throughout the year	12	7,500	-	3,60,000
Total				13,72,500

22. Mr. Raju, a manufacturer at Chennai, gives the following Manufacturing, Trading and Profit & Loss Account for the year ended 31.03.2021:

Manufacturing, Trading and Profit & Loss Account for the year ended 31.03.2021

Particulars	₹	Particulars	₹
To Opening Stock	71,000	By Sales	2,32,00,000
To Purchase of Raw Materials	2,16,99,000	By Closing stock	2,00,000
To Manufacturing Wages & Expenses	5,70,000		
To Gross Profit	10,60,000		
	2,34,00,000		2,34,00,000
To Administrative charges	3,26,000	By Gross Profit	10,60,000
To SGST penalty	5,000	By Dividend from domestic companies	15,000
To GST paid	1,10,000	By Income from agriculture (net)	1,80,000
To General Expenses	54,000		
To Interest to Bank (On machinery term loan)	60,000		
To Depreciation	2,00,000		
To Net Profit	5,00,000		
	12,55,000		12,55,000

Following are the further information relating to the financial year 2020-21:

- Administrative charges include ₹ 46,000 paid as commission to brother of the assessee. The commission amount at the market rate is ₹ 36,000.
- The assessee paid ₹ 33,000 in cash to a transport carrier on 29.12.2020. This amount is included in manufacturing expenses. (Assume that the provisions relating to TDS are not applicable to this payment)
- A sum of ₹ 4,000 per month was paid as salary to a staff throughout the year and this has not been recorded in the books of account.
- Bank term loan interest actually paid upto 31.03.2021 was ₹ 20,000 and the balance was paid in November 2021.
- Housing loan principal repaid during the year was ₹ 50,000 and it relates to residential property acquired by him in P.Y. 2019-20 for self-occupation. Interest on housing loan was ₹ 23,000. Housing loan was taken from Canara Bank. These amounts were not dealt with in the profit and loss account given above.
- Depreciation allowable under the Act is to be computed on the basis of following information:

	₹
Plant & Machinery (Depreciation rate @ 15%)	
Opening WDV (as on 01.04.2020)	12,00,000
Additions during the year (used for more than 180 days)	2,00,000
Total additions during the year	4,00,000
Note: Ignore additional depreciation under section 32(1)(ia)	

Compute the total income of Mr. Raju for the assessment year 2021-22 assuming he has not opted for the provisions of section 115BAC.

Note: Ignore application of section 14A for disallowance of expenditures in respect of any exempt income.

Solution:

Computation of total income of Mr. Raju for the A.Y. 2021-22

Particulars	₹	₹
Income from house property		
Annual value of self-occupied property	Nil	
Less: Deduction under section 24(b) – interest on housing loan	23,000	(23,000)
Profits and gains of business or profession		
Net profit as per profit and loss account		5,00,000
Add: Excess commission paid to brother disallowed under section 40A(2)	10,000	
Disallowance under section 40A(3) is not attracted since the limit for one time cash payment is ₹ 35,000 in respect of payment to transport operators. Therefore, amount of ₹ 33,000 paid in cash to a transport carrier is allowable as deduction.	Nil	
Salary paid to staff not recorded in the books (Assuming that the expenditure is in the nature of unexplained expenditure and hence, is deemed to be income as per section 69C and would be taxable @ 60% under section 115BBE – no deduction allowable in respect of such expenditure) [See Note 1 below (Alternate views)]	48,000	
Bank term loan interest paid after the due date of filing of return under section 139(1) – disallowed as per section 43B	40,000	
State GST penalty paid disallowed [See Note 2 below]	5,000	
Depreciation debited to profit and loss account	2,00,000	3,03,000
		8,03,000
Less: Dividend from domestic companies [Chargeable to tax under the head “Income from Other Sources”]	15,000	
Income from agriculture [Exempt under section 10(1)]	1,80,000	
Depreciation under the Income-tax Act, 1961 (As per working note)	2,25,000	4,20,000
		3,83,000
Income from Other Sources Dividend from domestic companies		15,000
Gross Total Income		3,75,000
Less: Deduction under section 80C in respect of Principal repayment of housing loan		50,000
Total Income		3,25,000

Working Note:

Computation of depreciation under the Income-tax Act, 1961

Particulars	₹
Depreciation@15% on ₹ 14 lakh (Opening WDV of ₹ 12 lakh plus assets purchased during the year and used for more than 180 days ₹ 2 lakh)	2,10,000
Depreciation @7.5% on ₹ 2 lakh (Assets used for less than 180 days)	15,000
	2,25,000

Notes (Alternate views):

1. It is also possible to take a view that the salary not recorded in the books of account was an erroneous omission and that the assessee has offered satisfactory explanation for the same. In such a case, the same should not be added back as unexplained expenditure, but would be allowable as deduction while computing profits and gains of business and profession.

2. Where the imposition of penalty is not for delay in payment of sales tax or VAT or GST but for contravention of provisions of the Sales Tax Act or VAT Act or GST Law, the levy is not compensatory and therefore, not deductible. However, if the levy is compensatory in nature, it would be fully allowable. Where it is a composite levy, the portion which is compensatory is allowable and that portion which is penal is to be disallowed.

Since the question only mentions "GST penalty paid" and the reason for levy of penalty is not given, it has been assumed that the levy is not compensatory and therefore, not deductible. It is, however, possible to assume that such levy is compensatory in nature and hence, allowable as deduction. In such a case, the total income would be ₹ 3,20,000.

23. Mr. Tenzingh is engaged in composite business of growing and curing (further processing) coffee in Coorg, Karnataka. The whole of coffee grown in his plantation is cured. Relevant information pertaining to the year ended 31.3.2021 are given below:

Particulars	₹
WDV of car as on 1.4.2020	3,00,000
WDV of machinery as on 1.4.2020 (15% rate)	15,00,000
Expenses incurred for growing coffee	3,10,000
Expenditure for curing coffee	3,00,000
Sale value of cured coffee	22,00,000

Besides being used for agricultural operations, the car is also used for personal use; disallowance for personal use may be taken at 20%. The expenses incurred for car running and maintenance are ₹ 50,000. The machines were used in coffee curing business operations.

Compute the income arising from the above activities for the assessment year 2021-22. Show the WDV of the assets as on 1.4.2021.

Solution:

Where an assessee is engaged in the composite business of growing and curing of coffee, the income will be segregated between agricultural income and business income, as per Rule 7B of the Income-tax Rules, 1962.

As per the above Rule, income derived from sale of coffee grown and cured by the seller in India shall be computed as if it were income derived from business, and 25% of such income shall be deemed to be income liable to tax. The balance 75% will be treated as agricultural income.

Particulars	₹	₹	₹
Sale value of cured coffee			22,00,000
Less: Expenses for growing coffee		3,10,000	
Car expenses (80% of ₹ 50,000)		40,000	
Depreciation on car (80% of 15% of ₹ 3,00,000)		36,000	
[See Computation below]			
Total cost of agricultural operations		3,86,000	
Expenditure for coffee curing operations	3,00,000		
Add: Depreciation on machinery (15% of ₹ 15,00,000) [See Computation below]	2,25,000		
Total cost of the curing operations		5,25,000	
Total cost of composite operations			9,11,000
Total profits from composite activities			12,89,000
Business income (25% of above)			3,22,250
Agricultural income (75% of above)			9,66,750

Computation of value of depreciable assets as on 31.3.2021

Particulars	₹	₹	₹
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Car			
Opening value as on 1.4.2020		3,00,000	
Depreciation thereon at 15%	45,000		
Less: Disallowance @20% for personal use	9,000		
Depreciation actually allowed		36,000	
WDV as on 1.4.2021			2,64,000
Machinery			
Opening value as on 1.4.2020		15,00,000	
Less: Depreciation @ 15%		2,25,000	
WDV as on 1.4.2021			12,75,000

Explanation 7 to section 43(6) provides that in cases of 'composite income', for the purpose of computing written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire composite income of the assessee (and not just 25%) is chargeable under the head "Profits and gains of business or profession". **The depreciation so computed shall be deemed to have been "actually allowed" to the assessee.**

QUESTIONS *for* Practice - SET B

1. Mr. Praveen Kumar has furnished the following particulars relating to payments made towards scientific research for the year ended 31.3.2021:

Particulars	₹ (in lacs)
(i) Payments made to K Research Ltd.	20
(ii) Payment made to LMN College	15
(iii) Payment made to OPQ College	10
(iv) Payment made to National Laboratory	8
(v) Machinery purchased for in-house scientific research	25
(vi) Salaries to research staff engaged in in-house scientific research	12

Note: K Research Ltd. and LMN College are approved research institutions and these payments are to be used for the purposes of scientific research.

Compute the amount of deduction available under section 35 of the Income-tax Act, 1961 while arriving at the business income of the assessee.

2. Win Limited commenced the business of operating a three star hotel in Tirupati on 1-4-2020. It furnishes you the following information:

(a) Cost of land (acquired in June 2017) ₹ 60 lakhs

(b) Cost of construction of hotel building

Financial year 2018-19 ₹ 30 lakhs

Financial year 2019-20 ₹ 150 lakhs

(c) Plant and Machineries (all new) acquired during financial year 2019-20 ₹ 30 lakhs [All the above expenditures were capitalized in the books of the company]. Net profit before depreciation for the financial year 2020-21 ₹ 80 lakhs

Determine the amount eligible for deduction under section 35AD of the Income-tax Act, 1961, for the assessment year 2021-22.

3. Briefly discuss about the provisions relating to deductibility of interest on capital borrowed for the purpose of business or profession.

4. What are the conditions to be satisfied for the allowability of expenditure under section 37 of the Income-tax Act, 1961?

5. Ramji Ltd., engaged in manufacture of medicines (pharmaceuticals), furnishes the following information for the year ended 31.03.2021:

(i) Municipal tax relating to office building ₹ 51,000 **not paid till 31.10.2021.**

(ii) Patent acquired for ₹ 20,00,000 on 01.09.2020 and used from the same month.

(iii) Capital expenditure on scientific research ₹ 10,00,000, which includes cost of land ₹ 2,00,000.

(iv) Amount due from customer X outstanding for more than 3 years written off as bad debt in the books ₹ 5,00,000.

(v) Income tax paid ₹ 90,000 by the company in respect of non-monetary perquisites provided to its employees.

(vi) Provident fund contribution of employees ₹ 5,50,000 remitted in July 2021.

(vii) Expenditure towards advertisement in souvenir of a political party ₹ 1,50,000.

(viii) Refund of GST ₹ 75,000 received during the year, which was claimed as expenditure in an earlier year.

State with reasons the taxability or deductibility of the items given above under the Income-tax Act, 1961.

Note: Computation of total income is not required.

6. Answer the following with reference to the provisions of the Income-tax Act, 1961:

(a) Bad debt claim disallowed in an earlier assessment year, recovered subsequently. Is the sum recovered chargeable to tax?

(b) Tax deducted at source on salary paid to employees not remitted till the 'due date' for filing the return prescribed in section 139. Is the expenditure to be disallowed under section 40(a)(ia)?

(c) X Co. Ltd. paid ₹ 120 lakhs as compensation as per approved Voluntary Retirement Scheme (VRS) during the financial year 2020-21. How much is deductible under section 35DDA for the assessment year 2020-21?

(d) Bad debt of ₹ 50,000 written off and allowed in the financial year 2018-19 recovered in the financial year 2020-21.

7. M/s. Arora Ltd., submits the following details of expenditure pertaining to the financial year 2020-21:
- Payment of professional fees to Mr. Mani ₹ 50,000. Tax was not deducted at source.
 - Interior works done by Mr. Hari for ₹ 2,00,000 on a contract basis. Payment made in the month of March 2021. Tax deducted in March 2021 was paid on 30.06.2021.
 - Factory Rent paid to Mr. Rao ₹ 15,00,000. Tax deducted at source and paid on 01.11.2021.
 - Interest paid on Fixed Deposits ₹ 2,00,000. Tax deducted on 31.12.2020 and paid on 28.10.2021.

Examine the above with reference to allowability of the same in the assessment year 2021-22 under the Income-tax Act, 1961. You answer must be with reference to section 40(a) read with relevant tax deduction at source provisions. Assume that the **due date of filing the return of income is 31.10.2020.** [After TDS Chapter]

8. Ramamurthy had 4 **non heavy goods** vehicles as on 1.4.2020. He acquired 7 non-heavy goods vehicles on 27.6.2020. He sold 2 non-heavy goods vehicles on 31.5.2020. He has brought forward business loss of ₹ 50,000 relating to assessment year 2016-17 of a discontinued business. **Assuming that he opts for presumptive taxation of income as per section 44AE, compute his total income chargeable to tax for the assessment year 2021-22.**
9. X Ltd. follows mercantile system of accounting. After negotiations with the bank, interest of ₹ 4 lakhs (including interest of ₹ 1.2 lakhs pertaining to year ended 31.03.2021 has been converted into loan. **Can the interest of ₹ 1.2 lakhs so capitalized be claimed as business expenditure?**
10. List **Eight items** of expenses which otherwise are deductible shall be disallowed, unless payments are actually made within the due date for furnishing the return of income under Section 139(1). **When can the deduction be claimed, if paid after the said date?**
11. Mr. Gupta is having a trading business and his Trading and Profit & Loss Account for the financial year 2020-21 is as under:

Particulars	Amount (₹)	Particulars	Amount (₹)
To Opening stock	1,00,000	By Sales	70,00,000
To Purchase	49,00,000	By Closing stock	50,000
To Gross profit	20,50,000		
Total	70,50,000	Total	70,50,000
Salary to employees (Including Contribution to PF)	5,00,000	By Gross Profit b/d	20,50,000
Donation to Prime Minister Relief Fund	1,00,000		
Provision for bad debts	50,000		
Bonus to employees	50,000		
Interest on bank loan	50,000		
Family planning expenditure incurred on employees	20,000		
Depreciation	30,000		
Income-tax	1,00,000		
To Net profit	<u>11,50,000</u>		
	20,50,000	Total	20,50,000

Other information:

- Depreciation allowable ₹ 40,000 as per Income-tax Rules, 1962.
- ★(b) No deduction of tax at source on payment of interest on bank loan has been made.
- (c) Payment of bonus to workers made in the month of October, 2020 on the occasion of Diwali festival.
- ★(d) Out of salary, ₹ 25,000 pertains to his contributions to recognized provident fund which was deposited after the due date of filing return of income. Further, employees contribution of ₹ 25,000 was also deposited after the due date of filing return of income.

Calculate gross total income of Mr. Gupta for the Assessment Year 2021-22.

12. Following is the profit and loss account of Mr. Q for the year ended 31-03-2021:

Particulars	₹	Particulars	₹
To Repairs on Building	1,81,000	By Gross Profit	6,01,000
To Amount paid to IIT, Mumbai for an approved scientific research programme	1,00,000	By I.T. Refund	8,100
To Interest	1,10,000	By Interest on Company Deposits	6,400
To Travelling	1,30,550		
To Net Profit	93,950		
	6,15,500		6,15,500

Following additional information is furnished:

- (1) Repairs on building includes ₹ 1,00,000 being cost of building a new toilet.
- (2) Interest payments include ₹ 50,000 on which tax has not been deducted and penalty for contravention of Central GST Act of ₹ 24,000.

Compute the income chargeable under the head "Profits and gains of Business or Profession" of Mr. Q for the year ended 31-03-2021 ignoring depreciation.

13. Following is the profit and loss account of Mr. A for the year ended 31.3.2021:

Particulars	₹	Particulars	₹
To Repairs on building	1,30,000	By Gross profit	6,01,000
To Advertisement	51,000	By Income Tax Refund	4,500
To Amount paid to Scientific Research Association approved u/s 35	1,00,000	By Interest from company deposits	6,400
To Interest	1,10,000	By Dividends	3,600
To Traveling	1,30,000		
To Net Profit	94,500		
	6,15,500		6,15,500

Following additional information is furnished:

- (1) Repairs on building includes ₹ 95,000 being cost of raising a compound wall for the own business premises.
- (2) Interest payments include interest of ₹ 12,000 payable outside India to a non-resident Indian on which tax has not been deducted and penalty of ₹ 24,000 for contravention of Central GST Act.

Compute the income chargeable under the head 'Profits and gains of business or profession' of Mr. A for the year ended 31.3.2021 ignoring depreciation.

14. Briefly explain the term "substantial interest". State three situations in which the same assumes importance.

15. Raghav Industries Ltd. furnishes you the following information for the year ended 31-03-2021:

- (a) Scientific research expenditure related to its business ₹ 2,40,000 fully revenue in nature.
- (b) Building acquired for scientific research (including cost of land ₹ 5,00,000) in June 2020 for ₹ 12,00,000.
- (c) Amount paid to Indian Institute of Science, Bangalore for scientific research ₹ 50,000.
- (d) Demerger expenses incurred in financial year 2020-21 ₹ 5,00,000.
- (e) Contribution to the account of employees as per pension scheme referred to in section 80CCD amounted to ₹ 30,00,000. Amount above 10% of the salary of employees is ₹ 7,00,000.
- (f) Amount recovered from employees towards provident fund contribution ₹ 12,00,000 of which amount remitted upto the end of the year was ₹ 7,00,000 and the balance was remitted before the 'due date' for filing the return prescribed in Section 139(1).
- ★(g) Tax on non-monetary perquisites provided to the employees, borne by the employer ₹ 4,50,000.
- ★(h) Gain due to change in the rate of exchange of foreign currency ₹ 1,00,000 related to import of machinery. The machinery was acquired two years ago and put to regular use since then.

Explain in brief how the above said items would be dealt with for the A.Y. 2021-22.

Note: Computation of total income not required.

16. Advise an assessee on the admissibility or otherwise on the following aspects giving reasons in respect of its business income :

- (i) Brokerage paid for raising loan for the business.
- (ii) Cost of erecting medical unit annexed to the factory for emergency treatment of the employees.
- (iii) Compensation paid to an employee for the premature termination of his services.
- (iv) Travelling expenses of a director, who went to Japan for negotiating the purchase of a new heavy machinery, which was to be installed during next year.
- (v) Lump sum consideration of ₹ 5 lakh paid for acquiring know-how.

17. State, with reasons in brief, whether following receipts/expenses are capital or revenue in nature -
- Ankit Ltd. received ₹ 3 lakh as compensation from Bhushan Ltd. for premature termination of a contract of agency;
 - GST collected from the buyer of goods;
 - Pretty Ltd., instead of receiving royalty year by year, received it in advance in lumpsum;
 - Payment of ₹ 60,000 as compensation for cancellation of a contract for the purchase of machinery with a view to avoid an unnecessary expenditure;
 - An employee director of a company was paid ₹ 1.5 lakh as a lumpsum consideration for not resigning from the directorship.
18. Jardine Ltd. is an existing Indian Company, engaged in developing and providing computer software services which sets up a new industrial unit. It incurs the following expenditure in connection with the new unit:

	₹
Preparation of project report	4,00,000
Market Survey	5,00,000
Legal and other charges for issue of additional capital required for the new unit	2,00,000
Total	11,00,000

The following further data is given :

Cost of project	30,00,000
Capital employed in the new unit	40,00,000

What is the deduction admissible to the company under section 35D for AY 2021-22?

19. In the financial year 2018-19, RK Ltd. had prepared a Voluntary Retirement Scheme for its employees in accordance with which it paid ₹ 10 lakhs, ₹ 15 lakhs and ₹ 5 lakhs to its employees in the financial years 2018-19, 2019-20 and 2020-21 respectively. Compute the amount of deduction admissible u/s 35DDA to RK Ltd. in AY 2021-22.

20. Following is the Profit & Loss account of Mr. A a dealer in shares and securities for the year ended on 31.3.2021 (amounts in ₹)

To Trading Expenses	62,60,000	By Sales	72,54,000
To Administrative Exp.	1,05,000	By Interest on FD with bank	16,500
To Financial Expenses	48,265	By Dividend from Indian Co	64,360
To Demat & delivery charges	4,350	By Interest on I.T. Refund	230
To Securities transaction tax	5,500		
To Net Profit before depreciation	9,11,975		
	73,35,090		73,35,090

Compute total income.

21. Computation of taxable income: Ram, who is 28 years of age, is a businessman in Delhi. On the basis of the following profit and loss account for the financial year 2020-21, compute his taxable income :

Opening stock	20,700	Sales	1,500,000
Purchases	1,000,000	Closing stock	25,200
Household expenses	10,000		
Income-tax for the financial year 2010-11	30,000		
Interest on capital	8,400		
Depreciation on furniture	12,000		
Reserve for bad debts	1,200		
Salaries and wages	60,000		
Rent and rates	25,000		
Net profit	357,900		
	1,525,200		1,525,200

Other relevant particulars are as follows:

- Opening stock and closing stock have consistently been valued at 10% below cost price.
- Household expenses include a contribution of ₹ 1,500 towards public provident fund.
- Amount of depreciation on furniture as per income-tax provisions is ₹ 10,000.

22. Mrs. Thakur carries on a textile manufacturing business. Her Profit and Loss Account for the year ending 31st March 2021 is as follows (amounts in ₹) :

To Office Expenses	8,500	By Gross Profit	106,000
To Sundry Expenses	7,500	By Misc. Receipts	6,000
To Staff Welfare Expenses	750	By Income tax Refund	20,000
To Legal Expenses	5,000	By Bad debts recovered	4,500
To Salaries	17,000	By Gift from Mr. Thakur	10,000
To Outstanding liability for CGST	7,500		
To Bonus to staff	6,000		
To Depreciation	4,000		
To Contribution to Approved provident fund	7,000		
To Audit fees	32,500		
To Net profit	50,750		
Total	146,500	Total	146,500

Notes:

- (1) Depreciation as per Income-tax Act comes to ₹ 2,700.
- ★(2) Bonus payable under the Payment of Bonus Act, 1965 amounts to ₹ 2,500.
- (3) Sundry expenses include ₹ 1,500 paid as donation to her son's school for their annual function.
- (4) Office expenses include a capital expenditure of ₹ 5,000 on additional furniture purchased on 1.12.2019. No depreciation has been provided for in the books.
- (5) Liability for CGST was paid as follows :
On 13.4.2021 ₹ 3,500 On 2.5.2021 ₹ 1,000 On 30.7.2021 ₹ 1,800; The return was filed on 31.7.2021 (last date for filing).
- ★(6) No tax has been deducted at source on the audit fees of ₹ 32,500.
- (7) Bad debts recovered were allowed as deduction in an earlier assessment.

You are required to compute Mrs. Thakur's business income.

23. Shri Nagesh's Profit and loss A/c for the year ended 31st March 2021 is as under (Amount in ₹) :

Opening Stock	40,000	Sales	540,000
Purchases	205,000	Closing Stock	60,000
Royalty	26,000	Commission	8,000
Wages	95,000	Interest from customers	2,000
Factory expense	45,000	Dividends	5,000
Rent rates and taxes	3,000	Contribution by employees towards RPF	2,100
Sundry expenses	5,300	Profit on sale of building	16,500
Salaries and bonus	9,500		
Contribution to RPF	2,100		
Legal expenses	1,800		
Provision for depreciation	1,500		
Travelling expenses	4,000		
Repairs	5,800		
Entertainment expenses	14,400		
Rural development expenses	1,000		
Advertisement expenses	4,900		
Miscellaneous expenses	2,800		
Net profits	166,500		
	633600		633600

Other information:

- (1) Opening and closing stock valued at 20% below cost price. Market price was higher than cost price.
- (2) A sum of ₹ 1,500 paid on the accident of an employee is included in the factory expenses.
- (3) Allowable depreciation is ₹ 1,800
- (4) Advertisement expenses include ₹ 3,000 for advertisement in souvenir published by political party.
- (5) Rural development expenses include ₹1,000 paid to an approved institution for carrying out an approved rural development programme. The approval was withdrawn after payment of such sum.
- (6) Sundry expenses ₹ 1,000 and contribution to recognised provident fund are unpaid.

Determine his taxable profits of business.

24. Mr. Rameshwar is registered Medical practitioner. He keeps his book on cash basis and his summarised cash account for year ended 31 March 2021 is as under (amounts in ₹)

To Balance b/d	2,700	By costs of medicines	20,000
To loan from Bank	6,000	By surgical equipments	6,000
To sale of medicines	30,500	By motor car purchased	12,000
To consultation fees	10,000	By car expenses	1,800
To visiting fees	8,000	By salaries	1,200
To interest on investments	9,000	By rent on dispensary	1,200
To dividend on shares	7,200	By General expenses	600
To sale of building	15,000	By personal expenses	3,600
To sale of furniture	5,000	By Life insurance premium	2,000
		By Interest on bank loan for investment	360
		By insurance of property	400
		By Fixed Deposit in Bank	30,000
		By balance c/d	14,240
	93,400		93,400

Compute his Income from profession taking into account the following further information:

- (1) 1/3rd of the motorcar expenses is in respect of his personal use.
- (2) The original cost of the building was ₹ 20,000 and written down value of furniture as on 1st April 2020 was ₹ 4,000. There was no other asset in this block.
- (3) The rate of depreciation on motorcar and on surgical equipments is 15%. An old car was purchased in May 2020 while the surgical equipments were purchased in Dec. 2020.
- ★(4) Outstanding consultancy fees and outstanding salaries are ₹ 20,000 and ₹ 1,000 respectively. Further, medicines valuing ₹ 5,000 were sold to Mr. Babu on credit.

25. Shri Mohit Jain, a resident assessee, has given the following Profit and Loss Account for the year ended 31st March 2021: (All amount in ₹)

To Office Salaries	26,000	By Gross profit	299,400
To Staff welfare Expenses	12,000	By Sundry receipts	8,800
To General expenses	13,000		
To Bad debts	6,000		
To Advance tax	800		
To Fire insurance	8,000		
To Advertisement expenses	22,000		
To Interest on Mohit's capital and loan	7,200		
To Expenditure incurred on acquisition of copyright on 1-2-2021 (it is put to use on the same day).	5,600		
To Lump sum consideration for acquiring know-how incurred on 5-3-2021 (it is put to use on April 1, 2021)	24,000		
To Depreciation on other business assets	12,000		
To Provision for income-tax	4,000		
To Contribution to a political party	2,000		
To Net profit	165,600		
	308,200		308,200

Other information:

- (1) Salary to staff includes salary paid to a relative, which is unreasonable to the extent of ₹ 4,800.
- (2) Depreciation on other assets according to income-tax provision comes to ₹ 19,200.
- (3) Provision for income tax is excessive to the extent of ₹ 1,200.
- (4) General expenses include an expenditure of ₹ 3,560 for arranging a long-term loan.
- ★(5) During the previous year 2020-21, the following payments are made:
 - (a) ₹ 14,000 paid on 5-5-2020 on account of outstanding customs duty of previous year 2019-20; and
 - (b) ₹ 10,000 paid on 3-1-2021 on account of outstanding SGST of the previous year 2019-20.

Find out the business income of Mr. Mohit Jain for the AY 2021-22. Due date of filing return of income is July 31, 2020 for AY 2020-21 and July 31, 2021 for AY 2021-22.

26. Alpha Ltd. a manufacturing company, which maintains accounts under mercantile system, has disclosed a net profit of ₹ 12.50 lakhs for the year ending 31st March 2021. **You are required to compute the taxable income of the company for the assessment year 2021-22 after considering the following information, duly explaining the reasons for each item of adjustment:**

- (a) Advertisement expenditure includes the sum of ₹ 60,000/- paid in cash to the sister concern of a director, the market value of which is ₹ 52,000/-.
- (b) Legal charges include a sum of ₹ 45,000/- paid to a consultant for framing a scheme of amalgamation duly approved by the Central Government.
- (c) Repairs of plant and machinery include ₹ 1.80 lakhs towards replacement of worn out parts.
- ★(d) A sum of ₹ 6,000/- on account of liability foregone by a creditor has been taken to general reserve. The same was charged to the Revenue Account in the assessment year 2016-17.
- (e) Sale proceeds of import entitlements amounting to ₹ 1 lakh has been credited to Profit and Loss A/c, which company claims as capital receipt not chargeable to Income tax.
- (f) Being also engaged in the biotechnology business, the company incurred the following expenditure on in-house research and development as approved by prescribed authority: -
 - a) Research equipments purchased ₹ 1,50,000/-
 - b) Remuneration paid to scientists ₹ 50,000/-

The Total amount of ₹ 2,00,000/- is debited to Profit and Loss A/c.

27. [Also refer Agriculture Chapter] - The following is the profit and loss account for year ended 31st March, 2021 of Western Sugar Mills of which Shri Daga is the owner:

	₹		₹
To Manufacturing expenses	7,01,000	By Sale of Sugar and molasses	11,62,300
To GST	92,795	By Rent from agricultural land	950
To Establishment charges	49,200	By Revenue from fisheries	4,000
To Fine paid to GST dept	2,000	By Sale proceeds from Sugar canes	6,05,055
To Salary and wages	1,21,445	By Profit on sale of motor truck	3,230
To General charges	16,750		
To Interest on bank loan	21,000		
To Daga's remuneration	38,750		
To Depreciation	91,000		
To Income-tax	25,000		
To Cultivation expenses	4,37,500		
To Net profit	1,79,095		
	17,75,535		17,75,535

Compute the income from business of Shri Daga from the Sugar Mill for the AY 2021-22 after taking the following information into consideration:

- ★ a) Sale proceeds of cane include ₹ 5,32,000 on account of cane produced and consumed in the factory and debited to manufacturing expenses, the average market price of such cane being ₹ 6,00,000.
- b) The motor truck sold during the year for ₹ 7,230 was purchased in the past for ₹ 19,000. Depreciation claimed in respect thereof in past assessment was ₹ 15,000.
- c) General charges include —
 - i) ₹ 2,000 being the legal expenses incurred in defending a suit regarding the company's title to certain agricultural lands and
 - ii) ₹ 10,000 paid to Shri Daga's son who is an employee in the Sugar Mill for a trip to Hawaii to study modern methods of manufacture.
- d) Depreciation in respect of all assets has been ascertained at ₹ 50,000 as per Income-tax Rules.

SOLUTION – SET B

1.

Computation of deduction allowable under section 35

Particulars	Amount (₹ In lacs)	Section	% of weighted deduction	Amount of deduction (₹ in lacs)
Payment for scientific research				
K Research Ltd.	20	35(1)(iia)	100%	20.00
LMN College	15	35(1)(ii)	100%	15.00
OPQ College [See Note 1]	10	-	Nil	Nil
National Laboratory [See Note 4]	8	35(2AA)	100%	8.00
In-house research [See Note 2]				
Capital expenditure	25	35(1)(iv) r.w. 35(2)	100%	25.00
Revenue expenditure	12	35(1)(i)	100%	<u>12.00</u>
Deduction allowable under section 35				<u>80.00</u>

Notes :-

- 1. Payment to OPQ College:** Since the note in the question below item (iii) clearly mentions that only K Research Ltd. and LMN College (mentioned in item (i) and (ii), respectively) are approved research institutions, it is a logical conclusion that OPQ College mentioned in item (iii) is not an approved research institution. Therefore, payment to OPQ College would not qualify for deduction under section 35.
 - 2. Deduction for in-house research and development:** Only company assessee are entitled to under section 35(2AB) in respect of in-house research and development expenditure incurred. However, in this case, the assessee is an individual. Therefore, he would be entitled to deduction@100% of the revenue expenditure incurred under section 35(1)(i) and 100% of the capital expenditure incurred under section 35(1)(iv) read with section 35(2), assuming that such expenditure is laid out or expended on scientific research related to his business.
2. Under section 35AD, 100% of the capital expenditure incurred during the previous year, wholly and exclusively for the specified business, which includes the business of building and operating a hotel of two-star or above category anywhere in India which commences its operations on or after 1.4.2011, would be allowed as deduction from the business income.

However, expenditure incurred on acquisition of any land, goodwill or financial instrument would not be eligible for deduction.

Further, the expenditure incurred, wholly and exclusively, for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business. A condition has been inserted that such amount incurred prior to commencement should be capitalized in the books of account of the assessee on the date of commencement of its operations.

Accordingly, the deduction under section 35AD for the A.Y. 2021-22 in the case of Win Ltd. would be calculated as follows, assuming that the expenditures were capitalised in the books of the company on 1.4.2020, being the date of commencement of operations-

Particulars	₹
Cost of land (not eligible for deduction under section 35AD)	Nil
Cost of construction of hotel building (₹ 30 lakhs + ₹ 150 lakhs)	180
Cost of plant and machinery	<u>30</u>
Deduction under section 35AD	<u>210</u>

Note:-

- (1) For A.Y.2021-22, the loss from specified business of operating a three star hotel would be ₹ 130 lakhs (i.e. ₹ 210 lakhs – ₹ 80 lakhs). As per section 73A, any loss computed in respect of the specified business referred to in section 35AD shall be set off only against profits and gains, if any, of any other specified business. The unabsorbed loss, if any, will be carried forward for set off against profits and gains of any specified business in the following assessment year.

(2) Since the entire cost of plant and machinery and building qualifies for deduction under section 35AD, the same does not qualify for deduction under section 32.

3. Under section 36(1)(iii), deduction is allowed in respect of interest on capital borrowed for the purposes of business or profession while computing income under the head “Profits and gains of business or profession”.

Further, Explanation 8 to section 43(1) clarifies that interest relating to a period after the asset is first put to use cannot be capitalized. Interest in respect of capital borrowed for any period from the date of borrowing to the date on which the asset was first put to use should, however, be capitalized in the case of extension of existing business or profession.

The proviso to section 36(1)(iii) provides that no deduction shall be allowed in respect of any amount of interest paid, in respect of capital borrowed for acquisition of a new asset or for extension of existing business or profession (whether capitalized in the books of account or not) for any period beginning from the date on which the capital was borrowed for acquisition of the asset, till the date on which such asset was first put to use.

4. (a) **The following conditions are to be fulfilled for the allowability of expenditure under section 37 -**
- (1) The expenditure should not be of the nature described in section 30 to 36;
 - (2) It should not be in the nature of personal expenditure of the assessee;
 - (3) It should have been incurred by the assessee during the previous year;
 - (4) The expenditure should have been laid out or expended wholly or exclusively for the purposes of the business or profession;
 - (5) It should not be in the nature of a capital expenditure; It should not have been incurred for any purpose which is an offence or which is prohibited by law.
- (b) **No** deduction is allowable for expenditure incurred by the assessee on advertisement in any souvenir, brochure, tract pamphlet or the like published by a political party [Section 37(2B)]
- (c) As per Explanation 2 to Section 37(1), any expenditure incurred by the assessee on the activities relating to Corporate Social Responsibility referred to in Section 135 of the Companies Act, 2013 shall **not** be deemed to be an expenditure incurred for the purpose of business or profession. Hence, such expenditure shall be disallowed while computing total income.

5. (i) As per section 43B, municipal tax is not deductible for A.Y. 2021-22 **since it is not paid on or before 31.10.2021**, being the due date of filing the return for A.Y. 2021-22.

Note – It is assumed that the company has not undertaken any international transaction during the year, and therefore does not have to file a transfer pricing report under section 92E. Therefore, the due date of filing of return of the company **would be 31st October, 2021**.

- (ii) Patent is an intangible asset eligible for depreciation@25%. Since it has been acquired and put to use for more than 180 days during the previous year 2020-21, full depreciation of ₹ 5,00,000 (i.e. 25% of ₹ 20,00,000) is allowable as deduction under section 32.
- (iii) **W.e.f. AY 2021-22, Deduction@100%** is available under section 35(2AB) in respect of expenditure incurred by a company on scientific research on in-house research and development facility as approved by the prescribed authority. However, cost of land is not eligible for deduction. Deduction under section 35(2AB) = 100% of ₹ 8 lakhs = ₹ 8,00,000.

Note: It is presumed that the in-house research and development facility is approved by the prescribed authority and is hence, **eligible for the deduction@100%** under section 35(2AB).

- (iv) Bad debts i.e. ₹ 5,00,000 written off in the books of account as irrecoverable is deductible under section 36(1)(vii), provided the debt has been taken into account in computing the income of the company in the current previous year or any of the earlier previous years.
- (v) As per section 40(a)(v), income-tax of ₹ 90,000 paid by the company in respect of nonmonetary perquisites provided to its employees, exempt in the employee's hands under section 10(10CC), is not deductible while computing business income of the employer– company.

(vi) The employees' contribution to provident fund is taxable in the hands of the company since it is included in the definition of income under section 2(24)(x). As per section 36(1)(va), provident fund contribution of employees is deductible only if such sum is credited to the employee's provident fund account on or before the due date under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. In this case, since it is remitted after the due date under the said Act, it is not deductible.

Note: There is an alternate view that remittance of provident fund contribution of employees is deductible even though it is remitted beyond the due date under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, in case the same is remitted before the due date of filing return of income in view of the Delhi High Court decision in CIT vs. Aimil Ltd

(vii) Expenditure towards advertisement in souvenir of a political party is disallowed under section 37(2B) while computing business income. However, the same is deductible under section 80GGB from gross total income.

(viii) Refund of a trading liability is taxable under section 41(1), if a deduction was allowed in respect of the same to the taxpayer in an earlier year. Since GST was claimed as expenditure in an earlier year, refund of the same during the year would attract the provisions of section 41(1).

6.

- (a) Recovery of a bad debt claim disallowed in the earlier year cannot be brought to tax under section 41(4). Section 41(4) can be invoked only in a case where bad debts or part thereof has been allowed as deduction earlier under section 36(1)(vii).
- (b) The scope of section 40(a)(ia) has been expanded to cover all sums in respect of which tax is deductible under Chapter VII-B. Section 192, which requires deduction of tax at source from salary income, forms part of Chapter VII-B. Therefore, salary payment without deduction of tax at source would attract disallowance under section 40(a)(ia). However, only 30% of salary paid without deduction tax at source would be disallowed under section 40(a)(ia).
- (c) It is deductible in 5 equal annual instalments commencing from the previous year of payment. ₹ 24 lakhs, being 1/5th of ₹ 120 lakhs, is deductible under section 35DDA for the A.Y. 2021-22.
- (d) As per section 41(4), any amount recovered by the assessee against bad debt earlier allowed as deduction shall be taxed as income in the year in which it is received. Therefore, in this case, ₹ 50,000 would be taxable in the F.Y. 2020-21 (A.Y. 2021-22).

7. Allowability of expenses of M/s. Arora Ltd. for the A.Y. 2021-22

- (i) Payment of professional fees is subject to TDS under section 194J. Since no tax is deducted at source, ₹ 15,000, being 30% of the expenditure of ₹ 50,000 is disallowed under section 40(a)(ia).
- (ii) Since the tax was deducted in March, 2021 and paid on or before the due date of filing the return (i.e., on or before **October 31st, 2020**), the expenditure on interior works will be allowed as deduction. Hence, disallowance under section 40(a)(ia) is not attracted.
- (iii) The maximum time allowable for deposit of tax deducted at source is upto the due date of filing of return i.e., **31st October, 2021**. In this case, since tax deducted under section 194-I was paid after the due date of filing the return, ₹ 4,50,000 being 30% of ₹ 15,00,000 is disallowed under section 40(a)(ia) for the previous year 2020-21.
- (iv) The tax deducted at source can be deposited on or before the due date of filing of return to avoid disallowance under section 40(a)(ia). In this case, disallowance would not be attracted since tax deducted during December 2020 was deposited before 31st October 2021 i.e. on 28.10.2021.

8.

Computation of total income of Mr. Ramamurthy for A.Y. 2021-22

Particulars	₹
Presumptive business income under section 44AE	
4 non heavy goods vehicles for 2 months (4 x ₹ 7,500 x 2)	60,000
Balance 2 non-heavy goods vehicles for 10 months (2 x ₹ 7,500 x 10)	1,50,000
7 non- heavy goods vehicles for 10 months (7 x ₹ 7,500 x 10)	<u>5,25,000</u>
Business Income	7,35,000
Less: Brought forward business loss of discontinued business	50,000
Total Income	6,85,000

Note: The assessee is eligible for computing the income from goods carriages applying the presumptive provisions of section 44AE, since he does not own more than 10 goods carriages at any time during the previous year.

9. Under section 43B, interest on term loans and advances to scheduled banks shall be allowed only in the year of payment of such interest irrespective of the method of accounting followed by the assessee.

Explanation 3D to section 43B provides that if any interest payable by the assessee is converted into a loan, the interest so converted and not "actually paid" shall not be deemed as actual payment, and hence would not be allowed as deduction. Therefore, the interest of ₹ 1.2 lakhs converted into loan cannot be claimed as business expenditure.

10. Section 43B provides that the following expenses shall not be allowed as deduction unless the payments are actually made within the due date for furnishing the return of income under section 139(1):

- (i) Any tax, duty, cess or fees under any law in force.
- (ii) Any sum payable by the assessee as an employer by way of contribution to provident fund or superannuation fund or gratuity fund or any other fund for the welfare of the employees;
- (iii) Any bonus or commission for services rendered payable to employees;
- (iv) Any interest on any loan or borrowings from any public financial institution or State financial corporation or State industrial investment corporation;
- (v) Interest on loans and advances from a scheduled bank;
- (vi) Any sum payable by the assessee as interest on any loan or borrowing from a deposit taking non-banking financial company or systemically important non-deposit taking non-banking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing,
- (vii) Any sum paid as an employer in lieu of earned leave at the credit of his employee.
- (viii) Any sum payable to the Indian Railways for the use of railway assets

In case the payment is made after the due date of filing of return of income, deduction can be claimed only in the year of actual payment.

11. **Computation of Gross Total Income of Mr. Gupta for the A.Y. 2021-22**

Particulars	₹	₹
Income from Business or profession		
Net profit as per Profit and Loss Account		11,50,000
Add : Expenses not deductible		
➤ Donation to Prime Minister Relief Fund (Refer Note -1)	1,00,000	
➤ Provision for bad debts	50,000	
➤ Family planning expenditure incurred on employees (Refer Note -2)	20,000	
➤ Depreciation as per Profit and Loss Account	30,000	
➤ Income-tax (Refer Note -3)	1,00,000	
➤ Employer's contribution to recognized provident fund (Note-4)	<u>25,000</u>	<u>3,25,000</u>
Less : Expense allowed		14,75,000
Depreciation as per Income- tax Rules, 1962		<u>40,000</u>
		14,35,000
Add : Employee's contribution included in income as per Section 2(24)(x) (Refer Note-5)		25,000
Business Income / Gross Total Income		<u>14,60,000</u>

Notes:-

- (1) Donation to Prime Minister Relief Fund is not allowed as deduction from the business income. It is allowed as deduction under section 80G from the gross total income.
- (2) Expenditure on family planning is allowed as deduction under section 36(1)(ix) only to a company assessee. Therefore, such expenditure is not allowable as deduction in the hands of Mr. Gupta.
- (3) Income-tax paid is not allowed as deduction as per the provisions of section 40(a)(ii).
- (4) Since, Mr. Gupta's contribution to recognized provident fund is deposited after the due date of filing return of income, the same is disallowed as per provisions of section 43B.
- (5) Employee's contribution is includible in the income of the employer by virtue of Section 2(24)(x). The deduction for the same is not provided for as it was deposited after the due date. It has been assumed that it has not been already debited in the given profit and loss account.
- (6) TDS provisions under section 194A are not attracted in respect of payment of interest on bank loan. Therefore, disallowance under section 40(a)(ia) is not attracted in this case.
- (7) Since, the payment of bonus is made in October 2020, hence, no disallowance is attracted.

12.

**Computation of income under the head “Profits and gains of business or profession” of
Mr. Q for the A.Y. 2021-22**

Particulars	₹	₹
Net profit as per profit and loss account		93,950
Add: Expenses not allowable		
➤ Expenses on building a new toilet – Capital expenditure, hence not allowable as per section 37(1).	1,00,000	
➤ Interest payable on which tax has not been deducted at source [disallowed under section 40(a)] [See Note 1]	15,000	
➤ Penalty for contravention of Central GST Act [Penalty paid for violation or infringement of any law is not allowable as deduction under section 37(1)]	<u>24,000</u>	<u>1,39,000</u>
		2,32,950
Less: Income not forming part of business income		
➤ Interest from company deposits (chargeable under the head “Income from other sources”)(See Note 2 below)	6,400	
➤ Income-tax refund (not an income chargeable to tax)	<u>8,100</u>	<u>14,500</u>
Profit and gains of business or profession		2,18,450

Note –

- Section 40(a)(ia) provides for disallowance of 30% of any sum paid, on which tax is deductible under Chapter XVII-B, but the same has not been deducted. Hence, ₹ 15,000 being 30% of ₹ 50,000 has to be added back while computing business income.
- Interest on company deposits may also be treated as business income presuming that the interest has been earned by Mr. Q out of available temporary surplus funds which are not immediately required for his business purposes but nevertheless meant only for Mr. Q's business activities. In such a case, income under the head “Profit and gains of business or profession” would be ₹ 1,24,850.

13.

Profits and gains of business or profession of Mr. A for the year ended 31.3.2021

Particulars	₹	₹
Net profit as per profit and loss account		94,500
Add: Expenses not allowable		
(a) Expenses on raising compound wall – capital expenditure, hence disallowed	95,000	
(b) Interest payable outside India to a non-resident, as tax has not been deducted at source [Section 40(a)(i)]	12,000	
(c) Penalty for contravention of CGST Act [Penalty paid for violation or infringement of any law is not allowable as deduction under section 37(1)]	24,000	1,31,000
		2,25,500
Less: Income not forming part of business income		
(a) Interest from company deposits	6,400	
(b) Dividend	3,600	
(c) Income-tax refund	<u>4,500</u>	<u>14,500</u>
Profit and gains of business or profession		2,11,000

Note: Contribution to approved scientific research association qualifies for deduction @ 100% under section 35(1)(ii). Hence, no adjustment is needed.

- As per Explanation to section 40A(2), a person shall be deemed to have a substantial interest in a business or profession, if, -
 - in case where the business or profession is carried on by a company, such person who, at any time during the previous year, is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend, whether with or without a right to participate in profits), carrying not less than 20% of the voting power.
 - In any other case, such person who, at any time during the previous year, is beneficially entitled to not less than 20% of the profits of such business or profession.

Following are the situations under which the substantial interest assumes importance -

- (a) Taxability of deemed dividend under section 2(22)(e);
- (b) Disallowance of excessive or unreasonable expenditure under section 40A(2) to an individual who has a substantial interest in the business or profession of the assessee, and
- (c) Clubbing of salary income of spouse, under section 64(1)(ii) in respect of remuneration received by the spouse from a concern in which the individual has a substantial interest.

15.

- (a) The entire revenue expenditure of ₹ 2,40,000 on scientific research related to the business of the company qualifies for deduction under section 35.
- (b) As per section 35(1)(iv) read with section 35(2), if any capital expenditure (other than expenditure on acquisition of land) is incurred on scientific research related to the business carried on by the assessee, the whole of such capital expenditure is allowable as deduction in the previous year in which it is incurred. Therefore, ₹ 7,00,000 (i.e. ₹ 12,00,000 – ₹ 5,00,000, being the cost of land) is allowable as deduction for the A.Y. 2021-22. It is assumed that the scientific research is related to the business of Raghav Industries Ltd.
- (c) The amount of ₹ 50,000 paid to Indian Institute of Science, Bangalore, for scientific research qualifies for a deduction @ 100% of the sum paid as per section 35(1)(ii). Therefore, Raghav Industries Ltd. would be entitled to a deduction of ₹ 50,000 for the A.Y. 2021-22.
- (d) As per section 35DD, one-fifth of the expenditure incurred on demerger would be allowable as deduction for five successive previous years beginning from previous year 2020-21. Therefore, in the previous year 2020-21, ₹ 1,00,000, being one-fifth of ₹ 5,00,000 would be allowable as deduction.
- (e) The employer's contribution to the account of an employee under a pension scheme referred to in section 80CCD, upto 10% of salary of the employee in the previous year, is allowable as deduction under section 36(1)(iva) while computing business income. Disallowance under section 40A(9) would be attracted only in respect of the amount in excess of 10% of salary. Accordingly, ₹ 23 lakhs would be allowed as deduction and ₹ 7 lakhs would be disallowed.
- (f) As per section 2(24)(x), the amount of provident fund contribution recovered from employees i.e. ₹ 12 lakhs would be taxable as income of Raghav Industries Ltd.

However, the company can claim deduction under section 36(1)(va) of amount credited to the account of the employee in the provident fund before the due date under the relevant Act.

If ₹ 7 lakhs has been remitted before the said due date, the same is allowable as deduction. If it has not been so remitted, then the same is not allowable as deduction. The deduction would be restricted to the amount remitted before the due date. The balance ₹ 5 lakhs remitted after the due date under the said Act but before the due date of filing the return is not allowable as deduction.

- (g) The tax of ₹ 4,50,000 borne by the employer on non-monetary perquisites provided to the employees is disallowed under section 40(a)(v).
- (h) As per section 43A, the gain of ₹ 1,00,000, arising at the time of making payment in respect of an imported machinery, due to change in rate of exchange of foreign currency, has to be reduced from the actual cost of machinery, and depreciation would be computed on such reduced cost.

16. Answer:

- (i) Allowable, being business expenditure,
- (ii) Capital expenditure eligible for depreciation
- (iii) Allowable, if it is incurred on account of commercial expediency,
- (iv) Capital expenditure. It will form part of actual cost of machinery
- (v) Capital expenditure eligible for depreciation @ 25%.

17. Answer:

- (i) Capital receipt but chargeable to tax as business income, specifically covered by section 28;
- (ii) Revenue receipt, as the same is received in the course of business;
- (iii) Revenue receipt, though chargeable to tax as per system of accounting (mercantile or cash) followed by the assessee;
- (iv) Capital expenditure, as the same is incurred on capital account;
- (v) Revenue expenditure for the company; Taxable as 'Salaries' in the hands of the employee-director.

18. Answer: Computation of Deduction u/s 35D for AY 2021-22 [Discuss the provisions of 35D]**Amount qualifying for deduction is**

5% of the cost of the project [5% × 30,00,000]

= ₹ 1,50,000, or

5% of the capital employed in the new unit i.e. 5% ₹ 40,00,000

= ₹ 2,00,000.

Whichever is beneficial to the company.

Therefore, the higher of the above two is ₹ 2,00,000 which is the qualifying amount.

Net qualifying amount - **It is the lower of the following two.****a)** Gross qualifying amount ₹ 2,00,000 or.**b)** Actual amount of preliminary expenses i.e. ₹ 11,00,000.**The lower of these two being ₹ 2,00,000 is the net qualifying amount.**Amount deductible for AY 21-22: - **1/5th of the net qualifying amount i.e. 1/5 ₹ 2,00,000 = ₹ 40,000.**

19. Answer: Each part payment made to employees in connection their voluntary retirement is deductible in five equal installments beginning from the year in which such part payment is made to the employees. The following table shows the deduction available u/s 35DDA to RK Ltd. in various financial years –

Financial Year	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24	2024-25
Payment of ₹ 10 lakhs in 2018-19	2	2	2	2	2		
Payment of ₹ 15 lakhs in 2019-20		3	3	3	3	3	
Payment of ₹ 5 lakhs in 2020-21			1	1	1	1	1
Total (₹ lakhs)	2	5	6	6	6	4	1

Thus, the amount of deduction allowable u/s 35DDA to RK Ltd. in assessment year 2021-22 is ₹ 6 lakhs.

20. Answer:

Net profit as per profit and loss account	911975
Less : (i) Interest on FD with bank - Taxable as Income from other sources	16500
(ii) Dividend from Indian Co. – Taxable as IOS	64360
(iii) Interest on I.T. Refund - Taxable as Income from other sources	230
Profits and gains of business or profession	830885
Add: Income from other sources (Interest on FD, Dividend & IT Refund)	81090
Total Income	911975
Rounded off-	911980

Note: Securities transaction tax is an allowable expenditure.**21. Answer: Computation of taxable income of Mr. Ram**

Net profit as per Profit and Loss A/c	357,900
Add: Not allowable (Household Exp. + Income-tax + Interest on capital + Reserve for Bad debts) – 10000 + 30000 + 8400 + 1200	49,600
Add : Excess Depreciation debited to P&L A/c (12000 - 10000)	2,000
Add: Undervaluation of closing stock (25,200 x 1/9) (assuming that NRV exceeds cost)	2,800
Less : Undervaluation of opening stock (20,700 x 1/9) (assuming that NRV exceeds cost)	-2,300
Gross Total Income	410,000
Less : Deduction u/s 80C for contribution to PPF	1,500
Total income	408,500

22. Answer: Computation of business income of Mrs. Thakur for A.Y. 2021-22 (Amounts in ₹)

Net Profit as per Profit & Loss Account for the year ended 31.3.2021		50,750
Add: Expenses not admissible under the Income-tax Act:		
Donation paid to son's school	1,500	
Capital expenditure (Furniture)	5,000	
Depreciation as per books of account (considered separately)	4,000	
CGST unpaid till 31-7-2021 (7,500 - 3,500 - 1,000 - 1,800)	1,200	
30% of Audit fees (being fees for professional services, on which TDS not made)	9,750	21,450
		72,200

Less: Amounts not taxable under the Income-tax Act:		
Gift from husband	10,000	
Income-tax refund	20,000	30,000
		42,200
Less: Depreciation under Income-tax Act:		
On items already included	2,700	
On new furniture (5,000 × 10% × 1/2) (used for less than 180 days)	250	2,950
Profits and gains from business		39,250

23. Answer: Computation of Income from Business (amounts in ₹)

Net profit as per Profit and Loss Account		1,66,500
Add: (1) Advertisement in a souvenir of political party	3,000	
(2) Contribution to RPF (outstanding)	2,100	
(3) Under valuation of closing stock [{{(60000 × 100) / 80} - 60000]	15,000	20,100
Less : (1) Dividend (Taxable under the head IOS)	5,000	
(2) Profit on sale of building (not taxable under this head)	16,500	
(3) Under valuation of opening stock [{{(40000 × 100) / 80} - 40000]	10,000	
(4) Extra Depreciation allowable (1,800 - 1,500)	300	31,800
Taxable Profits		1,54,800

24. Answer: Computation of taxable income from Business (amounts in ₹)

Gross earnings: Sale of medicines	30,500	
Consultation fees	10,000	
Visiting fees	8,000	48,500
Less: Allowable expenses viz. Cost of medicines	20,000	
Car expenses (1800 × 2 ÷ 3)	1,200	
Salaries	1,200	
Rent of dispensary	1,200	
General Expenses	600	
Depreciation allowed Motor car (12000 × 15%) × 2/3	1,200	
Surgical equipment (15% × 50% × 6000)	450	25,850
		22,650

Note : Since the assessee maintains accounts as per cash basis, therefore, outstanding consultancy fees, outstanding salaries and sale of medicines on credit will not be considered.

25. Answer: Computation of Income from Business for the Assessment Year 2021-22 (all amounts in ₹)

Profit as per Profit and Loss Account		165,600
Add: Advance tax	800	
Salary to staff (salary paid to relative to the extent it is treated as excessive)	4,800	
Interest on Mohit's capital and loan	7,200	
Expenditure on acquisition of copy right (being capital expenditure)	5,600	
Expenditure for acquiring know how (capital expenditure, no depreciation will be allowed thereon as the same was not put to use during the previous year)	24,000	
Depreciation	12,000	
Provision for Income tax	4,000	
Contribution to political party	2,000	60,400
Less: Depreciation as per Income tax	19,200	
Depreciation on copyright (5600 × 25% × 1/2) (used for less than 180 days)	700	
Outstanding CGST paid during the previous year	10,000	29,900
Income from Business		1,96,100

Note : Expenses for arranging a long-term loan are covered by the term 'interest' and are, therefore, allowable as deduction. Further, since outstanding customs duty of previous year 2019-20 was paid before due date of furnishing return of income for that year, therefore, the same had been allowed in that year.

However, outstanding SGST of previous year 2019-20 paid after such due date but during the previous year 2020-21 will be allowed during the previous year 2020-21.

26. **Assessee: Alpha Ltd. Assessment Year 2021-22 (amounts in ₹)**

Net Profit as per Profit and Loss Account		1,250,000
Add: Expenses disallowed or considered separately: -		
Excessive payment to relatives u/s 40A(2) [60,000 - 52,000]	8,000	
Cash payment in excess of ₹ 10,000 (whole of ₹ 52,000)	52,000	
Legal expenses	45,000	
Scientific research expenses (no adjustment required as now there is no weighted deduction w.e.f. AY 2021-22)	-	105,000
		13,55,000
Add: Amount foregone by the creditor is taxable u/s 41(1)		6,000
		13,61,000
Less: Admissible expenditure: -		
1/5th of amalgamation expenditure of ₹ 45,000 u/s 35DD		9,000
Taxable Income		13,52,000

Notes:

- Cost of replacement of worn out part of machineries is revenue expenses. Since cost of replacement is included in Repairs, no adjustment is required.
- Sale of import entitlements is chargeable as business income under section 28(iia). Since it is already credited to profit and loss account, no adjustment is required.

27. **Computation of Income from business of Shri Daga [for the assessment year 2021-22]**

	₹	₹
Net profit as per profit & loss account		1,79,095
Less: Items of income credited to Profit & Loss account but are not taxable under the head "Profit & gains of business of profession"		
Rent from agricultural land	950	
Revenue from fisheries	4,000	
Sale proceeds from canes	6,05,055	
Profit on sale of Motor Truck	3,230	(-) 6,13,235
		(-) 4,34,140
Add: Expenses not allowable		
Fine paid to GST department (see working note 1)	2000	
Legal Expenses incurred on defending suit [Capitalised]	2000	
Daga's Remuneration (see working note 2)	38,750	
Depreciation (considered separately)	91,000	
Income tax	25,000	
Cultivate on expenses (see working note 3)	4,37,500	(+) 5,96,250
		1,62,110
Less: Expenses allowable u/s 28 to 44D but not debited to p & I		
Depreciation's per Income-tax Rules	50,000	
Manufacturing expenses on cane produced and consumed in the factory (see working note 4)	68,000	1,18,000
Income from business		44,110

Working Notes:

- Fine paid to GST department. It is presumed that fine is paid for infringement of central excise law.
- Salary paid to the proprietor of the firm is not allowable.
- Cultivate on expenses:** Since the agricultural income on account of sale proceeds of cane has been taken out from the normal business receipts, any expenditure incurred towards this account (i.e. to earn agricultural income) is also not allowable.
- Manufacturing expenses:** If any item is produced in the factory, the income from which is considered separately, and the same item is used in normal business, the fair market value of the item produced has to be charged as expenditure in the normal business. Therefore, the average market price of the cane produced and consumed in the factory is allowable as business expenditure. **The expenses is under charged by ₹ 68,000 [i.e. ₹ 6,00,000 - ₹ 5,32,000].**

AOPs AND BOIs – Section 40(ba)

FROM 18th EDITION – Assessment Year 2021-22
CMA INTER STUDENTS
(EXAM IN JUNE 2021 & DEC 2021)

<u>Point</u>	<u>AOP</u>	<u>BOI</u>
1. Creation	Created by two or more persons voluntarily.	Created by operation of law.
2. Members	Companies, firms, HUFs or individuals.	Only Individuals.
3. Features	Persons join in a common purpose or action. Mere joint receipt of income not enough. Different from partnership.	It merely receives the income jointly and is assessable in the like manner and to the same extent as the beneficiaries.
4. Assessee	Not a representative assessee	A representative assessee

Section 40(ba) – Disallowances in case of AOPs or BOIs

1. Any payment of interest, salary, commission, bonus or remuneration made by an AOPs or BOIs to its members shall be disallowed.
2. Where interest is paid by an AOP or BOI to a member who has also paid interest to the AOP/BOI, the amount of interest to be disallowed under clause (ba) **shall be limited to the net amount of interest paid by AOP/BOI to the members.**
3. Where an individual is a member in his individual capacity, **interest paid to him in his representative capacity shall not be taken into account.**
4. Where an individual is a member in representative capacity, **interest paid to him in his individual capacity shall not be taken into account.**

Example: Computation of total income of AOP: Mr. T and Mr. Q are individuals, who constitute an Association of persons, sharing profit and losses in the ratio of 2 : 1. For the accounting year ended 31st March, 2021, the Profit and Loss account of the business was as under:

Cost of goods sold	42,50,000	Sales	49,00,000
Remuneration to: T	1,30,000	Dividend from companies	25,000
Q	1,70,000	Capital gains (long term)	6,40,000
Employees	2,56,000		
Interest to: T	48,300		
Q	35,700		
Other expenses •	1,11,700		
Sales tax penalty due	39,000		
Net Profit	5,24,000		
	55,65,000		55,65,000

Additional information furnished -

- 1) Other expenses included -
 - a) Entertainment expenses of ₹ 35,000;
 - b) Wristwatches costing ₹ 2,500 each were given to 12 dealers, who had exceeded the sales quota prescribed under a sales promotion scheme;
 - c) Employer's contribution of ₹ 6,000 to the Provident Fund was paid on 14th January 2022.
 - d) ₹ 30,000 was paid in cash to an advertising agency for publicity.
- 2) Outstanding sales tax penalty was paid on 15th October 2020. The penalty was imposed by the Sales-tax Officer for non-filing of returns and statements by the due dates.
- 3) T and Q had, for this year, income from other sources of ₹ 1,88,000 and ₹ 64,000 respectively.

Required to compute the total income of the AOP for the Assessment Year 2021-22.

Solution: Computation of total income and tax liability of AOP (amounts in ₹)

Net profit an per Profit and Loss Account		5,24,000
Add: Remuneration to members T and Q	3,00,000	
Interest to members T and Q	84,000	
Employer's contribution to PF not paid within due date	6,000	
Advertising expenses paid in cash (100% of 30,000)	30,000	
Sales tax penalty for non-filing of returns by due date (Not allowable as it is incurred for a purpose, which is prohibited by law - Explanation to Section 37(1))	39,000	4,59,000
		9,83,000
Less: Incomes taxable under other heads :		
Dividends [Taxable now under the head "IOS"]	25,000	
Long-term capital gains	6,40,000	6,65,000
Profits and gains of business		3,18,000
LTCG		6,40,000
Income from Other Sources (Dividend)		25,000
Total income of the AOP		9,83,000

FIRMS Taxation [Section 40(b)]

FROM 18th EDITION – Assessment Year 2021-22
CMA INTER DT STUDENTS
(EXAM IN JUNE 2021 & DEC 2021)

- 1) **"Firm", "Partners" and "Partnership" to include "Limited Liability Partnership (LLP)":**
- a) "Firm" shall have the meaning assigned to it in the Indian Partnership Act, 1932, and shall include a LLP as defined in the LLP Act, 2008.
 - b) "Partner" shall have meaning assigned to it in Indian Partnership Act, 1932, and shall include:
 - i) any person who, being a minor, has been admitted to the benefits of partnership; and
 - ii) a partner of a LLP as defined in LLP Act, 2008;
 - c) "Partnership" shall have the meaning assigned to it in the Indian Partnership Act, 1932, and shall include a LLP as defined in the LLP Act, 2008.

Provisions of the Indian Partnership Act, 1932: Partnership is the relation between persons who have agreed to share profits of business carried on by all or any of them acting for all. Persons who have entered into partnership with one another are called individually "partners" & collectively "a firm".

- 2) **Exemption in respect of partner's share - Section 10(2A):** The partners' share in the total income of the firm shall be exempt from tax in the hands of partner.
- 3) **Under Income Tax Act, a partnership firm has a separate identity apart from its partner.** It is taxed as a separate entity at a flat rate of 30% + surcharge + Health & Education Cess @ 4%.
- 4) **Interest and remuneration received by partner - business income [Sec. 28(v)]:** Interest, salary, bonus, commission or other remuneration received by a partner from a firm shall be chargeable to tax under the head PGBP. **However, any payment of remuneration etc to partners, not allowed as deduction to the firm, shall not be taxed in the hands of partners.**
- 5) **Carry forward & set-off of loss of Firm on change in constitution of firm [Sec. 78]:** where a change occurs in the constitution of firm, on account of retirement or death of a partner, the **proportionate loss of the retired or deceased partner** shall not be carried forward. However, this section **shall not apply in case of unabsorbed depreciation.**
- 6) **Disallowance of interest & remuneration to partners in excess of specified limits [Sec 40(b)]**
In the case of any firm assessable as such or a Limited Liability Partnership (LLP) the following amounts shall not be deducted in computing the income from business of any firm/LLP:
 - a) Any salary, bonus, commission or remuneration, by whatever name called (hereinafter referred to as "remuneration"), **to any partner who is not a working partner.**
 - b) Any remuneration **paid to the working partner** or interest **to any partner which is not authorised by or which is inconsistent with the terms of the partnership deed.**
 - c) **Any interest payment** in excess of 12% simple interest p.a. as **authorised** by the partnership deed falling after the date of such deed.
 - d) **Any remuneration paid to a partner**, authorised by a partnership deed and falling after the date of the deed **in excess of the following limits:**

<u>On the First ₹ 3 lakh of book profit or in case of "Loss"</u>	<u>Higher of ₹ 1,50,000 or 90% of book profit</u>
<u>On the balance</u>	<u>60% of Book Profit.</u>

7) Computation of Book Profits for determining remuneration:

Profits and Gains of Business or Profession of Firm computed as per Sec. 28 to 44D	XXX
Add: Interest to partners disallowed as per above provisions (if not already considered)	XXX
Add: Remuneration to partners, if debited to P&L A/c	XXX
Book Profits	XXX

- 8) **Circular No 8/2014:** *CBDT has clarified that income of a firm is to be taxed in the hands of the firm only & the same can under no circumstances be taxed in the hands of its partners.*

It is exempt in the hands of partners even if the income chargeable to tax become NIL in the hands of Firm on account of any exemption or deduction.

9) **Important Points for section 40(b) :**

(A) **If an individual is a partner in firm on behalf of other person (i.e. in representative capacity), then —**

- Interest paid to such individual in his individual capacity shall not be disallowed.
- Interest paid to such individual as partner in representative capacity and interest paid to the person ***so represented shall be taken into account for disallowance as given above.***

E.g.: If Mr. Ram is a partner in the firm on behalf of his wife, interest paid to Ram in his individual capacity will be allowed while interest paid to Ram on behalf of his wife as well as interest paid to his wife directly, both will be taken into account for the purposes of disallowance.

(B) **If an individual is a partner in a firm in his individual capacity -**

- Interest paid to him on behalf, or for the benefit, of any other person is not disallowed; and
- ***Interest paid to him in his personal capacity is taken into account for disallowance.***

E.g.: If Mr. Sohan is a partner in the firm in his individual capacity, then interest paid to him on behalf of any other person will not be disallowed, while interest paid to him in his individual capacity will be taken into account for the purposes of disallowance.

Examples for Practice

1. A firm has paid ₹ 7,50,000 as remuneration to its partners for the P.Y. 2020-21, in accordance with its partnership deed, and it has a book profit of ₹ 10 lakh. What is the remuneration allowable as deduction?

Solution:

The allowable remuneration calculated as per the limits specified in section 40(b) would be –

Particulars	₹
On first ₹ 3 lakh of book profit [₹ 3,00,000 × 90%]	2,70,000
On balance ₹ 7 lakh of book profit [₹ 7,00,000 × 60%]	4,20,000
	6,90,000

The excess amount of ₹ 60,000 (i.e., ₹ 7,50,000 – ₹ 6,90,000) would be disallowed as per section 40(b).

2. Rao & Jain, a partnership firm consisting of two partners, reports a net profit of ₹ 7,00,000 before deduction of the following items:

- (1) Salary of ₹ 20,000 each per month payable to two working partners of the firm (as authorized by the deed of partnership).
- (2) Depreciation on plant and machinery under section 32 (computed) ₹ 1,50,000.
- (3) Interest on capital at 15% per annum (as per the deed of partnership). The amount of capital eligible for interest is ₹ 5,00,000.

Compute:

- (i) Book-profit of the firm under section 40(b) of the Income-tax Act, 1961.
- (ii) Allowable working partner salary for the assessment year 2021-22 as per section 40(b).

Solution:

- (i) As per Explanation 3 to section 40(b), “book profit” shall mean the net profit as per the profit and loss account for the relevant previous year computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to the partners of the firm if the same has been already deducted while computing the net profit.

In the present case, the net profit given is before deduction of depreciation on plant and machinery, interest on capital of partners and salary to the working partners.

Therefore, the book profit shall be as follows:

Particulars	₹	₹
Net Profit (before deduction of depreciation, salary and interest)		7,00,000
Less: Depreciation under section 32	1,50,000	
Interest @ 12% p.a. [being the maximum allowable as per section 40(b)] (₹ 5,00,000 × 12%)	60,000	2,10,000
Book Profit		4,90,000

- (ii) Salary actually paid to working partners = ₹ 20,000 × 2 × 12 = ₹ 4,80,000.

As per the provisions of section 40(b), the salary paid to the working partners is allowed subject to the following limits –

On the first ₹ 3,00,000 of book profit or in case of loss	₹ 1,50,000 or 90% of book profit, whichever is more
On the balance of book profit	60% of the balance book profit

Therefore, the maximum allowable working partners' salary for the A.Y. 2021-22 would be:

Particulars	₹
On the first ₹ 3,00,000 of book profit [(₹ 1,50,000 or 90% of ₹ 3,00,000) whichever is more]	2,70,000
On the balance of book profit [60% of (₹ 4,90,000 - ₹ 3,00,000)]	1,14,000
Maximum allowable partners' salary	3,84,000

Hence, allowable working partners' salary for the A.Y. 2021-22 as per the provisions of section 40(b) is ₹ 3,84,000.

QUESTIONs for Practice - SET A

Question No. 1:

Nikhil, Gagan and Suman are partners in a firm with equal shares. The profit and loss account for the year ending 31st March, 2021 shows a net profit of ₹ 42,300 after debiting the following items:

- (i) Salary of ₹ 24,000 each to Nikhil and Gagan.
- (ii) Bonus to Suman ₹ 18,000.
- (iii) Commission of ₹ 9,000, ₹ 10,000 and ₹ 15,000 to Nikhil, Gagan and Suman respectively.
- (iv) Interest on capital @ 15% amounting to ₹ 4,500, ₹ 6,000 and ₹ 15,000 paid to Nikhil, Gagan and Suman respectively.

Assuming that all partners are working partners and the firm fulfils the conditions of Section 184, compute the total income of the firm and taxable income of the partners in the firm.

Solution: Computation of total income of the firm

Net profit as per Profit and Loss A/c		42,300
Add :		
Remuneration i.e. Salary, bonus and commission to partners		100,000
Interest to partners in excess of 12% p.a. [(4500 + 6000 + 15000) × 3 ÷ 15]		5100
Book profits		147,400
Less : Remuneration allowable as per section 40(b), being the lower of the following -		
(a) Actual remuneration	100,000	
(b) Limit as per section 40(b)	150,000	100,000
Total income		47,400

Computation of total income of each partner of the firm

	Nikhil	Gagan	Suman
Interest on capital @ 12% (to the extent allowed in hands of the firm)	3,600	4,800	12,000
Salary, Bonus & Commission (fully taxable; as fully allowed in the hands of firm)	33,000	34,000	33,000
Total income	36,600	38,800	45,000

Question No. 2:

Profit and loss account of a partnership firm for the year ended 31st March, 2021 is as follows (amounts in ₹) :-

Cost of goods sold	10,00,000	Sales	15,00,000
Remuneration to Partners	1,45,000	Rent of House Property	60,000
Interest to Partners @ 20% p.a.	40,000	Dividend	1,70,000
Municipal Taxes of house property	25,000		
Other expenses	2,40,000		
Net Profit	2,80,000		
	17,30,000		17,30,000

Other information:

- (i) Out of other expenses, ₹ 18,400 is not deductible under sections 36, 37(1) and 43B.
- (ii) On 15th January 2021, the firm pays an outstanding GST liability of ₹ 54,700 for the previous year 2019-20. As this amount pertains to the previous year 2019-20, it has not been debited to the aforesaid profit and loss account

Calculate remuneration deductible under section 40(b).

Question No. 3:

The net profits of Jolly Brothers, a partnership firm, consisting of three partners carrying on business for the accounting year ended 31st March, 2021 was ₹ 5,40,000. The said net profits after charging salary payable to all the partners were amounting to ₹ 1,08,000, but before crediting interest to partners' accounts on their fixed capitals amounting to ₹ 10 lakh totally. The partnership deed provided for payment of interest on fixed capital at 18% per annum. The partnership deed does not, however, specify any salary entitlement to partners.

On this information, you are required to —

- (i) Compute the taxable income of the firm; and
- (ii) Calculate the remuneration allowable under provisions of the Income-tax Act, 1961 to all the partners, if the partnership deed had provided for the payment of remuneration to them.

Question No. 4:

A firm of Company Secretaries consisting of 3 partners earned a net surplus of ₹ 2,08,000 during the accounting year ended 31st March, 2021 after charging interest on capitals amounting to ₹ 36,000 calculated @ 18% per annum on the capitals of partners but before charging remuneration to partners. You are required to calculate the taxable income of the firm and tax thereon after allowing the maximum allowable remuneration to partners under the provisions of the Income-tax Act, 1961.

Question No. 5:

X & Co., a partnership firm as such, furnishes the following Profit and Loss Account for the previous year ending 31-3-2021 (amounts in ₹):

To cost of Goods	280000	By Sales	292000
To other Expenses	91,000	By Net Loss	172000
To Interest to Partners	25000		
To Remuneration to Partners	68000		
	464000		464000

The other expenses debited include ₹ 13,600 not allowable under section 37(1) of the Act. Interest to partners is in Excess by ₹ 7,100 (not statutory allowable)

You are required to compute for the AY 2021-22:

- (1) Book profits of the firm,
- (2) Permissible remuneration to partners under section 40(b)
- (3) The income of the firm.

Question No. 6:

Chatterjee and Co., a firm of Company Secretaries at Kolkata, has furnished the profit and loss account for the year ended 31st March, 2021 as under (Amounts in ₹):

Expenses	165000	Gross receipts from profession	220000
Depreciation on assets	45,000	Net loss	131000
Remuneration to partners	141000		
	351000		351000

Additional information:

- (a) Expenses include an amount of ₹ 22,500 being interest on capital to partners credited @ 12% per annum on the balances and ₹ 22,500 being the expenditure not allowable under section 37.
- (b) Depreciation as per the income-tax rules is ₹ 48,000.

Compute the taxable income of the firm indicating the maximum permissible remuneration and interest allowable to partners under the provisions of the Income-tax Act, 1961.

Solution: Computation of remuneration allowed to the partner (amounts in ₹)

Net loss as per Profit & Loss account			-131000
Add: (a) Remuneration to partners		141000	
(b) Expenses disallowed u/s 37		22500	
			163500
			32500
Less: Depreciation not debited to P & L A/c (₹ 48000 - ₹ 45000)			3000
Book profit			29500
Less: Remuneration allowable u/s 40(b), being the lower of			
(a) Higher of - (i) 90% of 29,500	26550		
(ii) Minimum statutory limit	150000	150000	
(b) Actual Remuneration		141000	141000
Total Income (Business loss to be carried forward)			-111500

Note : Interest on capital ₹ 22,500 paid to partner is allowable, as interstate doesn't exceed 12% p.a.

Question No. 7:

ABC is a partnership firm carrying on business, in which A, B and C are partners sharing profits and losses equally. In respect of **Assessment Year 2021-22**, it furnishes the following particulars (amounts in ₹):

1. Loss as per Profit and Loss A/c after debiting remuneration to partners and interest on their capital -
₹ 250,000

2. Remuneration to Partners:

A	90,000
B	60,000
C	30,000

3. Interest paid on Capital as on 1-4-2020

	Capital	Interest
A	100000	20,000
B	100000	20,000
C	100000	20,000

You are required to work out the income of the firm and of the partners A, B and C assuming that the partners have no other income.

TAXABILITY OF HINDU UNDIVIDED FAMILY

W.e.f. AY 2021-22, HUF is now option to choose Section 115BAC (Alternative Tax regime) (Refer Tax Rates Chapter)

- 1) **Definition:** HUF is not defined under the Income-tax law. However, **as per Hindu law it means** “a family, which consists of all males lineally descended from a common ancestor and includes their wives and unmarried daughters”. The **head of a HUF is termed as 'Karta'**.
- 2) **Origin:** The relation of a HUF does not arise from a contract but arises from status. A person becomes a member of the HUF not by virtue of contract but by his birth.
- 3) **Cessation of membership:**
 - ✓ A male member continues to be a member of the HUF until partition of the HUF. On partition, he ceases to be a member of the earlier larger HUF and becomes member of another smaller HUF.
 - ✓ A female member ceases to be a member of the HUF in which she was born, when she gets married; in that case, she becomes a member of the HUF of her husband.
- 4) **Conditions for HUF: In order to be assessed as a HUF the following conditions are to be fulfilled –**
 - a) there should be coparcenership; and
 - b) there should be a Joint Family Property.
- 5) **Co-parcenership:** Co-parcener refers to those members of an HUF who acquire by birth an interest in the joint family property. Only the coparceners have a right to partition. **Now, the female members have been brought at par with the male members. Hence, now**
 - a) daughter of a coparcener becomes a coparcener by birth in her own right in the same manner as son. She will have the **same rights and liabilities** in respect of coparcenary property as of a son.
 - b) daughter shall be **entitled to same share** on partition of coparcenary property as that of the son.
 - c) female heir can **demand the partition** of a coparcenary property in the same manner as the son.
- 6) **HUF v. Hindu Coparcenery:** While-an HUF covers all members; the Hindu coparcenery is limited to male members (viz. the common ancestor, sons, grandsons and great grandsons) and the daughters of such coparceners. Hence, HUF is a wider body than coparcenery.
- 7) **Exemption to the members of HUF in relation to income of HUF [Section 10(2)]:** Any sum received by a member of a Hindu Undivided Family out of the income of the family or, in the case of any impartible estate, out of the income of the estate belonging to the family shall be exempt from tax.
- 8) **Partition:** Partition means physical or other division of property. **However, physical division of income without physical division of property producing the income is not partition.** Partial partition means a partition, which is partial as regards members or properties of HUF or both.
- 9) **Assessment after partition [Section 171]:** The law doesn't recognise any partial partition of HUF. Hence in case of partial partition, HUF shall be assessed as if no partition had taken place. However, in case of total partition, the assessment will be made as follows -
 - a) the Assessing Officer shall, after making inquiry, record the date of effect of such partition; and
 - b) the total income of HUF shall be assessed as that of HUF only upto the date of such partition.
- 10) **Schools of Hindu Law: There are two schools of Hindu law. They are –**
 - (1) Mithakshara school of Hindu law
 - (2) Dayabhaga school of Hindu law

Mithakshara law is followed by entire India except West Bengal and Assam. There is a basic difference between the two schools of thought with regard to succession.

Under the Mithakshara law, the inheritance is by birth. One acquires the right to the family property by his birth and not by succession irrespective of the fact that his elders are living. Thus every child born in the family acquires a right/share in the family property.

Dayabhaga law prevails in West Bengal and Assam. In ***Dayabhaga law, nobody acquires the right, share in the property by birth as long as the head of family is living***, that is, the children do not acquire any right, share in the family property, as long as his father is alive and only on death of the father, the children will acquire right/share in the property. Thus, the father and his brothers would be the coparceners of the HUF

11) ASSESSMENT OF HUF:

The income of a HUF is to be assessed in the hands of the HUF and not in the hands of any of its members. This is because HUF is a separate and a distinct tax entity.

12) FOLLOWING POINTS SHALL BE CONSIDERED:

1. **Remuneration to member of HUF due to investment of HUF fund:** Where joint fund is invested in a company or a firm, fees or remuneration received by any member of HUF as a director or partner from such company or firm by virtue of such investment shall be treated as income of the HUF. On the other hand., where such remuneration or fees is received by virtue of service rendered by such member (in his personal capacity) then such amount shall be taxable in hands of such member
2. **Remuneration to Karta:** Any genuine (not excessive) remuneration paid to the Karta for conducting business of the HUF is allowed expenditure in the hands of the HUF provided such remuneration is paid under a bonafide agreement and is in the interest of the family business.
3. **Personal income of the members:** income of the member of HUF acquired in his personal capacity shall not be taxable in the hands of HUF.
4. **Income from impartible estate:** Though the impartible estate belongs to the family, income arising there from is taxable in the hands of the holder of the 'estate' and not in the hands of the HUF.
5. **Also refer Partner/Member in "Representative Capacity" & "Individual Capacity" concept in Clubbing / Firm / AOP Class.**

13) STEPS FOR COMPUTATION OF INCOME TAX OF HUF

- Step 1** The Gross Total Income of HUF, like any other person, shall be computed under four heads of income, on the basis of their residential status. There can be no income under the head income from salaries in the case of HUF.
- Step 2** Sections 60 to 63 relating to income of other person included in the assessee's total income are applicable in case of HUF but section 64 is not applicable to HUF as it is applicable in case of individual assessee only.
- Step 3** Set off of losses is permissible while aggregating the income under different heads of income.
- Step 4** Carry forward and set off of losses of past years, if permissible, is allowed.
- Step 5** The income computed in steps 1 to 4 is known as gross total income from which the following deductions u/s 80C to 80U (not a complete list) will be allowed:

Sl. No.	Section	Nature of Deductions
1	80C	Deduction in respect of Life Insurance Premium, deferred annuity, contribution to PF, subscription to certain equity shares or debentures, etc.
2	80D	Payment of medical insurance premium
3	80DD	Medical treatment of handicapped dependents and deposits made for maintenance of handicapped dependents
4	80DDB	Deduction in respect of medical treatment, etc.
5	80G	Donations to certain funds/charitable institutions etc.
6	80GGA	Certain donations for scientific research or rural development
7	80GGC	Deduction in respect of contribution given by any person to political parties
8	80JJA	Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste
9	80TTA	Deduction in respect of Saving Bank Account Interest

- Step 6** The balance income after allowing the deductions is known as Total Income which will be rounded off to the nearest ₹ 10.
- Step 7** Compute the tax on such total income at the prescribed rates of tax.
- Step 8** Add Health & Education Cess @ 4% on the tax shall be levied.
- Step 9** Deduct TDS and advance tax paid for the relevant assessment year. The balance is the net tax payable which must be rounded off to the nearest ten rupees. This tax has to be paid as self-assessment tax before submitting the return of income.

NOTE: AMT under Section 115JC may also be applicable on HUF

Question 1:

X is the coparcener of a Hindu Undivided Family consisting of himself, his father and two elder brothers. The assets of the family have not yet been partitioned. From out of the rental income of the family, X's father sends X ₹ 16,000 to enable him to maintain his family. Besides the above receipt, X has received a salary of ₹ 60,000 from his employer. Discuss the tax liability/ exemptions that Mr. X gets.

Solution: As per section 10(2), any sum received by a member of a HUF out of the income of the family is exempt from tax. Hence, share in HUF income received by X is exempt from tax. **However, salary of ₹ 60,000 is taxable. The tax liability in respect thereof shall be NIL.**

Question 2:

Mr. Prasad is a karta of a HUF. The family declares GTI of ₹ 4,00,000 for the assessment year 2021-22. The gross total income includes taxable long-term capital gains of ₹ 65,000 (taxable u/s Section 112) and short-term capital gains of ₹ 35,000 which is taxable under section 111A. The details of HUF funds investment made during the previous year 2020-21 are as follows (amounts in ₹):

Amount deposited in PPF in the name of members of HUF	10,000
Medical insurance premium paid by cheque:	
(a) in the name of the karta	4,000
(b) in the personal name of Mr. Prasad	5,000
Contributions made to:	
(a) Indra Gandhi Memorial Trust	7,000
(b) Delhi university (declared as an institution of national eminence)	3,000
(c) Zila saksharta samiti	5,000
(d) An approved charitable institution	30,000
(e) Government for the promotion of family planning	10,000
(f) Hanuman temple in the local mohalla	20,000

Compute the total income of HUF which is chargeable to tax for the AY 2021-22. **Ignore Section 115BAC**

Solution: Computation of the Total Income of HUF

LTTCG income (112)	65,000
STCG income (111A)	35,000
Other income	300,000
Gross Total Income	400,000
Less : Deduction u/s 80C (PPF deposit in the name of member of HUF)	10,000
Less : Deduction u/s 80D (Medical insurance premium paid to effect/keep in force insurance on the health of a member viz. Karta - whether in his personal name or in his name as Karta. Since payment is out of funds of the HUF, hence, deductible in computing total income of the HUF)	9,000
Less: Deduction under section 80G (See Note)	30,550
Total income	350,450

Note: Computation of deduction under section 80G

Donation to -	Qualifying Sum Rs.	% Eligible	Deduction
(A) Donation without any qualifying limit:			
1. Delhi university	3,000	100%	3000
2. Zila Saksharta Samiti	5,000	100%	5000
3. Indra Gandhi Memorial Trust	7,000	50%	3500

(B) Donation subject to qualifying limit of total donation of 10% of Adjusted GTI:

1. Government for the promotion of family planning.	10,000	100%	10,000
2. An approved charitable institution (While total donation is ₹ 30,000; the qualifying amount = 10% of Adj. GTI - Donation for family planning, which is eligible for 100% deduction)	18,100	50%	9,050
Qualifying amount under (B) = 10% of Adj. GTI	28,100		
Total Deduction u/s 80G			30,550
**Adjusted GTI = GTI - Deduction u/s 80C & 80C - LTTCG - STCG referred u/s 111A			281,000

Question 3:

The following details of income for FY 2020-21 have been supplied by R who is Karta of HUF:

a. Profit from family business	1,44,000
b. Salary received by a member of family for looking after the family business	20,000
c. Remuneration received by Karta for working as secretary in a company	30,000
d. Municipal value of ancestral house let out	24,000
e. Local taxes of house	1,200
f. Long term capital gain	19,000
g. Long term capital gain from transfer of Investment	20,000
h. Profit from a firm in which Karta is a partner on behalf of HUF	28,000
i. Donation to recognized education institution	15,000
j. Life Insurance Premium paid	26,000

Compute the TI of the family for the AY 2021-22. Ignore Section 115BAC

Solution: Gross Total Income of HUF for the AY 2021-22

Income from house property:-

Annual value	24,000	
Less: Local taxes of house	(1,200)	
Net annual value	22,800	
Less: Standard deduction @ 30 %	6,840	15,960

Profit gain of business or profession -

Profit from business		1,44,000
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Capital Gain –

Long term capital gain	19,000	
Long term capital gain from transfer of Investment	20,000	39,000

Gross Total income**1,98,960**Less: Deduction

U/s 80C	26,000	
U/s 80G 50% - (Donation to a recognized education institution)		
₹ 15,000 but limited to 10% of Adj GTI = ₹ 13,396		
50% of ₹ 13,396	6,698	32,698

Total income**1,66,260****Notes: -**

- Income from long-term capital gain is assumed to be the income of HUF though specifically not mentioned in question.
- Profit from a firm is exempt
- Adjusted Gross Total Income ₹ 1,98,960 – ₹ 39,000 (LTCG) – ₹ 26,000 (80C) = ₹ 1,33,960.
- Salary to member is allowable expenses hence not added back.

Question 4:

The Karta of an HUF furnished the following particulars of the income of the HUF for the AY 2021-22:

Interest on Debentures	45,000
Interest on Govt. Securities	4,000
Dividend from UTI	6,000
Rent of House Property	20,000
Profit from an industrial undertaking	90,000
Long term Capital Gain	50,000
Agricultural income	60,000

The family paid ₹ 12,000 by way of insurance premium of its members and donated ₹ 16,000 to a recognized charitable institution. Compute the amount of tax payable by the HUF. Ignore Section 115BAC

Solution:**Computation of income of HUF****(For the assessment year 2021-22)**

Non-agricultural income		
Income from house property		
Annual value	20,000	
Less: Standard deduction @ 30% u/s 24(a)	6,000	14,000
Income from business & profession		
Profit from newly established industrial undertaking		90,000
Income from long term capital gain		50,000
Income from other sources		

HUF	SATC	14.5
Interest on debentures	45,000	
Interest on Govt. securities	4,000	
Dividend from UTI	6,000	<u>55,000</u>
Gross total income		2,09,000
Less: Deductions		
U/s 80C	12,000	
U/s 80G – ₹ 16,000 donated to a charitable institution 50% of [10% of ₹ 1,47,000]	7,350	19,350
Total income		1,89,650
Tax on Total income excluding of LTCG (₹ 1,89,650 – ₹ 50,000)	1,39,650	NIL
Tax on long term capital gain of ₹ 50,000 (as unexhausted basic exemption limit is ₹ 110,350)		NIL

- No partial integrate of agricultural income with non-agricultural income as agricultural income exclusive of LTCG is **less than the exemption limit**
- Adjusted GTI is ₹ 209,000 (GTI) – ₹ 50,000 (LTCG) – ₹ 12,000 (80C) = ₹ 147,000

Question 5:

A HUF has three coparceners: X (Karta), Y and Z. The family has the following incomes for the year ending March 31, 2021:

	₹
Interest on securities	5,00,000
Rent (House 1)	6,00,000
Rent of a House 2 (purchased in 1946 in the name of Mrs. X out of funds of the family)	3,50,000
Income from family business	9,70,000
Bank interest [Term Deposits]	3,12,000
Salary of Y from a company	6,00,000
One-third share from a partnership firm in which Y is a partner, representing the family	8,00,000

Determine the total income of the family for the AY 2021-22, assuming that the family pays life insurance premium of ₹ 14,000 (sum assured: ₹ 1,40,000) on the life of X and medical insurance premium of ₹ 36,000 for Mr. X. **Ignore Section 115BAC.**

Solution:

Interest on securities	5,00,000
Income from house property [(₹ 6,00,000 + ₹ 3,50,000) Less: Deduction u/s 24(a) - 30%]	6,65,000
Business income	9,70,000
Income from other sources	<u>3,12,000</u>
Gross Total Income	24,47,000
Less: Deductions	
U/s 80C	14,000
U/s 80D (subject to a maximum of ₹ 50,000)	<u>36,000</u>
Net income	23,97,000

Note – age of X is not given in the problem. However, the family purchased house in the name of Mrs. X in the year 1946. Since X was married in 1946, his age on March 31, 2021 should be at least of 60 years. Consequently, **deduction up to ₹ 50,000 is available u/s 80D.**

Question 6:

Ramesh is the karta of Ramesh (HUF) in which the other members are his wife Padma, major son Guru and a minor daughter Gauri. The following details of this HUF, resident in India, pertaining to the year ended 31st March, 2021 are made available to you:

- (a) Rent (at ₹ 10,000 per month) received from a flat is ₹ 1,10,000. Rent of ₹ 10,000 for the month of March 2021 was received in April 2021. Property tax paid ₹ 10,000.
Bank loan of ₹ 10,00,000 was taken for construction of this flat, bearing interest at 10%. ₹ 8,000 interest is in arrears pertaining to this year, which was paid by the HUF in May 2021 only. Principal repayment during the year was ₹ 48,000.
- (b) Ramesh represents the HUF in a partnership firm M/s. Ashok & Co., engaged in turmeric business. The firm has paid interest of ₹ 1,80,000 to the HUF computed at 15%.
For the services rendered by Ramesh to this firm as the alone Working partner, the firm has paid him a remuneration of ₹ 1,50,000, as per the provisions of the partnership deed. The "book profit" of the firm in terms of Section 40(b) is ₹ 1,35,000.
- (c) The HUF is also running business as narrated below:
Retail trade in food grains:
A rough account book alone is maintained. Expense bills/ vouchers are not properly maintained. The total turnover is ₹ 38 lacs (in cash). The net profit as per rough account is ₹ 1,41,000. This has been arrived at after considering a penalty of ₹ 8,000 levied by Sales-tax authorities for the misuse of "C" Form.
- (d) The HUF has received dividend of ₹ 90,000 from shares held in a foreign company.
- (e) Tuition Fees of ₹ 20,000 were paid for the purpose of part-time education of Ms. Gauri in an Indian college.

- (f) The following sums have been paid by the HUF in respect of Life Insurance Premium :

Policyholder's name	Insurer	Premium (₹)	Late fee (₹)
Mrs. Padma	LIC	80,000	500
Guru	IRDA- approved private insurer	42,000	1500

Parts of the above premiums were paid from out of agricultural income of ₹ 60,000 derived from agricultural lands situated in Colombo.

You are required to compute the total income of Ramesh (HUF) for the Assessment Year 2021-22, showing clearly the computation under proper heads of income. You are also required to indicate with reasons, whether any item is to be considered in the hands of Ramesh (Individual). **Ignore Section 115BAC.**

Solution: Computation of Total Income of Ramesh (HUF)

	₹	₹
Income from House Property :		
Actual rent received or receivable (₹ 1,10,000 + ₹ 10,000)	1,20,000	
Less : Property tax paid	-10,000	
Net annual Value	1,10,000	
Less: Statutory Deduction (30%)	-33,000	
Interest on borrowed capital (See Note 1)	-1,00,000	- 23,000
Income from business and profession:		
Interest received from partnership firm (See Note 2)	1,44,000	
Income from Retail business u/s 44AD (See Note 3)	3,04,000	4,48,000
Income from other sources :		
Dividend received from foreign company (See Note 5)	90,000	
Income from agricultural land situated in Colombo (See Note 6)	60,000	1,50,000
Gross Total Income		5,75,000
Less: Deduction u/s 80C (See Note 6)		(1,50,000)
Total Income		4,25,000

Income Taxable in the Hands of Ramesh (Karta):

It has been judicially decided by the Supreme Court that the "remuneration received by the Karta from the firm in which HUF is a partner is taxable in the hands of the Karta **if it is earned by the Karta on account of his personal qualifications & exertions and not on account of the investment of the family funds.**

Hence, in the given question, the remuneration received by Mr. Ramesh for services rendered in the partnership firm in which Ramesh (HUF) is a partner, **is taxable in his hands.**

The taxable amount in the hands of Ramesh shall be amount of remuneration allowable to firm u/s 40(b). As per section 40(b), the minimum remuneration eligible for deduction is ₹ 1,50,000. **Since, in this case, whole of remuneration is eligible for deduction u/s 40(b), therefore, amount taxable in hands of Ramesh = ₹ 1,50,000.**

Working Notes:

- In case of let out house property, the whole amount of interest accrued on the amount of housing loan is allowable u/s 24(b). In the given question, the amount of interest accrued during the previous year is 10% of ₹ 10,00,000 = ₹ 1,00,000. **Hence, the full amount is allowed as deduction u/s 24(b) irrespective of the fact that a part thereof was paid after the end of previous year.**
- As per Section 28, any amount of interest allowable as deduction in the hands of firm is taxable in the hands of partners. However, any amount not allowed as deduction to the firm u/s 40(b) is not taxable in the hands of partner. In the given question, the amount of interest paid is ₹ 1,80,000 @ 15%. Interest @ 12% is allowable in the hands of the firm u/s 40(b), **hence, it is taxable in the hands of Ramesh (HUF).** Taxable amount = ₹ 1,80,000 × 12 ÷ 15 = ₹ 1,44,000. The remaining amount is taxable in the hands of the firm.
- In case of retail trade business, the deemed profits **shall be 8% of ₹ 38 lakhs = ₹ 3,04,000.** Since a rough account has been maintained, such account cannot be regarded as proper books of account. Therefore, the HUF cannot claim that its actual profits are lower because in order to claim lower profits, the maintenance of proper books of account and audit thereof is a pre-requisite. Therefore, income is to be computed as per section 44AD. When income is computed under section 44AD it is deemed that all the adjustments under section 30 to 38 have been made, **hence, there is no requirement of further disallowance of the amount of penalty levied by Sales-tax authorities.**
- Dividend received from foreign company is chargeable to tax.
- Section 10(1) exempts the income derived from agricultural land situated in India. Since, in the given question, agricultural land is situated outside India, the income derived from it is chargeable to tax as Income from other sources.
- Deduction u/s 80C is computed as follows:**

Nature of payment	Amount	Reasons for exclusion/inclusion
Principal amount of house loan	48,000	Specifically allowed on payment basis.
Tuition fees for part time education	-	Disallowed since it is paid for part-time education. <u>Also, tuition fees is allowed only in case of individual.</u>
LIC premium paid	122,000	Only the amount of premium is allowed as deduction; <u>the amount of late fees is disallowed.</u>
Total eligible amount	170,000	

Since the maximum amount of deduction u/s 80C is ₹ 1,50,000, therefore, the amount of deduction allowable in the given question shall be ₹ 1.5 lakh.

CLUBBING OF INCOME

FROM 18th EDITION – Assessment Year 2021-22

CMA INTER DT STUDENTS

(EXAM IN JUNE 2021 & DEC 2021)

TRANSFER OF INCOME WITHOUT TRANSFER OF THE ASSET [SECTION 60]

If any person transfers the income from any asset without transferring the asset itself, such income is to be included in the total income of the transferor.

Example:

Mr. A confers the right to receive rent in respect of his house property on his wife, Mrs. A, without transferring the house itself to her. In this case, rent received by Mrs. A will be clubbed with the income of Mr. A.

INCOME ARISING FROM REVOCABLE TRANSFER OF ASSETS [SECTION 61]

- (i) All income arising to any person ***by virtue of a revocable transfer of assets*** is to be included in the total income of the transferor.
- (ii) As per section 63, the transfer is deemed to be revocable ***if whole or any part*** of income or assets is **re-transferred** to the transferor or **transferor gets the right over** such income or assets.

Note: This clubbing provision will operate ***even if only part of income*** of the transferred asset had been applied for the benefit of the transferor. **Once the transfer is revocable**, the ***entire income*** from the transferred asset is includible in the total income of the transferor.

EXCEPTIONS WHERE CLUBBING PROVISIONS ARE NOT ATTRACTED EVEN IN CASE OF REVOCABLE TRANSFER [SECTION 62]: Section 61 will not apply in the following 2 cases -

1. Transfer not revocable during the life time of the Beneficiary or the Transferee:

If there is a transfer of asset which is not revocable during the life time of the **Transferee** (Direct Transfer) or **Beneficiary** (in case of transfer by way of Trust), the income from the transferred asset is not includible in the total income of the transferor ***provided the transferor derives no direct or indirect benefit from such income.***

Note: In the above case, ***as and when the power to revoke the transfer arises***, the income arising by virtue of such transfer will be included in the total income of the transferor.

2. Transfer is made before 01.04.1961 & transfer is not revocable for a period exceeding 6 years.

CLUBBING OF INCOME ARISING TO SPOUSE FROM A CONCERN [SECTION 64(1)(ii)]

Any remuneration derived by a spouse from a concern in which the ***other spouse has a substantial interest***, shall be ***clubbed in the hands of the spouse who has a substantial interest in that concern***.

- No clubbing if remuneration is due to technical or professional qualifications of spouse & such income is solely attributable to the application of his or her technical or professional knowledge and experience.
- **If the husband and wife both have substantial interest in the concern and**
 - both are in receipt of remuneration from the concern,
 - then the remuneration of *both* shall be clubbed in the hands of *that spouse*
 - whose **total income**, ***before including such remuneration, is greater.***

Where any such income is once included in the total income of either spouse, income arising in the succeeding year shall **not be included in the total income of the other spouse unless the Assessing Officer is satisfied**, after giving that spouse an opportunity of being heard, that it is necessary to do so.

Meaning of substantial interest:

An individual shall be deemed to have a substantial interest in the concern:

- (i) For company - at least 20% equity shares of such company **at any time** during the PY are held by Individual **along with his relatives**.
- (ii) For any other case- at least 20% of the profits of such concern **at any time** during the PY is held by individual **along with his relatives**.

“Relative” means the spouse, brother or sister or any ***lineal ascendant or descendant*** of the individual.

Question 1: Mr. A is an employee of X Ltd. and he has 25% shares of that company. His salary is ₹ 50,000 p.m. Mrs. A is working as a computer software programmer in X Ltd. at a salary of ₹ 30,000 p.m. She is, however, not qualified for the job. Compute the gross total income of Mr. A and Mrs. A for the AY 2021-22, assuming that they do not have any other income.

Solution: Mr. A is an employee of X Ltd and has 25% shares of X Ltd i.e. a substantial interest in the company. His wife is working in the same company without any professional qualifications for the same. Thus, by virtue of the clubbing provisions of the Act, the salary received by Mrs. A from X Ltd. will be clubbed in the hands of Mr. A.

Computation of GTI of Mr. A

Salary Income of Mr. A [₹ 50,000 × 12 – ₹ 50,000]	₹ 5,50,000
Salary Income of Mrs. A clubbed here [₹ 30,000 × 12 – ₹ 50,000]	₹ 3,10,000
Gross total income	₹ 8,60,000

The GTI of Mrs. A is NIL.

Question 2: Mr. Raman is a Chartered Accountant in practice. He engages his wife Mrs. Seetha as an employee for audit works and pays a sum of ₹ 20,000/ – p.m. towards salary. Mrs. Seetha before marriage has completed her C.A. articleship training and is presently awaiting result of the final examination. Examine the tax implication in respect of the above transaction.

Solution: Where the spouse of the assessee has qualification and experience, the remuneration obtained by virtue of the exercise or application of such qualification, experience and skill will not be subjected to clubbing because of the proviso to Sec. 64(1). Therefore, the income of Mrs. Seetha should not be clubbed with that of Mr. Raman. However, the Assessing Officer has power under section 40A(2) (refer PGBP Chapter) to examine the reasonableness of the salary paid to a relative and disallow to the extent it is excessive or unreasonable.

Question 3: Mr B holds 5% shares in A Ltd., where his brother and nephew hold 11% and 6% shares, respectively. Mrs B gets commission of ₹ 1,00,000 from A Ltd. for canvassing orders. She holds no technical/professional qualification. Mr B earns income of ₹ 5,00,000 from sugar business. Compute their total income for the AY 2021-22.

Solution:

Particulars of income	Computation of Total Income for the AY 2021-22	
	Mr. B ₹	Mrs. B ₹
Income from sugar business	5,00,000	
Commission for canvassing orders from Z Ltd.		100,000
Total Income	5,00,000	100,000

Note: In the instant case, Mr B holds 5% and his brother holds only 11% shares in A Ltd. The total of their shareholding is less than 20%. They have no substantial interest. Therefore, commission income is assessable as income of Mrs B. [Nephew is not a relative for clubbing purpose]

Question 4:

Mr. J and Mrs. J holds 15% and 10% shares in A Ltd. and both are employed by A Ltd. getting salary income (computed) of ₹ 2,40,000 respectively. Their remuneration does not match their technical or professional knowledge or experience. Apart from the salary income Mr. J has business income of ₹ 300,000 & Mrs. J has earned ₹ 3,00,000 as rent of the house property. Mr. J has invested ₹ 120,000 in PPF account and another ₹ 60,000 in NSC. While Mrs. J has invested ₹ 1,10,000 in NSC and has donated ₹ 10,000 to PMNRF. Calculate the Total Income of Mr. J and Mrs. J.

Solution:

When both, husband and wife, have substantial interest in a concern and both are drawing remuneration from that concern without possessing any specific qualification, remuneration from such concern will be included in the total income of husband or wife, whose total income excluding such remuneration, is higher.

In given case, both has a substantial interest [shareholding with relative is 25%] & therefore remuneration will be clubbed in the hands of spouse whose total income [Excluding salary from A Ltd.] is higher.

Calculation to check higher total income (ignoring salary income)

		Mr. J	Mrs. J
Income under the head Salary		Ignore	Ignore
Income under the head house property		NIL	
GAV	3,00,000		
Less: Municipal Taxes	<u>NIL</u>		
NAV	3,00,000		
Less: Statutory deduction	<u>90,000</u>		2,10,000
Income under the head PGBP		3,00,000	NIL
Gross Total Income		3,00,000	2,10,000
Less: Deduction u/s 80C		1,50,000	1,10,000
Deduction u/s 80G		NIL	10,000
Taxable Income		1,50,000	90,000

Calculation of total income

		Mr. J	Mrs. J
Income under the head Salary		4,80,000	NIL
Mr. J's own 2,40,000			
Mrs. J's 2,40,000 clubbed u/s 64(1)(ii)			
Income under the head house property		NIL	2,10,000
Income under the head PGBP		3,00,000	NIL
Gross Total Income		7,80,000	2,10,000
Less: Deduction u/s 80C		1,50,000	1,10,000
Deduction u/s 80G			10,000
Taxable Income		6,30,000	90,000

CASE STUDY: When other spouse is not beneficially holding Substantial Interest in the Concern

The HUF is a partner in the firm ABC through its Karta "Mr. X" and has 25% shares in the profits of the firm. Wife of Mr. X is employed by firm ABC. In this case, clubbing shall not apply because Mr. X is partner in representative capacity and not in individual capacity. Clubbing applies where an individual is a partner in his individual capacity and has substantial interest in the firm and his spouse get remuneration from the firm.

INCOME ARISING TO THE SPOUSE FROM AN ASSET TRANSFERRED WITHOUT ADEQUATE CONSIDERATION [SECTION 64(1)(iv)]

Subject to Section 27, if an individual transfers directly or indirectly any asset to his/her spouse, the income from such an asset shall be included in the total income of the transferor.

The income from the transferred assets shall not be clubbed in the following cases:

- (i) if the transfer is for adequate consideration;
- (ii) the transfer is under an agreement to live apart;

Note:

1. If an ***individual transfers a house property*** to his spouse, without adequate consideration or otherwise than in connection with an agreement to live apart, the transferor shall be deemed to be the owner of the house property and its annual value will be taxed in his hands. **[Section 27]**
2. It is also to be noted that natural love and affection do not constitute adequate consideration.

INCOME ARISING TO SON'S WIFE FROM THE ASSETS TRANSFERRED WITHOUT ADEQUATE CONSIDERATION BY THE FATHER-IN-LAW OR MOTHER-IN-LAW [SECTION 64(1)(vi)]

Where an asset is transferred, directly or indirectly, by an individual to ***his or her son's wife*** without adequate consideration, the income from such asset is to be included in the total income of the transferor.

For the purpose of Clause (iv) & (vi) [Asset transferred to Spouse or Son's wife] above, following points must be noted:

- 1) The relationship **must exist on the date of transfer as well as at the time of accrual of income during the P.Y.**
- 2) Clubbing is not applicable on any income which arises **on accretion of the transferred asset.**
- 3) Section 64(1)(iv) will not be applicable if the property is acquired by the spouse out of Pin Money.
- 4) **Where the transferred assets is invested by the transferee in any business by way of capital contribution then, the following proportionate income shall be clubbed with the income of the individual:**

Investment made by transferee out of transferred asset As on the first day of Previous Year	X	<u>Total income from such business</u>
Total Investment in the business as on the first day of Previous Year		

Question No. 5:

Mr A gifts ₹ 4,00,000 to Mrs A 1st February 2021. Mrs A starts crockery business and invests ₹ 1,00,000 from her account also. She earns profit of ₹ 60,000 during the period ending on 31 March 2021. How would you tax the business profits?

Answer:

Proportionate profits, in proportion the gifted amount from the spouse on the first day of the previous year bears to the total investment in the business on the first day of the previous year, will be taxable in the income of the transferor spouse.

As Mrs A has started the new business, the first previous year will begin on the date of setting up and will end on 31 March, immediately following. Thus, the first previous year will consist a period of 2 months from 1 February 2021, to 31 March 2021.

Therefore, proportionate profit of ₹ 48,000, computed as below, will be included in the income of Mr. A:

$$\frac{4,00,000}{5,00,000} \times 60,000 = 48,000$$

Question No. 6:

Mr A gifts ₹ 3,00,000 to Mrs A on 1st February 2021. Mrs A invests the same in the existing crockery business where she has already invested ₹ 5,00,000. Mrs A earns ₹ 3,00,000 from the business during the year 2020-21 ending on 31 March 2021 How would you assess the profits?

Answer: The previous year of the existing business is April to March. On the first day of the previous year (i.e. 1 April 2020), total investment has come from Mrs A account. As the proportion of the gifted amount from spouse on 1 April 2020 to the total investment in business on the same day is **NIL**, the whole of the profits of ₹ 3,00,000 for the year 2020-21 will be included in the total income of Mrs A.

Question No. 7: [INCOME ARISING FROM INCOME EARNED IS NOT TO BE CLUBBED]

Mr Goutam, out of his own funds, had taken a FDR for ₹ 1,00,000 bearing interest @ 10% p.a. payable half-yearly in the name of his wife Latika. The interest earned for the year 2020-21 of ₹ 10,000, was invested by Mrs Latika in the business of packed spices which resulted in a net profit of ₹ 55,000 for the year ended 31st March 2021. How shall the interest on FDR and income from business be taxed for the AY 2021-22?

Answer: Where an individual transfers an asset (excluding house property), directly or indirectly to his/her spouse, otherwise than for adequate consideration, or in connection with an agreement to live apart, income from such asset is included in the total income of such individual [Sec. 64(1)(iv)]. Accordingly, interest on FDR, accruing to wife, is included in the total income of her husband.

However, business profits cannot be clubbed with total income of husband. Clubbing applies only to the income from assets transferred without adequate consideration. It does not apply to the income from accretion of the transferred assets. Hence, business profit is taxable as the income of wife.

TRANSFER OF ASSETS FOR THE BENEFIT OF THE SPOUSE [SECTION 64(1)(vii)]

Where any asset is transferred by an individual, without adequate consideration, to any person **for the benefit of Spouse**, then **any income arising from such transferred asset**, is liable to be taxed in the hands of the transferor, **to the extent such income is used for the immediate / deferred benefit of such spouse**.

IMP: Where any asset is transferred by any person to any person without consideration or for inadequate consideration, the provisions of 56(2)(x) would get attracted in the hands of transferee, if conditions specified thereunder are satisfied.

TRANSFER OF ASSETS FOR THE BENEFIT OF SON'S WIFE [SECTION 64(1)(viii)]

Where any asset is transferred by an individual, without adequate consideration, to any person **for the benefit of Son's wife**, then **any income arising from such transferred asset**, is liable to be taxed in the hands of the transferor, **to the extent such income is used for the immediate / deferred benefit of the Son's wife**.

IMP: Where any asset is transferred by any person to any person without consideration or for inadequate consideration, the provisions of 56(2)(x) would get attracted in the hands of transferee, if conditions specified thereunder are satisfied.

Question 8:

Mrs. Kasturi transferred her immovable property to ABC Co. Ltd. subject to a condition that out of the rental income, a sum of ₹ 36,000 per annum shall be utilized for the benefit of her son's wife.

Mrs. Kasturi claims that the amount of ₹36,000 (utilized by her son's wife) should not be included in her total income as she no longer owned the property. Examine with reasons whether the contention of Mrs. Kasturi is valid in law.

Answer:

The clubbing provisions under section 64(1)(viii) are attracted in case of transfer of any asset, directly or indirectly, otherwise than for adequate consideration, to any person to the extent to which the income from such asset is for the immediate or deferred benefit of son's wife. Such income shall be included in computing the total income of the transferor-individual.

Therefore, income of ₹ 36,000 meant for the benefit of daughter-in-law is chargeable to tax in the hands of transferor i.e., Mrs. Kasturi in this case. The contention of Mrs. Kasturi is, hence, not valid in law.

Note - In order to attract the clubbing provisions under section 64(1)(viii), the transfer should be otherwise than for adequate consideration. In this case, it is presumed that the transfer is otherwise than for adequate consideration and therefore, the clubbing provisions are attracted. Moreover, the provisions of section 56(2)(x) will also get attract in the hands of ABC Co Ltd. if stamp duty value exceeds ₹ 50,000. and if the conditions specified thereunder are satisfied.

If it is presumed that the transfer was for adequate consideration, the provisions of section 64(1)(viii) would not be attracted.

CLUBBING OF MINOR'S INCOME [SECTION 64(1A)]

The income of the minor child [including minor married daughter] is liable to be taxed in the hands of that parent, **whose total income**, excluding income of minor child, **is Greater**.

Exception: No clubbing shall apply in case of following incomes:

- 1) Where a **minor child is suffering from disability** of the nature specified in Sec. 80U.
- 2) Where such income as arises / accrues to the minor child **on account of any manual work** done by him or **activity involving application of his skill, talent or specialized knowledge** and experience.

Notes:

1. **Section 10(32) provides** that where the income of an individual includes the income of his minor child due to the operation of Section 64(1A), the individual shall be entitled to exemption of such income subject to a maximum of ₹ 1,500 per child. **[Not applicable in case of Section 27 – Deemed Owner]**

Imp: Exemption under Section 10(32) would not be available in case of an Individual, being an assessee, who opts for the provisions of section 115BAC [Finance Act 2020]

2. Once clubbing of minor's income is done with that of one parent, it will continue to be clubbed with that parent only, in subsequent years. The Assessing Officer, may, however, club the minor's income with that of the other parent, if, after giving the other parent an opportunity to be heard, he is satisfied that it is necessary to do so.
3. Where **the marriage of his parents does not subsist**, income of the minor shall be clubbed in the income of that parent who maintains the minor child in the relevant previous year.
4. If the income by way of manual work or activity involving application or skill, etc. which was not clubbed, *in invested, and income is earned thereon*, **such investment income shall be clubbed**.
5. If the minor child becomes major during the P.Y., **then the incomes till the date he remained minor** in that P.Y. shall be clubbed with the parent.
6. **Minor Child includes step or adopted child.**

CROSS TRANSFER

In the case of cross transfers also (e.g., A making gift of ₹ 50,000 to the wife of his brother B for the purchase of a house by her and a simultaneous gift by B to A's minor son of shares in a foreign company worth ₹ 50,000 owned by him), the income from the assets transferred would be assessed **in the hands of the deemed transferor** if the transfers are so intimately connected as to form part of a single transaction, and each transfer constitutes consideration for the other by being mutual or otherwise.

Thus, in the instant case, the transfers have been made by A and B to persons who are not their spouse or minor child so as to circumvent the provisions of this section, showing that such transfers constituted consideration for each other.

The Supreme Court, in case of CIT v. Keshavji Morarji, observed that if two transactions are inter-connected and are parts of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted.

Accordingly, the income arising to Mrs. B from the house property should be included in the total income of B and the dividend from shares transferred to A's minor son would be taxable in the hands of A. This is because A and B are the indirect transferors to their minor child and spouse, respectively, of income-yielding assets, so as to reduce their burden of taxation.

Question 9: *Mr. Vasudevan gifted a sum of ₹ 6 lakhs to his brother's wife on 14-6-2020. On 12-7-2020, his brother gifted a sum of ₹ 5 lakhs to Mr. Vasudevan's wife. The gifted amounts were invested as fixed deposits in banks by Mrs. Vasudevan and wife of Mr. Vasudevan's brother on 01-8-2020 at 9% interest. Examine the consequences of the above under the provisions of the Income-tax Act, 1961 in the hands of Mr. Vasudevan and his brother.*

Answer:

In the given case, Mr. Vasudevan gifted a sum of ₹ 6 lakhs to his brother's wife on 14.06.2020 and simultaneously, his brother gifted a sum of ₹ 5 lakhs to Mr. Vasudevan's wife on 12.07.2020. The gifted amounts were invested as fixed deposits in banks by Mrs. Vasudevan and his brother's wife. These transfers are in the nature of cross transfers. Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

If two transactions are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted. It was so held by the Apex Court in *CIT vs. Keshavji Morarji*.

Accordingly, the interest income arising to Mrs. Vasudevan in the form of interest on fixed deposits would be included in the total income of Mr. Vasudevan and interest income arising in the hands of his brother's wife would be taxable in the hands of Mr. Vasudevan's brother as per section 64(1), to the extent of amount of cross transfers i.e., ₹ 5 lakhs.

This is because both Mr. Vasudevan and his brother are the indirect transferors of the income to their respective spouses with an intention to reduce their burden of taxation.

However, the interest income earned by his spouse on fixed deposit of ₹ 5 lakhs alone would be included in the hands of Mr. Vasudevan's brother and not the interest income on the entire fixed deposit of ₹ 6 lakhs, since the cross transfer is only to the extent of ₹ 5 lakhs.

Question 10: Mr. Ram gave cash gift of ₹ 10 lakhs to his younger brother Mr. Bharat's wife Smt. Mandavi. On the same date Mr. Bharat gave gift to wife of Mr. Ram viz, Smt. Sita a vacant land measuring 2000 sq.ft. The stamp duty valuation of the land on the date of gift was 8 lakhs. Smt. Mandavi invested ₹ 8 lakhs in bank fixed deposit fetching interest at 7 % per annum and commenced a business with the balance of 2 lakhs along with her own capital of 3 lakhs. The profit for the year from the business amounts to 1,50,000.

Determine the tax implication of the above transaction in the hands of all the parties.

Would your answer be different if all of them are non-relatives?

Solution:

The amount gifted by Mr. Ram and Mr. Bharat would fall in the exceptions to section 56(2)(x) as they are 'relatives'. The amount gifted hence would not be liable to tax as income.

The relationship from donee's perspective it would be brother of spouse. The gift up to ₹ 8 lakhs is covered by cross-transfer. Hence, the income arising therefrom is liable for clubbing in the hands of spouse of the person deriving such income.

In the case of Smt. Sita, who received vacant site there is no income. Hence, the clubbing provision will not operate.

As regards Smt. Mandavi, the interest income of 56,000 (₹ 8 lakhs × 7%) is liable for clubbing in the hands of Mr. Bharat.

As regards income from business which includes the extra gift of ₹ 2 lakhs by Mr. Ram (brother of her spouse) is **not liable for clubbing**. Hence the business income will have no tax implication.

In case they are not relatives:

The principles relating to cross-transfer will not apply when they are not relatives. The amount received by Smt. Mandavi from Mr. Ram would be assessed as income under section 56(2)(x).

The business income of Smt. Mandavi and interest income will not be liable for any clubbing and hence would be taxed in her hands. The stamp duty value of land received by Smt. Sita is assessable to tax as income under the head 'other sources'.

CONVERSION OF SELF-ACQUIRED PROPERTY INTO THE PROPERTY OF A HUF [SEC 64(2)]

Where an individual, who is a member of the Hindu Undivided Family transfers his individual property to the family, otherwise than for adequate consideration, **then the income from such property shall continue to be included in the total income of the individual.**

Implication in the case of subsequent partition:

Where the converted property has been the subject matter of partition (whether partial or total) amongst the members of the family, the income derived from such, **converted property as is received by the spouse**, on partition, shall be deemed to arise to the spouse from assets transferred indirectly by the individual to the spouse **and the income from the portion, received by the spouse, shall be clubbed in the hands of the transferor.**

DISTINCTION BETWEEN SECTION 61 AND SECTION 64

It may be noted that the main distinction between the two sections is that **Section 61 applies only to a revocable transfer** made by any person while **Section 64 applies to revocable as well as irrevocable transfers made only by individuals.**

LIABILITY OF THE TRANSFEEE IN RESPECT OF CLUBBED INCOME [SECTION 65]

Sections 61 to 64 provide for clubbing of income of one person in the hands of the other in circumstances specified therein. However, service of notice of demand (in respect of tax on such income) may be made upon the person to whom such asset is transferred (i.e. the transferee). In such a case, the transferee is liable to pay that portion of tax levied on the transferor which is attributable to the income so clubbed.

INCOME INCLUDES LOSS [CLUBBING OF NEGATIVE INCOME]

'Income' would include 'loss'. Accordingly, where the specified income to be included in the total income of the individual is a loss, such loss will be taken into account while computing the total income of the individual.

Example: Consider the following cases:

- a) X transfers ₹ 1,00,000 to Mrs. X. By investing ₹ 1,00,000, Mrs. X sets up a business (total investment only ₹ 1,00,000). For the previous year, income from business is (-) ₹ 40,000. The loss of ₹ 40,000 will be included in the income of X.
- b) Minor son of Y has a business. For the previous year 2020-21, loss from business is ₹ 20,000. The loss of ₹ 20,000 will be included in the income of Y or Mrs. Y whosoever has higher income.

- 1) **LOAN Vs TRANSFER: Giving a loan / Interest free Loan is not a transfer of assets.** Therefore, if interest free loan is given by husband to wife/individual to son's wife/individual to his HUF, and the person to whom the loan is given purchases an asset out of the loan, then income from such asset shall not be clubbed in the hands of the person who has given the loan.
- 2) **CONVERSION OF TRANSFERRED PROPERTY:** The clubbing shall continue to apply even if the transferee has converted the transferred assets to some other form. For example, a house property is transferred to son's wife and she sells the house property and buys debentures, then income from debentures shall be clubbed with the income of transferor.
- 3) **CLUBBING OF CAPITAL GAIN INCOME:** If the transferee sells the transferred assets, then capital gains shall also be clubbed with the income of the transferor.
- 4) **INCOME ON INCOME/ACCRETIONS TO THE ASSETS TRANSFERRED:** Income arising out of income earned on transferred assets has not to be clubbed. Therefore, if debentures are transferred to son's wife without consideration and she receives debenture interest which is invested in bank FDR, then debenture interest shall be clubbed with the income of the transferor **but interest on bank FDRs shall not be clubbed.**

Similarly income arising from accretions to assets transferred has not to be clubbed. Therefore, capital gains on bonus shares will not be clubbed with income of transferor where shares have been transferred and the transferee receives bonus shares
- 5) **INADEQUATE TRANSFER:** If property has been transferred to spouse or son's wife directly or indirectly for a consideration **which is inadequate**, then only the part of income which is related to transfer of inadequate, shall be clubbed.
- 6) The clubbing provisions of section 64(1)(iv) is not applicable if the property is transferred by a Karta of HUF, gifting the **coparcenary property to his wife.**

64(1)(vii)	Where any asset is transferred by an individual, without adequate consideration, to any person <i>for the benefit of Spouse</i> , then <i>any income arising from such transferred asset</i> , is liable to be taxed in the hands of the transferor, <i>to the extent such income is used for the immediate / deferred benefit of such spouse.</i>	
64(1)(viii)	Where any asset is transferred by an individual, without adequate consideration, to any person <i>for the benefit of Son's wife</i> , then <i>any income arising from such transferred asset</i> , is liable to be taxed in the hands of the transferor, <i>to the extent such income is used for the immediate / deferred benefit of the Son's wife</i>	
64(1A)	Clubbing of income of a minor child	<p>The income of the minor child [including minor married daughter] is liable to be taxed in the hands of that parent, <u>whose Total Income</u>, excluding income of minor child, <u>is Greater.</u></p> <p><i>Exception: No clubbing shall apply in case of following incomes:</i></p> <ol style="list-style-type: none"> Where a minor child is suffering from disability of the nature specified in Sec. 80U. Where such income as arises / accrues to the minor child on account of any manual work done by him or activity invoking application or his skill, talent or specialized knowledge and experience. <p><u>1. Exemption u/s Section 10(32):</u> Maximum exemption of ₹ 1,500 per annum per child.</p> <ol style="list-style-type: none"> Marriage of his parents does not subsist : Clubbing to that parent who maintains the minor child If the income by way of manual work or activity involving application or skill, etc. which was not clubbed, <i>in invested, and income is earned thereon, such investment income shall be clubbed.</i> If the minor child becomes major during the P.Y., <i>then the incomes till the date he remained minor</i> in that P.Y. shall be clubbed with the parent.
64(2)	<p><u>Income from self acquired property converted to joint family property for inadequate consideration</u></p> <ol style="list-style-type: none"> Where an individual, who is a member of the HUF converts, his separate property as the property of the HUF otherwise than for adequate consideration, <u>then the income from such property shall continue to be included in the total income of the individual.</u> <u>Implication in the case of subsequent partition:</u> Where the above converted property has been distributed on partition among members of the family, the income derived from such, converted property as is received by the spouse, after partition, shall be deemed to arise to the spouse <u>from assets transferred indirectly by the individual to the spouse and the income from the portion, received by the spouse, shall be clubbed in the hands of the transferor.</u> 	
65	<u>Liability of transferee:</u> The transferee is always liable to pay that portion of tax levied on the transferor which is attributable to the income so clubbed.	
Other Common Points	<ol style="list-style-type: none"> Loan is not a transfer, so clubbing will not apply on Loan amount (even if it given interest free to spouse, son's wife etc.) The clubbing provisions of section 64(1)(iv) is not applicable if the property is transferred by a Karta of HUF, gifting the coparcenary property to his wife. Income accruing or arising from transferred assets only will be clubbed. <i>Any income earned out of such income [accreted assets] should not be clubbed</i> [Dividend/CG from Bonus Shares allotted to transferee] The clubbing shall continue to apply even if the transferee has converted the transferred assets to some other form. If property has been transferred to spouse or son's wife directly or indirectly for a consideration <u>which is inadequate</u>, then only the <i>part of income which is related to transfer of inadequate</i>, shall be clubbed 	

QUESTIONS for Practice - SET A

In case any Individual opts for the provisions of Sec 115BAC, exemption of ₹ 1,500 would not be available.

- 1) X holds 20 per cent equity share capital in Y Ltd. Mrs. X is employed by Y Ltd. (salary being ₹ 40,000 per month) as general manager (finance). She does not have any professional qualification to justify remuneration. **Ascertain in whose hands salary income is chargeable to tax. Does it make any difference if Mrs. X was employed by Y Ltd. even prior to her marriage?**

- 2) Shankar has transferred a house property to Uma on 1st April 2012. Uma married Shekar, who is the son of Shankar on 1st April 2020. The income from the property received by Uma during the previous year 2020-21 is ₹ 1,20,000. The assessing officer has clubbed the above income in the hands of Shankar. **Is the action of assessing officer tenable under the law?**

- 3) **Important:** Mr. Vaibhav started a proprietary business on 01.04.2019 with a capital of ₹ 5,00,000. He incurred a loss of ₹ 2,00,000 during the year 2019-20. To overcome the financial position, his wife Mrs. Vaishaly, a software Engineer, gave a gift of ₹ 5,00,000 on 01.04.2020, which was immediately invested in the business by Mr. Vaibhav. He earned a profit of ₹ 4,00,000 during the year 2020-21. **Compute the amount to be clubbed in the hands of Mrs. Vaishaly for the Assessment Year 2021-22.**

If Mrs. Vaishaly gave the said amount as loan, what would be the amount to be clubbed?

- 4) **Important:** X and Y form a partnership firm on April 1, 2020 (profit sharing ratio - 2: 3) by investing ₹ 10 lakhs and ₹ 15 lakhs respectively. The investment has been financed from the following sources—

	X ₹	Y ₹
Gift from Mrs. X	6,60,000	—
Gift from Mrs. Y	—	8,00,000
Past savings of X and Y	3,40,000	7,00,000

For the year ending March 31, 2021, share of profit from the firm is as follows—

	X ₹	Y ₹
Interest on capital @ 12 per cent	1,20,000	1,80,000
Salary as working partner	24,000	24,000
Share of profit	1,08,000	1,62,000

Find out the income chargeable to tax in the hands of X and Mrs. X.

- 5) Raja gifts ₹ 2 lakh to his wife on 1-4-2020 which she invests in a firm on interest @ 18% p.a. On 1-1-2021, Mrs. Raja withdraws the money and gifts it to their son's wife. She claims that the interest which has accrued to the daughter – in – law from 1-1-2021 to 31-3-2021 on the investment made by the daughter – in – law is not assessable in her hands but in the hands of Raja. **Is this correct? What would be the position, if Mrs. Raja had gifted the money to their minor son, instead of the daughter – in – law?**

- 6) A and B are minor sons of X and Mrs. X. Business income of X is ₹ 3,40,000. Income from house property of Mrs. X is ₹ 1,90,000. Income of A and B from stage acting is ₹ 60 000 and ₹ 70,000 respectively. Besides interest on company deposits of A and B (deposit was made out of income from acting) is ₹ 30,000 and ₹ 1,000, respectively. A and B have received following birthday gifts: on May 20, 2020, gift received by B from his grandfather: ₹ 80 000; On September 14, 2020, gift received by A ₹ 60,000 from X's friend and ₹ 35,000 from a relative. **Find out the income of X, Mrs. X, A and B for the AY 2021-22.**

- 7) **Important:** Mr. Singh is a trader. Particulars of his income and those of the members of his family are given below. These incomes relate to the previous year ended 31st March, 2021.

	₹
(i) Income from business— Mr. Singh's	90,000
(ii) Salary income (computed) from an educational institution by Mrs. Singh, she is the Principal of the institution	50,000
(iii) Interest on company deposits derived by Master Deep Singh (minor son). These deposits were made in the name of Deep Singh by his father's father about 6 years ago.	12,000
(iv) Receipts from sale of paintings and drawings made by Minor Dipali Singh (minor daughter of Mr. and Mrs. Singh and a noted child artist)	60,000
(v) Income by way of lottery earnings by Master Dipender Singh (minor – son of Mr. Singh)	6,000

Discuss whether the above will form part of the assessable income of any individual and also compute the assessable income of Mr. Singh.

- 8) Mr. Sharma has four minor children consisting 2 daughters and 2 sons. The annual income of 2 daughters were ₹ 9,000 and ₹ 4,500 and of sons were ₹ 6,200 and ₹ 4,300, respectively. The daughter who has income of ₹ 4,500 was suffering from a disability specified under section 80U. Compute the amount of income earned by minor children to be clubbed in hands of Mr. Sharma.
- 9) **Mr. Dhaval and his wife Mrs. Hetal furnish the following information:**

Particulars	₹
(i) Salary income (computed) of Mrs. Hetal	4,60,000
(ii) Income of minor son 'B' who suffers from disability specified in Section 80U	1,08,000
(iii) Income of minor daughter 'C' from singing	86,000
(iv) Income from profession of Mr. Dhaval	7,50,000
(v) Cash gift received by 'C' on 2.10.2020 from friend of Mrs. Hetal on winning of singing competition	48,000
(vi) Income of minor married daughter 'A' from company deposit	30,000

Compute the total Income of Mr. Dhaval and Mrs. Hetal for the AY 2021-22.

- 10) **Compute the gross total income of Mr. & Mrs. A from the following information:**

Particulars	₹
(a) Salary income (computed) of Mrs. A	2,30,000
(b) Income from profession of Mr. A	3,90,000
(c) Income of minor son B from company deposit	15,000
(d) Income of minor daughter C from special talent	32,000
(e) Interest from bank received by C on deposit made out of her special talent	3,000
(f) Gift received by C on 30.09.2020 from friend of Mrs. A	2,500

Brief working is sufficient. Detailed computation under various heads of income is NOT required.

- 11) Mr. A is an employee of Larsen Limited and has substantial interest in the company. His salary is ₹ 25,000 p.m. Mrs. A also is working in that company at a salary of ₹ 10,000 p.m. without any professional qualification. Mr. A also receives ₹ 30,000 as income from securities, Mrs. A owns a house property which she has let out. Rent received from such house property is ₹ 12,000 p.m.

Mr. & Mrs. A have three minor children-two twin daughters and one son. Income of the twin daughters is ₹ 2,000 p.a. and that of his son is ₹ 1,200 p.a. **Compute the income of Mr. A and Mrs. A.**

- 12) Mr. Dhaval has an income from salary (computed) of ₹ 3,50,000 and his minor children's income are as under:

Particulars	₹
Minor daughter has earned the following income:	
From a TV show	50,000
From interest on FD with a bank (deposited by Mr. Dhaval from his income)	5,000
Minor son has earned the following income:	
From the sale of a own painting	10,000
From interest on FD with a bank (deposited by Mr. Dhaval from his income)	1,000

Compute the gross total income of Mr. Dhaval.

- 13) Mr. B is the Karta of a HUF, whose members derive income as given below:

Particulars	₹
(a) Income from B' s profession	45,000
(b) Mrs. B' s salary income (computed) as fashion designer	76,000
(c) Minor son D (interest on fixed deposits with a bank which were gifted to him by his uncle)	10,000
(d) Minor daughter P's earnings from sports	95,000
(e) D's winnings from lottery (gross)	1,95,000

Discuss the tax implications in the hands of Mr. and Mrs. B.

- 14) **Important:** The following details are furnished in respect of Mr. X and his family members. Determine the gross total income:

Particulars	Mr. X ₹	Mrs. X ₹	Minor Child ₹
Income as a child artist in films	—	—	60,000
Business Income (Own)	(40,000)		
Salary income from X Ltd. In which Mr. X holds 25% voting power @ ₹ 6,500 p.m.	—	78,000	—
Share of profit from Firm AB & Co.	(40%) 80,000	—	(10%) 20,000
Commission from AB & Co.	—	20,000	—
Interest income	8,000	5,000	4,000

Note:

- Mrs. X possesses B.Com degree and works as accountant of X Ltd.,
- Mrs. X does not render any services to M/s. AB & Co.,
- Interest income received by Mrs. X is from an investment of ₹ 40,000 gifted by Mr. X and ₹ 40,000 invested from her own resource.

15) **Important:** Determine the GTI of R and his wife from the following particulars for the year ending 31.3.2021:

- i) R and his wife are partners in a firm carrying on garments business, their respective shares of profit being ₹ 35,000 and ₹ 40,000.
- ii) Their 17 year old son has been admitted to the benefits of another firm, from which he received ₹ 25,000 as his share of profit in the firm and ₹ 24,000 as interest on capital. The capital, was invested out of the minor's own funds amounting to ₹ 1,50,000.
- iii) A house property in the name of R was transferred to his wife on 1.12.2020 for adequate consideration. The property has been let at a rent of ₹ 5,000 p.m.
- iv) Debentures of a company of ₹ 2,00,000 and ₹ 1,00,000 purchased two years ago are in the names of R and his wife respectively, on which interest is receivable at 14% p.a. His wife had in the past transferred ₹ 1,00,000 out of her income to R for the purchase of the debentures in R's name.
- v) R had transferred ₹ 60,000 to his wife in the year 1990 without any consideration which was given as a loan by her to G. She earned ₹ 15,000 as interest during the earlier previous years which was also given on loan to G. During the financial year 2020-21, she received interest at 10% p.a. on ₹ 75,000.
- vi) R transferred ₹ 60,000 to a trust, the income accruing from its investment as interest amounted to ₹ 9,000, out of which ₹ 6,000 shall be utilised for the benefit of his son's wife and ₹ 3,000 for the benefit of his son's minor child.

16) During the previous year 2020-21, the following transactions occurred in respect of Mr. A.

- (a) Mr. A had a fixed deposit of ₹ 5,00,000 in Bank of India. He instructed the bank to credit the interest on the deposit @ 9% from 1-4-2020 to 31-3-2021 to the savings bank account of Mr. B, son of his brother, to help him in his education.
- (b) Mr. A holds 75% share in a partnership firm. Mrs. A received a commission of ₹ 25,000 from the firm for promoting the sales of the firm. Mrs. A possesses no technical or professional qualification.
- (c) Mr. A gifted a flat to Mrs. A on April 1, 2020. During the previous year 2020-21, Mrs. A's "Income from house property" (computed) was ₹ 52,000.
- (d) Mr. A gifted ₹ 2,00,000 to his minor son who invested the same in a business and he derived income of ₹ 20,000 from the investment.
- (e) Mr. A's minor son derived an income of ₹ 20,000 through a business activity involving application of his skill and talent.

During the year, Mr. A got a monthly pension of ₹ 10,000. He had no other income. Mrs. A received salary of ₹ 20,000 per month from a part time job.

Discuss the tax implications of each transaction and compute the total income of Mr. A, Mrs. A and their minor child.

17) Discuss the tax implications of income arising from revocable transfer of assets. When will the clubbing provisions not apply at present, even where there is revocable transfer of assets?

18) Explain the provisions of the Income-tax Act, 1961, with regard to clubbing of income of spouse u/s 64.

19) **State True or False, with reasons:**

Mr. Y, who is a physically handicapped minor (suffering from a disability of the nature specified in section 80U), earns bank interest of ₹ 50,000 and ₹ 60,000 from marking bags manually by himself. The total income of Mr. Y shall be computed in his hands separately.

20) Mrs. Kasturi transferred her immovable property to ABC Co. Ltd. subject to a condition that out of the rental income, a sum of ₹ 36,000 per annum shall be utilized for the benefit of her son's wife. Mrs. Kasturi claims that the amount of ₹ 36,000 (utilized by her son's wife) should not be included in her total income as she no longer owned the property.

State with reasons whether the contention of Mrs. Kasturi is valid in law.

SOLUTION – SET A

In case any Individual opts for the provisions of Sec 115BAC, exemption of ₹ 1,500 would not be available.

Solution 1: In this case, X has substantial interest in Y Ltd. where Mrs. X is employed. Mrs. X does not have any professional qualification to justify the remuneration of ₹ 40,000 per month. Her salary income of ₹ 4,30,000 (i.e., ₹ 40,000 X 12 – **deduction u/s 16(ia) 50,000**) will be taxable in the hands of X. It does not make any difference even if Mrs. X was employed by Y Ltd. prior to her marriage.

Solution 2:

Income arising out of asset transferred without adequate consideration to son's wife is liable to clubbed in the hands of the assessee, if the said relationship exists both at the time of transfer of property and at the time of accrual of income. Since, in this case, the said relationship didn't exist between Uma and Shankar at the time of transfer of house property, the income of ₹ 1,20,000 arising to Uma cannot be clubbed with the income of Shankar. Hence, the action of the assessing officer is untenable in law.

Solution 3:

Section 64(1)(iv) of the Income-tax Act, 1961 provides for the clubbing of income in the hands of the individual, if the income earned is from the assets (other than house property) transferred directly or indirectly to the spouse of the individual, otherwise than for adequate consideration or in connection with an agreement to live apart.

In this case, Mr. Vaibhav received a gift of ₹ 5,00,000 on 1.4.2020 from his wife Mrs. Vaishaly, which he invested in his business immediately. The income to be clubbed in the hands of Mrs. Vaishaly for the A.Y. 2021-22 is computed as under:

Particulars	Mr. Vaibhav's capital contribution (₹)	Capital contribution out of gift from Mrs. Vaishaly (₹)	Total (₹)
Capital as on 1.4.2020	3,00,000 (5,00,000 - 2,00,000)	5,00,000	8,00,000
Profit for F.Y. 2020-21 to be apportioned on the basis of capital employed on the first day of the previous year i.e. as on 1.4.2020 (3:5)	1,50,000 $\left[\frac{4,00,000 \times 3}{8} \right]$	2,50,000 $\left[\frac{4,00,000 \times 5}{8} \right]$	4,00,000

Therefore, the income to be clubbed in the hands of Mrs. Vaishaly for the A.Y. 2021-22 is ₹ 2,50,000.

In case Mrs. Vaishaly gave the said amount of ₹ 5,00,000 as a bona fide loan, then, clubbing provisions would not be attracted.

Solution 4:

Share of profit [exempt under section 10(2A)]
Salary from the firm
Interest on capital [*₹ 1,20,000 x ₹ 6.6 lakh / ₹10 lakh]

Business income

** 120,000 – 79,200 = 40,800.

<u>X</u>	<u>Mrs. X</u>
₹	₹
Nil	—
24,000	—
40,800**	79,200*
64,800	79,200

Solution 5:

This case is analysed as under -

- 1) In this case, interest from the firm received by Mrs. Raja for the period 1.4.2020 to 31.12.2020 shall be clubbed in the hands of Mr. R under section 64(1)(iv) as the said interest accrues to Mrs. Raja.
- 2) Thereafter, Mrs. Raja has gifted ₹ 2 lakh to their son's wife on 1.1.2021. Now, no income accrues to Mrs. Raja on the money gifted and the income is derived only by the son's wife.
- 3) In this case, it is an indirect transfer of assets by Mr. Raja to their son's wife. This case will clearly fall under section 64(1)(vi) and the income accruing to son's wife will be included in Mr. Raja's total income. Thus, Mrs. Raja's contention is correct.
- 4) However, if Mrs. Raja had gifted the money to minor son, then by virtue of sec. 64(1A), the income accruing to the minor son would have been clubbed with the total income of Mr. Raja or Mrs. Raja whose total income, before such clubbing, had been greater.

Solution 6:

	X ₹	Mrs. X ₹	A ₹	B ₹
Income from house property	-	1,90,000	-	-
Business income	3,40,000	-	-	-
Income from stage acting	-	-	60,000	70,000
Income from other sources				
Gift received by B on May 20, 2020 from grandfather (gift from a relative is not taxable)	-	-	-	-
Gift received by A on September 14, 2020 from X's friend (to be clubbed in the hands of X after giving exemption of ₹ 1,500)	58,500	-	-	-
Gift received by A on September 14, 2020 from relatives (gift from a relative is not taxable)	-	-	-	-
Interest from company deposit received by A (to be clubbed in the hands of X)	30,000	-	-	-
Interest from company deposit received by B (to be clubbed in the hands of X after giving exemption of ₹ 1,500, amount to be clubbed is ₹ 1,000 - ₹ 1,000)	-	-	-	-
	Nil			
Net income	4,28,500	1,90,000	60,000	70,000

Solution 7:

Assessee: Mr. Singh

Previous Year: 2020-21
Computation of Total Income

Assessment Year: 2021-22

Particulars	₹	₹
Profits and Gains of Business or Profession		90,000
Add: Income of Minor Children: (Note 1)		
(a) Interest on Company Deposits of Master Deep Singh	12,000	
Less: Exemption u/s 10(32)	(1,500)	10,500
(b) Lottery winnings of Master Dipender Singh	6,000	
Less: Exemption u/s 10(32)	(1,500)	4,500
Total Income		1,05,000

Notes:

- U/s 64(1A), income of a Minor Child shall be clubbed in the hands of the Parent whose total income is greater before such clubbing. Exemption of ₹ 1,500 per child shall be allowed in respect of such income.
- If the Minor receives income by exercise of labour, hard work, skill, knowledge or experience, then such income shall not be clubbed. Hence, Income of Dipali Singh, Minor Daughter of Mr. Singh is not clubbed in his hands.
- Since Mr. Singh does not have substantial interest in the educational institution employing Mrs. Singh, provisions of Sec. 64(1)(ii) is not attracted.

Solution 8:

As per section 64(1A), in computing the total income of an individual, all such income accruing or arising to a minor child shall be included. However, income of a minor child suffering from disability specified under section 80U would not be included in the income of the parent but would be taxable in the hands of the minor child. Therefore, in this case, the income of daughter suffering from disability specified under section 80U should not be clubbed with the income of Mr. Sharma.

Under section 10(32), income of each minor child includible in the hands of the parent under section 64(1A) would be exempt to the extent of the actual income or ₹ 1,500, whichever is lower. The remaining income would be included in the hands of the parent.

Computation of income earned by minor children to be clubbed with the income of Mr. Sharma:

Particulars	₹
(i) Income of one daughter	9,000
Less: Income exempt under section 10(32)	1,500
Total (A)	7,500
(ii) Income of two sons (₹ 6,200 + ₹ 4,300)	10,500
Less: Income exempt under section 10(32) (₹ 1,500 + ₹ 1,500)	3,000
Total (B)	7,500
Total Income to be clubbed as per section 64(1A) (A+B)	15,000

Note: It has been assumed that:

- (1) All the four children are minor children;
- (2) The income does not accrue or arise to the minor children on account of any manual work done by them or activity involving application of their skill, talent or specialized knowledge and experience;
- (3) The income of Mr. Sharma, before including the minor children's income, is greater than the income of Mrs. Sharma, due to which the income of the minor children would be included in his hands; and
- (4) This is the first year in which clubbing provisions are attracted.

Solution 9:

Computation of Total Income of Mr. Dhaval and Mrs. Hetal for the AY 2021-22

Particulars	Mr. Dhaval ₹	Mrs. Hetal ₹
Salaries (Computed)	—	4,60,000
Profits and gains of business or profession	7,50,000	—
Income from other sources		
Income by way of interest from company deposit earned by minor daughter A [See Note (4)]	30,000	
Less: Exemption under section 10(32)	<u>1,500</u>	<u>28,500</u>
Total Income	<u>7,78,500</u>	<u>4,60,000</u>

Notes:

- 1) The income of a minor child suffering from any disability of the nature specified in section 80U shall not be included in the hands of the parents. Hence, ₹ 1,08,000 being the income of minor son 'B' who suffers from disability specified under section 80U shall not be included in the hands of either of his parents.
- 2) The income derived by the minor from manual work or from any activity involving exercise of his skill, talent or specialized knowledge or experience will not be included in the income of his parent. Hence, in the given case ₹ 86,000 being the income of the minor daughter C shall not be clubbed in the hands of the parents.
- 3) Under section 56(2)(x), cash gifts received from any person/persons exceeding ₹ 50,000 during the year in aggregate is taxable. Since the case gift in this case does not exceed ₹ 50,000 the same is not taxable.
- 4) The clubbing provisions are attracted even in respect of income of minor married daughter. The income of the minor will be included in the income of that parent whose total income is greater. Hence, income of minor married daughter 'A' from company deposit shall be clubbed in the hands of the Mr. Dhaval and exemption under section 10(32) of ₹ 1,500 per child shall be allowed in respect of such income.

Solution 10:

1. As per the provisions of section 64(1A) of the Income-tax Act, 1961, all the income of a minor child has to be clubbed in the hands of that parent whose total income (excluding the income of the minor) is greater. The income of Mr. A is ₹ 3,90,000 and income of Mrs. A is ₹ 2,30,000. Since the income of Mr. A is greater than that of Mrs. A, the income of the minor children have to be clubbed in the hands of Mr. A. It is assumed that this is the first year when clubbing provisions are attracted.

Income derived by a minor child from any activity involving application of his/her skill, talent, specialised knowledge and experience is not to be clubbed. Hence, the income of minor child C from exercise of special talent will not be clubbed.

However, interest from bank deposit has to be clubbed even when deposit is made out of income arising from application of special talent. The Gross Total Income of Mrs. A is ₹ 2,30,000. The total income of Mr. A giving effect to the provisions of section 64(1A) is as follows:

Computation of gross total income of Mr. A for the A.Y. 2021-22

Particulars	₹	₹
Income from profession		3,90,000
Income of minor son B from company deposit	15,000	
Less: Exemption under section 10(32)	<u>1,500</u>	13,500
Income of minor daughter C		
From special talent – not to be clubbed	-	
Interest from bank	3,000	
Gift of ₹ 2,500 received from a non-relative is not taxable under section 56(2)(x) being less than the aggregate limit of ₹ 50,000	<u>Nil</u>	
	3,000	
Less : Exemption under section 10(32)	1,500	1,500
Gross Total Income		<u>4,05,000</u>

Solution 11:

Computation of Total Income of Mr. A and Mrs. A for the A.Y. 2021-22

Particulars	Mr. A (₹)	Mrs. A (₹)
Income from Salaries		
Salary income of Mr. A (₹ 25,000 × 12 – (u/s 16) 50,000)	2,50,000	
Salary income of Mrs. A (₹ 10,000 × 12 – (u/s 16) 50,000) (See Note 1)	70,000	
Income from House Property		
Rent received (₹ 12,000×12)	1,44,000	
Less: Deduction under section 24@30%	<u>43,200</u>	1,00,800
Income from other sources		
Income from securities	30,000	
Income before including income of minor children under section 64(1A) (See Note 2)	3,50,000	1,00,800
Income of twin daughters (₹ 2,000 per child × 2)	₹ 4,000	
Less: Exempt u/s 10(32) (₹ 1,500 × 2)	<u>₹ 3,000</u>	1,000
-		-
Income of the minor son	₹ 1,200	
Less: Exempt u/s 10(32)	<u>₹ 1,200</u>	-
Total Income	3,51,000	1,00,800

Notes:

- (1) As per section 64(1), in case the spouse of the individual receives any amount by way of income from any concern in which the individual has substantial interest, then, such income shall be included in the total income of the individual. The only exception is in a case where the spouse possesses any technical or professional qualifications and the income earned is solely attributable to the application of her technical or professional knowledge and experience, in which case, the clubbing provisions would not apply.

In this case, the salary of ₹ 10,000 p.m. received by Mrs. A from the company has to be included in the total income of Mr. A, as Mrs. A does not possess any technical or professional qualification for earning such income and Mr. A has substantial interest in the company.

- (2) As per section 64(1A), the income of a minor child is to be included in the total income of the parent whose total income (excluding the income of minor child to be so clubbed) is greater. Further, as per section 10(32), income of a minor child which is includible in the income of the parent shall be exempt to the extent of ₹ 1,500 per child.

Therefore, the income of minor children shall be included in the income of Mr. A, since Mr. A's income of ₹ 3,50,000 (before including the income of the minor child) is greater than Mrs. A's income of ₹ 1,00,800.

Solution 12:

Computation of Gross Total Income of Mr. Dhaval

Particulars	₹	₹
Income from Salary (computed)		3,50,000
<u>Income from other sources:</u>		
Minor Daughter's income		
Income from T.V. show (See Note below)		Nil
Interest income from FD with a Bank	5,000	
Less : Exempt under section 10(32)	<u>1,500</u>	3,500
Minor son's income		
Income from sale of self made painting (See Note below)		Nil
Interest income from FD with a Bank	1,000	
Less : Exempt under section 10(32)	<u>1,000</u>	Nil
Gross Total Income		3,53,500

Note: The income derived by the minor from manual work or from any activity involving exercise of his skill, talent or specialised knowledge or experience will not be included in the income of his parent. Hence, in the given case ₹ 50,000 being the income of the minor daughter from TV show and ₹ 10,000 being the income of minor son from sale of own painting, shall not be clubbed in the hands of Mr. Dhaval.

Solution 13:**Clubbing of income and other tax implications**

As per the provisions of section 64(1A), in case the marriage of the parents subsist, the income of a minor child shall be clubbed in the hands of the parent whose total income, excluding the income of the minor child to be clubbed, is greater. In this problem, it has been assumed that the marriage of Mr. B and Mrs. B subsists. Further, in case the income arises to the minor child on account of any manual work done by the child or as a result of any activity involving application of skill, talent, specialized knowledge or experience of the child, then, the same shall not be clubbed in the hands of the parent.

Tax implications:

- (i) Income of ₹ 45,000 from Mr. B's profession shall be taxable in the hands of Mr. B under the head "Profits and gains of business or profession".
- (ii) Salary income (computed) of ₹ 76,000 of Mrs. B as a fashion designer shall be taxable as "Salaries" in the hands of Mrs. B.
- (iii) Income from fixed deposit of ₹ 10,000 arising to the minor son D, shall be clubbed in the hands of the mother, Mrs. B as "Income from other sources", since her income is greater than income of Mr. B before including the income of the minor child.
As per section 10(32), income of a minor child which is includible in the income of the parent shall be exempt to the extent of ₹ 1,500 per child. The balance income would be clubbed in the hands of the parent as "Income from other sources".
- (iv) Income of ₹ 95,000 arising to the minor daughter P from sports shall not be included in the hands of the parent, since such income has arisen to the minor daughter on account of an activity involving application of her skill.
- (v) Income of ₹ 1,95,000 arising to minor son D from lottery shall be included in the hands of Mrs. B as "Income from other sources", since her income is greater than the income of Mr. B before including the income of minor child.

Note – Mrs. B can reduce the tax deducted at source from such lottery income while computing her net tax liability.

Solution 14: Computation of gross total income

Particulars	Mr. X ₹	Mrs. X ₹	Minor Child ₹
I. Salaries :			
Salary from X Ltd [6,500 p.m less deduction u/s 16 - 50,000]		28,000	
II. Profits and gains from business/profession :			
Income / (Loss)	(40,000)	—	60,000
III. Income from other sources :			
Interest income Own (Mr. X)	8,000		
Add : Spouse -Sec. 64(1)	<u>2,500</u>	—	----
Interest income own (Mrs. X)	2,500		
Interest income of minor child	4,000		
Less : Exempt u/s. 10(32)	<u>(1500)</u>	5,000	—
Commission income of spouse u/s 64(1)	20,000		
Gross Total Income	(9,500)	33,000	60,000

Note: Share of profit from firm is exempt from tax u/s. 10(2A). It is assumed that the expenditure attributable to exempt income have not been claimed as deduction.

Solution 15:**Computation of Gross Total Income of R
(For the assessment year 2021-22)**

	₹	₹
1. Income from House Property:		
Rental value for 8 months (i.e., before transfer) (8 x 5,000)	40,000	
Less: Statutory deduction @ 30%	<u>12,000</u>	28,000
2. Profit from Business:		
(i) Share from firm (Exempt)	Nil	
(ii) Minor Son's share in another firm (Exempt)	Nil	
(iii) Interest on minor's capital with firm (₹ 24,000 - Exemption u/s 10(32) ₹ 1,500)	<u>22,500</u>	22,500
3. Income from other Sources:		
(i) Interest @ 14% on ₹ 1,00,000 Debentures (only one-half of ₹ 2,00,000 were bought by own funds)	14,000	
(ii) Interest received by his wife @ 10% on ₹ 60,000 (being transferred without any consideration)	6,000	
(iii) Interest on ₹ 6,000 from his trust (Interest income utilised for the benefit of son's wife)		
Gross Total Income		<u>76,500</u>

**Computation of Gross Total Income of Mrs. R
(For the assessment year 2021-22)**

	₹	₹
Income from House Property :		
Rental value for 4 months (i.e., after transfer) (₹ 5,000 x 4)	20,000	
Less : Statutory deduction @ 30%	<u>6,000</u>	14,000
Income from business :		
Share from firm (Exempt)	Nil	
Income from Other Sources :		
(i) Interest on ₹ 1,00,000 14% Debentures	14,000	
(ii) interest on ₹ 1,00,000 14% Debentures in husband's name but funds invested by her	14,000	
(iii) Interest on ₹ 15,000 @10%	<u>1,500</u>	29,500
(This interest is on accrued income of ₹ 60,000, which have been transferred to her by the husband and interest on such accrued income is treated as the income of the transferee, although the income on the transferred amounts is treated as the income of the transferor as it was transferred without any consideration.)		
Gross Total Income		<u>43,500</u>

Solution 16:**Computation of total income of Mr. A, Mrs. A and their minor son for the A.Y. 2021-22**

Particulars	Mr. A (₹)	Mrs. A (₹)	Minor Son (₹)
Salary income (of Mrs. A) [2,40,000 - 40,000]		2,00,000	-
Pension income (of Mr. A) (₹ 10,000×12 - 40,000)			-
Income from House Property [See Note (3) below]			-
Income from other sources			
Interest on Mr. A's fixed deposit with Bank of India (₹ 5,00,000 × 9%) [See Note (1) below]	45,000		
Commission received by Mrs. A from a partnership firm, in which Mr. A has substantial interest [See Note (2) below]	<u>25,000</u>		
Income before including income of minor son under section 64(1A)		2,02,000	
Income of the minor son from the investment made in the business out of the amount gifted by Mr. A [See Note (4) below]			18,500

Clubbing of Income**SATC****15B.7**

Income of the minor son through a business activity involving application of his skill and talent [See Note (5) below]		-	-	20,000
Total Income		2,20,500	2,00,000	20,000

Notes:

- (1) As per section 60, in case there is a transfer of income without transfer of asset from which such income is derived, such income shall be treated as income of the transferor.

Therefore, the fixed deposit interest of ₹ 45,000 transferred by Mr. A to Mr. B shall be included in the total income of Mr. A.

- (2) As per section 64(1)(ii), in case the spouse of the individual receives any amount by way of income from any concern in which the individual has substantial interest (i.e. holding shares carrying at least 20% voting power or entitled to at least 20% of the profits of the concern), then, such income shall be included in the total income of the individual. The only exception is in a case where the spouse possesses any technical or professional qualifications and the income earned is solely attributable to the application of her technical or professional knowledge and experience, in which case, the clubbing provisions would not apply.

In this case, the commission income of ₹ 25,000 received by Mrs. A from the partnership firm has to be included in the total income of Mr. A, as Mrs. A does not possess any technical or professional qualification for earning such commission and Mr. A has substantial interest in the partnership firm as he holds 75% share in the firm.

- (3) According to section 27(i), an individual who transfers any house property to his or her spouse otherwise than for adequate consideration or in connection with an agreement to live apart, shall be deemed to be the owner of the house property so transferred. Hence, Mr. A shall be deemed to be the owner of the flat gifted to Mrs. A and hence, the income arising from the same shall be computed in the hands of Mr. A.

Note: The provisions of section 56(2)(x) would not be attracted in the hands of Mrs. A, since she has received immovable property without consideration from a relative i.e., her husband.

- (4) As per section 64(1A), the income of the minor child is to be included in the total income of the parent whose total income (excluding the income of minor child to be so clubbed) is greater. Further, as per section 10(32), income of a minor child which is includible in the income of the parent shall be exempt to the extent of ₹ 1,500 per child.

Therefore, the income of ₹ 20,000 received by minor son from the investment made out of the sum gifted by Mr. A shall, after providing for exemption of ₹ 1,500 under section 10(32), be included in the income of Mr. A, since Mr. A's income of ₹ 2,02,000 (before including the income of the minor child) is greater than Mrs. A's income of ₹ 2,00,000.

Therefore, ₹ 18,500 (i.e., ₹ 20,000 – ₹ 1,500) shall be included in Mr. A's income. It is assumed that this is the first year in which clubbing provisions are attracted.

Note – The provisions of section 56(2)(x) would not be attracted in the hands of the minor son, since he has received a sum of money exceeding ₹ 50,000 without consideration from a relative i.e., his father.

- (5) In case the income earned by the minor child is on account of any activity involving application of any skill or talent, then, such income of the minor child shall not be included in the income of the parent, but shall be taxable in the hands of the minor child.

Therefore, the income of ₹ 20,000 derived by Mr. A's minor son through a business activity involving application of his skill and talent shall not be clubbed in the hands of the parent. Such income shall be taxable in the hands of the minor son.

Solution 17:**Income arising from revocable transfer of assets [Sections 61 & 63]**

- (i) All income arising to any person by virtue of a revocable transfer of assets is to be included in the total income of the transferor.
- (ii) A transfer is deemed to be revocable if:
 - (a) it contains any provision for the re-transfer, directly or indirectly, of the whole or any part of the income or assets to the transferor, or
 - (b) it gives, in any way, the transferor, a right to re-assume power, directly or indirectly, over the whole or any part of the income or the assets.

Transfer not revocable during the life time of the beneficiary or the transferee [Section 62] If there is a transfer of asset which is not revocable during the life time of the beneficiary or transferee, the income from the transferred asset is not includible in the total income of the transferor provided the transferor derives no direct or indirect benefit from such income. If the transferor receives direct or indirect benefit from such income, such income is to be included in his total income even though the transfer may not be revocable during the life time of the beneficiary or transferee.

Solution 18:

As per section 64(1)(ii), any income arising directly or indirectly to the spouse of an individual by way of salary, commission, fees or any other form of remuneration, whether in cash or in kind, from a concern in which such individual has a substantial interest, would be clubbed. However, such rule does not apply where the spouse possesses technical or professional qualification and the income of the spouse is solely attributable to the application of his or her technical or professional knowledge and experience.

Where both husband and wife have substantial interest in a concern and both are in receipt of salary etc. from the said concern, such income will be clubbed with the income of the spouse whose total income, excluding such income, is greater.

An individual shall be deemed to have substantial interest in a concern under the following circumstances:

- (a) If the concern is a company, equity shares carrying not less than 20% of the voting power are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of his relatives.
- (b) In any other case, if such person is entitled, or such person and one or more of his relatives are entitled in the aggregate, at any time during the previous year, to not less than 20% of the profits of such concern.

As per section 64(1)(iv), where there is a transfer of an asset other than house property, directly or indirectly from one spouse to another, otherwise than for adequate consideration or in connection with an agreement to live apart, any income that arises either directly or indirectly to the transferee from the transfer of the asset shall be included in the total income of the transferor.

However, any income from the accretion of transferred asset is not liable to be clubbed. It may be noted that natural love and affection will not constitute adequate consideration for the purpose of section 64(1).

Solution 19:

True. The clubbing provisions of section 64(1A) are not applicable in a case where the minor child is suffering from any disability of the nature specified in section 80U. The income of such minor child will not be clubbed in the hands of either of the parents. Consequently, the total income of Mr. Y will be assessed in his hands.

Solution 20:

The clubbing provisions under section 64(1)(viii) are attracted in case of transfer of any asset, directly or indirectly, otherwise than for adequate consideration, to any person to the extent to which the income from such asset is for the immediate or deferred benefit of son's wife. Such income shall be included in computing the total income of the transferor-individual.

Therefore, income of ₹ 36,000 meant for the benefit of daughter-in-law is chargeable to tax in the hands of transferor i.e., Mrs. Kasturi in this case. The contention of Mrs. Kasturi is, hence, not valid in law.

Note - In order to attract the clubbing provisions under section 64(1)(viii), the transfer should be otherwise than for adequate consideration. In this case, it is presumed that the transfer is otherwise than for adequate consideration and therefore, the clubbing provisions are attracted.

If it is presumed that the transfer was for adequate consideration, the provisions of section 64(1)(viii) would not be attracted.

QUESTIONS for Practice - SET B

In case any Individual opts for the provisions of Sec 115BAC, exemption of ₹ 1,500 would not be available.

1. Mrs. G holds 7% equity shares in B Ltd., where her married sister, Mrs. N also holds 14% equity shares. Mr. G is employed with B Ltd., without holding technical professional qualification. The particulars of their income for the Previous Year 2020-21 are given as follows:

Income	Mr. G (₹)	Mrs. G (₹)
(a) Gross Salary from B Ltd.	1,12,000	—
(b) Dividend from B Ltd.	—	6,000
(c) Income from House Property	90,000	—

Solution:

Computation of Total Income of Mr. G & Mrs. G for the A.Y. 2021-22

Particulars	Mr. G ₹	Mrs. G ₹
Taxable Salary to be included in the total income of Mrs G [Sec. 64(1)(ii)] [Gross Salary (₹ 1,12,000) less Deduction u/s 16(ia) ₹ 50,000]	—	62,000
Add: Income from House Property	90,000	—
Add: Income from Other Sources : Dividends to Mrs G, now taxable	—	6,000
Total Income	90,000	68,000

Note:

- (a) In the instant case, Mrs. G along with his sister, holds substantial interest in B Ltd. and Mr. G does not hold professional qualification. Accordingly, remuneration of Mr. G has been included in the total income of Mrs. G.
- (b) If the requisite conditions of clubbing are satisfied, clubbing provision will apply even if their application results into lower incidence of tax.
2. Mr. B holds 5% shares in A Ltd., where his brother and nephew hold 11% and 6% shares, respectively. Mrs. B gets commission of ₹ 1,00,000 from A Ltd. for canvassing orders. She holds no technical/professional qualification. Mr. B earns income of ₹ 5,00,000 from sugar business. Compute their Total Income for the Assessment Year 2021-22.

Solution:

Computation of Total Income for the AY 2021-22

Particulars of income	Mr. B (₹)	Mrs. B (₹)
Income from sugar business	5,00,000	—
Commission for canvassing orders from A Ltd.	—	1,00,000
Total Income	5,00,000	1,00,000

Note: In the instant case, Mr. B holds 5% and his brother holds only 11% shares in A Ltd. The total of their shareholding is less than 20%. They have no substantial interest.

Therefore, commission income is assessable as income of Mrs. B.

3. The shareholding of Mr. K and Mrs. K in S Ltd, is given as follows:
- | | |
|---|----|
| (a) Shareholding of K | 7% |
| (b) Shareholding of Mrs. K | 9% |
| (c) Shareholding of M, brother of K | 8% |
| (d) Shareholding of F, father of Mrs. K | 5% |

Mr. K and Mrs. K are employed with S Ltd. None of them hold technical qualification. Mr. K gets salary @₹ 10,000 p.m and Mrs. K gets @₹ 12,000 p.m.

Income from Other Sources:	₹
Mr. K	80,000
Mrs. K	1,00,000

Compute total income for the Assessment Year 2021-22.

Solution: Computation of Total Income for the AY 2021-22

Particulars	Mr. K (₹)	Mrs. K (₹)
1. Salary Income (1,44,000 – 50,000) Salary income of Mr. K (120,000 – 50,000) to be included in the total income of Mrs. K as her Income from Other Sources is greater and both of them have substantial interest along with their relative in S Ltd.	80,000	94,000 70,000
2. Income from Other Sources		1,00,000
Total Income	80,000	2,64,000

4. Mrs. Z is the owner of the business units A and B. A unit has been started with capital contribution from Mr. Z and B unit has been started out of capital contribution from Mrs. Z. The particulars of their income for the Previous Year 2020-21 are as follows:

Particulars	Mrs. Z	Mr. Z
(a) Income from A unit	(-) 6,00,000	—
(b) Income from B unit	4,00,000	—
(c) Income from House Property	—	2,50,000

How would you assess them for the Assessment Year 2021-22?

Solution:

- (a) Mrs. Z is assessable on the profits from B unit. She cannot set-off the loss from A unit against the profits of B unit. Thus, she would be assessed on ₹ 4,00,000.
- (b) The loss from A unit will be included in the total income of Mr Z in view of Sec. 64(1)(iv). "Income" includes "loss" also. Mr Z is entitled to set-off business loss of A's unit against Income from House Property. Thus, loss of ₹ 3,50,000 would be carried forward but could be set-off only against business profits.
5. Sawant is a fashion designer having lucrative business. His wife is a model. Sawant pays her a monthly salary of ₹ 20,000. The Assessing Officer, while admitting that the salary is an admissible deduction, in computing the total income of Sawant, had applied the provisions of Sec. 64(1) and had clubbed the income (salary) of his wife in Sawant's hands. Discuss the correctness of the action of the Assessing Officer.

Solution:

Where an individual has got substantial interest in a concern and his spouse derives any income from such concern by way of salary, commission, fees or by any other mode, such income is clubbed with the total income of such individual [Sec. 64(1)(ii)].

However, clubbing provision does not apply if the earning spouse holds technical or professional qualification and the income is solely attributable to the application of such knowledge and experience. Salary earned by wife as model from the concern where her husband holds substantial interest is assessable as her income.

6. Mr. Rose, out of his own funds, had taken an FDR for ₹ 10,00,000 bearing interest @ 10% p.a. payable half-yearly in the name of his wife Lilly. The interest earned during the financial year 2020-21 of ₹ 1,00,000 was invested by Mrs. Lilly in the business of packed spices which resulted in a net profit of ₹ 55,000 for the year ended 31.03.2021. How shall the interest on FDR and income from business be taxed for the Assessment Year 2021-22?

Answer

Section 64(1)(iv) of the Act specifies that the income derived by the spouse of an assessee from the assets transferred directly or indirectly without adequate consideration or intention to live apart shall be clubbed with the income of the transferor. Therefore, the interest income of ₹ 1 lac on the FDR of ₹ 10 lacs for the F.Y. 2020-21 shall be clubbed with the income of Mr. Rose.

When Mrs. Lilly invested the interest income in a business and earned profits therefrom, such profits shall not be clubbed with the income of her husband but shall be taxable in her individual capacity. ***This is so because the income from the accretion of the transferred assets is not to be clubbed with the income of the transferor.***

7. Mr. Siddharth was a partner in a firm, representing his HUF, holding 25% of the share in the firm. His wife Vineeta, a house lady, was admitted in her individual capacity in the firm for 25% share. She was paid remuneration which has been proposed by the Assessing Officer to be clubbed in the hands of Siddharth-HUF by invoking section 64 of the Act.

Answer

As per section 64(1)(ii), in computing the total income of any "individual", the remuneration paid to spouse by a firm in which the individual has substantial interest shall be liable for clubbing. In the present case, Mr. Siddharth is not a partner in his individual capacity, but a partner in representative capacity.

Where a person is a partner as the Karta of a Hindu undivided family, the capacity in which he is a partner in the partnership firm is relevant as between him and the other members of the Hindu undivided family. The income the Karta receives as a partner is not his individual income; it is the income of the Hindu undivided family and he receives it on behalf of the Hindu undivided family.

It is for this reason that the income of the wife arising from her membership of the partnership firm, is held not includible in the income of the Hindu undivided family since the total income of the Hindu undivided family is not the total income of the individual (husband). **For section 64(1) to get attracted, it is necessary that the spouse should be a partner in a partnership firm in his individual capacity. It is not attracted where he is a partner as the Karta of the Hindu undivided family to which his wife belongs. The action of the Assessing Officer in this case is, therefore, not correct.**

8. **Important:** Dinesh, an individual engaged in the business of finance, advances ₹ 5 lacs to his HUF on interest at 12% p.a., which is the prevailing market rate. The HUF invests the amount in its business and earns profit of ₹ 2 lacs from this money. Can the Assessing Officer add a sum of ₹ 1,40,000 (i.e. ₹ 2,00,000 - ₹ 60,000) as income of Dinesh under section 64(2) of the I. Tax Act, 1961?

Answer

Section 64(2) shall be applicable only where an individual member of HUF converts his property into the property of HUF or throws it into the common stock of the HUF without adequate consideration.

In this case, Dinesh does not transfer money to his HUF but only lends an amount of ₹ 5 Lacs to his HUF at an interest of 12%, which is the prevailing market rate. This is a transaction of loan, which presupposes, repayment. Dinesh continues to be the owner of the amount lent. Thus, there is no transfer of property from Dinesh to the HUF.

Therefore, the Assessing Officer cannot add the profit arising to HUF in the total income of Dinesh by invoking section 64(2).

QUESTIONS for Practice - SET C

In case any Individual opts for the provisions of Sec 115BAC, exemption of ₹ 1,500 would not be available.

1. Mr. B holds shares carrying 30% voting power in Y Ltd. Mrs. B is working as accountant in Y Ltd. getting income from salary (computed) of ₹ 3,44,000 without any qualification in accountancy. Mr. B also receives ₹ 30,000 as interest on securities. Mrs. B owns a house property which she has let out. Rent received from tenants is ₹ 6,000 p.m. Compute the gross total income of Mr. B and Mrs. B for the A.Y. 2021-22.

Solution

Since Mrs. B is not professionally qualified for the job, the clubbing provisions shall be applicable.

Computation of Gross total income of Mr. B

Particulars	₹
Income from Salary of Mrs. B (Computed)	3,44,000
Income from other sources	
Interest on securities	30,000
	3,74,000

Computation of Gross total income of Mrs. B

Particulars	₹	₹
Income from Salary [clubbed in the hands of Mr. B]		Nil
Income from house property		
Gross Annual Value [₹ 6,000 × 12]	72,000	
Less: Municipal taxes paid	-	
Net Annual Value (NAV)	72,000	
Less: Deductions under section 24		
- 30% of NAV i.e., 30% of ₹ 72,000	21,600	
- Interest on loan	-	50,400
Gross total income		50,400

2. A proprietary business was started by Smt. Rani in the year 2018. As on 1.4.2019 her capital in business was ₹ 3,00,000. Her husband gifted ₹ 2,00,000 on 10.4.2019, such sum is invested by Smt. Rani in her business on the same date. Smt. Rani earned profits from her proprietary business for the Financial year 2019-20, ₹ 1,50,000 and Financial year 2020-21 ₹ 3,90,000. Compute the income, to be clubbed in the hands of Rani's husband for the Assessment year 2021-22 with reasons.

Answer: Section 64(1) of the Income-tax Act, 1961 provides for the clubbing of income in the hands of the individual, if the income earned is from the assets transferred directly or indirectly to the spouse of the individual, otherwise than for adequate consideration. In this case Smt. Rani received a gift of ₹ 2,00,000 from her husband which she invested in her business. The income to be clubbed in the hands of Smt. Rani's husband for A.Y. 2021-22 is computed as under:

Particulars	Smt. Rani's Capital Contribution	Capital Contribution Out of gift from husband	Total
Capital as at 1.4.2019	3,00,000	--	3,00,000
Investment on 10.04.2019 out of gift received from her husband		2,00,000	2,00,000
	3,00,000	2,00,000	5,00,000
Profit for F.Y. 2019-20 to be apportioned on the basis of capital employed on the first day of the previous year i.e., on 1.4.2019	1,50,000		1,50,000
Capital employed as at 1.4.2020	4,50,000	2,00,000	6,50,000
Profit for F.Y. 2020-21 to be apportioned on the basis of capital employed as at 1.4.2020 (i.e., 45 : 20)	2,70,000	1,20,000	3,90,000

Therefore, the income to be clubbed in the hands of Smt. Rani's husband for A.Y. 2021-22 is ₹ 1,20,000.

3. Important: Mrs. E, wife of Mr. F, is a partner in a firm. Her capital contribution to the firm as on 01-04-2020 was ₹ 5 lacs, out of which ₹ 3 lacs was contributed out of her own sources and ₹ 2 lacs was contributed out of gift from her husband.

As further capital was needed by the firm, she further invested ₹ 2 lacs on 01.05.2020 out of the funds gifted by her husband. The firm paid interest on capital of ₹ 80,000 and share of profit of ₹ 60,000 for the financial year 2020-21.

Advise Mr. F as to the applicability of the provisions of section 64(1)(iv) and the manner thereof in respect of the above referred transactions.

Answer:

As per section 64(1)(iv), in computing the total income of any individual, there shall be included all such income as arises, directly or indirectly, to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart.

In this instant case, Mr. F has gifted money to his wife, Mrs. E. Mrs. E, in turn, invested such gifted money in the capital of a partnership firm, of which she is a partner. Mrs. E has also contributed a sum of ₹ 3 lacs out of her own resources to the capital of the firm.

For the purpose of clubbing under section 64(1)(iv), where the assets transferred, directly or indirectly, by an individual to his spouse are invested by the transferee in the nature of contribution of capital as a partner in a firm, proportionate interest on capital will be clubbed with the income of the transferor.

Such proportion has to be computed by taking into account the value of the aforesaid investment as on the first day of the previous year to the total investment by way of capital contribution as a partner in the firm as on that day.

In view of the above provision, interest received by Mrs. E from the firm shall be included in total income of Mr. F to the extent of ₹ 32,000 i.e., ₹ 80,000 x ₹ 2,00,000 / ₹ 5,00,000.

Share of profit amounting to ₹ 60,000 is exempt from income-tax under the provisions of section 10(2A). The provisions of section 64 will not apply, if the income from the transferred asset itself is exempt from tax.

Note: It is assumed that rate of interest on capital contributed by Mrs. E does not exceed 12% p.a.

4. Important: Mr. A has gifted a house property valued at ₹ 50 lakhs to his wife, Mrs. B, who in turn has gifted the same to Mrs. C, their daughter-in-law. The house was let out at ₹ 25,000 per month throughout the year. Compute the total income of Mr. A and Mrs. C.

Will your answer be different if the said property was gifted to his son, husband of Mrs. C?

Answer:

Gift of house property by Mr. A to Mrs. C, via Mrs. B, can be viewed as an indirect transfer by Mr. A to Mrs. C.

As per section 64(1)(vi), income arising to the son's wife from assets transferred, **directly or indirectly**, to her by an individual otherwise than for adequate consideration would be included in the total income of such individual.

Since section 64(1)(vi) speaks of clubbing of income arising to son's wife from indirect transfer of assets to her by her husband's parent, without consideration, Income from House property arising to Mrs. C can be clubbed & taxable in the hands of Mr. A.

Income from let-out property is ₹ 2,10,000 [i.e., ₹ 3,00,000, being the actual rent calculated at ₹ 25,000 per month less ₹ 90,000, being deduction under section 24@30% of ₹ 3,00,000].

In this case, income of ₹ 2,10,000 from let-out property arising to Mrs. C, being Mr. A's son's wife, would be included in the income of Mr. A, applying the provisions of Section 64(1)(vi). Such income would, therefore, not be taxable in the hands of Mrs. C.

In case the property was gifted to Mr. A's son, the clubbing provisions under section 64 would not apply, since the son is not a minor child. Therefore, the income of ₹ 2,10,000 from letting out of property gifted to the son would be taxable in the hands of the son.

It may be noted that the provisions of section 56(2)(x) would not be attracted in the hands of the recipient of house property, since the receipt of property in each case was from a "relative" of such individual. Therefore, the stamp duty value of house property would not be chargeable to tax in the hands of the recipient of immovable property, even though the house property was received by her or him without consideration.

- 5. Mr. Korani transferred 2,000 debentures of ₹ 100 each of Wild Fox Ltd. to his wife Mrs. Rekha Korani on 3.10.2018 without consideration. The company paid interest of ₹ 30,000 in September, 2020 which was deposited by Mrs. Korani with Kartar Finance Co. in October, 2020. Kartar Finance Co. paid interest of ₹ 3,000 upto March, 2021. How would both the interest income be charged to tax in A.Y. 2021-22?**

Answer:

As per section 64(1)(iv), income arising from assets transferred without adequate consideration by an individual to his spouse is liable to be clubbed in the hands of the individual. It may be noted that income on the asset transferred has to be clubbed but if there is accretion to the asset, any further income derived on such accretion should not be clubbed.

Therefore, applying the provisions of section 64(1)(iv), ₹ 30,000, being the interest on debentures received by Mrs. Rekha Korani in September, 2020 will be clubbed with the income of Mr. Korani, since he had transferred the debentures of the company without consideration to her in October, 2018.

However, the interest of ₹ 3,000 upto March 2021 earned by Mrs. Rekha Korani on the interest on the debentures deposited by her with Kartar Finance Company shall be taxable in her individual capacity and will not be clubbed with the income of Mr. Korani.

- 6. Mr. Ravi has gifted his only house property to his wife, Mrs. Ravi, and his married daughter, Mrs. Divya (age 23 years). The Assessing Officer has served a notice of demand on Mr. Ravi for payment of tax for the income derived from the said house property. Examine the validity of the Assessing Officer's action.**

Answer:

As per Section 27(i), an individual who transfers otherwise than for adequate consideration any house property to his spouse, not being a transfer in connection with an agreement to live apart, **or to a minor child not being a married daughter** shall be deemed to be the owner of the house property so transferred.

Mr. Ravi, in this case, would be the deemed owner only in respect of the share of house property transferred to his wife Mrs. Ravi without consideration **and not for the share of the house property transferred to his married daughter Mrs. Divya, even if she is a minor.**

Since Mr. Ravi is the deemed owner of the share of house property transferred to his wife without consideration, the income derived from the house property, to the extent attributable to the share of property transferred to his wife without consideration, **would be taxable in his hands under the head "Income from house property"**.

As per Section 65, the notice of demand can, however, be served on Mrs. Ravi for payment of that portion of tax levied on Mr. Ravi attributable to the income derived [by virtue of section 27(i)], from the share of house property transferred to Mrs. Ravi, and standing in her name.

However, the income derived from house property, attributable to the share of property transferred to his **married daughter without consideration, would be taxable in the hands of his daughter.** Such income would not be taxable in the hands of Mr. Ravi. Mr. Ravi will not be responsible for the payment of tax attributable to aforesaid share of income of daughter from house property.

Thus, the action of the Assessing Officer in serving notice of demand on Mr. Ravi for payment of tax for the entire income derived from the said house property is not valid.

7. Mrs. Komal transferred her immovable property to TPS Co. Ltd. subject to a condition that out of the rental income, a sum of ₹ 42,000 per annum shall be utilized for the benefit of her son's wife.

Mrs. Komal claims that the amount of ₹ 42,000 (utilized by her son's wife) should not be included in her total income as she no longer owned the property.

Examine with reasons whether the contention of Mrs. Komal is valid in law.

Solution:

The clubbing provisions under section 64(1)(viii) are attracted in case of transfer of any asset, directly or indirectly, otherwise than for adequate consideration, to any person to the extent to which the income from such asset is for the immediate or deferred benefit of son's wife. Such income shall be included in computing the total income of the transferor-individual.

Therefore, income of ₹ 42,000 meant for the benefit of daughter-in-law is chargeable to tax in the hands of transferor i.e., Mrs. Komal in this case.

Hence, the contention of Mrs. Komal is not valid in law.

8. Mr. Arvind has three minor children – two twin daughters and one son. Income of the twin daughters is ₹ 2,500 p.a. each and that of the son is ₹ 1,200 p.a. Compute the income, in respect of minor children, to be clubbed in the hands of Mr. Arvind.

Solution:

Taxable income, in respect of minor children, in the hands of Mr. Arvind is

Particulars	₹	₹
Twin minor daughters [₹ 2,500 × 2]	5,000	
Less: Exempt under section 10(32) [₹ 1,500 × 2]	3,000	2,000
Minor son	1,200	
Less: Exemption under section 10(32) would be lower of ₹ 1200, being the income of minor son or ceiling limit of ₹ 1500	1,200	Nil
Income to be clubbed in the hands of Mr. Arvind		2,000

9. Mayur gifted amount of ₹ 5,00,000 to the wife of his brother which was used by her for the purchase of a house and simultaneously, on the same day, Mayur's brother gifted shares owned by him in a foreign company worth ₹ 5,00,000 to the minor son of Mayur. What will be the impact of such transfers in the hands of both the transferors and the transferees?

Answer:

In the given case, Mayur is making a gift of ₹ 5,00,000 to the wife of his brother for the purchase of a house by her and simultaneously, his brother is making a gift to the minor son of Mayur, shares owned by him in a foreign company worth ₹ 5,00,000. These transfers are in the nature of cross transfers.

Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

The **Supreme Court has, in CIT vs. Keshavji Morarji**, held that if two transactions are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted.

Accordingly, the income arising to the wife of Mayur's brother from the house property would be included in the total income of his brother and the dividend from shares transferred to Mayur's minor son would be taxable in the hands of Mayur. This is because both Mayur and his brother are the indirect transferors of the income yielding assets to their minor child and spouse, respectively, with an intention to reduce their burden of taxation.

However, since husband's brother and father's brother fall within the definition of "relative" under Section 56(2)(x), hence, the sum of money and property, respectively, received from them would be exempt in the hands of the concerned transferee.

10. Important: Mr. Madan gifted a sum of ₹ 6.5 lakhs to his brother's wife on 14-6-2020. On 12-7-2020, his brother gifted a sum of ₹ 5.2 lakhs to Mr. Madan's wife. The gifted amounts were invested as fixed deposits in banks by Mrs. Madan and wife of Mr. Madan's brother on 01-8-2020 at 9% interest. Discuss the consequences of the above under the provisions of the Income-tax Act, 1961 in the hands of Mr. Madan and his brother.

Solution:

In the given case, Mr. Madan gifted a sum of ₹ 6.5 lakhs to his brother's wife on 14.06.2020 and simultaneously, his brother gifted a sum of ₹ 5.2 lakhs to Mr. Madan's wife on 12.07.2020. The gifted amounts were invested as fixed deposits in banks by Mrs. Madan and his brother's wife. These transfers are in the nature of cross transfers. Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

If two transactions are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted. It was so held by the Apex Court in CIT vs. Keshavji Morarji.

Accordingly, the interest income arising to Mrs. Madan in the form of interest on fixed deposits would be included in the total income of Mr. Madan and interest income arising in the hands of his brother's wife would be taxable in the hands of Mr. Madan's brother as per section 64(1), to the extent of amount of cross transfers i.e., ₹ 5.2 lakhs.

This is because both Mr. Madan and his brother are the indirect transferors of the income to their respective spouses with an intention to reduce their burden of taxation.

However, the interest income earned by his spouse on fixed deposit of ₹ 5.2 lakhs alone would be included in the hands of Mr. Madan's brother and not the interest income on the entire fixed deposit of ₹ 6.5 lakhs, since the cross transfer is only to the extent of ₹ 5.2 lakhs.

11. Explain in brief about the treatment to be given in the following case under the Income-tax Act, 1961, for A.Y. 2021-22:

Interest of ₹ 20,000 on bank FDRs received by minor son of Rajesh. These FDRs were made by the minor son out of his earnings from stage acting.

Answer:

According to section 64(1A), all income accruing or arising to a minor is to be included in the income of his parent, whose total income [excluding the income includible under section 64(1A)] is higher. The income derived by the minor from manual work or from any activity involving his skill, talent or specialised knowledge or experience will not be included in the income of his parent.

Since, interest of ₹ 20,000 on bank FDRs received by minor son of Rajesh does not arise to minor on account of his manual work or on account of an activity involving his skill, talent or specialized knowledge or experience, therefore, such interest should be included in income of Mr. Rajesh or Mrs. Rajesh, whosoever total income (before including minor's income) is higher.

However, exemption of ₹ 1,500 under section 10(32) shall be provided from interest of ₹ 20,000 to be clubbed.

In case assessee opts for the provisions of Section 115BAC, exemption of ₹ 1,500 would not be available.

12. H, a mentally retarded minor, has a total income of ₹ 1,20,000 for the assessment year 2021-22. The total income of his father L and of his mother R for the relevant assessment year is ₹ 3,40,000 and ₹ 2,80,000, respectively. Discuss the treatment to be accorded to the total income of H for the relevant assessment year.

Answer:

Section 64(1A) provides that all income accruing or arising to a minor child has to be included in the income of that parent, whose total income is greater. However, the income of a minor child suffering from any disability of the nature specified in section 80U shall not be included in the income of the parents but shall be assessed in the hands of the child.

Thus, the total income of H has to be assessed in his hands and cannot be included in the total income of either his father or his mother.

13. Important: Mr. Ghosh held 15% equity shares in ABC Ltd., a private limited company. He gifted all the shares held by him in ABC Ltd., to his wife Mrs. Ghosh on 25/5/2020. The transfer was made without adequate consideration. On 20/6/2020, Mrs. Ghosh obtained a loan of ₹ 80,000 from ABC Ltd., when the company's accumulated profit was ₹ 50,000. What are the tax implications of the above transactions?

Answer:

Under section 2(22)(e), any payment by a closely-held company by way of loan or advance to its shareholder, being a person who is the beneficial owner of shares, holding not less than 10% of the voting power, is deemed as dividend to the extent to which the company possesses accumulated profits.

Accordingly, in this case, ₹ 50,000 (i.e., loan to the extent of accumulated profits of ABC Ltd.) would be deemed as dividend in the hands of Mrs. Ghosh, who holds 15% equity shares in ABC Ltd., under section 2(22)(e).

Thereafter, the clubbing provisions under section 64(1)(iv) would be attracted, as per which, income as arises, directly or indirectly, from asset transferred to spouse, otherwise than for adequate consideration, would be included in the hands of the transferor.

If the assets so transferred are shares in a company, the loan taken from the company is deemed as dividend income of the shareholder under section 2(22)(e) to the extent to which the company possesses accumulated profits. Thus, on account of this deeming provision, such loan is treated as income arising from the shares.

Accordingly, as per section 64(1)(iv), such income arising in the hands of the shareholder, Mrs. Ghosh, by virtue of section 2(22)(e) (i.e., deemed dividend of ₹ 50,000) would be included in the total income of Mr. Ghosh, who had transferred the said shares to Mrs. Ghosh without consideration.

Note: Dividend Income u/s 2(22)(e) is now taxable in the hands of shareholders as DDT is withdrawn from AY 2021-22.

SET OFF, OR CARRY FORWARD & SET OFF OF LOSSES

[Chapter VI – Section 70 to 80]

Section	Particulars
70	Inter Source - Set off of loss from one source against income from another source under the same head of income
71	Inter Head - Set off of loss from one head against income from another Head
71B	Carry forward and set off of loss from house property
72	Carry forward and set off of Business Losses [Non-Speculative]
72A	Carry forward and set off of accumulated loss and unabsorbed depreciation allowances in amalgamation or demerger, etc.
72AA (NEW)	Carry forward and set off of accumulated loss and unabsorbed depreciation allowances in scheme of amalgamation in certain cases (Banking company, Government company doing general insurance business etc) – Substituted by Finance Act 2020
72AB	Carry forward and set off of accumulated loss and unabsorbed depreciation allowances in business reorganization of co-operative banks
73	Losses in Speculation Business
73A	Carry forward and set off of Losses by Specified Business referred to in Section 35AD
74	Losses under the head “Capital gains”
74A	Losses from certain specified sources falling under the head "income from other sources" [Owning & Maintaining Race Horses]
78	Carry forward and set off of losses in case of change in constitution of firm or on succession
79	Carry forward and set off of losses in the case of certain companies [Closely Held Companies]
80	Submission of Return for Losses [Read with Section 139(3)]

INTER SOURCE ADJUSTMENT / SET OFF [INTRA HEAD or WITHIN HEAD] [SECTION 70]

The **LOSS** in respect of any source of income under any head of income shall be set off against **INCOME** from any other source under the same head.

However, **Long term Capital Loss** can only be set off against Long term Capital Gains. **Short-term capital loss** is allowed to be set off against both short-term capital gain and long-term capital gain

Inter-source set-off, however, is not permissible in the following cases [Due to restrictions provided in other part of the Act]

- I. **Loss from a source, the income from which is exempt**, cannot be set off against any income.
- II. **A loss cannot be set off against winnings from lotteries**, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature.
- III. **Loss from lottery, card games etc.** cannot be set off against any income.
- IV. **Loss from activity of owning and maintaining race-horses** can be set off only against income from owning and maintaining race- horses.
- V. **Speculation business loss** can be set off only against speculation business income. However, losses from other business can be adjusted against profits from speculation business.
- VI. **Loss from a Specified Business [Referred to in Section 35AD]** shall be set off only against profits and gains, if any, of any other specified business.

INTER HEAD ADJUSTMENT [SECTION 71]

Loss under one head of income can be adjusted or set of against income under another head. However,

- i) **Loss under the head "PGBP"** cannot be set off against income under the head "Salaries".
- ii) **Loss under the head 'Capital Gains'** cannot be set-off against income under any other head.
- iii) **Loss under the head House Property will be setoff with other head's income to the extent of Only ₹200,000. Excess shall be allowed to carry forward under Section 71B.**

Following points should be considered due to restrictions in other relevant Sections:

- i) **Speculation loss and Loss from the activity of owning and maintaining** race horses cannot be set off against income under any other head.
- ii) **Loss from a Specified Business [Referred to in Section 35AD]** cannot be set off against any other income.
- iii) **A loss cannot be set off against winnings from lotteries**, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature.

Other Points:

1. Before adjusting the loss under section 71, one has to set off the loss under section 70.
2. No option is available to set off a loss or not to set off a loss
3. No order of priority is given to set off.
4. Carry forward of Loss under the head "Income from Other Sources" is not permissible in the Act:

MANDATORY FILLING OF RETURN [ITR] TO CARRY FORWARD LOSSES [Section 80]

As per section 80, the assessee ***must have filed a RETURN OF LOSS under section 139(3)*** in order to carry forward and set off a loss. **Such a return should be filed within the time allowed under section 139(1).** 
[31st July / 31st October / 30th November]

Following losses cannot be carried forward if Return of Loss is not filled within due date:

1. Loss from Non-Speculative Business **under Section 72**
2. Loss from Speculative Business **under Section 73**
3. Capital Loss **under Section 74**
4. Loss from the activity of owning and maintaining race horses **under Section 74A.**
5. Loss from the Specified Business (as referred in Section 35AD) **under Section 73A.**

However, **this condition does not apply** to carry forward of following losses: [means these losses can be c/f even if no ROI has been filled on time]:

1. Loss from House Property carried forward under section 71B
2. Unabsorbed Depreciation
3. Capital Expenditure on Scientific Research
4. Capital Expenditure on Family Planning

Note:

1. **Non-Filling of Return of Loss will not affect the Inter Source Adjustment u/s 70 or Inter-head Adjustment u/s 71 or adjustment of brought forward losses of previous year with current year Income.**
2. Also, Loss of the earlier year can be carried forward to next year(s) ***if the return of loss of that year(s) was submitted within due date.***

SET -OFF AND CARRY FORWARD OF LOSS FROM HOUSE PROPERTY [SECTION 71B]

A Loss under the head house property, to the extent not set off u/s 70 & 71, shall be carried forward to the next 8 AYs to be set-off **against income under the head 'Income from house property'**.

[**Note:** In any assessment year, if there is a loss under the head 'Income from house property' after Inter source adjustment under section 70, such loss will first be set-off against income from any other head during the same year as per Section 71]

NOTE:

1. Loss under this head can be carried forward even if ROI is filed after the due date of filing ROI u/s 139(1).
2. There is no condition that assessee should own the house for which the loss is to be carried forwarded.
3. Once a particular loss is carried forward, **it can be set off only against the income from the same head** in the forthcoming assessment years.

CARRY FORWARD AND SET-OFF OF BUSINESS LOSSES [SECTIONS 72]

1. **Business loss** to the extent not set-off under section 70 & 71 shall be carried forward to the next assessment year and set-off against the income **under head PGBP** of the next assessment year(s) up to maximum for **EIGHT ASSESSMENT YEARS** [8 A.Y.'s] immediately succeeding the assessment year in which loss was first computed.
2. **The term Business Loss will not include:**
 - a) Unabsorbed Depreciation
 - b) Capital Expenditure on Scientific Research
 - c) Capital Expenditure on Family Planning
 - d) Speculative Business Loss
 - e) Loss from Specified Business u/s 35AD
3. Business may or may not be continued for which the carry forward and set off is desired.
4. **Loss from normal business can be set off from the speculation incomes or income from specified business u/s 35AD in subsequent AYs but opposite is not permissible.**
5. Loss of business shall be allowed to be carry forward only if ITR has been filed as per the time period mentioned in section 139(1).
6. Loss of business can be carry forward and **set off against income from professions** being carried on by the assessee.

CARRY FORWARD AND SET-OFF OF SPECULATION BUSINESS LOSSES**[Section 73]**

SPECULATIVE TRANSACTIONS to mean a transaction in which a contract for purchase or sale of any commodity, including stocks & shares is periodically or ultimately settled *Otherwise than by actual delivery or transfer of the commodity.*

SPECULATION BUSINESS - Where the speculative transactions carried on by assessee are of such a nature as to constitute a business, the business shall be deemed to be distinct and separate from any other business.

Note: If the assessee is maintaining same books of account for speculative and non- speculative transactions, then the speculative transactions shall be segregated and treated as a separate business.


Deemed Speculative Business:

Where any part of the business of a Company consists of sale and purchase of shares, such company for the purposes of section 73, be deemed to be carrying on a speculation business to the extent to which the business consists of sale and purchase of shares.

This shall not apply to the following companies:

- a) **Investment Company** i.e., the company whose total income mainly consists of income from house property, capital gains and income from other sources.
- b) Company whose **principal business is Business of Trading in Shares OR Banking or Granting loans and advances.**

THE FOLLOWING SHALL NOT BE DEEMED TO SPECULATIVE TRANSACTIONS:

- a. a contract in respect of **raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business** to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him;
- b. a contract in respect of stocks and shares entered **into by a dealer or investor therein to guard against loss in his holdings of stocks and shares** through price fluctuations;
- c. a contract entered into **by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage** to guard against loss which may arise in the ordinary course of his business as such member;
- d. an eligible transaction in respect of **trading in derivatives** carried out in a recognised stock exchange;
- e. an eligible transaction in respect of **trading in commodity derivatives** carried out in a **recognised Stock exchange** association, which is chargeable to commodities transaction tax. 

Provided in respect of trading in agricultural commodity derivatives, the requirement of chargeability of commodity transaction tax shall not apply.

IMPORTANT POINTS

1. The loss of a speculation business shall be set off only against the profits and gains of another speculation business.
2. The loss to the extent not set –off shall be carried forward to the next assessment year and set-off against the profits from speculation business of the next assessment year.
3. The loss from speculation business can be carried forward for **FOUR ASSESSMENT YEARS.**
4. Loss in a speculative transaction entered into on behalf of principle, is non-speculative loss of agent.

SET OFF AND CARRY FORWARD OF UNABSORBED DEPRECIATION

Set off and carry forward of unabsorbed depreciation shall be governed by Sec. 32(2) and not be Sec. 72

Meaning: Depreciation, which could not be fully absorbed in any previous year, owing to –

- There being no profits or gains chargeable for that previous year; or
- The profits or gains chargeable being less than the amount of depreciation.

Tax treatment:

Allowances or the part of the allowances of depreciation which remains unabsorbed shall be (Subject to Sec. 72 and Sec. 73) added to the amount of the depreciation for the following previous year and deemed to be the depreciation allowances for that previous year, and so on for the succeeding previous years.

Tax point:

Unabsorbed depreciation shall be allowed to be carried forward for any number of years and such carried forward unabsorbed depreciation **may be set off against any income, other than –**

- **Income under the head “Salaries”**
- **Winning from lotteries, cross word puzzles, etc.**

Note:

1. **Continuation of business is not important:** Unabsorbed depreciation can be carried forward even if the business, in respect of which the loss was originally computed, is not carried on during the previous year.
2. **Filing of return within due date is not mandatory:** Unabsorbed depreciation can be carried forward even if the return of income has not been filed within time.

ORDER OF SET-OFF OF LOSSES

As per the provisions of section 72(2), brought forward business loss is to be set-off before setting off unabsorbed depreciation. Therefore, the order in which set-off will be effected is as follows –

- a) Current year depreciation / Current year capital expenditure on scientific research and current year expenditure on family planning, to the extent allowed.
- b) Inter Source & Inter Head Adjustments [Section 70 & Section 71]
- c) Brought forward loss from business/profession [Section 72(1)]
- d) Unabsorbed depreciation [Section 32(2)]
- e) Unabsorbed capital expenditure on scientific research [Section 35(4)].
- f) Unabsorbed Capital expenditure on family planning [Section 36(1)(ix)]

CARRY FORWARD & SET OFF OF LOSSES BY SPECIFIED BUSINESS
[SECTION 73A]

- i) Any loss computed in respect of the **eligible specified business** referred to in Section 35AD shall be set off only against profits and gains, if any, of any other specified business ***whether eligible or not***.
- ii) **No Inter Head Set off:** The unabsorbed loss, if any, will be carried forward for set off against profits and gains of any specified business in the following assessment year and so on.
- iii) **No Time Limit:** There is **no time limit** specified for carry forward and set-off and therefore, such loss can be carried forward indefinitely for set-off against income from specified business.

Specified Business u/s 35AD are:

- (i) *Setting up and operating a cold chain facility*
- (ii) *Setting up and operating a warehousing facility for storage of agriculture produce;*
- (iii) *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*
- (iv) *Building and operating, anywhere in India, a hotel of two-star or above category;*
- (v) *Building and operating, anywhere in India, a hospital with atleast 100 beds for patients;*
- (vi) *Developing and building a housing project under a scheme for slum redevelopment or rehabilitation;*
- (vii) *Developing and building a housing project under a scheme for affordable housing*
- (viii) *Production of fertilizer in India*
- (ix) *Setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962*
- (x) *Bee-keeping and production of honey and beeswax;*
- (xi) *Setting up and operating a warehousing facility for storage of sugar*
- (xii) *Laying & Operating a slurry pipeline for the transportation of iron ore*
- (xiii) *Setting up and operating a semiconductor wafer fabrication manufacturing unit, if notified*
- (xiv) *Developing or operating and maintaining or developing, operating and maintaining, any infrastructure facility*

Note - The loss of an assessee claiming deduction under section 35AD in respect of a specified business can be set-off against the profit of another specified business under section 73A, **irrespective of whether the latter is eligible for deduction under section 35AD.**

An assessee can, therefore, set-off the losses of a hospital or hotel which begins to operate after 1st April, 2010 and which is eligible for deduction under section 35AD, **against the profits of the existing business of operating a hospital (with atleast 100 beds for patients) or a hotel (of two-star or above category), even if the latter is not eligible for deduction under section 35AD.**

LOSSES UNDER THE HEAD 'CAPITAL GAINS' [SECTION 74]

The loss under the head Capital Gain shall be carried forward to the following assessment year to be set off in the following manner:

1. Net loss under the head capital gains **cannot be set off against income under any other head during the previous year.**
2. Where the loss so carried forward is a STCL, it shall be set off against **any capital gains**, short term or long term, **arising in that year.**
3. Where the loss so carried forward is a LTCL, it shall be set off only against long term capital gain **arising in that year.**
4. Any unabsorbed loss shall be carried forward to the following assessment year up to a **maximum of 8 assessment years** immediately succeeding the assessment year for which the loss was first computed.
5. Here also, it is necessary that a return of loss is furnished before the due date.

Question: Compute the Gross total income of Mr. F for the AY 2021-22 from the information given below:

<u>Particulars</u>	₹
Net income from house property	1,25,000
Income from business (before providing for depreciation)	1,35,000
Short term capital gains on sale of shares	56,000
Long term capital loss from sale of property (brought forward from AY 2019-20)	(90,000)
Income from tea business	1,20,000
Dividends from Indian companies carrying on agricultural operations	80,000
Current year depreciation	26,000
Brought forward business loss (loss incurred six years ago)	(45,000)

Solution

The gross total income of Mr. F for the AY 2021-22 is calculated as under:

<u>Particulars</u>	₹	₹
Income from house property		1,25,000
Income from business		
Profits before depreciation	1,35,000	
Less: current year depreciation	26,000	
Less: brought forward business loss	<u>45,000</u>	
	64,000	
Income from tea business (40% is business income)	48,000	1,12,000
Income from the capital gains		
Short term capital gains	56,000	
Long term capital loss from property (cannot be set off)	Nil	<u>56,000</u>
Gross Total Income		2,93,000

Note: Dividend from Indian companies is exempt from tax. 60% of the income from tea business is treated as agricultural income and therefore, exempt from tax.

LOSSES FROM THE ACTIVITY OF OWNING AND MAINTAINING RACE HORSES [SECTION 74A]

1. The losses incurred by an assessee from the activity of owning and maintaining race horses **can only be set-off against the income from** the activity of owning and maintaining race horses.
2. Such loss can be carried forward for a **maximum period of 4 assessment years** immediately succeeding the assessment year for which the loss was first computed for being set-off against the income from the activity of owning and maintaining race horses.
3. The carry forward and set-off is permissible only if the activity of owning & maintaining race-horses is carried on by Assessee in the previous year relevant to the assessment year in which such loss is carried forward and set-off.
4. **Filing of returns before the due date prescribed u/s 139(1) is necessary to carry forward the loss.**

CARRY FORWARD AND SET OFF OF LOSSES IN CASE OF CHANGE IN CONSTITUTION OF FIRM OR SUCCESSION [SECTION 78]**In case of Change in constitution of firm:**

- i) Where there is a change in the constitution of a firm, so much of the loss proportionate to the share of a retired or deceased partner **remaining unabsorbed**, shall not be allowed to be carried forward by the firm.
[Proportionate Loss – Proportionate Profits]
- ii) **However, unabsorbed depreciation can be carried forward in full.**

This section does not cover change in constitution of the firm due to change in the profit sharing ratio or admission of new partners.

Note: Retiring partner is **also not eligible** to avail the benefit of such proportionate loss of the firm.

In case of Succession:

- i) Where any person carrying on any business or profession has been succeeded in such capacity by another person **otherwise than by inheritance**, such other person shall not be allowed to carry forward and set off against his income, any loss incurred by the predecessor.
- ii) **Where there is a succession by inheritance**, the legal heirs (assessable as BOI) are entitled to set-off the **business loss** of the predecessor. **[Only Business Loss]**

Such carry forward and set-off is possible even if the legal heirs constitute themselves as a partnership firm. In such a case, the firm can carry forward and set-off the **business loss** of the predecessor.

For Example, a father dies and his son succeeds to his business. The B/F losses of father will be carried forward by the son for the balance number of years for which the father could have carried forward.

Note: Section 78(2) applies to loss and does not apply to depreciation. **Therefore on inheritance, only the loss can be carried forward by the legal heir and not the unabsorbed depreciation of the deceased.**

Where the legal heirs of the deceased proprietor enters into partnership and carries on the same business in the same premise under the same trade name, it was held that such loss of sole proprietary firm was allowed to be carried forward by the firm of the legal heirs who have succeeded to the business of the deceased [CIT vs. Madhu Kant M. Mehta (SC)]

CARRY FORWARD AND SET-OFF OF LOSSES IN CASE OF CLOSELY HELD COMPANIES [SECTION 79] - W.e.f. AY 2020-21**Carry forward and set-off of losses in case of closely held company not being an eligible start-up referred to in section 80-IAC**

In the case of a company in which the public are not substantially interested **and not being an eligible start-up referred to in section 80-IAC**, no loss incurred in any year prior to the previous year shall be carried forward and set-off against the income of the previous year, **unless**

- **on the last day of the previous year**, the shares of the company carrying not less than 51% of the voting power were beneficially held by persons
- who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years **in which the loss was incurred**.

Carry forward and set-off of losses in case of closely held company being an eligible start-up referred to in section 80-IAC

In case of a company in which the public are not substantially interested **but being an eligible start-up as referred to in section 80-IAC**, any unabsorbed loss of the company shall be allowed to be carried forward and set off against the income of the previous year **if either of the conditions are satisfied** –

- a. on the last day of the previous year, the shares of the company carrying **not less than 51% of the voting power were beneficially held by persons** who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred; or
- b. **all the shareholders of such company** who held shares carrying voting power on the last day of the previous year or years in which the loss was incurred **continue to hold** those shares on the last day of such previous year in which the loss is to be set-off and such loss has been incurred **during the period of 7 years beginning from the year of incorporation** of such company.

Non-applicability of restriction: This restriction shall, however, not apply :

- a. where a change in the said voting power and shareholding 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 such gift;
- b. 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 amalgamating or demerged foreign company continue to be the shareholders of the amalgamated or the resulting foreign company;

- c. where a change in the shareholding takes place in a previous year **pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016**, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner;
- d. **to a company, and its subsidiary and the subsidiary of such subsidiary**, where,—
- i. the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, **has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government**, under section 242 of the said Act; and
 - ii. a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, **has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013** after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Note:

- A. A company shall be a subsidiary of another company, if such other company holds **more than half in nominal value** of the equity share capital of the company;

B. Meaning of eligible start-up:

“Eligible start-up” means a company engaged in eligible business which fulfils the following conditions, namely:—

- a. it is incorporated **on or after the 1st day of April, 2016 but before the 1st day of April, 2021**;
- b. the total turnover of its business **does not exceed ₹ 100 crores** ~~twenty-five crore rupees~~ in the previous year relevant to the assessment year for which deduction is claimed under Section 80-IAC; and
- c. it **holds a certificate of eligible business from the Inter-Ministerial Board of Certification** as notified in the Official Gazette by the Central Government;

C. Meaning of eligible business:

A business carried out by an eligible start-up engaged in

- Innovation, development or improvement of products or processes or services or
- a scalable business model with a high potential of employment generation or wealth creation

Note: The provisions of this section are applicable only in respect of carry forward of losses and not in respect of carry forward of unabsorbed depreciation, which is covered by section 32(2).

Question:

XYZ Pvt. Ltd. has three shareholders i.e. X, Y and Z. All the three shareholders have equal shareholding of the company. During the previous 2020-21 the company incurred a loss of ₹ 1,20,000. On 25-3-2021, X and Y transferred shareholding to A. On 31-3-2021 the shareholders were:

- Z - 1/3rd shareholding
A - 2/3rd shareholding

Will the company be able to carry forward and set off the loss of ₹ 1, 20,000 to the subsequent year?

Solution: As there has been a change in the shareholding to the extent of more than 49%, the company cannot carry forward and set off the loss to the subsequent year.

CONDITION FOR CARRIED FORWARD & SET-OFF

Assessee must be the same i.e., the Assessee who incurred the loss and the Assessee who claims the carry forward and set-off, must be the same.

Example: A HUF has brought forward the losses of ₹ 2,50,000 and depreciation of ₹ 2,00,000. The business of the HUF on partition is taken over by an erstwhile member. The losses and depreciation of HUF cannot be carried forward by such member since the Assessee has changed.

EXCEPTION:

Where any person carrying on any business or profession has been succeeded by another person by way of inheritance, then losses incurred by the predecessor shall be allowed to be carried forward and set-off by such another person (successor) ---Section 78(2).

More Cases of Exception:

<u>Unabsorbed Business losses and Depn Sustained by</u>	<u>Unabsorbed Business losses & Depn can be C/F Set-off by</u>	<u>Subject to conditions given</u>
1) Amalgamating company	Amalgamated company	Section 72A
2) Partnership firm	Successor Company	Section 47(xiii) read with 72A
3) Proprietorship concern	Successor Company	Section 47(xiv) read with 72A
4) Demerged company	Resulting Company	Section 72A
5) Amalgamating banking Company	Amalgamated banking Institution	Section 72AA
6) Amalgamating co-operative Bank	Amalgamated Co-operative Bank	Section 72AB
7) Demerged co-operative Bank	Resulting Co-operative Bank	Section 72AB
8) Private & Unlisted Public Co.	LLP	Section 47(xiiib) read with 72A

FOLLOWING CASES WHERE LOSSES CANNOT BE CARRIED FORWARD

- (i) Business of an HUF where the business of HUF is taken over by the Karta of HUF;
- (ii) Proprietorship Business, where such business is taken over by a firm in which proprietor is one of the partner;
- (iii) A firm being succeeded by another firm;
- (iv) A firm where the business of the firm is taken over by one of the partner of the firm.

EXCEPTIONS TO THE RULE THAT LOSSES CAN BE CARRIED FORWARD FOR-8 A/Y s

- 1) The loss gets carried forward for more than 8 A/Ys in case of
 - Amalgamation u/s 72A ,
 - Succession **u/s 47(xiii) / 47(xiiib) / 47(xiv)** read with 72A and
 - Amalgamation u/s 72AA.

- 2) **Section 41(5) - Where the business or profession is no longer in existence and**
 - There is income chargeable to tax under section 41(1) or 41(3) or 41(4) in respect of that business or profession , then any loss(other than speculation loss),
 - Which arose in that business or profession during the Previous Year in which it ceased to exist and
 - Which could not be set -off against any income of that Previous Year,
 - Shall be set –off against the incomes chargeable to tax under the aforesaid sections.

- 3) **PROVISO TO SECTION 72(1)**: Where a business is discontinued in the circumstances referred to in **Section 33B** and
 - is re-established within the **period of 3 years from the end of Previous Year** of discontinuance,
 - then loss of such business including the brought forward losses
 - ***shall be allowed to be carried forward to the AY relevant to the Previous Year in which the business is re- established*** and
 - (1) It shall be set-off against the profits and gains of that business or any other business carried on by him in that assessment year and
 - (2) If the loss cannot be wholly set-off in such assessment year, be carried forward to the following assessment year and so on for **SEVEN** assessment years.

CARRY FORWARD & SET OFF OF ACCUMULATED LOSSES AND UNABSORBED DEPRECIATION IN CASE OF AMALGAMATION, DEMERGER OR SUCCESSION, etc. [Sec. 72A]

Sec. 72A can be divided in four parts:

1. Carry forward & set off of accumulated loss and unabsorbed depreciation **in case of amalgamation.**
2. Carry forward & set off of accumulated loss and unabsorbed depreciation **in case of demerger.**
3. Carry forward & set off of accumulated loss and unabsorbed depreciation **in case of succession.**
4. Carry forward & set off of accumulated loss and unabsorbed depreciation **in case of conversion into Limited Liability Partnership.**

“Accumulated Loss” means so much of the loss of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, under the head “Profits and gains of business or profession” (**not being a loss sustained in a speculation business**) which such predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, **would have been entitled to carry forward and set off under the provisions of section 72 if the re-organisation of business or conversion or amalgamation or demerger had not taken place**

“Unabsorbed Depreciation” means so much of the allowance for depreciation of the predecessor firm or the proprietary concern or the private company or unlisted public company before conversion into limited liability partnership or the amalgamating company or the demerged company, as the case may be, which remains to be allowed and **which would have been allowed to the predecessor** firm or the proprietary concern or the company or amalgamating company or demerged company, as the case may be, under the provisions of this Act, **if the re-organisation of business or conversion or amalgamation or demerger had not taken place**

CARRY FORWARD & SET OFF OF ACCUMULATED LOSS AND UNABSORBED DEPRECIATION IN CASE OF AMALGAMATION:

Applicability: Sec. 72A is applicable on following amalgamation, where -

1. There has been an amalgamation of a company owning -
 - ✓ an industrial undertaking; or
 - ✓ a ship; or
 - ✓ a hotel,
 with another company; or
2. There has been amalgamation of a banking company with a specified bank.
3. There has been an amalgamation of one or more public sector company or companies engaged in the business of operation of aircraft with one or more public sector company or companies engaged in similar business,

Treatment: The accumulated loss and the unabsorbed depreciation of the amalgamating company shall be **deemed to be the loss or depreciation of the amalgamated company** for the previous year in which the amalgamation was effected.

Tax point: Accumulated loss of the amalgamating company **can be carried forward for further 8 years.**

Consequences if the conditions are not satisfied

As per sec. 72A(3), in a case where above conditions are not complied with, the set off of loss or depreciation made in any previous year by the amalgamated company **shall be deemed to be the income of the amalgamated company and chargeable to tax in the year in which such conditions are violated.**

CARRY FORWARD & SET OFF OF ACCUMULATED LOSS AND UNABSORBED DEPRECIATION IN CASE OF DEMERGER [Sec. 72A(4)]

In case of Demerger, the amount of set off of the accumulated loss and unabsorbed depreciation, if any, allowable to the assessee being a resulting company shall be –

- (i) the accumulated loss or unabsorbed depreciation of the demerged company if the whole of the amount of such loss or unabsorbed depreciation is **directly relatable to the undertakings** transferred to the resulting company; or
- (ii) The amount which bears the same proportion to the accumulated loss or unabsorbed depreciation of the demerged company as the assets of the undertakings transferred to the resulting company bears to the assets of the demerged company **if such accumulated loss or unabsorbed depreciation is not directly relatable to the undertakings** transferred to the resulting company.

Unabsorbed loss can be carried forward for the unexpired period of out of total 8 years.

CARRY FORWARD & SET OFF OF LOSSES ON CONVERSION OF PROPRIETARY CONCERN OR PARTNERSHIP FIRM INTO COMPANY [Sec. 72A(6)]

Condition: Where -

- ✓ a firm is succeeded by a company fulfilling the conditions laid down in sec. 47(xiii); or
- ✓ a proprietary concern is succeeded by a company fulfilling conditions laid down in sec. 47(xiv).

Tax Treatment: The accumulated loss and unabsorbed depreciation of the predecessor firm or the proprietary concern, as the case may be, **shall be deemed to be the loss** or allowance for depreciation of the successor company for the purpose of previous year in which reorganisation of business was effected.

Taxpoint: Accumulated loss of such firm or concern can be carried forward for **further 8 years.**

Effect of non compliance of conditions given u/s 47(xiii) and (xiv)

If any of the conditions laid down in the sec. 47(xiii) or (xiv) are not complied with, the set off of loss or allowance of depreciation made in any previous year by the successor company **shall be deemed to be the income** of the company and chargeable to tax in the year in which such conditions are violated.

CARRY FORWARD & SET OFF OF LOSSES ON CONVERSION INTO LIMITED LIABILITY PARTNERSHIP [Sec. 72A(6A)]

Condition: Where a private company or unlisted public company is succeeded by a limited liability partnership fulfilling the conditions laid down in the proviso to sec.47(xiiib).

Tax Treatment: The accumulated loss and unabsorbed depreciation of the predecessor company **shall be deemed to be the loss or allowance** for depreciation of the successor LLP for the purpose of previous year in which reorganisation of business was effected.

Taxpoint: Accumulated loss of such company can be carried forward for **further 8 years.**

Effect of non compliance of conditions given u/s 47(xiiib)

If any of the conditions laid down in the sec. 47(xiiib) are not complied with, the set off of loss or allowance of depreciation made in any previous year by the successor LLP **shall be deemed to be the income** of the LLP and chargeable to tax in the year in which such conditions are violated.

CARRY FORWARD & SET-OFF OF ACCUMULATED LOSS IN SCHEME OF AMALGAMATION OF BANKING COMPANY OR GENERAL INSURANCE COMPANIES
[SEC. 72AA] - NEW [Substituted by Finance Act 2020 w.e.f. AY 2021-22]



Situation:

In case of amalgamation of:

- a. **one or more banking company with any other banking institution** under a scheme sanctioned and brought into force by the Central Government u/s 45(7) of the Banking Regulation Act, 1949; or
- b. **one or more corresponding new bank or banks with any other corresponding new bank** under a scheme brought into force by the Central Government u/s 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or similar provisions of 1980 Act; or
- c. **one or more Government company or companies with any other Government company under a scheme** sanctioned and brought into force by the Central Government u/s 16 of the General Insurance Business (Nationalisation) Act, 1972

Treatment:

The accumulated loss and the unabsorbed depreciation of amalgamating concern **shall be deemed to be the loss of amalgamated concern for the previous year in which the scheme of amalgamation was brought into force.**

Notes:

1. **'Accumulated loss'** means so much of the loss under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such amalgamating company, would have been entitled to carry forward and set-off u/s 72 if the amalgamation had not taken place.
2. **Unabsorbed depreciation** means so much of the allowance for depreciation of the amalgamating company, which remains to be allowed and which would have been allowed to such company if amalgamation had not taken place.

SUMMARY

Nature of income		Set – Off			Carry Forward	Set – Off
		Same Source under same head	Inter – Source under same head	Inter – Head	For Assessment Year	From
Salary		N.A				
House property		✓	✓	✓ Max. 2 Lakhs	8 Years	Same Head
PGBP	Non – Speculation	✓	✓	✓ Except from Salary	8 Years	Same Head
	Speculation	✓	x	x	4 Years	Same Source
	Specified Business u/s 35AD	✓	x	x	Indefinite	Same Source
	Unabsorbed Depreciation Cap Exp on Sci. Research Cap Exp on F. Plan by Co	✓	✓	✓ Except from Salary	Indefinite	Any Income Except from Salary
CGs	Short Term	✓	✓	x	8 Years	LTCG/STCG
	Long Term	✓	x	x	8 Years	Only LTCG
IOS	Owing & Maintenance race horses	✓	x	x	4 Years	Same Source
	Winning from Lottery etc.	x	x	x	Carry forward of loss under the head IOS is not permissible.	
	Interest etc.	✓	✓	✓		

NOTE:

- i) **Speculation business loss** can be set off only against speculation business income. However, losses from other business can be adjusted against profits from speculation business.
- ii) **Loss from the activity of trading in derivatives, however, is not to be treated as speculative loss.**
- iii) **Loss under the head "PGBP"** cannot be set off against income under the head "Salaries".
- iv) **Long term Capital Loss** can be set off against Long term Capital Gains. Thus, short-term capital loss is allowed to be set off against both short-term capital gain and long-term capital gain.
- v) **Loss under the head 'Capital Gains'** cannot be set-off against income under any other head.
- vi) **Loss from activity of owning and maintaining race-horses** can be set off only against income from owning and maintaining race- horses.
- vii) **Loss from a Specified Business [Referred to in Section 35AD]** can be set off against profits and gains, if any, of any other specified business **whether eligible or not.** [14 Business]
- viii) **Loss from a source, the income from which is exempt,** cannot be set off against any income. [Say 10(1)]
- ix) **Loss from lottery, card games etc.** cannot be set off against any income.
- x) **A loss cannot be set off against winnings from lotteries,** crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature.
- xi) **In case the assessee is lower income group, It's prefer to set off losses with LTCG first as the same is taxed @ 20% and also deductions under chapter VIA against such loss is not available.**

Important Notes:**A. Section 78: Losses in case of change in constitution of firm or on succession**

1. **Change in constitution of firm:** Any Loss proportionate to the share of a retired or deceased partner as exceeds his share of profits in firm, cannot be c/f by the firm. However, Unabsorbed Depreciation (in full) can be carry forward by the firm without any restriction.
2. **Succession by way of inheritance:** Where any person carrying on any business or profession has been succeeded by another person **by way of inheritance,** then losses incurred by the predecessor shall be allowed to be carried forward and set-off by such another person (successor).

Note: Loss incurred in his business by a sole proprietor can be c/f and set off against profits if that business carried on by his legal heirs forming a partnership firm.

B. Section 79: Carry forward and set off of losses in the case of certain companies [Closely Held Companies]

- C. Where the losses incurred are not set – off against the income of the immediately succeeding year, such losses cannot be set – off at a later date. However, the benefit to be denied is limited to the loss which could be set – off and not the entire loss which is being carried forward.

D. Order of Set-off:

Section 70 [Inter Source]; Section 71[Inter Head]; Adjustment of B/f Losses and then finally Carry forward of losses

E. Section 80:

Following losses cannot be carried forward if Return of Loss is not filled within Due Date u/s 139(1):

1. Loss from Non-Speculative Business under Section 72
2. Loss from Speculative Business under Section 73
3. **Loss from Specified Business u/s 73A**
4. Capital Loss under Section 74
5. Loss from the activity of owning and maintaining race horses under Section 74A.

[Note: Non-Filling of Return of Loss will not affect the Inter Source Adjustment u/s 70 or Inter-head Adjustment u/s 71 or adjustment of brought forward losses of previous year with current year Income]

PRACTICAL QUESTION - SET A

ASSUMPTION FOR ALL QUESTIONS - Assessee (If Individual) has not opted for Sec 115BAC

1) X, an individual, submits the following information relevant for the AY 2021-22

	Profit - ₹	Loss - ₹
Salary income	1,42,000	
Income from house property:		
House A	1,15,000	
House B		1,17,000
House C		1,21,000
Profits and gains of business or profession :		
Business A	1,08,000	
Business B		1,18,000
Business C (speculative)	1,11,000	
Business D (speculative)		1,23,000
Capital gains :		
Short – term capital gains	1,06,000	
Short – term capital loss		1,28,000
Long – term capital gains on sale of building	12,500	
Income from other sources :		
Income from card games	1,08,000	
Loss from card games		1,07,010
Loss on maintenance of race horses		1,06,000
Interest on securities	1,04,000	—

Determine the net income of X for the AY 2021-22

2) **Imp:** Rajesh submits the following information for previous year 2020-21 relevant to the AY 2021-22:

	₹
1. Profit from Business X situated in Bangalore	2,80,000
2. Profit from Business Y situated in Hyderabad	1,25,000
3. Loss from Business Z carried in Germany (the business is controlled from India but profits are not received in India)	85,000
4. Unabsorbed depreciation of business Z	45,000
5. Income from house property situated in India	30,000
6. Income from house property situated in London (rent received in London)	50,000

Find out the Gross Total Income of Rajesh for the AY 2021-22 if he is (a) ROR in India (b) Not ordinarily resident in India and (c) Non – resident in India. (after Residential Status)

3) **Mr. B has furnished you the following data –**

	₹
Income from house property	(–) 130000
Salaries (computed)	80000
Income from other sources	(–) 90000
Income from lotteries	350000

Mr. B is seeking your advice relating to set off and carry – forward.

4) **Mr. S has furnished following details to compute his gross total income: (After Clubbing)**

Income from house property	(-) 20000
Profits and gains of business or profession	15000
Taxable income of minor son from investment	175000

5) **Imp:** Compute GTI of Mr. X in following cases –

Source of income	Case – I	Case – II
Income from house property (A)	40000	50000
Income from house property (B)	(20000)	(35000)
Speculation income	80000	(60000)
Business income	(30000)	50000
Income from activity of owning and maintaining race – horses business (A)	(60000)	20000
Income from activity of owning and maintaining race – horses business (B)	30000	(16000)
Income from agricultural business	(35000)	20000
Short term capital gain (transaction A)	40000	(30000)
Short term capital gain (transaction B)	(20000)	15000
Long term capital gain (transaction A)	(40000)	47000
Long term capital gain (transaction B)	20000	(4000)
Income from lottery	40000	—
Income from horse races	10000	25000
Income on card games	(15000)	(30000)
Interest on securities	20000	10000

6) **Mr. X submits the following particulars pertaining to the A.Y. 2021-22:**

Particulars	₹
Income from salary (computed)	5,00,000
Loss from self – occupied property	(–) 70,000
Business loss	(–) 1,00,000
Bank interest (FD) received (gross)	90,000

Compute the taxable income of Mr. X for the A.Y. 2021-22.

7) **Imp:** Mrs. Amutha submits the following information for the year ending 31.3.2021:

Particulars	₹
Income from salaries (computed)	60,000
Income from house property	
House 1	16,000
House 2	(–) 20,000
House 3 (self – occupied property]	(–) 12,000
Profits and gains of business/profession	
Business A	(–) 25,000
Business B (Speculative)	35,000
Capital gains	
Short term capital loss	(–) 18,000
Long term capital gain	10,000
Income from other sources	
Income from betting	9,000
Loss on maintenance of race horses	(–) 12,000
Interest on securities (gross)	18,000
Interest on loan borrowed to invest in securities	20,000

Determine the gross total income for the AY 2021-22.

- 8) Simran, engaged in various types of activities, gives the following particulars of her income for the year ended 31.3.2021:

	₹
(a) Profit of business of consumer and household products	50,000
(b) Loss of business of readymade garments	10,000
(c) Brought forward loss of catering business which was closed in Asst. Year 2019-20	15,000
(d) Short – term loss on sale of securities and shares	15,000
(e) Profit of speculative transactions entered into during the year	12,500
(f) Loss of speculative transactions of Asst. Year 2016-17 not set off till Asst Year 2020-21	15,000

Compute the total income of Simran for the AY 2021-22.

- 9) R, a resident individual – submits the following information relevant for the previous year ending on 31.3.2021:

	₹
(a) Income from salary (computed)	+ 72,000
(b) Interest on securities	+ 12,000
(c) Income from House Property	
House No. 1	+ 22,000
House No. 2	– 60,000
House No. 3	– 10,000
(d) Profit and Gains from Business :	
Business No. 1	+ 26,000
Business No. 2	– 22,000
Business No. 3 (speculative)	– 74,000
Business No. 4 (speculative)	+ 46,000
(e) Capital gains :	
Short – term capital gain (computed)	– 70,000
Long – term capital gain (computed)	+ 64,000
(f) Income from card games and betting (gross)	+ 70,000
Loss from maintenance of horse races	– 56,000
Income from owning & maintaining horse races	+ 30,000

Determine the total income of R for the AY 2021-22.

- 10) **Imp:** X, a resident individual submits the following information for the AY 2021-22:

	₹
BUSINESS A	
Loss of the previous year 2020-21	(–) 1,20,000
Brought forward loss of the previous year 2019-20	(–) 1,45,000
BUSINESS B	
Profit of previous year 2020-21	1,35,000
BUSINESS C (previous year ends on March 31, business discontinued on April 10, 2020)	
Profits of the period April 1, 2020 to April 10, 2020	Nil
Brought forward loss of previous year 2019-20	(–) 1,16,000
BUSINESS D (PY ends on March 31, business discontinued on Mar 31, 2020)	
Brought forward loss of previous year 2018-19	(–) 1,04,000
OTHER INCOME	
Interest on debentures held as stock – in – trade	1,48,000
Interest on bonds held as investments	1,60,000
Long – term capital loss on sale of shares (STT not paid)	(–) 1,46,400
Income from house property	1,17,000

Dividend [deemed dividend under section 2(22)(e)] on September 3, 2020 held as investment 1,80,000.

Determine the net income of X for the AY 2021-22. Also calculate the amount of loss which can be carried forward for being set off to the next assessment year.

11) Mr. X informs you the following for AY 2021-22:

- a) Taxable salary ₹ 5,20,000/ –
- b) Loss from House property A ₹ 60,000/ –
- c) Income from House property B ₹ 40,000/ –
- d) Brought forward business loss – AY 2013-14 - ₹ 1,00,000/ –
- e) Current year business income – ₹ 80,000/ –
- f) Bank interest – ₹ 20,000/ – **Determine total income and carry forward loss, if any.**

12) From the following particulars of Mr. Naresh for the previous year ending 31.03.2021 compute the income under each head and the taxable income with reasons and also explain the provisions of carry forward of such loss, that could not be absorbed:

(i) Income from business (Proprietary concern)	
(a) Net adjusted profit from Textile Trade	20,000
(b) Net adjusted loss from Automotive Trade	30,000
(c) Loss in shares trade (Shares were never taken delivery)	40,000
(ii) Negative income from House Property	(–) 25,000
(iii) Capital Gain:	
(a) Short – term Loss	(–) 20,000
(b) Long – term gain	30,000

13) **[Imp]** The summarized p & I a/c of Y (from his grocery stores) for the PY ended 31/3/21 is as under:

Particulars	Amount	Particulars	Amount
Expenses	420000	Gross profit	600000
Net profit	280000	Dividends (from Indian listed companies)	100000
	700000		700000

The following further information was provided for the same previous year: Y had other business (proprietary)

Cloth trade (loss)	₹ 42000
Speculation (profit)	₹ 30000
Loss in proprietary business carried on in the name of his minor son	₹ 45000
He had carried forward loss in electrical spares for assessment year 2019-20, which business was closed down (return filed in time)	₹ 39000
Income of Mrs. Y	₹ 55000

Compute the assessable income of Y for the assessment year 2021-22 under the head "PGBP".

14) **[Imp]** Compute the total income of Mr. Krishna for the assessment year 2021-22 from the following particulars:

Particulars	Amount (₹)
Income from business before adjusting the following items:	1,75,000
(a) Business loss brought forward from assessment year 2018-19	70,000
(b) Current depreciation	40,000
(c) Unabsorbed depreciation of earlier year	1,55,000
Income from house property (Gross Annual Value)	4,32,000
Municipal taxes paid	32,000
Mr. Krishna sold a plot at Noida on 12th September, 2020 for a consideration of ₹ 6,40,000, which had been purchased by him on 20th December, 2018 at a cost of ₹ 4,10,000	
Long-term capital gain on sale of debentures	60,000
Dividend on shares	22,000
Dividend from a company carrying on agri business	10,000

During the previous year 2020-21, Mr. Krishna has repaid ₹ 1,67,000 towards housing loan from a scheduled bank. Out of ₹ 1,67,000, ₹ 97,000 was towards payment of interest and rest towards principal payments.

SOLUTION – SET A

Solution 1:

Net income (Hint) 2,21,000

Loss to be carried forward

Speculative business loss	12,000
Short-term capital loss	9,500
Loss from the activity of owning and maintaining race horses	1,06,000

Solution 2:

<i>Business Income</i>	<i>Resident (₹)</i>	<i>NOR (₹)</i>	<i>NR (₹)</i>
Business X (Profit)	2,80,000	2,80,000	2,80,000
Business Y (Profit)	1,25,000	1,25,000	1,25,000
	4,05,000	4,05,000	4,05,000
Business Z (Loss); (controlled from India but received out of India)	(-) 85,000	(-) 85,000	Nil
	3,20,000	3,20,000	4,05,000
Unabsorbed depreciation of business Z	(-) 45,000	(-) 45,000	Nil
	2,75,000	2,75,000	4,05,000
Income from house property	---		
Property in India	30,000	30,000	30,000
Property in London	50,000	---	---
Gross Total Income	3,55,000	3,05,000	4,35,000

Solution 3:

Statement showing application of sec. 71

<u>Particulars</u>	<u>Amount</u>
Salaries	80,000
Income from house property	(-) 130,000
Income from other sources	
Winning from lotteries	350,000
Other income	(90,000)
Gross total income	350,000

Conclusion

Casual income shall be fully taxable as no loss can be set off against such income. 350000

Losses to be carried forward

(a) Loss under the head "Income from house property" (130000)
 (b) Loss under the head "Income from other sources", as such loss cannot be carried forward. Nil

Income under the head 'Salaries' is first adjusted with the loss under the head 'IOS' as the same cannot be carried forward. Though loss under the head 'IOS' is ₹ 90,000 and such loss could be adjusted with income under the head 'Salaries' only to the extent of ₹ 80,000 still the remaining loss of ₹ 10,000 cannot be carried forward.

Solution 4:

Computation of gross total income of Mr. S for the A.Y. 2021-22

<u>Particulars</u>	<u>Details</u>	<u>Amount</u>
Income from house property		(-) 20000
Profits & gains of business or profession		15000
Income from other sources		
Taxable income of minor son from investment u/s 64(1A)	175000	
Less: Exemption u/s 10(32)	(-)1500	173500
Gross Total Income		168500

Solution 5: Computation of Gross Total Income of Mr. X for the AY 2021-22

Particulars	Case -I (₹)		Case-II (₹)	
Income from House Property				
House property A	40000		50000	
House Property B	(-)20000	20000	(-) 35000	15000
Profits & Gains of Business or Profession				
Speculation income	80000		(-) 60000	Nil
Other business	(-) 30000	50000		50000
Income from agricultural business (Exempted)	Nil			Nil
Capital Gains				
Short term capital Gain				
Transaction A	40000	-	(-) 30000	
Transaction B	(-) 20000	20000	15000	
Long term capital gain				
Transaction A	(-) 30000		47000	
Transaction B	10000	Nil	(-) 4000	28000
Income from other sources				
Casual income				
Income from lottery	40000		—	
Income from horse races	10000		25000	
Income on card games (losses not to be considered)	Nil	50000	Nil	25000
Income from activity of owning & maintaining race-horses				
Business (A)	(-) 60000		20000	
Business (B)	30000	Nil	(-) 16000	4000
Other income				
Interest on securities		20000		10000
Gross Total Income		160000		132000
Losses to be carried forward				
Loss from activity of owning & maintaining race horse		(-) 30000		—
Long term capital loss		(20000)		-
Speculation loss		-		(60000)

Solution 6:

Computation of taxable income of Mr. X for the A. Y. 2021-22

Particulars	Amount (₹)	Amount (₹)
Income from salary	5,00,000	
Income from house property	(-)70,000	4,30,000
Business income	(-) 1,00,000	
Income from other sources (bank interest)	90,000	
Business loss to be carried forward	(-) 10,000	-
Gross total income [See Note below]		4,30,000

Note: Business loss of ₹ 1,00,000 is set off against bank interest of ₹ 90,000 and remaining business loss of ₹ 10,000 shall be carried forward as it cannot be set off against salary income.

Solution 7:

Computation of gross total income of Mrs. Amutha for A.Y. 2021-22

Particulars	₹	₹
I. Salaries:		
Salary		60,000
II. Income from house property :		
House 1	16,000	
House 2	(20,000)	
House 3	(12,000)	(16,000)
III. Profits and gains of business :		
Business A	(25,000)	
Business B (Speculation)	35,000	10,000
IV. Capital gains :		
Short term capital loss	(18,000)	
Long term capital gains	10,000	
To be carried forward to A.Y 2022-23	(8,000)	Nil

V. Income from other sources :		
i) Interest on Securities (Gross)	18,000	
Less: Interest on loan	20,000	(2,000)
ii) Loss on maintenance of race horses carried forward to A.Y 2022-23	(12,000)	
iii) Income from betting		9,000
Gross total income		61,000

Note: Net loss of ₹ 2,000 on account of interest on securities cannot be set off against income from betting. However, this loss can be adjusted against any other head of income available to the assessee.

Solution 8:

Computation of total income of Simran for the A.Y. 2021-22

	₹	₹
Profit of business of consumer and house-hold products		50,000
Less: Loss of business of readymade garments for the year adjusted under section 70(1)	10,000	
Less: Brought forward loss of catering business closed in assessment year 2019-20 set off against business income for the year as per section 72(1)	15,000	25,000
Profit of speculative transaction		12,500
Total Income		37,500

Notes:

- Loss of speculative transaction of assessment year 2016-17 is not allowed to be set off against the profit of speculative transaction of the assessment year 2021-22, since, as per the provisions of section 73(4), such loss can be carried forward for set-off for a maximum period of 4 years. This time limit of 4 years expired in assessment year 2020-21.
- Short term capital loss of ₹ 15,000 on sale of securities and shares has to be carried forward as per section 74 since there is no income under the head Capital Gains for the assessment year **2021-22**. The loss is to be carried forward for set off in future years against income chargeable under the head Capital Gains. Such loss can be carried forward for a maximum period of 8 assessment years.

Solution 9

**Total Income of R
(For the assessment year 2021-22)**

Income from salary		72,000
Income from House Property (22,000 - 60,000 - 10,000)		(-) 48,000
Income from Profits and Gains from business		
Non-Speculative Business [26,000- 22,000]		4,000
Speculative Business- 3	- 74,000	
Speculative Business- 4	+ 46,000	
Carried forward	- 28,000	
Income from capital gain		
Short-term capital loss	- 60,000	
Long-term capital gain	54,000	
Carried forward capital loss	- 6,000	
Income from other sources		
Interest on securities	12,000	
Income from card game and betting	70,000	82,000
Income from maintaining horses	30,000	
Loss from maintenance of race horses	(-) 56,000	
To be carried forward	(-) 26,000	
Gross Total Income		110,000

Solution 10:

	₹
Loss of Business A for the previous year 2020-21	(-) 1,20,000
Profit of Business B for the previous year 2020-21	1,35,000
Profit of Business C for the period April 1, 2020 to April 10, 2020	Nil
Interest on debentures held as stock-in-trade	<u>1,48,000</u>
Current business profit	<u>1,63,000</u>
Less : Brought forward loss of Business A, Business C and Business D [i.e., (1,45,000 + 1,16,000 + 1,04,000) subject to the maximum of ₹ 1,63,000]	<u>1,63,000</u>
Income under the head "Profits and gains of business or profession"	Nil

Computation of Net Income

Income from house property	1,17,000
Profits and gains of business or profession	Nil
Capital gains	Nil
(Loss of ₹ 1,46,400 will be carried forward for next 8 years for set off against long-term capital gain)	
Income from other sources	
Interest on bonds held as investment	1,60,000
Deemed dividend on shares (now taxable from AY 2021-22)	<u>1,80,000</u>
Gross total income	<u>4,57,000</u>
Less : Deduction under sections 80C to 80U	Nil
Net income	<u>4,57,000</u>

Note:

- As debentures are held by X as stock-in-trade, interest income is a part of business profits. Interest income can, therefore, be utilised for claiming set off of brought forward business losses. This rule is, however, not applicable in the case of interest on bonds as bonds are held by X as investment.
- Though Business D was not in existence during the previous year 2020-21, yet the brought forward business loss of the year 2019-20 can be set off against the income of the assessment year **2021-22**

Solution 11:

Computation of Total Income of Mr. X:

Particulars	₹
Salary Income	5,20,000
Income from House Property - as given	(20,000)
Profits & Gains of Business or Profession	80,000
Income from Other Sources - Bank interest	20,000
	<u>6,00,000</u>
Brought forward loss - Business loss (A.Y. 2013-14) - restricted to	(80,000)
Gross Total Income ₹	<u>5,20,000</u>

Note: The assessee is not eligible to carry forward unabsorbed business loss of ₹ 20,000/- (₹ 1 lakh less ₹ 80,000 set off) to assessment year **2022-23** since the period of eight assessment years eligible for carry forward has expired.

Solution 12:

Computation of Income under the head 'Profits and gains of business or profession'
[for the assessment year 2021-22]

	₹	₹
Income from house property		(-) 25,000
Profit and gains of business or profession		
Net adjusted profit of textile trade	20,000	
Net loss of automotive trade	(-) 30,000	(-) 10,000
Speculative loss in shares business		
[Not allowed to be set off against any income except profit of speculative shares business](-) 40,000		
Capital gains		
Long term capital gain	30,000	
Less : Short term capital loss	(-) 20,000	10,000
Taxable income		NIL

Statement of losses to be carried forward to assessment year 2022-23

If LTCG is adjusted against business loss

Loss from house property	25,000
Speculative loss from shares	40,000

If LTCG is adjusted against loss from house property

Loss from house property	15,000
Loss from business	10,000
Loss from speculative business	40,000

Solution 13:

Computation of Profits & gains of business or profession of Mr. Y for the PY: 2020-21

Particulars	Amount
Net profit as per Profit and Loss account	280000
Less: Income not taxable under this head but credited to P/L A/c	
Dividends	<u>100000</u>
Profits and gains of business of grocery shop	180000
Add: Income from speculation business	30000
Less: Loss from cloth trade	(42000)
Less: Loss from business of minor clubbed u/s 64(1A)	<u>(45000)</u>
Profits and gains of business after application of sec. 70 but before application of sec. 72	123000
Less: Brought forward loss of electric spare business	(39000)
Profits & gains of business or profession	84000

Solution 14:

Computation of Total Income of Mr. Krishna for the AY 2021-22

Particulars	₹	₹
(1) Income from house property		
Gross Annual Value	4,32,000	
Less: Municipal taxes paid	<u>32,000</u>	
Net Annual Value (NAV)	4,00,000	
Less: Deductions under section 24		
(a) 30% of NAV	1,20,000	
(b) Interest on housing loan	<u>97,000</u>	1,83,000
(2) Income from business		
Income from business	1,75,000	
Less : Current year depreciation under section 32(1)	<u>40,000</u>	
	1,35,000	
Less: Set-off of brought forward business loss of AY 2018-19 under section 72	<u>70,000</u>	
	65,000	
Less: Unabsorbed depreciation set-off [See Note 2]	<u>65,000</u>	Nil
(3) Capital gains		
Long term capital gain on sale of debentures	60,000	
Less: Unabsorbed depreciation set-off [See Note 2]	<u>60,000</u>	Nil
Short term capital gain on sale of land [See Note 1]	2,30,000	
Less: Unabsorbed depreciation set-off [See Note 2]	<u>30,000</u>	2,00,000
(4) Income from other sources		
Dividend on shares	22,000	
Dividend from a company carrying on agri business	<u>10,000</u>	32,000
Gross Total Income		4,15,000
Less : Chapter VI-A deduction		
Section 80C [Principal repayment of housing loan]		70,000
Total income		3,45,000

Notes:

- (1) Since land is held for a period of less than 24 months, the gain of ₹ 2,30,000 arising from sale of such land is a short-term capital gain.
- (2) Brought forward unabsorbed depreciation can be adjusted against any head of income. However, it is most beneficial to set-off unabsorbed depreciation first against long-term capital gains, since it is taxable at a higher rate of 20% (the other income of the assessee falling in the 10% slab rate).

PRACTICAL QUESTION - SET B

ASSUMPTION FOR ALL QUESTIONS - Assessee (If Individual) has not opted for Sec 115BAC

1. Mr. A (aged 35 years) submits the following particulars pertaining to the A.Y. 2021-22:

Particulars	₹
Income from salary (computed)	4,00,000
Loss from self-occupied property	(-)70,000
Loss from let-out property	(-) 1,50,000
Business loss	(-)1,00,000
Bank interest (FD) received	80,000

Compute the total income of Mr. A for the A.Y. 2021-22.

Solution:

Computation of total income of Mr. A for the A.Y. 2021-22

Particulars	Amount (₹)	Amount (₹)
Income from salary	4,00,000	
Less: Loss from house property of ₹ 2,20,000 to be restricted to ₹ 2 lakhs by virtue of section 71	(-) 2,00,000	2,00,000
Balance loss of ₹ 20,000 from house property to be carried forward to next assessment year		
Income from other sources (interest on fixed deposit with bank)	80,000	
Business loss set-off	(-) 1,00,000	-
Business loss of ₹ 20,000 to be carried forward for set-off against business income of the next assessment year		
Gross total income [See Note below]		2,00,000
Less: Deduction under Chapter VI-A		Nil
Total income		2,00,000

Note: Gross Total Income includes salary income of ₹ 2,00,000 after adjusting loss of ₹ 2,00,000 from house property. The balance loss of ₹ 20,000 from house property to be carried forward to next assessment year for set-off against income from house property of that year.

Business loss of ₹ 1,00,000 is set off against bank interest of ₹ 80,000 and remaining business loss of ₹ 20,000 will be carried forward as it cannot be set off against salary income.

2. Mr. B, a resident individual, furnishes the following particulars for the P.Y. 2020-21:

Particulars	₹
Income from salary (computed)	45,000
Income from house property	(24,000)
Income from non-speculative business	(22,000)
Income from speculative business	(4,000)
Short-term capital losses	(25,000)
Long-term capital gains	19,000

What is the total income chargeable to tax for the A.Y. 2021-22?

Solution:

Total income of Mr. B for the A.Y. 2021-22

Particulars	Amount (₹)	Amount (₹)
Income from salaries	45,000	21,000
Income from house property	(24,000)	
Profits and gains of business and profession		
Business loss to be carried forward [Note 1]	(22,000)	
Speculative loss to be carried forward [Note 2]	(4,000)	
Capital Gains		
Long term capital gain	19,000	
Short term capital loss	(25,000)	
Short term capital loss to be carried forward [Note 3]	(6,000)	
Taxable income		21,000

Note 1: Business loss cannot be set-off against salary income. Therefore, loss of ₹ 22,000 from the non-speculative business cannot be set off against the income from salaries. Hence, such loss has to be carried forward to the next year for set-off against business profits, if any.

Note 2: Loss of ₹ 4,000 from the speculative business can be set off only against the income from the speculative business. Hence, such loss has to be carried forward.

Note 3: Short term capital loss can be set off against both short term capital gain and long-term capital gain. Therefore, short term capital loss of ₹ 25,000 can be set-off against long-term capital gains to the extent of ₹ 19,000. The balance short term capital loss of ₹ 6,000 cannot be set-off against any other income and has to be carried forward to the next year for set-off against capital gains, if any.

3. During the P.Y. 2020-21, Mr. C has the following income and the brought forward losses:

Particulars	₹
Short term capital gains on sale of shares	1,50,000
Long term capital loss of A.Y. 2019-20	(96,000)
Short term capital loss of A.Y. 2020-21	(37,000)
Long term capital gain	75,000

What is the capital gain taxable in the hands of Mr. C for the A.Y. 2021-22?

Solution:

Taxable capital gains of Mr. C for the A.Y. 2021-22

Particulars	₹	₹
Short term capital gains on sale of shares	1,50,000	
Less: Brought forward short term capital loss of the A.Y. 2020-21	(37,000)	1,13,000
Long term capital gain	75,000	
Less: Brought forward long term capital loss of A.Y. 2019-20	(75,000)	Nil
[See Note below]		
Taxable short-term capital gains		1,13,000

Note: Long-term capital loss cannot be set off against short-term capital gain. Hence, the unadjusted long-term capital loss of A.Y. 2019-20 of ₹ 21,000 (i.e. ₹ 96,000 – ₹ 75,000) can be carried forward to the next year to be set-off against long-term capital gains of that year.

4. Mr. D has the following income for the P.Y. 2020-21:

Particulars	₹
Income from the activity of owning and maintaining the race horses	75,000
Income from textile business	85,000
Brought forward textile business loss (relating to A.Y. 2020-21)	50,000
Brought forward loss from the activity of owning and maintaining the race horses (relating to A.Y. 2018-19)	96,000

What is the total income in the hands of Mr. D for the A.Y. 2021-22?

Solution:

Total income of Mr. D for the A.Y. 2021-22

Particulars	₹	₹
Income from the activity of owning and maintaining race horses	75,000	
Less: Brought forward loss from the activity of owning and maintaining race horses	96,000	
Loss from the activity of owning and maintaining race horses to be carried forward to A.Y. 2022-23	(21,000)	
Income from textile business	85,000	
Less: Brought forward business loss from textile business.	50,000	35,000
Total income		35,000

Note: Loss from the activity of owning and maintaining race horses cannot be set-off against any other source/head of income.

5. Mr. E has furnished his details for the A.Y. 2021-22 as under:

Particulars	₹
Income from salaries (computed)	1,50,000
Income from speculation business	60,000
Loss from non-speculation business	(40,000)
Short term capital gain	80,000
Long term capital loss of A.Y. 2019-20	(30,000)
Winning from lotteries (Gross)	20,000

What is the taxable income of Mr. E for the A.Y. 2021-22?

Solution:

Computation of taxable income of Mr. E for the A.Y. 2021-22

Particulars	₹	₹
Income from salaries		1,50,000
Income from speculation business	60,000	
Less : Loss from non-speculation business	(40,000)	20,000
Short-term capital gain		80,000
Winnings from lotteries		20,000
Taxable income		2,70,000

Note: Long term capital loss can be set off only against long term capital gain. Therefore, long term capital loss of ₹ 30,000 has to be carried forward to the next assessment year.

6. Compute the gross total income of Mr. F for the A.Y. 2021-22 from the information given below –

Particulars	₹
Income from house property (computed)	1,25,000
Income from business (before providing for depreciation)	1,35,000
Short term capital gains on sale of unlisted shares	56,000
Long term capital loss from sale of property (brought forward from A.Y. 2020-21)	(90,000)
Income from tea business	1,20,000
Dividends from Indian companies carrying on agricultural operations (Gross)	80,000
Current year depreciation	26,000
Brought forward business loss (loss incurred six years ago)	(45,000)

Solution:

Gross Total Income of Mr. F for the AY 2021-22

Particulars	₹	₹
Income from house property (Computed)		1,25,000
Income from business		
Profits before depreciation	1,35,000	
Less: Current year depreciation	26,000	
Less: Brought forward business loss	45,000	
	64,000	
Income from tea business (40% is business income)	48,000	1,12,000
Capital gains		
Short term capital gains		56,000
Income from Other Sources		
Dividend income (taxable in the hands of shareholders)		80,000
Gross Total Income		3,73,000

Note:

- (1) Dividend from Indian companies is fully taxable in the hands of shareholders at normal rates of tax.
- (2) 60% of the income from tea business is treated as agricultural income and therefore, exempt from tax;
- (3) Long-term capital loss can be set-off only against long-term capital gains. Therefore, long-term capital loss of ₹ 90,000 brought forward from A.Y. 2020-21 cannot be set-off in the A.Y. 2021-22, since there is no long-term capital gains in that year. It has to be carried forward for set-off against long-term capital gains, if any, during A.Y. 2022-23.

7. Mr. Soohan submits the following details of his income for the assessment year 2021-22:

Particulars	₹
Income from salary	3,00,000
Loss from let out house property	(-) 40,000
Income from sugar business	50,000
Loss from iron ore business b/f (discontinued in P.Y. 2015-16)	(-) 1,20,000
Short term capital loss	(-) 60,000
Long term capital gain	40,000
Dividend	5,000
Income received from lottery winning (Gross)	50,000
Winnings from card games (Gross)	6,000
Agricultural income	20,000
Short-term capital loss under section 111A	(-) 10,000
Bank interest on Fixed deposit	5,000

Calculate gross total income and losses to be carried forward.

Solution:

Computation of Gross Total Income of Mr. Soohan for the A.Y. 2021-22

Particulars	₹	₹
Salaries		
Income from salary	3,00,000	
Less: Loss from house property set-off against salary income as per section 71	(40,000)	2,60,000
Profits and gains of business or profession		
Income from sugar business	50,000	
Less: Brought forward loss from iron-ore business set-off as per section 72(1)	(50,000)	Nil
Balance business loss of ₹ 70,000 of P.Y. 2015-16 to be carried forward to A.Y. 2022-23		
Capital gains		
Long term capital gain	40,000	
Less: Short term capital loss set-off	(40,000)	Nil
Balance short-term capital loss of ₹ 20,000 to be carried forward		
Short-term capital loss of ₹ 10,000 under section 111A also to be carried forward		
Income from other sources		
Dividend (fully taxable in the hands of shareholders)	5,000	
Winnings from lottery	50,000	
Winnings from card games	6,000	
Bank interest	5,000	66,000
Gross Total Income		3,26,000
Losses to be carried forward to A.Y. 2022-23		
Loss of iron-ore business (₹ 1,20,000 – ₹ 50,000)	70,000	
Short term capital loss (₹ 20,000 + ₹ 10,000)	30,000	

Notes:

1. Agricultural income is exempt under section 10(1)
2. It is presumed that loss from iron-ore business relates to P.Y. 2015-16, the year in which the business was discontinued.

8. Mr. Batra furnishes the following details for year ended 31.03.2021:

Particulars	₹
Short term capital gain	1,40,000
Loss from speculative business	60,000
Long term capital gain on sale of land	30,000
Long term capital loss on sale of unlisted shares	1,00,000
Income from business of textile (after allowing current year depreciation)	50,000
Income from activity of owning and maintaining race horses	15,000
Income from salary (computed)	1,00,000
Loss from house property	40,000

Following are the brought forward losses:

- (i) Losses from activity of owning and maintaining race horses-pertaining to A.Y. 2018-19 ₹ 25,000.
- (ii) Brought forward loss from business of textile ₹ 60,000 - Loss pertains to A.Y. 2013-14.

Compute gross total income of Mr. Batra for the Assessment Year 2021-22. Also determine the losses eligible for carry forward to the Assessment Year 2022-23.

Solution:

Computation of Gross Total Income of Mr. Batra for the A.Y. 2021-22

Particulars	₹	₹
Salaries	1,00,000	
Less: Current year loss from house property	(40,000)	60,000
Profit and gains of business or profession		
Income from textile business	50,000	
Less: Loss from textile business brought forward from A.Y. 2013-14	60,000	
Balance business loss of A.Y. 2013-14 [See Note 1]	(10,000)	NIL
Income from the activity of owning and maintaining race horses	15,000	
Less: Loss from activity of owning and maintaining race horses brought forward from A.Y. 2018-19	25,000	
Loss to be carried forward to A.Y. 2022-23 [See Note 2]	(10,000)	NIL
Capital Gain		
Short term capital gain		1,40,000
Long term capital gain on sale of land	30,000	
Less: Long term capital loss on sale of unlisted shares	1,00,000	
Loss to be carried forward to A.Y. 2022-23 [See Note 3]	(70,000)	NIL
Gross Total Income		2,00,000

Losses to be carried forward to A.Y. 2022-23

Particulars	₹
Current year loss from speculative business [See Note-4]	60,000
Current year long term capital loss on sale of unlisted shares	70,000
Loss from activity of owning and maintaining of race horse pertaining to A.Y. 2018-19	10,000

Notes:-

- (1) As per section 72(3), business loss can be carried forward for a maximum of eight assessment years immediately succeeding the assessment year for which the loss was first computed. Since the eight year period for carry forward of business loss of A.Y. 2013-14 expired in the A.Y. 2021-22, **the balance unabsorbed business loss of ₹ 10,000 cannot be carried forward to A.Y. 2022-23.**
- (2) As per section 74A(3), the loss incurred on maintenance of race horses cannot be set-off against income from any source other than the activity of owning and maintaining race horses. Such loss can be carried forward for a maximum period of 4 assessment years.
- (3) Long-term capital loss on sale of unlisted shares can be set-off against long- term capital gain on sale of land. The balance loss of ₹ 70,000 cannot be set- off against short term capital gain or against any other head of income. The same has to be carried forward for set-off against long-term capital gain of the subsequent assessment year. Such long-term capital loss can be carried forward for a maximum of eight assessment years.
- (4) Loss from speculation business cannot be set-off against any income other than profit and gains of another speculation business. Such loss can, however, be carried forward for a maximum of four years as per section 73(4) to be set- off against income from speculation business.

9. **Important:** Mr. A furnishes you the following information for the year ended 31.03.2021:

	(₹)
(i) Income from plying of vehicles (computed as per books) (He owned 5 light goods vehicle throughout the year)	3,20,000
(ii) Income from retail trade of garments (Computed as per books) (Sales turnover ₹ 1,35,70,000) Mr. A had declared income on presumptive basis under section 44AD for the first time in A.Y. 2020-21. Assume 10% of the turnover during the previous year 2020-21 was received in cash and balance through A/c payee cheque and all the payments in respect of expenditure were also made through A/c payee cheque or debit card.	7,50,000
(iii) He has brought forward depreciation relating to A.Y. 2019-20	1,00,000

Compute taxable income of Mr. A and his tax liability for the assessment year 2021-22 with reasons for your computation. **Assuming that he does not opt for section 115BAC.**

Solution:

Computation of total income and tax liability of Mr. A for the A.Y. 2021-22

Particulars	₹
Income from retail trade – as per books (See Note 1 below)	7,50,000
Income from plying of vehicles – as per books (See Note 2 below)	3,20,000
	10,70,000
Less : Set off of brought forward depreciation relating to A.Y. 2019-20	1,00,000
Total income	9,70,000
Tax liability	1,06,500
Add: Health and Education cess @4%	4,260
Total tax liability	1,10,760

Note:

1. **Income from retail trade:** Presumptive business income under section 44AD is ₹ 8,41,340 i.e., 8% of ₹ 13,57,000, being 10% of the turnover received in cash and 6% of ₹ 1,22,13,000, being the amount of sales turnover received through A/c payee cheque. However, the income computed as per books is ₹ 7,50,000 which is to be further reduced by the amount of unabsorbed depreciation of ₹ 1,00,000. **Since the income computed as per books is lower than the income deemed under section 44AD, the assessee can adopt the income as per books.**

However, if he does not opt for presumptive taxation under section 44AD, he has to get his books of accounts audited under section 44AB, since his turnover exceeds ₹ 1 crore **(the enhanced limit of ₹ 5 crore would not available, since more than 5% of the turnover is received in cash)**. Also, his case would be falling under section 44AD(4) and hence tax audit is mandatory. It may further be noted that he cannot opt for section 44AD for next five A.Ys, if he does not opt for section 44AD this year.

2. **Income from plying of light goods vehicles:** Income calculated under section 44AE(1) would be ₹ 7,500 x 12 x 5 which is equal to ₹ 4,50,000. However, the income from plying of vehicles as per books is ₹ 3,20,000, which is lower than the presumptive income of ₹ 4,50,000 calculated as per section 44AE(1). Hence, the assessee can adopt the income as per books i.e. ₹ 3,20,000, provided he maintains books of account as per section 44AA and gets his accounts audited and furnishes an audit report as required under section 44AB.

It is to be further noted that in both the above cases, had presumptive income provisions been opted, all deductions under sections 30 to 38, including depreciation would have been deemed to have been given full effect to and no further deduction under those sections would be allowable.

If the assessee opted for income to be assessed on presumptive basis, his total income would be as under:

Particulars	₹
Income from retail trade under section 44AD [₹ 13,57,000 @ 8% plus ₹ 1,22,13,000 @6%]	8,41,340
Income from plying of light goods vehicles under section 44AE [₹ 7,500 x 12 x 5]	4,50,000
Less: Set off of brought forward depreciation – not possible as it is deemed that it has been allowed and set off	12,91,340 Nil
Total income	12,91,340
Tax thereon	1,99,902
Add : Health and Education cess @4%	7,996
Total tax liability	2,07,898
Total tax liability (rounded off)	2,07,900

10. Mr. Aditya furnishes the following details for the year ended 31-03-2021:

Particulars	Amount (₹)
Loss from speculative business A	25,000
Income from speculative business B	5,000
Loss from specified business covered under section 35AD	20,000
Income from salary (computed)	3,00,000
Loss from house property	2,50,000
Income from trading business	45,000
Long-term capital gain from sale of urban land	2,00,000
Long-term capital loss on sale of shares (STT not paid)	75,000
Long-term capital loss on sale of listed shares in recognized stock exchange (STT paid at the time of acquisition and sale of shares)	1,02,000

Following are the brought forward losses:

- Losses from owning and maintaining of race horses pertaining to A.Y. 2019-20 ₹ 2,000.
- Brought forward loss from trading business ₹ 5,000 relating to A.Y. 2016-17. Compute the total income of Mr. Aditya and show the items eligible for carry forward.

Solution:

Computation of total income of Mr. Aditya for the A.Y. 2021-22

Particulars	₹	₹
Salaries		
Income from Salary	3,00,000	
Less: Loss from house property set-off against salary income as per section 71(3A)	<u>2,00,000</u>	1,00,000
Loss from house property to the extent not set off i.e. ₹ 50,000 (Rs2,50,000 – Rs2,00,000) to be carried forward to AY 2022-23	50,000	
Profits and gains of business or profession		
Income from trading business	45,000	
Less: Brought forward loss from trading business of A.Y. 2016-17 can be set off against current year income from trading business as per section 72(1), since the eight year time limit as specified under section 72(3), within which set-off is permitted, has not expired.	5,000	40,000

Income from speculative business B	5,000	
Less: Loss from speculative business A set-off as per section 73(1)	25,000	
Loss from speculative business A to be carried forward to A.Y.2022-23 as per section 73(2)	20,000	
Loss from specified business covered under section 35AD to be carried forward for set-off against income from specified business as per section 73A.	20,000	
Capital Gains		
Long term capital gain on sale of urban land	2,00,000	
Less: Long term capital loss on sale of shares (STT not paid) set-off as per section 74(1)]	75,000	
Less: Long-term capital loss on sale of listed shares on which STT is paid can also be set-off as per section 74(1), since long-term capital arising on sale of such shares is taxable under section 112A	1,02,000	23,000
Total Income		1,63,000

Items eligible for carried forward to A.Y. 2022-23

Particulars	₹
<p><u>Loss from House property</u> As per section 71(3A), Loss from house property can be set-off against any other head of income to the extent of ₹ 2,00,000 only.</p> <p>As per section 71B, balance loss not set-off can be carried forward to the next year for set-off against income from house property of that year. It can be carried forward for a maximum of eight assessment years i.e., upto A.Y. 2029-30, in this case.</p>	50,000
<p><u>Loss from speculative business A</u> Loss from speculative business can be set-off only against profits from any other speculation business. As per section 73(2), balance loss not set-off can be carried forward to the next year for set-off against speculative business income of that year. Such loss can be carried forward for a maximum of four assessment years i.e., upto A.Y. 2025-26, in this case, as specified under section 73(4).</p>	20,000
<p><u>Loss from specified business</u> Loss from specified business under section 35AD can be set-off only against profits of any other specified business. If loss cannot be so set-off, the same has to be carried forward to the subsequent year for set off against income from specified business, if any, in that year. As per section 73A(2), such loss can be carried forward indefinitely for set-off against profits of any specified business .</p>	20,000
<p><u>Loss from the activity of owning and maintaining race horses Losses</u> Loss from the activity of owning and maintaining race horses Losses from the activity of owning and maintaining race horses (current year or brought forward) can be set-off only against income from the activity of owning and maintaining race horses. If it cannot be so set-off, it has to be carried forward to the next year for set-off against income from the activity of owning and maintaining race horses, if any, in that year. It can be carried forward for a maximum of four assessment years, i.e., upto A.Y.2023-24, in this case, as specified under section 74A(3).</p>	2,000

11. Mr. Garg, a resident individual, furnishes the following particulars of his income and other details for the previous year 2020-21.

	Particulars	₹
(1)	Income from Salary (computed)	15,000
(2)	Income from business	66,000
(3)	Long term capital gain on sale of land	10,800
(4)	Loss on maintenance of race horses	15,000
(5)	Loss from gambling	9,100

The other details of unabsorbed depreciation and brought forward losses pertaining to Assessment Year 2020-21 are as follows:

	Particulars	₹
(1)	Unabsorbed depreciation	11,000
(2)	Loss from Speculative business	22,000
(3)	Short term capital loss	9,800

Compute the Gross total income of Mr. Garg for the Assessment Year 2021-22 and the amount of loss, if any that can be carried forward or not.

Solution:

Computation of Gross Total Income of Mr. Garg for the A.Y. 2021-22

Particulars	₹	₹
(i) Income from salary		15,000
(ii) Profits and gains of business or profession	66,000	
Less: Unabsorbed depreciation brought forward from A.Y.2020-21 (Unabsorbed depreciation can be set-off against any head of income other than "salary")	<u>11,000</u>	55,000
(iii) Capital gains		
Long-term capital gain on sale of land	10,800	
Less: Brought forward short-term capital loss		
[Short-term capital loss can be set-off against both short-term capital gains and long-term capital gains as per section 74(1)]	9,800	1,000
Gross Total Income		71,000

Amount of loss to be carried forward to A.Y. 2022-23

	Particulars	₹
(1)	Loss from speculative business [to be carried forward as per section 73] [Loss from a speculative business can be set off only against income from another speculative business. Since there is no income from speculative business in the current year, the entire loss of ₹ 22,000 brought forward from A.Y. 2020-21 has to be carried forward to A.Y. 2022-23 for set-off against speculative business income of that year. It may be noted that speculative business loss can be carried forward for a maximum of four years as per section 73(4), i.e., upto A.Y. 2024-25]	22,000
(2)	Loss on maintenance of race horses [to be carried forward as per section 74A] [As per section 74A(3), the loss incurred in the activity of owning and maintaining race horses in any assessment year cannot be set-off against income from any other source other than the activity of owning and maintaining race horses. Such loss can be carried forward for a maximum of four assessment years i.e., upto A.Y. 2025-26]	15,000
(3)	Loss from gambling can neither be set-off nor be carried forward.	

12. The following are the details relating to Mr. Srivatsan, a resident Indian, aged 57, relating to the year ended 31.3.2021:

Particulars	₹
Income from salaries (computed)	2,20,000
Loss from house property	1,90,000
Loss from cloth business	2,40,000
Income from speculation business	30,000
Loss from specified business covered by section 35AD	20,000
Long-term capital gains from sale of urban land	2,50,000
Loss from card games	32,000
Income from betting (Gross)	45,000
Life Insurance Premium paid (10% of the capital sum assured)	45,000

Compute the total income and show the items eligible for carry forward.

Solution:

Computation of total income of Mr. Srivatsan for the A.Y. 2021-22

Particulars	₹	₹
Salaries		
Income from salaries	2,20,000	
Less: Loss from house property	1,90,000	30,000
Profits and gains of business or profession		
Income from speculation business	30,000	
Less: Loss from cloth business set off	30,000	Nil
Capital gains		
Long-term capital gains from sale of urban land	2,50,000	
Less: Loss from cloth business set off	2,10,000	40,000
Income from other sources		

SETOFF OF LOSSES**SATC****16C.12**

Income from betting		45,000
Gross Total Income		1,15,000
Less: Deduction under section 80C (life insurance premium paid)		30,000
Total income		85,000

Losses to be carried forward:

Particulars	₹
(1) Loss from cloth business (₹ 2,40,000 – ₹ 30,000 – ₹ 2,10,000)	Nil
(2) Loss from specified business covered by section 35AD	20,000

Notes:

- (i) Loss from specified business covered by section 35AD can be set-off only against profits and gains of any other specified business. Therefore, such loss cannot be set off against any other income. The unabsorbed loss has to be carried forward for set-off against profits and gains of any specified business in the following year.
- (ii) Business loss cannot be set off against salary income. However, the balance business loss of ₹ 2,10,000 (₹ 2,40,000 – ₹ 30,000 set-off against income from speculation business) can be set-off against long-term capital gains of ₹ 2,50,000 from sale of urban land. Consequently, the taxable long-term capital gains would be ₹ 40,000.
- (iii) Loss from card games can neither be set off against any other income, nor can be carried forward.
- (iv) For providing deduction under Chapter VI-A, gross total income has to be reduced by the amount of long-term capital gains and casual income. Therefore, the deduction under section 80C in respect of life insurance premium paid has to be restricted to ₹ 30,000 [i.e., Gross Total Income of ₹ 1,15,000 – ₹ 40,000 (LTCG) – ₹ 45,000 (Casual income)].
- (v) Income from betting is chargeable at a flat rate of 30% under section 115BB and no expenditure or allowance can be allowed as deduction from such income, nor can any loss be set-off against such income.

13. Mr. Rajat submits the following information for the financial year ending 31st March, 2021. He desires that you should:
- (a) Compute the total income and
 - (b) Ascertain the amount of losses that can be carried forward.

Particulars	₹
(i) He has two houses:	
(a) House No. I – Income after all statutory deductions	72,000
(b) House No. II – Current year loss	(30,000)
(ii) He has three proprietary businesses:	
(a) Textile Business:	
(i) Discontinued from 31 st October, 2020 – Current year loss	40,000
(ii) Brought forward business loss of A.Y. 2016-17	95,000
(b) Chemical Business:	
(i) Discontinued from 1 st March, 2019 – hence no profit/loss	Nil
(ii) Bad debts allowed in earlier years recovered during this year	35,000
(iii) Brought forward business loss of A.Y. 2017-18	50,000
(c) Leather Business: Profit for the current year	1,00,000
(d) Share of profit in a firm in which he is partner since 2007	16,550
(iii) (a) Short-term capital gain	60,000
(b) Long-term capital loss	35,000
(iv) Contribution to LIC towards premium	10,000

Solution:

Computation of total income of Mr. Rajat for the A.Y. 2021-22

Particulars	₹	₹
1. Income from house property		
House No.1	72,000	
House No.2	(-) 30,000	42,000
2. Profits and gains of business or profession		
Profit from leather business	1,00,000	
Bad debts recovered taxable under section 41(4)	35,000	
Less: Current year loss of textile business	1,35,000	
	(-) 40,000	
Less: Brought forward business loss of textile business for A.Y.2016-17 set off against the business income of current year	95,000	
	95,000	Nil
3. Capital Gains		
Short-term capital gain		60,000
		1,02,000
Gross Total Income		
Less: Deduction under Chapter VI-A		10,000
Under section 80C – LIC premium paid		92,000
Total Income		

Statement of losses to be carried forward to A.Y. 2022-23

Particulars	₹
Business loss of A.Y. 2017-18 to be carried forward under section 72	50,000
Long term capital loss of A.Y. 2021-22 to be carried forward under section 74	35,000

Notes:

- (1) Share of profit from firm of ₹ 16,550 is exempt under section 10(2A).
- (2) Long-term capital loss cannot be set-off against short-term capital gains. Therefore, it has to be carried forward to the next year to be set-off against long-term capital gains of that year.

14. Ms. Geeta, a resident individual, provides the following details of her income / losses for the year ended 31.3.2021:

- (i) Salary received as a partner from a partnership firm ₹ 7,50,000. The same was allowed to the firm.
- (ii) Loss on sale of shares listed in BSE ₹ 3,00,000. Shares were held for 15 months and STT paid on sale and acquisition.
- (iii) Long-term capital gain on sale of land ₹ 5,00,000.
- (iv) ₹ 51,000 received in cash from friends in party.
- (v) ₹ 55,000, received towards dividend on listed equity shares of domestic companies.
- (vi) Brought forward business loss of assessment year 2018-19 ₹ 12,50,000.

Compute gross total income of Ms. Geeta for the Assessment Year 2021-22 and ascertain the amount of loss that can be carried forward.

Solution:

Computation of Gross Total Income of Ms. Geeta for the Assessment Year 2021-22

Particulars	₹
<u>Profits and gains of business and profession</u>	
Salary received as a partner from a partnership firm is taxable under the head "Profits and gains of business and profession"	7,50,000
Less: Brought forward business loss of Assessment Year 2019-20 to be set-off against business income	7,50,000
<u>Capital Gains</u>	
Long term capital gain on sale of land	5,00,000
Less: Long-term capital loss on shares on STT paid (See Note 2)	<u>3,00,000</u>
<u>Income from other sources</u>	
Cash gift received from friends - since the value of cash gift exceeds ₹ 50,000, the entire sum is taxable	51,000
Dividend received from a domestic company is fully taxable in the hands of shareholders	<u>55,000</u>
Gross Total Income	3,06,000

Notes:

- 1. Balance brought forward business loss of assessment year 2019-20 of ₹ 5,00,000 has to be carried forward to the next year.
- 2. Long-term capital loss on sale of shares on which STT is paid at the time of acquisition and sale can be set-off against long-term capital gain on sale of land since long-term capital gain on sale of shares (STT paid) is taxable under section 112A. Therefore, it can be set-off against long-term capital gain on sale of land as per section 70(3).

15. Mr. P, a resident individual, furnishes the following particulars of his income and other details for the previous year 2020-21:

Sl. No.	Particulars	₹
(i)	Income from salary (computed)	18,000
(ii)	Net annual value of house property	70,000
(iii)	Income from business	80,000
(iv)	Income from speculative business	12,000
(v)	Long term capital gain on sale of land	15,800
(vi)	Loss on maintenance of race horse	9,000
(vii)	Loss on gambling	8,000

Depreciation allowable under the Income-tax Act, 1961, comes to ₹ 8,000, for which no treatment is given above.

The other details of unabsorbed depreciation and brought forward losses (pertaining to A.Y. 2020-21) are:

Sl. No.	Particulars	₹
(i)	Unabsorbed depreciation	9,000
(ii)	Loss from speculative business	16,000
(iii)	Short term capital loss	7,800

Compute the gross total income of Mr. P for the Assessment year 2021-22, and the amount of loss that can or cannot be carried forward.

Solution:

Computation of Gross Total Income of Mr. P for the A.Y. 2021-22

Particulars		₹	₹
(i)	Income from salary		18,000
(ii)	Income from House Property	70,000	
	Net Annual Value	21,000	
	Less : Deduction under section 24 (30% of ₹ 70,000)		49,000
(iii)	Income from business and profession		
(a)	Income from business	80,000	
	Less : Current year depreciation	8,000	
	Less : Unabsorbed depreciation	72,000	
		9,000	63,000
(b)	Income from speculative business	12,000	
	Less : Brought forward loss from speculative business (Balance loss of ₹ 4,000 (i.e. ₹ 16,000 – ₹ 12,000) can be carried forward to the next year)	12,000	Nil
(iv)	Income from capital gain		
	Long-term capital gain on sale of land	15,800	
	Less: Brought forward short-term capital loss	7,800	
			8,000
Gross total income			1,38,000

Amount of loss to be carried forward to the next year

Particulars	₹
Loss from speculative business (to be carried forward as per section 73)	4,000
Loss on maintenance of race horses (to be carried forward as per section 74A)	9,000

Notes:

- (i) Loss on gambling can neither be set-off nor be carried forward.
- (ii) As per section 74A(3), the loss incurred on maintenance of race horses cannot be set-off against income from any other source other than the activity of owning and maintaining race horses. Such loss can be carried forward for a maximum period of 4 assessment years.
- (iii) Speculative business loss can set off only against income from speculative business of the current year and the balance loss can be carried forward to A.Y. 2022-23. It may be noted that speculative business loss can be carried forward for a maximum of four years as per section 73(4).

16. A discloses the following incomes from business or profession for the PY 2020-21:

	₹
(i) Profit from A business	7,00,000
(ii) Loss from B business	(-) 3,00,000
(iii) Loss from profession C	(-) 3,50,000
(iv) Profit from speculation business – P	3,00,000
(v) Loss from speculation business – Q	(-) 4,00,000

Determine the Income from Business or Profession for the AY 2021-22.

Solution:

Income from Business or Profession for the AY 2021-22:

Particulars	₹
(i) A	7,00,000
(ii) B	(-) 3,00,000
(iii) C	(-) 3,50,000
Total Income from Non Speculation Business and Profession	50,000
Income from Speculation Business	
(i) P	3,00,000
(ii) Q	(-) 4,00,000
Loss from Speculation Business	(-) 1,00,000

Loss cannot be set-off against the income from business profit, though both of them fall under the same head of income. Thus, taxable business profits for the AY 2021-22 is ₹ 50,000.

The speculation loss will be carried forward for future set-off for 4 AYs, immediately succeeding the Assessment Year for which it was first computed [Sec. 73(4)]. The time-limit of 4 years is applicable from the AY 2022-23 and subsequent year.

17. The following are the broad details pertaining to Excel Pvt. Ltd., for the AY 2020-21 (all amounts are ₹ in lacs):

From specified business covered by section 35AD: **Loss** 12

From other non-speculation business:

Unabsorbed depreciation 8
 Business loss excluding depreciation 7

The return of income had been filed on 11.01.2021

For the assessment year 2021-22, the broad position is as under:

From specified business covered by section 35AD: **Profit** 9

From other non-speculation business:

Depreciation of FY 2020-21 alone 3
 Business income before depreciation 22

How will the brought forward items be set off in the assessment year 2021-22 and what is the business income for the assessment year 2021-22?

Answer:

Set off and carry forward of business loss

In terms of sec 80 and 139(3), for carrying forward business loss covered by sec 72 & section 73A (Specified Business), the return of income should be filed within the due date as per sec 139(1). Hence the assessee cannot carry forward the non-speculation business loss of ₹ 7 lacs & loss of ₹ 12 lakhs from

specified businesses.

Unabsorbed depreciation is not covered by above and hence the unabsorbed depreciation of ₹ 8 lacs can be carried forward and the same will be deemed to be current depreciation.

Income for AY 2021-22:	(₹ in lacs)
From specified business covered by section 35AD : Profit	9
Less: brought forward loss from specified business set off	NIL
Balance income	9
From other non-speculation business:	
Business income before depreciation	22
Less: Current depreciation as per sec 32(2) [3+8]	11
Balance income	11
Business income chargeable to tax	20

18. Following details pertaining to Mr. Vaamana, a resident Indian aged 58 years, are furnished to you.

Particulars	₹
(i) Salary received from ABC Ltd.	7,30,000
(ii) Profession tax paid by employer	12,000
(iii) Loss from own business not covered by section 35AD	2,20,000
(iv) Long term capital gains from sale of residential house property	1,20,000
(v) Winning from T.V. games show (Net of TDS ₹ 30,000)	70,000
Expenses incurred for participating in the show	5,000
(vi) Loss in card games	12,000
(vii) Loss from agricultural lands in India	32,000

Answer:

**Computation of Total Income Mr. Vaamana
Assessment Year 2021-22**

Particulars	Amount (₹)	Amount (₹)
Salaries		
Received from employer	7,30,000	
Profession tax paid by employer (to be treated as perquisite)	<u>12,000</u>	
Gross Salary:	7,42,000	
Less: Statutory Deduction u/s 16(ia)	50,000	
Professional tax paid	<u>12,000</u>	
Income chargeable under this head		6,80,000
Profits and gains of business or profession		
Loss from non-speculative business not covered by sec-35AD (Cannot be set off against salaries)	2,20,000	
Capital gains		
Long-term capital gains from sale of residential house property	1,20,000	
Business loss can be set off against LTCG Hence chargeable LTCG is	1,20,000	NIL
Balance business loss ₹ 1 lac to be carried forward		
Income from other sources		
(a) Income from T.V. Games show Gross		
No expenditure is allowable from this income u/s 58(4) (No other loss can be set off against this winnings)	1,00,000	
(b) Loss from card games - ₹ 12,000		
(Can neither be set off, nor carried forward)	NIL	
Income chargeable under this head		1,00,000
Gross total income/Total income		7,80,000

Note:

1. Agricultural income being net loss, the same has to be ignored.

19. *Vivitha Logistics Ltd., engaged in the business of logistics support and infrastructural activities (started on 12.5.2018), has set up a warehouse facility for sugar storage during the current year.*

The particulars of investment relating to this warehouse facility business are as under:

	(₹ in lacs)
<i>Land</i>	40
<i>Building</i>	100
<i>Machinery</i>	200
<i>Non-compete fee paid to machinery manufacturer</i>	60
<i>Profit from warehouse facility (covered by section 35AD) before depreciation</i>	120

The assessee has earned profits of ₹ 150 lacs from the business of infrastructural activity (covered by section 35AD of the Income-tax Act, 1961), ₹ 40 lacs from the logistics support business and ₹ 2 lacs as income from other sources.

Determine the total income of the assessee and the loss, if any, to be carried forward, as per normal provisions. Notes on treatment of each item above, should form part of your answer.

Logistics support business is not covered by section 35AD. Where the return of income is being filed on 3rd December, 2021, will the right of carry forward of loss be affected?

Answer:

Computation of loss from specified business

As per section 35AD of the Income-tax Act, 1961,

- a) the assessee can set off the entire capital expenditure against the profits from this business. However, investment in **land and goodwill will not be considered.**
- b) Deduction will not be available under any other provision. **This means that depreciation will not be available.**

The assessee can set off the income from “specified business” against income from any other “specified business” but not against other business profit. **Such unabsorbed business loss has to be carried forward under section 73A.**

The problem clearly states that the **warehouse facility business and infrastructure facility business run by the assessee are covered by the term “specified business” of section 35AD.**

In the light of above, total income computed is as under:

	(₹ in lacs)
Profits and gains of business or profession	
(i) Logistics support business	40
(ii) Specified business covered by Sec 35AD	
(a) From infrastructural activities	150
(b) From warehouse facility set off	(-) 150
Income from specified business	Nil
(Balance ₹ 90 lacs is carried forward u/s 73A)	
Chargeable income under this head	40
Income from other sources	
Interest from bank deposit	<u>2</u>
Total income	42

Working Note:

Income from Warehousing Facility business covered by sec 35AD

Profit from business	120
Less : Capital expenditure deductible in full	
Building	100
Machinery	200
Non-compete fee paid to machinery manufacturer	<u>60</u>
Total	360
Loss from cold chain facility business	240

Carry forward of loss u/s 73A

The need for filling of return within the time stipulated u/s 139(1) enjoined by sec 139(3) is for the purpose of carrying forward losses under sections 72(1), 73(2), 73A, 74(3) or 74A(3).

Hence filling the return of income on 3rd December, 2021 will affect the right of carry forward of loss as per section 73A.

20. Following are the particulars of the income of Mr. Kapil for the PY 2020-21:

	₹
1. Income from House Property	
(a) Property R	(+) 1,12,000
(b) Property J	(-) 1,20,000
2. Profits and Gains from Business:	
(A) Non-speculation:	
(i) Business X	2,40,000
(ii) Business Y	(-) 1,50,000
(B) Speculation:	
(i) Silver	1,40,000
(ii) Bullion	(-) 10,000
3. Capital Gains:	
(i) Long-term Capital Gains	(+) 2,30,000
(ii) Short-term Loss	(-) 1,10,000
4. Income from Other Sources:	
(i) Card games-loss	(-) 10,000
(ii) From the activity of owing and maintaining race horses:	
(a) Loss at Mumbai	(-) 50,000
(b) Profit at Kolkata	(+) 40,000
(iii) Dividend from Indian companies	20,000
(iv) Income by letting out plant and machinery	2,22,000
 The following losses have been carried forward:	
(i) Long-term Capital Loss from the Assessment Year 2015-16	18,000
(ii) Loss from silver speculation from the Assessment Year 2018-19 and which was discontinued in the Assessment Year 2019-20	25,000

Compute the Gross Total Income for the Assessment Year 2021-22.

Answer:

Computation of Gross Total Income for the Assessment Year 2021-22

Particulars	₹	₹
1. Income from House Property (+1,12,000 – 1,20,000)		(-) 8,000
2. Profits from speculation:		
(i) Profit from Silver Business	1,40,000	
Less: Current year loss from bullion	(-) 10,000	
	<u>1,30,000</u>	
Less: Carried forward silver speculative loss	(-) 25,000	
Surplus from Speculation Business	1,05,000	
(ii) Add: Business profit from X business	2,40,000	
(iii) Less: Business loss from Y business	(-) 1,50,000	1,95,000
3. Capital Gains:		
Long-term Capital Gains	2,30,000	
Less : Short-term Capital Loss	(-) 1,10,000	
Less: Brought Forward LTCL	(-) 18,000	1,02,000
4. Income from Other Sources:		
(i) Income by letting out plant and machinery		2,22,000
(ii) Card game-loss (Neither it can be set-off nor it can be carried forward)	10,000	
(iii) Profit from race horses at Kolkata	(+) 40,000	
Less : Loss from race horses at Mumbai	(-) 50,000	
Less : to be carried forward for next four Assessment Year	(-) 10,000	
(iv) Dividend from Indian companies		<u>20,000</u>
GTI or total income as there is no deduction available from GTI		5,31,000

Unabsorbed business loss may be set-off against the income of any other head except 'salaries' and 'winnings from lottery, card games, crossword puzzle, betting on race horses', etc.

21. Mr. Dey furnishes the following particulars of his income for the Previous Year 2021-22:

Particulars	₹
Unit "A": Business loss	(-) 4,00,000
Unabsorbed depreciation	(-) 2,00,000
Unit "B": Business profit	10,00,000
Income from House Property	2,00,000
Apart from the above mentioned, the following are unabsorbed Carried forward losses and allowance:	
Unit "C" business was discontinued on 31-12-2014:	(-) 3,00,000
1. Business loss	(-) 2,00,000
2. Unabsorbed depreciation	
These are occurred during the Previous Year 2014-15	
Unit "D" business was discontinued on 1-3-2016:	
1. Business loss	(-) 3,00,000
2. Unabsorbed depreciation	(-) 1,00,000
These are occurred during the Previous Year 2015-16	

Compute his total income for the Assessment Year 2021-22

Solution:

Computation of Total Income for the AY 2021-22

Particulars	₹	₹
Income from House Property		2,00,000
Business - Profession		
Profit of B Business	(+ 10,00,000	
Less: Business loss of A Business (Current Year)	(-) 4,00,000	
Depreciation of A Business (Current Year)	(-) 2,00,000	
	<u>(+ 4,00,000)</u>	4,00,000
Aggregated Income		6,00,000
Less: Carried forward business loss:		
✓ Loss of C Business to be set-off against business profits	(-) 3,00,000	
✓ Loss of D Business to be set-off against business profits	(-) 1,00,000	
✓ Unabsorbed depreciation to be setoff with HP Income	(-) 2,00,000	6,00,000
Total Income		Nil

Note: Where business loss and depreciation both are being carried forward, business loss has got priority, over depreciation. Unabsorbed depreciation is carried forward without time-limit & it can be setoff with HP income also.

22. Explain in brief about the treatment to be given in the following case under the Income-tax Act, 1961, for AY 2021-22:

A loss of ₹ 85,000 was sustained by Simran in the activity of owning and maintaining camels for races.

Answer:

Section 74A(3) lays down the provisions for set-off and carry forward of loss from the activity of owning and maintaining race horses. According to provisions of section 74A(3), the losses incurred by an assessee from the activity of owning and maintaining race horses cannot be set-off against the income from any other source other than the activity of owning and maintaining race horses. Since the scope of this section is confined to the activity of owning and maintaining race horses only, **therefore, set-off and carry forward of loss from the activity of owning and maintaining camels is not covered under section 74A(3).**

It is possible to take a view that the loss from the activity of owning and maintaining camels for races may be governed by section 72 **provided such activity amounts to business.** Accordingly, the loss from the activity of owning and maintaining of camels for races can be set-off against any income (other than income from salary) of current year and unadjusted amount shall be carried forward for set off against any business income for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.

23. An assessee sustained a loss under the head "Income from House Property" in the previous year relevant to the assessment year 2021-22, which could not be set off against income from any other head in that assessment year. The assessee did not furnish the return of loss within the time allowed u/s 139(1) in respect of the relevant assessment year. However, the assessee filed the return within the time allowed u/s 139(4). Can the assessee carry forward such loss for set-off against income from house property of the assessment year 2022-23?

Answer:

Section 139(3) stipulates that an assessee claiming carry forward of loss under the heads "Profits and gains of business or profession" or "Capital gains" should furnish the return of loss within the time stipulated under section 139(1). There is no reference to loss under the head "Income from house property" in section 139(3). The assessee, in the instant case, has filed the return showing loss from property within the time prescribed under section 139(4). The assessee is, therefore, entitled to carry forward such loss for set off against the income from house property of the subsequent assessment year.

Note: Loss u/s 71B and Section 32(2), can be carried forward even if the return of income has been filed after the due date u/s 139(1) but before the time limit u/s 139(4) for filing belated return.

24. "Short-term capital losses can be set off only against short-term capital gains. Discuss."

Answer:

Where the net result of computation in respect of any source falling under any head of income is a loss for any assessment year, the assessee is entitled to have the amount of such loss set off against income from another source under the same head of income for the same assessment year.

There is however an exception that the long term capital loss can be set off only against long term capital gains. **But the short term capital loss can be set against long term as well as short term capital gains.**

25. X carrying on a business as sole proprietor, died on 31st March, 2021. On his death, the same business was continued by his legal heirs, by forming a firm. As on 31st March 2021, a determined business loss of ₹ 5 lacs is to be carried forward under the Income-tax Act, 1961.

Does the firm consisting of all legal heirs of Mr. X, get a right to have this loss adjusted against its current income?

Answer:

Section 78(2) provides that where a person carrying on any business or profession has been succeeded in such capacity by another person, otherwise than by inheritance, then, the successor is not entitled to carry forward and set-off the loss of the predecessor against his income. This implies that generally, set-off of business losses should be claimed by the same person who suffered the loss and the only exception to this provision is when the business passes on to another person by inheritance.

The facts of case given in the question are similar to the case CIT v. Madhukant M. Mehta, where the Supreme Court has held that if the business is succeeded by inheritance, the legal heirs are entitled to the benefit of carry forward of the loss of the predecessor. Even if the legal heirs constitute themselves as a partnership firm, the benefit of carry forward and set off of the loss of the predecessor would be available to the firm.

In this case, the business of X was continued by his legal heirs after his death by constituting a firm. Hence, the exception contained in section 78(2) along with the decision of the Apex Court discussed above, would apply in this case. Therefore, the firm is entitled to carry forward the business loss of ₹ 5 lacs of X.

26. Subsequent to the demise of Mrs. X, her sons constituted a firm and ran the same business. Can the firm claim set off of unabsorbed business loss of late X?

Answer:

Where any person carrying on business or profession has succeeded in such capacity by another person otherwise than by inheritance, then the successor cannot have the loss of predecessor carried forward and set off against his income.

When the business is succeeded by inheritance, the legal heirs are entitled to the benefit of the loss of predecessor. ***Even if the legal heirs constitutes themselves as a partnership firm, the benefit of predecessor's loss should be made available to the firm.***

27. Raja, an individual was carrying on a business as sole proprietor. On his death, his legal heirs decided to continue the same business by forming a firm. At the time of death, Raja had a determined business loss of ₹ 3 lakhs, under the provisions of the Income-tax Act, to be carried forward. Does the firm, consisting of all the legal heirs of Raja, get a right to have this loss adjusted against its current income? Discuss.

Answer:

Under section 78, on death of an individual, if the legal heirs carry on the business of the individual by forming a Partnership, then the firm is entitled to carry forward the loss of individual. ***[Madhukant Mehta 247 ITR 805 (SC)].***

In the instant case, the carry forward business loss in the hands of late Mr. Raja can be set off against the income of the firm subject to the following conditions:

- The legal heirs are the only partners and no other outsiders are involved
- The business carried on belongs to the deceased assessee.

In view of the Supreme Court decision given above, they are entitled to carry forward and set off Mr. Raja's business loss of ₹ 3 lakhs.

28. M/s. JKLM, a firm, consists of four partners namely, J, K, L and M. They shared profits and losses equally during the year ended 31.3.2020. The assessed business loss of the firm for the assessment year 2020-21 which it is entitled to carry forward amounts to ₹ 3,60,000. A new deed of partnership was executed among J, K, L and M on 1.4.2020 in terms of which they agreed to share profits and losses in the ratio of 15:15:20:50 respectively.

Compute the amount of business loss relating to the assessment year 2020-21, which the firm is entitled to set off against its business income for the assessment year 2021-22.

The business income of the firm for the assessment year 2021-22 is ₹ 3,30,000. Your answer should be supported by reasons.

Answer:

The firm is entitled to set off its brought forward business loss amounting to ₹ 3,60,000 relating to the assessment year 2020-21 to the extent of ₹ 3,30,000 against its business income of ₹ 3,30,000 for the assessment year 2021-22, as per the provisions of section 72(1).

Section 78(1) which deals with carry forward and set-off of losses in the case of change of constitution of firm is applicable only where there is **retirement or death** of a partner. **It is not applicable to a case where there is a change in the ratio of sharing profits and losses amongst the existing partners.**

Therefore, section 78(1) is not applicable to the case of M/s. JKLM. The unabsorbed business loss of ₹ 30,000 relating to the assessment year 2020-21 will be carried forward further after its set-off against the business income of the assessment year 2021-22.

29. The business of Sia Ltd, an industrial undertaking was discontinued on 25th September, 2017 due to fire and the company had incurred the following business losses:

- Loss for Assessment Year 2018-19 - ₹ 4,00,000
- Brought forward business loss of Assessment Years 2014-15 to 2017-18 – ₹ 6,00,000

The above business is re-established on 25th December, 2020. What will be the treatment of the losses if the profit of assessment year 2021-22 is ₹ 5,00,000?

Solution:

Since the business is re-established within three years from the end of the previous year in which it was discontinued due to fire, the loss of ₹ 10,00,000 can be set off against ₹ 5,00,000 i.e. the income of the year in which it was re-established. **The balance loss of ₹ 5,00,000 can be carried forward for seven succeeding Assessment Years.**

30. On 1st April, 2020, Mr. A & Mrs. A purchased entire shares of M/s. Thakur Company Private Limited (not an eligible start-up) in which public are not substantially interested. The company had unabsorbed business loss and accumulated depreciation from earlier years. Accumulated non-speculative business losses — ₹ 3 lakhs, Unabsorbed Depreciation — ₹ 8 lakhs The company made sufficient profits during the Asst. year 2021-22 to accommodate above allowances.

(i) State the effect of changes of shareholders in the right of the company to carry forward the losses and unabsorbed depreciation for set off.

(ii) Is it different if the shares are acquired by Mr. A & Mrs. A by way of gift?

Answer:

(i) The effect of change in shareholding rights to carry forward and set off of business loss and unabsorbed depreciation are as follows:

M/s. Thakur Company Private Ltd is a closely held company. As per provisions of section 79 of income tax act, a closely held company will be entitled to carry forward and set off business losses provided the person beneficially holding 51 % of voting power on the following two dates are same.

(a) On the last day of the previous year in which loss was incurred.

(b) On the last date of the previous year in which the company wants to set off the brought forward loss.

That means to carry forward of loss, same person on the last day of the year loss are required to beneficially hold 51% of voting power on the last day of the year of setoff.

In the present case 100% beneficial holding on 31st March 2021 are not the same as on 31st March 2020 so the business loss of ₹ 3 lakhs can not be carry forward and set off against profit for the asst. year 2020-21. Provisions of sec. 79 as above is applicable only in case of carry forward and set off of business loss. Carry forward of unabsorbed depreciation stands in different footings and provisions of section 79 is not applicable.

So M/s Thakur Company Pvt. Ltd is eligible for set off unabsorbed depreciation.

(ii) Where a change in voting power takes place in a previous year on account of transfer of shares by way of gift, the restriction as per provision in section 79 is not applicable. So if Mr. A & Mrs. A acquired shares of Thakur Company Pvt. Ltd. by way of gift both business loss and accumulated depreciation can be carried forward and set off against profit of the Asst. year 2021-22.

31. A, B & C are three partners of firm sharing profit and loss equally. B retires from the firm on 30.9.2020. From the following information furnished to you for the financial year ended 31st March, 2021, compute loss and depreciation which the firm shall be allowed to carry forward.

Particular	₹
Current Year business loss before allowing current year depreciation	3,00,000
Current year depreciation	2,10,000
Brought forward business loss of assessment year 2020-21	1,20,000
Brought forward unabsorbed depreciation of assessment year 2020-21	90,000

Solution:

Particular	₹
Proportionate share of loss of partner 'B' in the current year (3,00,000 x 1/3 x 6/12)	50,000
Proportionate share of brought forward business loss (1,20,000 x 1/3)	40,000
Loss not allowed to be carried forward in the hands of firm	90,000

Loss and depreciation allowed to be carried in the hands of firm

Particular	₹
Business loss of assessment year 2021-22 before depreciation	3,00,000
Less: Share of loss of 'B' the retiring partner of assessment year 2021-22	50,000
Business loss allowed to be carried forward (A)	2,50,000
Particular	₹
Brought forward business loss of assessment year 2020-21	1,20,000
Less: Share of loss of 'B' the retiring partner	40,000
Business loss of assessment year 2020-21 allowed to be carried forward (B)	80,000
Total unabsorbed Business Loss to be carried forward by firm (A+B)	3,30,000

Depreciation allowed to be carried forward

Particular	₹
Current Year Depreciation	2,10,000
Add : Brought forward unabsorbed depreciation of assessment year 2020-21	90,000
Total unabsorbed depreciation to be carried forward by firm	3,00,000

32. A, B, & C are the partners of a firm sharing profits and losses in the ratio 2:2:1 respectively. The firm has brought forward business loss of ₹ 2,00,000 and unabsorbed depreciation of ₹ 1,80,000. During the previous year 2020-21, B retired from the firm w.e.f. 1st July, 2020. Compute the business loss which will not be allowed to be carried forward in the hands of firm if –
- (a) The firm has earned business income of ₹ 3,00,000 during the previous year 2020-21
- (b) The firm has incurred business loss of ₹ 3,00,000 during the previous year 2020-21.

Solution:

- (a) Where the firm earned business income of ₹ 3,00,000

Share of loss of partner B in the brought forward business loss = ₹ 2,00,000 x 2/5 = ₹ 80,000

Share of profit of partner B in the business income of the Previous Year 2020-21 i.e. for 3 months
= ₹ 3,00,000 x 2/5 x 3/12 = ₹ 30,000

Hence, loss which cannot be carried forward in the hands of the firm = ₹ 80,000 – ₹ 30,000 = ₹ 50,000.

Business loss which can be carried forward and set-off brought forward loss = ₹ 2,00,000 – ₹ 50,000 (share of loss of partner B) = ₹ 1,50,000

Hence, in the previous year 2020-21, the firm shall be allowed to set-off of brought forward loss of ₹ 1,50,000 (instead of ₹ 2,00,000) from the current business income of ₹ 3,00,000.

However, entire unabsorbed depreciation of ₹ 1,80,000 can be set off from the balance income of ₹ 1,50,000 (= ₹ 3,00,000 – ₹ 1,50,000).

- (b) The firm has incurred business loss of ₹ 3,00,000 during the previous year 2020-21

Share of loss of partner B in the brought forward loss = (₹ 2,00,000 x 2/5) = ₹ 80,000.

Share of loss of partner B in the current year business loss for 3 months
= ₹ 3,00,000 x 2/5 x 3/12 = ₹ 30,000.

Aggregate loss which cannot be carried forward ₹ 1,10,000 (= ₹ 80,000 + ₹ 30,000).

Loss which can be carried forward to subsequent assessment year

= (₹ 2,00,000 + ₹ 3,00,000) - ₹ 1,10,000

= ₹ 5,00,000 – ₹ 1,10,000

= ₹ 3,90,000.

However, entire unabsorbed depreciation of ₹ 1,80,000 shall be allowed to be carried forward.

RETURN OF INCOME

**FROM 18th EDITION – Assessment Year 2021-22
CMA INTER DT STUDENTS
(EXAM IN JUNE 2021 & DEC 2021)**

COMPULSORY FILING OF RETURN OF INCOME [SECTION 139(1)]

1. It is mandatory for **COMPANIES AND FIRMS** to file a return of income or loss for every previous year on or before the due date.
2. Further, every person, being an Individual / HUF / AOP / BOI / AJP:
 - ✓ whose **TOTAL INCOME** during the previous year
 - ✓ without giving effect to the provisions of Chapter VI-A or Section 54/54B/54D/54EC/54F/54G/54GA/54GB exceeded the basic exemption limit [₹ 250,000 / ₹ 300,000 / ₹ 500,000 as the case may be]
 - ✓ is required to file a return of income on or before the due date.
3. In case of **person other than above**, filing of return on or before the due date is mandatory, if Total Income exceeds Basic Exemption Limits.

Compulsory filing of income tax return in relation to assets located outside India

Any Resident person (other than RNOR) who is not required to furnish a return under section 139(1) and who during the PY:

- a) holds (beneficial Owner) any asset (including any financial interest in any entity) located outside India or
- b) has a signing authority in any account located outside India or
- c) **is a beneficiary of any asset (including financial interest in any entity) located outside India**

Shall furnish, on or before the due date, a return in respect of his Income or loss for the PY in prescribed manner. However, an individual being a beneficiary of any asset (including any financial interest in any entity) located outside India would not be required to file return of income under this clause, where, income, if any, arising from such asset is includible in the income of the person referred to in (a) above in accordance with the provisions of the Income-tax Act, 1961.

Added by Finance (No. 2) Act 2019 (FROM AY 2020-21)

Any person other than a company or a firm, who is not required to furnish a return under section 139(1), is required to file income-tax return in the prescribed form and manner on or before the due date if, during the previous year, such person –

- a) has deposited an amount or aggregate of the amounts exceeding ₹ 1 crore in one or more current accounts maintained with a banking company or a co-operative bank; or
- b) has incurred expenditure of an amount or aggregate of the amounts exceeding ₹ 2 lakh for himself or any other person for travel to a foreign country; or
- c) has incurred expenditure of an amount or aggregate of the amounts exceeding ₹ 1 lakh towards consumption of electricity; or
- d) fulfils such other prescribed conditions.

'DUE DATE'

a) **30th November of the AY, where the assessee is required to furnish a report u/s 92E – Transfer Pricing Report for International & Specified Domestic Transactions**

b) **31st October 30th September of the AY**, where the assessee is:

- (i) A company **[Other than a company covered above]**; or
- (ii) A person (**excluding person covered above**) whose **accounts are required to be audited** under the Income-tax Act, 1961 or any other law in force; or
- (iii) A **working partner of a firm** whose accounts are required to be audited under the Income-tax Act, 1961 or any other law for the time being in force.

[Amended by Finance Act 2020, w.r.e.f AY 2020-21]

c) **31st July of the AY**, in the case of any other assessee.

Note: If on the last date on which Income tax Return ought to be filed is a holiday then it can be filed on the next working day and it will be assumed as if return was filed on the due date.

Consequences for default in Furnishing Income tax Return:

- i) *Interest u/s 234A & late fee u/s 234F (No Penalty)*
- ii) *Losses (Selected) can not be carried forwarded.*
- iii) *Income based deduction [80-IA to 80RRB] will not be available.*

Fee for Default in furnishing Return of Income [SECTION 234F]

Where a person, who is required to furnish a return of income under section 139, fails to do so within the prescribed time limit under section 139(1), he shall pay, by way of fee, a sum of-

- a. ₹ 5,000 if the return is furnished **on or before the 31st December of AY;**
- b. ₹ 10,000 in any other case

However, if the total income of the person does not exceed ₹ 500,000, the fees payable shall not exceed ₹ 1,000

RETURN OF LOSS [SECTION 139(3)]

If any person who has sustained a loss in any previous year and claims that the loss or any part thereof **should be carried forward** under sub-section (1) of section 72, or sub-section (2) of section 73, or sub-section (2) of section 73A or sub-section (1) or sub-section (3) of section 74, or sub-section (3) of section 74A, **he may furnish, within the time allowed under sub-section (1) of Section 139, a return of loss in the prescribed manner.**

Section 80

No loss which has not been determined in pursuance of a return filed in accordance with the provisions of sub-section (3) of section 139, **shall be carried forward and set off** under

- ✓ sub-section (1) of section 72 or
- ✓ sub-section (2) of section 73 or
- ✓ sub-section (2) of section 73A or
- ✓ sub-section (1) or sub-section (3) of section 74 or
- ✓ sub-section (3) of section 74A.

RETURN OF INCOME OF CHARITABLE TRUSTS AND INSTITUTIONS [SECTION 139(4A)]

1. Every person in receipt of income –

- a. derived from property held under a trust or any other legal obligation wholly or partly for charitable or religious purpose; or
- b. by way of voluntary contributions on behalf of such trust or institution

must furnish a return of income if the total income in respect of which he is assessable as a representative assessee (computed before allowing any exemption under sections 11 and 12) **exceeds the basic exemption limit.**

2. This return must be filed by the **representative-assessee voluntarily** within the time limit.

RETURN OF INCOME OF POLITICAL PARTIES [SECTION 139(4B)]

1. The **chief executive officer of the political party** is statutorily required to furnish a return of income of the party, if the amount of total income of the previous year **exceeds the basic exemption limit before claiming exemption under Section 13A.**
2. The grant of exemption from income-tax to any political party under section 13A is **conditional to the filing of Return within the time limit** prescribed under section 139(1).
3. The **Due date shall be 31st October** as Audit is compulsory for political parties.
4. The provisions of the Act would apply as if it were a return required to be furnished under section 139(1).

MANDATORY FILING OF RETURNS BY SCIENTIFIC RESEARCH ASSOCIATIONS, NEWS AGENCY, TRADE UNIONS, ETC. [SECTION 139(4C)]

1. **It will be mandatory for the following institutions/associations etc. to file the return of income if their total income without giving effect to exemption under section 10, exceeds the basic exemption limit –**
 - a) Research Association u/s 10(21)
 - b) News Agency u/s 10(22B)
 - c) Association or Institution u/s 10(23A)
 - d) Institution u/s 10(23B)
 - e) Fund or Institution u/s 10(23C)
 - f) Trust or Institution u/s 10(23C)
 - g) University or other educational institution u/s 10(23C)
 - h) Hospital or other medical institution u/s 10(23C)
 - i) Trade Union u/s 10(24)
 - j) Competition Commission of India & National Skill Development Corporation u/s Section 10(46)
 - k) Infrastructure Debt Fund referred in Section 10(47)
 - l) Mutual Fund u/s 10(23D)
 - m) Securitisation Trust u/s 10(23DA)
 - n) Venture Capital Company / Venture Capital Fund u/s 10(23FB)
 - o) Investor Protection Fund whose income is exempt u/s 10(23EC)/10(23ED)
 - p) Tea Board/Rubber Board/Coffee Board etc exempt u/s 10(29A)
 - q) RPF, ASF, Approved Gratuity Funds etc
2. The Due date **shall be 31st October** as Audit is compulsory.
3. Then, the provisions of the Act would apply as if it were a return required to be furnished under section 139(1).

MANDATORY FILING OF RETURNS BY UNIVERSITIES, COLLEGES ETC. [SEC 139(4D)]

1. It will be mandatory for every university, college or other similar institution [*as referred in Section 35(1)(ii)-150% & (iii)-100%*] to furnish its return in respect of its income or loss in every previous year.
2. All the provisions of the Income-tax Act, 1961 shall apply to such return as if it were a return under section 139(1).

SECTION 139(4E)

Every Business Trust, which is not required to furnish return of income or loss under any other provisions of this section, shall furnish the return of its income in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply if it were a return required to be furnished under sub-section (1).

SECTION 139(4F)

Every investment fund referred to in section 115UB, which is not required to furnish return of income or loss under any other provisions of this section, shall furnish the return of income in respect of **its income or loss** in every previous year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished under sub-section (1).

BELATED RETURN [SECTION 139(4)]

Any person who has not furnished a return within the time allowed to him under section 139(1) may furnish the return for any previous year at any time –

- (i) before **the end of the relevant assessment year**; or
- (ii) before the completion of the assessment,

whichever is earlier.

REVISED RETURN [SECTION 139(5)]

(1) If any person having furnished a return under section 139(1) or 139(4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time **before the end of the relevant assessment year OR before completion of assessment**, whichever is earlier.

(2) **It may be noted that a belated return can be revised now.**

(3) Once a revised return is filed, the original filed return must be taken to have been withdrawn & substituted by the revised return.

(4) **CAN A LOSS RETURN BE REVISED:**

Assessee files a loss return u/s. 139(3). Later it revises the return u/s. 139(5) and claims enhanced amount of loss. According to section 139(3), once a return is filed, all the provisions of the Income-tax Act shall apply as if such return has been filed u/s.139(1). Consequently, the filing of revised loss return is valid **and section 80 does not come in the way of disallowing the carry forward of such increased amount of loss.**

PERMANENT ACCOUNT NUMBER (PAN) [SECTION 139A]

1. Following persons, who have not been allotted a permanent account number (PAN), are liable to apply to the AO within the prescribed time for the allotment of a PAN:
 - a. Every person whose total income or the total income of any other person in respect of which he is assessable under this Act **during any previous year exceeded the basic exemption limit**; or
 - b. Every person carrying on **any business or profession whose total sales, turnover or gross receipts exceeds or is likely to exceed ₹ 5 lakh** in any previous year; or
 - c. Every person **who is required to furnish a return of income** under section 139(4A).
 - d. Every person, being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to ₹ 2,50,000 or more in a financial year.
 - e. Every person who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person mentioned in (d) above or any person competent to act on behalf of such person; or
 - f. who intends to enter into such transaction as may be prescribed by the Board in the interest of revenue.
- (1A) Notwithstanding anything contained in sub-section (1), the Central Government may, by notification in the Official Gazette, **specify, any class or classes of persons by whom tax is payable under this Act or any tax or duty is payable under any other law for the time being in force including importers and exporters** whether any tax is payable by them or not and such persons shall, within such time as mentioned in that notification, apply to the Assessing Officer for the allotment of a permanent account number.
- (1B) Notwithstanding anything contained in sub-section (1), the Central Government may, **for the purpose of collecting any information which may be useful for or relevant to the purposes of this Act**, by notification in the Official Gazette, specify, any class or classes of persons who shall apply to the Assessing Officer for the allotment of the permanent account number and such persons shall, within such time as mentioned in that notification, apply to the Assessing Officer for the allotment of a permanent account number.
2. The Assessing Officer, **having regard to the nature of the transactions** as may be prescribed, may also allot a permanent account number, to any other person (whether any tax is payable by him or not), in the manner and in accordance with the procedure as may be prescribed.
3. Any person, not falling under sub-section (1) or sub-section (2), may apply to the Assessing Officer for the allotment of a permanent account number and, thereupon, the Assessing Officer shall allot a permanent account number to such person forthwith.
4. For the purpose of allotment of permanent account numbers under the new series.....
5. **Every person shall—**
 - a) quote such number in all his returns to, or correspondence with, any income-tax authority;
 - b) quote such number in all challans for the payment of any sum due under this Act;
 - c) quote such number in all documents pertaining to such transactions as may be prescribed by the Board in the interests of the revenue, and entered into by him;
 - d) intimate the Assessing Officer any change in his address or in the name and nature of his business on the basis of which the permanent account number was allotted to him.

- (5A) Every person receiving any sum or income or amount from which tax has been deducted under the provisions of Chapter XVIIIB, **shall intimate his permanent account number to the person responsible for deducting such tax under that Chapter.**
- (5B) Where any sum or income or amount has been paid after deducting tax under Chapter XVIIIB, **every person deducting tax under that Chapter shall quote the permanent account number of the person to whom such sum or income or amount has been paid by him—**
- i. **in the statement** furnished in accordance with the provisions of sub-section (2C) of section 192;
 - ii. **in all certificates** furnished in accordance with the provisions of section 203;
 - iii. **in all returns** prepared and delivered or caused to be delivered in accordance with the provisions of section 206 to any income-tax authority;
 - iv. **in all statements** prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (3) of section 200:
- Provided further** that nothing contained in sub-sections (5A) and (5B) shall apply in case of a person whose total income is not chargeable to income-tax or who is not required to obtain permanent account number under any provision of this Act if such person furnishes to the person responsible for deducting tax, a declaration referred to in section 197A in the form and manner prescribed thereunder to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be *NIL*.
- (5C) Every buyer or licensee or lessee referred to in section 206C **shall intimate his permanent account number to the person responsible for collecting tax referred to in that section.**
- (5D) Every person collecting tax in accordance with the provisions of section 206C **shall quote the permanent account number of every buyer or licensee or lessee referred to in that section—**
- (iii) **in all certificates** furnished in accordance with the provisions of sub-section (5) of section 206C;
 - (iv) **in all returns** prepared and delivered or caused to be delivered in accordance with the provisions of sub-section (5A) or sub-section (5B) of section 206C to an income-tax authority;
 - (v) **in all statements prepared** and delivered or caused to be delivered in accordance with the provisions of sub-section (3) of section 206C.
- (5E) **Notwithstanding anything contained in this Act, every person who is required to furnish or intimate or quote his permanent account number under this Act, and who,—**
- a) **has not been allotted a permanent account number but possesses the Aadhaar number, may furnish or intimate or quote his Aadhaar number in lieu of the permanent account number, and such person shall be allotted a permanent account number in such manner as may be prescribed;**
 - b) **has been allotted a permanent account number, and who has intimated his Aadhaar number in accordance with provisions of sub-section (2) of section 139AA, may furnish or intimate or quote his Aadhaar number in lieu of the permanent account number.**
6. Every person receiving any document relating to a transaction prescribed under clause (c) of sub-section (5) shall ensure that the Permanent Account Number or the General Index Register Number **or the Aadhaar number, as the case may be**, has been duly quoted in the document.
- (6A) **Every person entering into such transaction, as may be prescribed, shall quote his permanent account number or Aadhaar number, as the case may be, in the documents pertaining to such transactions and also authenticate such permanent account number or Aadhaar number, in such manner as may be prescribed.**
- (6B) **Every person receiving any document relating to the transactions referred to in sub-section (6A), shall ensure that permanent account number or Aadhaar number, as the case may be, has been duly quoted in such document and also ensure that such permanent account number or Aadhaar number is so authenticated.**

7. No person who has already been allotted a permanent account number under the new series shall apply, obtain or possess another permanent account number.
8. Such PAN **comprises of 10 alphanumeric characters** and is issued in the form of a laminated card.
9. Persons, who have agricultural income and are not in receipt of any other taxable income, **are exempt from the provisions of section 139A.**

PENALTY FOR FAILURE TO COMPLY WITH THE PROVISIONS OF SECTION 139A or for quoting or intimating wrong PAN or possessing more than one PAN (Section 272B):

₹ 10,000. [No Penalty, if defaulter has reasonable cause of such failure.]

Manner for allotment of PAN to a person who has not been allotted a PAN but possesses Aadhaar number [Notification No. 59/2019, dated 30.8.2019]

*The Finance (No. 2) Act, 2019, has inserted sub-section (5E) to section 139A, w.e.f. 1.9.2019, to provide inter alia that every person who is required to furnish or intimate or quote his PAN and who has not been allotted a PAN but possesses the Aadhaar number, **may furnish or intimate or quote his Aadhaar Number in lieu of the PAN** and such person would be allotted a PAN in such manner as may be prescribed.*

*Rule 114(4) requires submission of application for allotment of PAN by the applicant in the prescribed form **accompanied by the prescribed documents as proof of identity, address and date of birth of such applicant.***

*The CBDT has, vide this notification, inserted sub-rule (1A) to Rule 114 w.e.f. 1.9.2019 to provide that any person, **who has not been allotted a PAN but possesses the Aadhaar number** and has furnished or intimated or quoted his Aadhaar number in lieu of the PAN in accordance with section 139A(5E), **shall be deemed to have applied for allotment of PAN and he shall not be required to apply or submit any documents under Rule 114.***

*Further, sub-rule (1B) has also been inserted in Rule 114 to provide that any person, who has not been allotted a PAN but possesses the Aadhaar number may apply for allotment of the PAN under section 139A **by intimating his Aadhaar number and he shall not be required to apply or submit any documents under Rule 114.***

Monetary limits of specified transactions which require quoting of PAN:

S.No.	Nature of transaction	Value of transaction
1.	Sale or purchase of motor vehicle (other than two wheeled motor vehicle) which requires registration	All such transactions
2.	Opening an account [other than a time-deposit referred to at Sl. No.12 and a Basic Savings Bank Deposit Account] with a bank etc	All such transactions
3.	Making an application to any bank etc for issue of a credit or debit card.	All such transactions
4.	Opening of a Demat account	All such transactions
5.	Payment to a hotel or restaurant against a bill or bills at any one time	Payment in cash of an amount exceeding ₹ 50,000.
6.	Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time	Payment in cash of an amount exceeding ₹ 50,000.
7.	Payment to a Mutual Fund for purchase of its units	Amount exceeding ₹ 50,000.
8.	Payment to a company or an institution for acquiring debentures or bonds	Amount exceeding ₹ 50,000.
9.	Payment to the Reserve Bank of India for acquiring bonds	Amount exceeding ₹ 50,000.
10.	Cash Deposit with a banking company or a cooperative bank	Deposits in cash exceeding ₹ 50,000 during any one day.
11.	Purchase of bank drafts or pay orders or banker's cheques	Payment in cash of an amount exceeding ₹ 50,000 during any one day.
12.	A Time Deposit with, - (i) a banking company or a co-operative bank (ii) a Post Office; (iii) a Nidhi referred in Companies Act, 2013; or (iv) a NBFC	Amount exceeding ₹ 50,000 or aggregating to more than ₹ 5 lakh during a financial year
13.	Payment for one or more pre-paid payment instruments	Payment in cash or by way of a bank draft or pay order or banker's cheque of an amount aggregating to more than ₹ 50,000 in a financial year.
14.	Payment as life insurance premium	Amount aggregating to more than ₹ 50,000 in a financial year.
15.	A contract for sale or purchase of securities (other than shares)	Amount exceeding ₹ 1 lakh per transaction
16.	Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange.	Amount exceeding ₹ 1 lakh per transaction.
17.	Sale or purchase of any immovable property	Amount exceeding ₹ 10 lakh or valued by stamp valuation authority referred to in section 50C of the Act at an amount exceeding ₹ 10 lakh
18.	Sale or purchase, by any person, of goods or services of any nature other than above.	Amount exceeding ₹ 2 lakh per transaction

Note:

- a.** In case of minor who does not have any income chargeable to income-tax, PAN of his father or mother or guardian is required.
- b.** Further, any person who does not have a PAN and who enters into any transaction specified in this rule, shall make a declaration in Form No. 60 giving therein the particulars of such transaction.
- c.** Also, the provisions of this rule shall not apply to the Central Government, the State Governments and the Consular Offices

Section 139AA - Quoting of Aadhaar number

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:

Quoting of Aadhaar Number mandatory in returns filed on or after 1.4.2019

[Circular No. 6/2019 dated 31.03.2019]

As per Section 139AA(1)(ii), with effect from 01.07.2017, every person who is eligible to obtain Aadhaar number has to quote Aadhaar number in the return of income.

The Apex Court in a series of judgments has upheld the validity of section 139AA. Consequently, with effect from 01.04.2019, the CBDT has clarified that it is mandatory to quote Aadhaar number while filing the return of income unless specifically exempted as per any notification issued under section 139AA(3).

Thus, returns being filed either electronically or manually on or after 1.4.2019 cannot be filed without quoting the Aadhaar number.

2. 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 (**Date is now extended to 31.03.2021**) by the Central Government in the Official Gazette:

Provided that in case of failure to intimate the Aadhaar number, the permanent account number allotted to the person shall be **made inoperative after the date so notified in such manner as may be prescribed** [Rule 111.

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.

Accordingly, the Central Government has, vide Notification No. 37/2017 dated 11.05.2017 effective from 01.07.2017, notified that the provisions of section 139AA relating to quoting of Aadhaar Number would not apply to an individual who does not possess the Aadhaar number or Enrolment ID and is:

- a. residing in the States of Assam, Jammu & Kashmir and Meghalaya;
- b. a non-resident as per Income-tax Act, 1961;
- c. of the age of 80 years or more at any time during the previous year;
- d. not a citizen of India

RULE 114AAA (Effective from 13.02.2020)

Rule 114AAA specifies the manner of making permanent account number inoperative.

- If a person, who has been allotted PAN as on 1st July, 2017 and is required to intimate his Aadhaar number under section 139AA(2), has failed to intimate the same on or before 31st March, 2020, **the PAN of such person would become inoperative immediately after the said date (i.e., after 31st March, 2020) for the purposes of furnishing, intimating or quoting under the Income-tax Act, 1961.**

- Accordingly, where a person, whose PAN has become inoperative, is required to furnish, intimate or quote his PAN under the Act, **it shall be deemed that he has not furnished, intimated or quoted the PAN**, as the case may be, in accordance with the provisions of the Act. Consequently, **he would be liable for all the consequences under the Act for not furnishing, intimating or quoting the PAN.**

- Where such person who has not intimated his Aadhaar number on or before 31st March, 2021, intimates his Aadhaar number under section 139AA(2) after 31st March, 2020, his PAN would become operative from the date of intimation of Aadhaar number for the purposes of furnishing, intimating or quoting under the Act. Accordingly, the consequences in sub-rule (2) would not be applicable from such date of intimation.

[At the time of insertion of Rule, last date of Aadhaar number intimation was 31.03.2020, which is further extended to 31.03.2021, so there is a conflict of date]

DEFECTIVE RETURN [SECTION 139(9)]

1. Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation.
2. The Assessing Officer has the discretion to extend the **time period beyond 15 days**, on an application made by the assessee.
3. If the defect is not rectified within the period of 15 days or such further extended period, then the return would be **treated as an invalid return**.
4. **The consequential effect would be the same as if the assessee had failed to furnish the return. However, the Assessing Officer can condone the delay and treat the return as a valid return.**
5. **A return of income shall be regarded as defective unless** the annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computations of gross total income and total income have been duly filled in.
6. ~~W.e.f. 01/06/2013, the Return of Income shall be regarded as defective unless the tax together with interest, if any, payable in accordance with the provisions of Section 140A has been paid on or before the date of furnishing of the return.~~
7. **A return of income shall be regarded as defective unless the return is accompanied by the following documents -**
 - a. a statement showing the computation of tax liability;
 - b. the audit report u/s 44AB (where the report has been submitted prior to the furnishing of return, a copy of audit report together with proof of furnishing the report);
 - c. the proof of tax deducted or collected at source, advance tax paid and tax paid on self-assessment;
 - d. **where regular books of account are maintained by the assessee:**
 - i. copies of Manufacturing A/c, Trading A/c, Profit and Loss A/c or Income and Expenditure A/c or any other similar account and Balance Sheet;
 - ii. **in the case of**
 - A proprietary business or profession - the personal account of the proprietor;
 - A firm, AOP or BOI - personal account of the partners or members; or
 - A partner or member of the firm, AOP or BOI - his personal account in the firm, association of persons or body of individuals;
 - e. **where regular books of account are not maintained by the assessee:**
 - i. a statement indicating the amount of turnover or gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amount have been computed; and
 - ii. the amount of sundry debtors, sundry creditors, stock and cash balance as at the end of the previous year.
 - f. **where the accounts of the assessee have been audited**, copies of the audited Profit and Loss A/c, Balance Sheet and a copy of the Auditor's report;
 - g. Cost audit report u/s 233B of the Companies Act, 1956 (if any).

Note: Currently, the assessee is required to furnish paper-less return. i.e., no documents, proof or report (other than some specified report required to be furnished electronically) is required to be attached with return of income. In this regard, return of income shall not be considered as defective return. However, the assessee should retain these documents, proof or report with himself. If called for by the income-tax authority during any proceeding, it shall be incumbent upon the assessee to furnish/produce the same.

RETURN BY WHOM TO BE VERIFIED [Section 140]: 4 Marks

Assessee	Case	Verified by
Individual	In General	Individual himself
	Where the individual concerned is absent from India	Individual himself or by the duly authorized person of such individual
	Where the individual is mentally incapacitated	Guardian of such individual or any other person competent to act on his behalf
	Where by any other reason it is not possible to verify the return.	Any person duly authorized by him
	Note: when return is verified by any authorized person in that case the return should be accompanied with power of attorney.	
HUF	In General	Karta
	Where the 'Karta' is absent from India or is mentally incapacitated	Any adult member of the family
Firm	In General	Managing Partner
	If due to any reason it is not possible for managing partner to verify or where there is no managing partner	Any adult partner
Limited liability partnership	In General	Designated partner
	If due to any unavoidable reason such designated partner is not able to verify and verify the return, or where there is not designated partner	Any partner of the LLP, or any other person as may be prescribed for this purpose.
Local authority	Principal Officer	
Political party	Chief Executive Officer	
Company	In General	Managing Director (MD)
	If due to any reason it is not possible for MD to verify or where there is no MD	Any director, or any other person as may be prescribed for this purpose.
	Non-Resident company	A person holding a valid power of attorney. Copy of such power of attorney must be attached with the return.
	Where the company is being wound up (whether under the orders of a court or otherwise); or where any person has been appointed as the receiver of any assets of the company	Liquidator
	Where an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.	insolvency professional appointed by such Adjudicating Authority



TAX RETURN PREPARERS SCHEME [SECTION 139B]


Section 139B provides that for the purpose of enabling any specified class or classes of persons in preparing and furnishing returns of income, the CBDT may, without prejudice to the provisions of section 139, frame a Scheme, by notification in the Official Gazette, providing that such persons may furnish their returns of income through a Tax Return Preparer (TRP) authorised to act as such under the Scheme.

CBDT had notified the “Tax Return Preparer Scheme, 2006”. Content of amended scheme are:

Particulars	Contents
Applicability of the scheme	The scheme is applicable to all eligible persons .
Eligible person	Any person <i>being an individual or a Hindu undivided family</i> .
Tax Return Preparer	<p>Any individual who has been issued a "Tax Return Preparer Certificate" and a "unique identification number" under this Scheme by the Partner Organisation to carry on the profession of preparing the returns of income in accordance with the Scheme.</p> <p>However, the following person are not entitled to act as TRP:</p> <p>(i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings.</p> <p>(ii) any legal practitioner who is entitled to practice in any civil court in India.</p> <p>(iii) A chartered accountant.</p>
Educational qualification for Tax Return Preparers	An individual, who holds a bachelor degree from a recognised Indian University or institution, or has passed the intermediate level examination conducted by the Institute of Chartered Accountants of India or the Institute of Company Secretaries of India or the Institute of Cost Accountants of India, shall be eligible to act as TRP .
Preparation of and Furnishing the Return of Income by the TRP	<p>An eligible person may, at his option, furnish his return of income u/s 139 for any assessment year after getting it prepared through a TRP:</p> <p>However, the following eligible persons (an individual or a HUF) cannot furnish a return of income for an assessment year through a TRP:</p> <p>(i) who is carrying out business or profession during the previous year and accounts of the business or profession for that previous year are required to be audited under section 44AB or under any other law for the time being in force; or</p> <p>(ii) who is not a resident in India during the previous year.</p> <p>An eligible person cannot furnish a revised return of income for any assessment year through a TRP unless he has furnished the original return of income for that assessment year through such or any other TRP.</p> <p>Further, a return of income which is required to be furnished in response to a notice under section 142(1)(i) or under section 148 or under section 153A cannot be prepared or furnished through a TRP.</p>

SELF-ASSESSMENT [SECTION 140A]**Payment of tax, interest and fee before furnishing return of income**

Where any tax is payable on the basis of any return required to be furnished **under, inter alia, section 139**, after taking into account -

- a. the amount of tax, already paid, under any provision of the Income-tax Act, 1961
- b. any tax deducted or collected at source;
- c. any relief of tax allowed under section 89;
- d. any tax credit allowed to be set off in accordance with the provisions of section 115JD [AMT Credit]
- e. any relief of tax allowed under Section 90 or Section 90A or Section 91 [**FINAL Syllabus**];
- f. any tax credit allowed to be set off in accordance with the provisions of section 115JAA (MAT Credit) – **MAT is in Final Syllabus**
- g. **any tax or interest payable as per the provisions of section 191(2) [TDS Class]**
[Inserted by Finance Act 2020, effective from AY 2021-22 onwards] 

the assessee **shall be liable to pay such tax together with interest and fees** payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax before furnishing the return. **The return shall be accompanied by the proof of payment of such tax, interest and fee.**

Order of adjustment of amount paid by the assessee

Where the amount paid by the assessee under section 140A(1) falls short of the aggregate of the tax, interest and fees as aforesaid, the amount so paid shall **first be adjusted towards the fees payable and thereafter towards interest and the balance, if any, shall be adjusted towards the tax payable.**

Interest under section 234A

For the above purpose, interest payable under section 234A shall be computed on the amount of tax on the total income as declared in the return, **as reduced by the amount of-**

- a. advance tax paid, if any;
- b. any tax deducted or collected at source;
- c. **any relief of tax claimed under section 89**
- d. any tax credit allowed to be set off in accordance with the provisions of section 115JD [AMT Credit]
- e. any relief of tax allowed under Section 90 or Section 90A or Section 91 [**FINAL Syllabus**];
- f. any tax credit allowed to be set off in accordance with the provisions of section 115JAA (MAT Credit) – **MAT is in Final Syllabus**

Interest under section 234B

Interest payable under section 234B shall be computed on the assessed tax or on the amount by which the advance tax paid falls short of the assessed tax.

For this purpose “assessed tax” means the **tax on total income declared in the return as reduced by the amount of**

- a. any tax deducted or collected at source;
- b. **any relief of tax claimed under section 89**
- c. any tax credit allowed to be set off in accordance with the provisions of section 115JD [AMT Credit]
- d. any relief of tax allowed under Section 90 or Section 90A or Section 91 **[FINAL Syllabus];**
- e. any tax credit allowed to be set off in accordance with the provisions of section 115JAA (MAT Credit) – **MAT is in Final Syllabus**

Consequence of failure to pay tax, interest or fee

If any assessee fails to pay the whole or any part of **such of tax or interest or fees**, he shall be deemed to be an **assessee in default** in respect of such tax or interest or fees remaining unpaid and all the provisions of this Act shall apply accordingly.

PRACTICAL QUESTION - SET A

1. Paras aged 55 years is a resident of India. During the F.Y. 2020-21, interest of ₹ 2,88,000 was credited to his Non-resident (External) Account with SBI. ₹ 30,000, being interest on fixed deposit with SBI, was credited to his saving bank account during this period. He also earned ₹ 3,000 as interest on this saving account. Is Paras required to file return of income?

What will be your answer, if he has incurred ₹ 3 lakhs as travel expenditure of self and spouse to US to stay with his married daughter for some time?

Solution:

An individual is required to furnish a return of income under section 139(1) if his total income, before giving effect to the deductions under Chapter VI-A or exemption under section 54/54B/54D/54EC or 54F, exceeds the maximum amount not chargeable to tax i.e. ₹ 2,50,000 (for A.Y. 2021-22).

Computation of total income of Mr. Paras for A.Y. 2021-22

Particulars	₹
Income from other sources	
Interest earned from Non-resident (External) Account ₹ 2,88,000	
[Exempt under section 10(4)(ii), assuming that Mr. Paras has been permitted by RBI to maintain the aforesaid account]	NIL
Interest on fixed deposit with SBI	30,000
Interest on savings bank account	3,000
Gross Total Income	33,000
Less: Deduction under section 80TTA (Interest on saving bank account)	3,000
Total Income	30,000

Since the total income of Mr. Paras for A.Y. 2021-22, before giving effect, inter alia, to the deductions under Chapter VI-A, is less than the basic exemption limit of ₹ 2,50,000, he is not required to file return of income for A.Y.2021-22.

If he has incurred expenditure of ₹ 3 lakhs on foreign travel of self and spouse, he has to mandatorily file his return of income on or before the due date under section 139(1).

Note: In the above solution, interest of ₹ 2,88,000 earned from Non-resident (External) account has been taken as exempt on the assumption that Mr. Paras, a resident, has been permitted by RBI to maintain the aforesaid account. However, in case he has not been so permitted, the said interest would be taxable. In such a case, his total income, before giving effect, inter alia, to the deductions under Chapter VI-A, would be ₹ 3,21,000 (₹ 30,000 + ₹ 2,88,000 + ₹ 3,000), which is higher than the basic exemption limit of ₹ 2,50,000. Consequently, he would be required to file return of income for A.Y. 2021-22.

2. Explain with brief reasons whether the return of income can be revised under section 139(5) of the Income-tax Act, 1961 in the following cases:
- Belated return filed under section 139(4).
 - Return already revised once under section 139(5).
 - Return of loss filed under section 139(3).

Solution:

Any person who has furnished a return under section 139(1) or 139(4) can file a revised return at any time before the end of the relevant assessment year or before the completion of assessment, whichever is earlier, if he discovers any omission or any wrong statement in the return filed earlier. Accordingly,

- A belated return filed under section 139(4) can be revised.
- A return revised earlier can be revised again as the first revised return replaces the original return. Therefore, if the assessee discovers any omission or wrong statement in such a revised return, he can furnish a second revised return within the prescribed time i.e. within the end of the relevant assessment year or before the completion of assessment, whichever is earlier.
- A return of loss filed under section 139(3) is deemed to be return filed under section 139(1), and therefore, can be revised under section 139(5).

3. Mrs. Hetal, an individual engaged in the business of Beauty Parlour, has got her books of account for the financial year ended on 31st March, 2021 audited under section 44AB. Her total income for the assessment year 2021-22 is ₹ 6,35,000. She wants to furnish her return of income for assessment year 2021-22 through a tax return preparer. Can she do so?

Solution:

Section 139B provides a scheme for submission of return of income for any assessment year through a Tax Return Preparer. However, it is not applicable to persons whose books of account are required to be audited under section 44AB. Therefore, Mrs. Hetal cannot furnish her return of income for A.Y. 2021-22 through a Tax Return Preparer.

4. State with reasons whether you agree or disagree with the following statements:

- (a) Return of income of Limited Liability Partnership (LLP) could be verified by any partner.
- (b) Time limit for filing return under section 139(1) in the case of Mr. A having total turnover of ₹ 160 lakhs (₹ 110 lakhs received in cash) for the year ended 31.03.2021, whether or not opting to offer presumptive income under section 44AD, is 31st October 2021.

Solution:

- (a) Disagree

The return of income of LLP should be verified by a designated partner.

Any other partner can verify the Return of Income of LLP only in the following cases:-

- (i) where for any unavoidable reason such designated partner is not able to verify the return, or,
(ii) where there is no designated partner.

- (b) Disagree

In case Mr. A opts to offer his income as per the presumptive taxation provisions of section 44AD, then, the due date under section 139(1) for filing of return of income for the year ended 31.03.2021, shall be 31st July, 2021.

In case Mr. A does not opt for presumptive taxation provisions under section 44AD and, has to get his accounts audited under section 44AB, **since his turnover exceeds ₹ 1 crore, the due date for filing return would be 30st October, 2021.**

5. Mr. Vineet submits his return of income on 12-09-2021 for A.Y 2021-22 consisting of income under the head "Salaries", "Income from house property" and bank interest. On 21-01-2022, he realized that he had not claimed deduction under section 80TTA in respect of his interest income on the Savings Bank Account. He wants to revise his return of income. Can he do so? Examine. Would your answer be different if he discovered this omission on 21-04-2022?

Solution:

Since Mr. Vineet has income only under the heads "Salaries", "Income from house property" and "Income from other sources", he does not fall under the category of a person whose accounts are required to be audited under the Income-tax Act, 1961 or any other law in force.

Therefore, the due date of filing return for A.Y. 2021-22 under section 139(1), in his case, is 31st July, 2021. Since Mr. Vineet had submitted his return only on 12.9.2021, the said return is a belated return under section 139(4).

As per section 139(5), a return furnished under section 139(1) or a belated return u/s 139(4) can be revised. Thus, a belated return under section 139(4) can also be revised. Therefore, Mr. Vineet can revise the return of income filed by him under section 139(4) in January 2022, to claim deduction under section 80TTA, since the time limit for filing a revised return is upto the end of the relevant assessment year, which is 31.03.2022.

However, he cannot revise return had he discovered this omission only on 21-04-2022, since it is beyond 31.03.2022, being the end of A.Y. 2021-22.

6. Examine with reasons, whether the following statements are true or false, with regard to the provisions of the Income-tax Act, 1961:
- The Assessing Officer has the power, inter alia, to allot PAN to any person by whom no tax is payable.
 - Where the Karta of a HUF is absent from India, the return of income can be verified by any male member of the family.

Solution:

- True:** Section 139A(2) provides that the Assessing Officer may, having regard to the nature of transactions as may be prescribed, also allot a PAN to any other person, whether any tax is payable by him or not, in the manner and in accordance with the procedure as may be prescribed.
- False:** Section 140(b) provides that where the Karta of a HUF is absent from India, the return of income can be verified by any other adult member of the family; such member can be a male or female member.

7. Explain the term “return of loss” under the Income-tax Act, 1961. Can any loss be carried forward even if return of loss has not been filed as required?

Solution:

A return of loss is a return which shows certain losses. Section 80 provides that the losses specified therein cannot be carried forward, unless such losses are determined in pursuance of return filed under the provisions of section 139(3).

Section 139(3) states that to carry forward the losses specified therein, the return should be filed within the time specified in section 139(1).

Following losses are covered by section 139(3):

- business loss to be carried forward under section 72(1),
- speculation business loss to be carried forward under section 73(2),
- loss from specified business to be carried forward under section 73A(2).
- loss under the head “Capital Gains” to be carried forward under section 74(1); and
- loss incurred in the activity of owning and maintaining race horses to be carried forward under section 74A(3)

However, loss from house property to be carried forward under section 71B and unabsorbed depreciation can be carried forward even if return of loss has not been filed as required under section 139(3).

8. Ms. Priyanka is a partner in a firm but not a working partner, whose turnover for the previous year 2020-21 is ₹ 275 lacs (Cash sales). The due date of filing the return of income by Mr. Priyanka is 31st July, 2021, if he is getting only interest on capital from the firm. Whether this statement is correct.

Solution:

Incorrect, as w.e.f AY 2021-22, the due date u/s 139(1) gets extended to **30th october** in respect of **any partners**.

9. Mr. Sharma's sales for year ended 31-3-2021 were ₹ 10,00,000 and his income for the same year was ₹ 2,10,000. As his income doesn't exceed maximum amount not chargeable to tax, he is of the opinion that neither he is required to apply for PAN nor he is required to furnish his return of income.

Solution:

Mr. Sharma is liable to apply for PAN, as his sales exceed ₹ 5 lakhs, but he is not required to furnish return of income, as his income doesn't exceed ₹ 2,50,000.

10. Specify the persons who are authorized to verify under section 140, the return of income filed under section 139 of the Income-tax Act, 1961 in the case of:
- Political party;
 - Local authority;
 - Association of persons, and
 - Limited Liability Partnership (LLP).

Solution:

The following persons (mentioned in Column III below) are authorised as per section 140, to verify the return of income filed under Section 139:

I	II	III
(i)	Political party	Chief Executive Officer of such party (whether known as secretary or by any other designation).
(ii)	Local authority	Principal Officer thereof.
(iii)	Association of Persons	Any member of the association or the principal officer thereof.
(iv)	LLP	<p>Designated partner, or Any partner of the LLP or any other person as may be prescribed for this purpose</p> <ul style="list-style-type: none"> ➤ where the designated partner is not able to verify the return for any unavoidable reason; ➤ where there is no designated partner.

11. State whether filing of income-tax return is mandatory for the AY 2021-22 in respect of the following cases:

A Limited Liability Partnership (LLP) with business loss of ₹ 1,30,000.

Solution:

As per third proviso to section 139(1), every company or firm shall furnish on or before the due date the return in respect of its income or loss in every previous year. Since LLP is included in the definition of "firm" under the Income-tax Act, 1961, it has to file its return mandatorily, even though it has incurred a loss.

12. Can an individual, who is not in India, **verify** the return of income from outside India? Is there any other option?

Solution:

As per section 140, return of income can be verified by an individual even if he is absent from India. Hence, an individual can himself **verify** the return of income from a place outside India. Alternatively, any person holding a valid power of attorney and duly authorised by the individual can also **verify** the return of income.

13. Enumerate the circumstances in which an individual assessee is empowered to verify his return of income under section 139 by himself or otherwise by any authorized person.

Solution:

The following table enumerates the specific circumstances and the authorized persons empowered to verify the return of income of an individual assessee filed under section 139(1) in each such circumstance:

	Circumstance	Return of income, to be verified by
(i)	Where he is absent from India	<ul style="list-style-type: none"> ➤ the individual himself; ➤ or any person duly authorised by him in this behalf holding a valid power of attorney from the individual. (Such power of attorney should be attached to the return of income)
(ii)	Where he is mentally incapacitated from attending to his affairs	<ul style="list-style-type: none"> ➤ his guardian; or ➤ any other person competent to act on his behalf.

(iii)	Where, for any other reason, it is not possible for the individual to verify the return	➤ any person duly authorised by him in this behalf holding a valid power of attorney from the individual (Such power of attorney should be attached to the return of income)
(iv)	In circumstances not covered under (i), (ii) & (iii) above	➤ the individual himself

ADVANCE TAX [SECTIONS 207 TO 219]**FROM 18th EDITION – Assessment Year 2021-22****CMA INTER DT STUDENTS****(EXAM IN JUNE 2021 & DEC 2021)**

Note: Computation of Interest u/s 234A, 234B & 234C is not in CMA INTER syllabus, still we have covered these sections in notes as well as in class due to easy calculations.

Liability for payment of Advance Tax [Section 207]

- 1) Tax shall be payable in advance **during any financial year**, in accordance with the provisions of sections 208 to 219 (both inclusive), in respect of the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year.
- 2) **The provisions of sub-section (1) shall not apply to an individual resident in India, who-**
 - a. does not have any income chargeable under the head "Profits and gains of business or profession"; and
 - b. is of the age of **sixty years or more** at any time during the previous year.

Conditions of liability to pay advance tax [Section 208]

Advance tax shall be payable during a FY in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter, is **₹ 10,000 or more**.

Note - An assessee who is liable to pay advance tax of less than ₹ 10,000 will not be saddled with interest under sections 234B and 234C for defaults in payment of advance tax. However, the consequences under section 234A regarding interest for belated filing of return would be attracted.

Section 211 – Installments of Advance Tax & due dates

1. **Common advance tax payment schedule for both corporates and non-corporates (other than assessee computing profits on presumptive basis under section 44AD(1) or section 44ADA(1)):**

Due date of instalment	Amount payable
On or before 15th June	Not less than 15% of advance tax liability
On or before 15th September	Not less than 45% of advance tax liability, as reduced by the amount, if any, paid in the earlier instalment.
On or before 15th December	Not less than 75% of advance tax liability, as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.
On or before 15th March	The whole amount of advance tax liability as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.

Note - Any amount paid by way of advance tax on or before 31st March shall also be treated as advance tax paid during each financial year ending on 31st March.

2. **Advance tax payment by assessee computing profits on presumptive basis under section 44AD(1) or section 44ADA(1)**

An eligible assessee, opting for computation of profits or gains of business on presumptive basis in respect of eligible business referred to in section 44AD(1) or for computation of profits or gains of profession on presumptive basis in respect of eligible profession referred to in section 44ADA(1), **shall be required to pay advance tax of the whole amount in one instalment on or before the 15th March of the financial year.**

However, any amount paid by way of advance tax on or before 31st March **shall also be treated as advance tax paid during each financial year ending on 31st March.**

Interest for non-payment or short-payment of advance tax [Section 234B]

1. Interest under Section 234B is attracted for non-payment of advance tax or payment of advance tax of an amount **less than 90% of assessed tax.**
2. The interest liability would be **1% per month or part of the month** from 1st April following the financial year **upto the date of determination of income under section 143(1) and where a regular assessment is made, to the date of such regular assessment.**
3. Such interest is calculated on the amount of difference **between the assessed tax and the advance tax paid.**
4. Where, **before** the date of determination of total income under sub-section (1) of section 143 or completion of a regular assessment, **tax is paid by the assessee under section 140A or otherwise,-**
 - a) interest shall be calculated at the rate aforesaid **up to the date on which the tax is so paid**, and reduced by the interest, if any, paid under section 140A towards the interest chargeable under this section;
 - b) thereafter, interest shall be calculated at the rate aforesaid on the amount by which **the tax so paid together with the advance tax paid falls short of the assessed tax.**

[Detailed analysis with example for this point is in Final Level]

5. In this section, **"assessed tax" means** the tax on the total income determined under sub-section (1) of section 143 and where a regular assessment is made, the tax on the total income determined under such regular assessment **as reduced by the amount of,-**
 - i. any tax deducted or collected at source;
 - ii. any relief of tax allowed under section 89;
 - iii. any tax credit allowed to be set off in accordance with the provisions of section 115JD [AMT Credit]
 - iv. any relief of tax allowed under Section 90 or Section 90A or Section 91 [FINAL Syllabus];
 - v. any tax credit allowed to be set off in accordance with the provisions of section 115JAA (MAT Credit) – MAT is in Final Syllabus

Interest payable for deferment of advance tax [Section 234C]**1. Manner of computation of interest under section 234C for deferment of advance tax**

In case an assessee, other than an assessee who declares profits and gains in accordance with the provisions of section 44AD(1) or section 44ADA(1), who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by such assessee on its current income on or before the dates specified in column (1) is less than the specified percentage [given in column (2)] of tax due on returned income, then simple interest@1% per month for the period specified in column (4) on the amount of shortfall, as per column (3) is leviable under section 234C:

Specified date	Specified %	Shortfall in advance tax	Period
(1)	(2)	(3)	(4)
15th June	15%	15% of tax due on returned income (-) advance tax paid up to 15th June	1 month
15th September	45%	45% of tax due on returned income (-) advance tax paid up to 15th September	1 month
15th December	75%	75% of tax due on returned income (-) advance tax paid up to 15th December	1 month
15th March	100%	100% of tax due on returned income (-) advance tax paid up to 15th March	1 month

Note – However, if the advance tax paid by the assessee on the current income, on or before 15th June or 15th September, is not less than 12% or 36% of the tax due on the returned income, respectively, then, the assessee shall not be liable to pay any interest on the amount of the shortfall on those dates.

2. Computation of interest under section 234C in case of an assessee who declares profits and gains in accordance with the provisions of section 44AD(1) or section 44ADA(1):

In case an assessee who declares profits and gains in accordance with the section 44AD(1) or section 44ADA(1), as the case may be, who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by the assessee on its current income on or before 15th March is less than the tax due on the returned income, then, **the assessee shall be liable to pay simple interest at the rate of 1% on the amount of the shortfall from the tax due on the returned income.**

3. Tax due on the returned income:

"Tax due on the returned income" means the tax chargeable on the **total income declared in the return of income furnished by the assessee** for the assessment year commencing on the 1st day of April immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of,-

- i. any tax deducted or collected at source;
- ii. any relief of tax allowed under section 89;
- iii. any tax credit allowed to be set off in accordance with the provisions of section 115JD [AMT Credit]
- iv. any relief of tax allowed under Section 90 or Section 90A or Section 91 [FINAL Syllabus];
- v. any tax credit allowed to be set off in accordance with the provisions of section 115JAA (MAT Credit) – MAT is in Final Syllabus

4. Non-applicability of interest under section 234C in certain cases:

[Theory Question – 4 Marks]

Interest under Section 234C **shall not be leviable** in respect of any shortfall in payment of tax due on returned income, where **such shortfall is on account of under-estimate or failure to estimate-**

(i) The amount of Capital Gain

(ii) Casual Income

(iii) PGBP Income where the income accrues or arises under the said head for the first time

~~(iv) Income in the nature referred to in Section 115BBDA i.e. dividend in aggregate exceeding of ₹ 10 Lakhs received during the PY~~ **[This section was effective till AY 2020-21]**

However, the assessee should have paid the whole of the amount of tax payable in respect of such income referred to in (i), (ii) or (iii), as the case may be, had such income been a part of the Total Income, as part of the remaining installments of advance tax which are due or where no such installments are due, by 31st March of the financial year.

SECTION 234A - INTEREST FOR DEFAULT IN FURNISHING OF ROI

1. Interest under section 234A is attracted for failure to file a return of income on or before the due date under section 139(1) i.e., **interest is payable where an assessee furnishes the return of income after the due date or does not furnish the return of income.**
2. Simple interest @1% per month or part of the month is payable for the period commencing from the date immediately following the due date and ending on the following dates-

Circumstances	Ending on the following dates
Where the return is furnished after due date	the date of furnishing of the return
Where no return is furnished	the date of completion of assessment

3. The interest has to be calculated on the amount of tax on total income as determined under section 143(1) or on regular assessment **as reduced** by
 - ✓ the advance tax paid
 - ✓ any tax deducted or collected at source,
 - ✓ any relief of tax allowed under section 89;
 - ✓ any tax credit allowed to be set off in accordance with the provisions of section 115JD [AMT Credit]
 - ✓ any relief of tax allowed under Section 90 or Section 90A or Section 91 **[FINAL Syllabus];**
 - ✓ any tax credit allowed to be set off in accordance with the provisions of section 115JAA (MAT Credit) – **MAT is in Final Syllabus**
4. No interest under section 234A **shall be charged on self-assessment tax paid by the assessee on or before the due date of filing of return.**
5. The interest payable under section 234A **shall be reduced** by the interest, if any, paid on self-assessment under section 140A towards interest chargeable under section 234A.

Additional Points

- a) Under the provisions of Section 234A and 234B, interest is chargeable **per month or part of a month**. This means that even where the delay is for part of a month, say even for one day, interest shall be charged for whole month.
- b) **Rule 119A:**
- (i) Where interest is to be calculated for every month or part of a month comprised in a period, **any fraction of a month shall be deemed to be a full month**.
 - (ii) Where interest is to be calculated on annual basis, any fraction of a month shall be ignored.
 - (iii) The amount of tax in respect of which interest is to be calculated is to be **rounded off to the nearest multiple of rupees hundred and any fraction of hundred is to be ignored**.
- c) Any amount paid by way of advance tax on or before 31st March shall also be treated as advance tax paid during the financial year for all purposes of the Act.
- d) Where the assessee does not pay any installment by the due date, he shall be **deemed to be an assessee in default** in respect of such installment.
- e) if the last day for payment of any installment of advance tax is a day **on which bank is closed**, then the assessee can make payment on the **next immediately following working day**, and in such cases, the interest under sections 234B and 234C shall be not be charged.
- f) **Net agricultural income has to be considered for the purpose of computing advance tax.**

Problems on Advance Tax & Interest

1. **IMP (4 Marks):** Briefly discuss the provisions relating to payment of advance tax on income arising from capital gains, casual income etc.

Answer: Interest under Section 234C shall not be leviable in respect of any shortfall in payment of tax due on returned income, where such shortfall is on account of under-estimate or failure to estimate-

(i) **The amount of Capital Gain**

(ii) **Casual Income**

(iii) **PGBP Income where the income accrues or arises under the said head for the first time**

~~(iv) Income in the nature referred to in Section 115BBDA i.e. dividend in aggregate exceeding of ₹ 10 Lakhs received during the PY~~

However, the assessee should have paid the whole of the amount of tax payable in respect of such income referred to in (i), (ii) or (iii), as the case may be, had such income been a part of the Total Income, as part of the remaining installments of advance tax which are due or where no such installments are due, by 31st March of the financial year.

2. **The following particulars are furnished by Abdul for the FY 2020-21 (AY 2021-22):**

Tax on total income (paid on 31.10.2021) ₹ 1,50,000

Due date for filing the return **31-10-2020**

Actual date of filing the return 1-11-2020

Calculate the total interest payable under sections 234A, 234B and 234C.

Answer: **Computation of Interest payable by Abdul (amount in ₹)**

Interest under section 234A (Since the tax has been paid on 31-10-2021 i.e. on or before the due date of filing of return of income and no tax is due on 1-11-2021 on the date of filing of the return, therefore, no interest can be charged.)		NIL
Interest under section 234B for 7 months i.e. 1-4-2021 to 31-10-2021 (1,50,000*1%*7)		10,500
Interest under section 234C as follows-		
15% of ₹ 1,50,000 i.e. ₹ 22,500*1%*3 months	675	
45% of ₹ 1,50,000 i.e. ₹ 67,500 *1%*3 months	2,025	
75% of ₹ 1,50,000 i.e. ₹ 1,12,500*1%*3 months	3,375	
100% of ₹ 1,50,000 i.e. ₹ 1,50,000*1%*1 months	1,500	7,575
Total interest payable		18,075

3. **The following particulars are furnished by Ms. Madhuri for the financial year 2020-21 (assessment year 2021-22):**

Tax on total income (paid on 31.7.2021) - ₹ 50,000

Date of filing the return 1.8.2021

Due date for filing the return 31.7.2021

Compute the total interest payable under sections 234A, 234B and 234C.

Answer:

The total interest payable by Ms. Madhuri under section 234 is computed as under:

Interest for	Calculation	Amount (₹)
Delay in filing under section 234A	NIL, as tax fully paid on due date	NIL
Default in payment of advance tax u/s 234B	50,000*1%*4 months	2,000
Deferment of Advance Tax u/s 234C	15% of ₹ 50,000*1%*3 months	225
	45% of ₹ 50,000*1%*3 months	675
	75% of ₹ 50,000*1%*3 months	1,125
	100% of ₹ 50,000*1%*1 months	500
Total Interest Payable		4525

TAX DEDUCTED AT SOURCE

FROM 18th EDITION – Assessment Year 2021-22
CMA INTER DT STUDENTS
(EXAM IN JUNE 2021 & DEC 2021)

DEDUCTION OF TAX AT SOURCE AND ADVANCE PAYMENT [SEC 190]

The total income of an assessee for the previous year is taxable in the relevant assessment year. However, the income-tax is recovered from the assessee in the previous year itself through –

- (1) Tax deduction at Source (TDS)
- (2) Tax collection at source (TCS)
- (3) Payment of Advance Tax

Another mode of recovery of tax is from the employer through tax paid by him under section 192(1A) **on the non-monetary perquisites provided to the employee [example Rent Free Accommodation].**

Note: These taxes are deductible from the total tax due from the assessee. The assessee, while filing his return of income, has to pay self-assessment tax under section 140A, if tax is due on the total income as per his return of income **after adjusting, inter alia, TDS, TCS, Advance Tax, Relief of tax claimed under section 89 or Section 90/91, MAT/AMT Credit etc.**

DIRECT PAYMENT [SECTION 191]

[Section 191(1)] *In the case of income in respect of which provision is not made under this Chapter for deducting income-tax at the time of payment, and in any case where income-tax has not been deducted in accordance with the provisions of this Chapter, income-tax shall be payable by the assessee direct.*

[Section 191(2)] - Direct payment of tax, where income of the assessee includes value of specified security or sweat equity shares allotted or transferred free of cost or at a concessional rate to the assessee by an employer being an eligible start up

*For the purposes of paying income-tax directly by the assessee under sub-section (1), if the income of the assessee in any assessment year, beginning on or after the 1st day of April, 2021, includes income of the nature specified in Section 17(2)(vi) [i.e. Value of any specified security or sweat equity shares allotted or transferred] and such security or shares are allotted or transferred directly or indirectly by the **current employer, being an eligible start-up referred to in section 80-IAC**, the income-tax on such income shall be payable by the assessee **within 14 days** -*

- i. after the expiry of **48 months from the end of the relevant assessment year**; or
- ii. from the **date of the sale** of such specified security or sweat equity share by the assessee; or
- iii. from the **date of the assessee ceasing to be the employee** of the employer who allotted or transferred him such specified security or sweat equity share,

whichever is the earliest.

[Section 191(2) is inserted by Finance Act 2020, w.e.f. AY 2021-22]

Explanation: If any person including the principal officer of a company, -

- a. who is required to deduct any sum in accordance with the provisions of this Act; or
- b. referred to in sub-section (1A) of section 192, being an employer,

does not deduct, or after so deducting fails to pay, or does not pay, the whole or any part of the tax, as required by or under this Act, and where the assessee has also failed to pay such tax directly, then, such person shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default within the meaning of sub-section (1) of section 201, in respect of such tax.

NOTE:**Eligible start-up referred to in Section 80-IAC**

Eligible Startup means a Company/LLP engaged in eligible business which fulfils the following conditions, namely:—

- i. it is incorporated on or after the 1st day of April, 2016 but before the 1st day of April, 2021;
- ii. **[Amended by FA 2020]** the total turnover of its business **does not exceed ₹ 100 crores** ~~25 crore~~ in any of the previous year relevant to the Assessment year for which deduction is claimed under section 80-IAC; and
- iii. it holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government

"Eligible Business" means a business carried out by an eligible start-up engaged in innovation, development or improvement of products or processes or services, or a scalable business model with a high potential of employment generation or wealth creation;

SURCHARGE & CESS

Surcharge (when receipts payable **exceeds 5 Crores / 2 Crores / 1 Crores / 10 Crores / 50 Lakhs** etc) or **H & EC** is applicable when TDS is deducted either **from Salary payment to any person (Res / NR)** OR **from the payment to NR / Foreign Company.**

NO TDS on GST Component

Circular No. 23/2017 - Tax shall be deducted at source on the amount paid/payable to Resident without GST component if such GST component is indicated separately.

SALARY [Section 192]

Person Responsible to deduct Tax	ANY PERSON responsible for paying any income chargeable to tax under the head 'Salaries' i.e. Employers
Category of Payee	Employee [Resident as well as Non-Resident]
Rate of TDS	<p>Average rate of income tax computed on the basis of the rates in force for the relevant financial year in which the payment is made, on the estimated total income of the assessee.</p> <p><i>However, in case an employee intends to opt for concessional rate of tax under section 115BAC and he intimates to the deductor, being his employer, of such intention, then, the employer shall compute his total income, and deduct tax thereon in accordance with the provisions of section 115BAC. If such intimation is not made by the employee, the employer shall deduct tax at source without considering the provision of section 115BAC of the Act.</i></p> <p>[Benefit of lower or NIL TDS Tax under Section 197 is available]</p>
Time for Deduction of Tax	At the time of Payment. [Due date is irrelevant]
Tax on Non-Monetary Perquisite	<ul style="list-style-type: none"> U/s 192(1A), the employer may, at his option, pay income-tax on the whole or part of perquisite provided by way of non-monetary payments. The tax so payable shall be construed as if it were, a tax deductible at source, from the income under the head "Salaries"
Other Income	<p>A tax payer having salary income in addition to other income chargeable to tax for that financial year, may send to the employer, the following:</p> <ol style="list-style-type: none"> particulars of such other income and particulars of any tax deducted under any other provision; loss, if any, under the head 'Income from house property'. <p>The employer shall take the above particulars into account while calculating tax deductible at source.</p>

Section 192(1C):

For the purposes of deducting or paying tax under sub-section (1) or sub-section (1A), as the case may be, **a person, being an eligible start-up referred to in section 80-IAC**, responsible for paying any income to the assessee being perquisite of the nature specified in clause (vi) of sub-section (2) of section 17 in any previous year relevant to the assessment year, beginning on or after the 1st day of April, 2021, **shall deduct or pay, as the case may be, tax on such income within 14 days-**

- after the **expiry of 48 months** from the end of the relevant assessment year; or
- from the **date of the sale of such specified security or sweat equity share** by the assessee; or
- from the **date of the assessee ceasing to be the employee** of the person,

whichever is the earliest, **on the basis of rates in force for the financial year in which the said specified security or sweat equity share is allotted or transferred.**

[Section 192(1C) is inserted by Finance Act 2020 w.e.f. AY 2021-22]

Furnishing of statement of particulars of perquisites or profits in lieu of salary by employer to employee

Sub-section (2C) provides that the employer shall furnish to the employee, a **statement (in Form No. 12BA)** giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof.

This requirement is applicable only where the salary paid/payable to an employee exceeds ₹ 1,50,000. **For other employees, the particulars of perquisites/profits in lieu of salary shall be given in Form 16 itself.**

Requirement to obtain evidence/ proof/ particulars of claims from the employee by the employer

S. No.	Nature of Claim	Evidence or particulars
1	House Rent Allowance	Name, address and PAN of the landlord(s) where the aggregate rent paid during the previous year exceeds ₹ 1 lakh.
2	Leave Travel Concession or Assistance	Evidence of expenditure
3	Deduction of interest under the head "Income from house property"	Name, address and PAN of the lender
4	Deduction under Chapter VIA	Evidence of investment or expenditure.

Taxable Withdrawal from Employee Provident Fund [Sec 192A]

For the purpose of discouraging pre-mature withdrawal and promoting long term savings, if the employee makes withdrawal before continuous service of five years (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.) and does not opt for transfer of accumulated balance to new employer, the withdrawal would be subject to tax.

1. TDS rate is **10%** in case of **premature taxable withdrawal** from EPF (at the time of payment)

*Accordingly, in a case where the accumulated balance due to an employee participating in a recognized provident fund is **includible in his total income** owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, the trustees of the Employees Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to deduct income-tax @ **10%**.*

*Rule 8 of Part A of the Fourth Schedule, inter alia, provides that only if an employee has rendered continuous service of five years or more with the employer, **then accumulated balance in a recognized provident fund payable to an employee would be excluded from the total income of that employee.***

2. No TDS if payment is **Less than ₹ 50,000**
3. In case PAN is not furnished, **TDS rate will be MMR.**

EXAMPLE:

Mr. Sharma, an employee of M/s. ABC Ltd. since 10-04-2017, resigned on 31-03-2021 and withdrew ₹ 60,000 being the balance in his EPF account. Discuss with reasons whether the provisions of Chapter XVII-B are attracted and if so, what is the net amount receivable by the payee, Mr. Sharma?

SOLUTION:

As per Section 192A, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income **owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable**, the trustees of the Employees' Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to deduct income-tax@10% at the time of payment of accumulated balance due to the employee.

Tax deduction at source has to be made only if the amount of such payment or aggregate amount of such payment of the payee is ₹ 50,000 or more.

Rule 8 of Part A of the Fourth Schedule, inter alia, provides that only if an employee has rendered continuous service of five years or more with the employer, then accumulated balance in a recognized provident fund payable to an employee would be excluded from the total income of that employee.

In the present case, Mr. Sharma has withdrawn an amount exceeding ₹ 50,000 on his resignation after rendering a continuous service of four years with M/s. ABC Ltd. Therefore, tax has to be deducted at source@10% under section 192A on ₹ 60,000, being the amount withdrawn on his resignation without rendering continuous service of a period of five years with M/s. ABC Ltd.

The net amount receivable by Mr. Sharma is ₹ 54,000 [i.e., ₹ 60,000 – ₹ 6,000, being tax deducted at source].

Note- It is assumed that Mr. Sharma has furnished his permanent account number (PAN) to the person responsible for deducting tax at source. Otherwise, tax would be deductible at the maximum marginal rate.

Interest on securities [Section 193]

Person Responsible to deduct Tax & Payee	Every person responsible for paying <u>to a resident</u> any income by way of interest on securities.
Rate of TDS	<p>10% [only Resident payee are covered here]</p> <p><i>In order to provide more funds at the disposal of the taxpayers for dealing with the economic situation arising out of COVID-19 pandemic, the rate of TDS u/s 193 has been reduced from 10% to 7.5% (i.e., ¾th of the specified rate) for the period from 14th May, 2020 to 31st March, 2021.</i></p> <p>[Section 197B]</p> <p>[Benefit of lower or NIL TDS Tax under Section 197 is available]</p>
Time for Deduction of Tax	At the time of credit to the account of payee or payment, whichever is earlier.

TDS SHALL NOT BE DEDUCTED IN THE FOLLOWING CASES:

1. Interest payable on any **Security of the CG/SG**
2. Interest payable upto ₹ 10,000 on 8% Taxable Savings Bonds 2003.
3. Interest payable upto ₹ 10,000 on 7.75% GOI Savings (Taxable) Bonds, 2018
4. *Interest payable on “Power Finance Corporation Limited 54EC Capital Gains Bond” and “Indian Railway Finance Corporation Limited 54EC Capital Gains Bond.*
5. Interest paid to **Resident Individual ‘or’ HUF** on listed or unlisted debentures of widely held company by account payee cheque of an amount not exceeding ₹ 5,000 during a financial year.
6. Interest payable on **Securities to LIC, GIC, subsidiaries of GIC or any other insurer.**
7. Interest payable on securities issued by a company, where such security is in **demat form and is listed** on a recognised stock exchange.

TDS on Dividend payable to Resident Shareholders [SEC 194]Amended w.e.f. AY 2021-22 **1. Applicability of TDS under section 194**

The principal officer of a domestic company is required to deduct tax on dividend distributed or paid by it to its resident shareholders.

2. Rate of TDS

The rate of deduction of tax in respect of such dividend is 10%. **Rate of TDS u/s 194 has been reduced from 10% to 7.5% (i.e., $\frac{3}{4}$ th of the specified rate) for the period from 14th May, 2020 to 31st March, 2021 [Section 197B].**

[Benefit of lower or NIL TDS Tax under Section 197 is available]

3. Time of tax deduction at source

The deduction of tax has to be made **before making any payment in cash or before issuing any cheque or warrant by any mode** in respect of any dividend **or before making any distribution or payment** to a resident shareholder of any amount deemed **as dividend under section 2(22)(a)/(b)/(c)/(d)/(e)**.

4. Non-applicability of TDS under Section 194

i. **No tax is to deducted in case of a shareholder, being an individual, where -**

a. the dividend is paid by ~~account payee cheque~~ **any mode other than cash**; and

b. the amount of such dividend or aggregate of dividend distributed or paid or likely to be distributed or paid during the financial year by the company to such shareholder **does not exceed ₹ 5,000 ₹2,500**.

ii. The TDS provisions will not apply to such **dividend credited or paid to LIC, GIC, subsidiaries of GIC or any other insurer** provided the shares are owned by them, or they have full beneficial interest in such shares

Interest other than interest on securities [Section 194A]

AMENDED BY FINANCE ACT 2020, w.e.f. AY 2021-22

Person Responsible to deduct Tax	<p><u>All assessee other than individual and HUF</u></p> <ul style="list-style-type: none"> - Paying Interest other than Interest on Securities <p style="color: red;"><u>In case of individual or a Hindu undivided family:</u> <i>whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ 1 crore in case of business or ₹ 50 lakh in case of profession the monetary limit specified in Section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income-tax under this section.</i></p>
Payee	RESIDENT PERSON
Rate of Deduction of Tax [TDS Rate]	<p>10%</p> <p style="color: red;">Rate of TDS u/s 194A has been reduced from 10% to 7.5% (i.e., ¾th of the specified rate) for the period from 14th May, 2020 to 31st March, 2021 [Section 197B].</p> <p>[Benefit of lower or NIL TDS Tax under Section 197 is available]</p>
Time for Deduction of Tax	At the time of credit to the account of payee or payment, whichever is earlier.
Non-deduction of TDS	<p>NO TDS If aggregate amount of interest [by all branch] credited or paid does not exceed-</p> <ul style="list-style-type: none"> a) Where the payer is (i) a Banking Company, or (ii) A Co-operative Society engaged in banking business, or (iii) in respect of Deposit with post office notified by the central Government [Time deposits including recurring deposits in case of banks] <ul style="list-style-type: none"> - ₹ 40,000 (₹ 50,000 in case of senior citizen)# b) In any other case - ₹ 5,000

The threshold limit will be reckoned with reference to the total interest credited or paid by the banking company or the co-operative society or the public company, as the case may be, (and not with reference to each branch), **where such banking company or co-operative society or public company has adopted core banking solutions.**

NO TDS IS DEDUCTED U/S 194A IN THE FOLLOWING CASES:

1. Interest paid or credited by a firm to any of its partners;
2. **Interest income credited or paid by the Central Government** under any provisions of the Income-tax Act.
3. **Interest income credited or paid to -**
 - a. any banking company to which the Banking Regulation Act, 1949, applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or
 - b. any financial corporation established by or under a Central, State or Provincial Act, or
 - c. the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956, or
 - d. the Unit Trust of India established under the Unit Trust of India Act, 1963, or
 - e. any company or co-operative society carrying on the business of insurance, or
 - f. such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette

Provided that no notification under this sub-clause shall be issued on or after the 1st day of April, 2020;

[Inserted by Finance Act 2020; w.e.f. AY 2021-22]

4. Interest income paid or payable by an infrastructure capital company or infrastructure capital fund or public sector company in relation to a **Zero Coupon Bond issued**.
5. Interest income as referred to in Section 10(23FC) [Interest income to Business trust from Special Purpose Vehicle]
6. Interest income credited or paid in respect of deposits (other than time deposits or recurring deposits) with a bank to which the Banking Regulation Act, 1949 applies;
7. Income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;
8. Income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income **paid during the financial year does not exceed ₹ 50,000**;
9. Income paid or credited by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society;
10. Interest income credited or paid in respect of -
 - i. deposits with primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank;
 - ii. deposit (other than time deposits) with a co-operative society [other than cooperative society or bank referred to in (i)] engaged in carrying on the business of banking.

However, a cooperative society referred to in (9) or (10) is liable to deduct tax if –

1. the total sales, gross receipts or turnover of the co-operative society **exceeds ₹ 50 crore** during the financial year immediately preceding the financial year in which interest is credited or paid; **and**
2. the amount of interest or the aggregate amount of interest credited or paid, or is likely to be credited or paid, **during the financial year is more than ₹ 50,000 in case of payee being a senior citizen and ₹ 40,000, in any other case.**

Inserted by Finance Act 2020 w.e.f. AY 2021-22

Power to the Central Government to issue notification [Section 194A(5)]

Inserted by Finance Act 2020 w.e.f. AY 2021-22

The Central Government may, by notification in the Official Gazette, provide that the deduction of tax shall not be made or shall be made at such lower rate, **from such payment to such person or class of persons, as may be specified in the said notification.**

QUESTION:

Examine the TDS implications under section 194A in the cases mentioned hereunder–

1. On 1.10.2020, Mr. Harish made a six-month fixed deposit of ₹ 10 lakh @9% p.a. with ABC Co-operative Bank. The fixed deposit matures on 31.3.2021.
2. On 1.6.2020, Mr. Ganesh made three nine month fixed deposits of ₹ 3 lakh each, carrying interest @9% with Dwarka Branch, Janakpuri Branch and Rohini Branch of XYZ Bank, a bank which has adopted CBS. The fixed deposits mature on 28.2.2021.
3. On 1.10.2020, Mr. Rajesh started a six months recurring deposit of ₹ 2,00,000 per month @8% p.a. with PQR Bank. The recurring deposit matures on 31.3.2021.

SOLUTION

1. ABC Co-operative Bank has to deduct tax at source @7.5% on the interest of ₹ 45,000 ($9\% \times ₹ 10 \text{ lakh} \times 1/2$) under section 194A. The tax deductible at source under section 194A from such interest is, therefore, ₹ 3,375.
2. XYZ Bank has to deduct tax at source @7.5% u/s 194A, since the aggregate interest on fixed deposit with the three branches of the bank is ₹ 60,750 [$3,00,000 \times 3 \times 9\% \times 9/12$], which exceeds the threshold limit of ₹ 40,000. Since XYZ Bank has adopted CBS, the aggregate interest credited/paid by all branches has to be considered. Since the aggregate interest of ₹ 60,750 exceeds the threshold limit of ₹ 40,000, tax has to be deducted @7.5% u/s 194A.
3. No tax has to be deducted under section 194A by PQR Bank on the interest of ₹ 28,000 falling due on recurring deposit on 31.3.2021 to Mr. Rajesh, since such interest does not exceed the threshold limit of ₹ 40,000.

Winnings from lotteries, crossword puzzles, Games etc [Sec 194B & 194BB]

No Amendment

Particulars	194B	194BB
Person Responsible to deduct Tax	Any person paying the sum by way of winnings from lottery, Crossword Puzzle, Card Game or Game of any sort.	Any Person being the holder of license paying winning from Horse Races
Non-deduction of TDS	If the payment does not exceed ₹ 10,000 during a financial year.	If the payment does not exceed ₹ 10,000 during a financial year.
Payee	All Assessee [Resident as well as Non-Resident]	
Rate of Deduction of Tax [TDS Rate]	30% [Benefit of lower or NIL Tax under Section 197 is not applicable]	
Time for Deduction of Tax	At the Time of Payment; [Where prize money is in Kind, before releasing the prize, the payer should ensure that tax has been paid in respect of the winnings.]	

Payments to contractors and sub-contractors [Section 194C]

Person Responsible to deduct Tax	<p><u>Any Person other than Individual / HUF / AOP / BOI</u></p> <ul style="list-style-type: none"> - Paying any sum to a resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract <p><u>In case of Individual / Hindu Undivided Family / AOP / BOI:</u></p> <p>whose total sales, gross receipts or turnover from the business or profession carried on by him <u>exceed ₹ 1 crore in case of business or ₹ 50 lakh in case of profession</u> the monetary limit specified in Section 44AB during the financial year immediately preceding the financial year in which such sum is credited or paid.</p>
Payee	Any person Resident in India
TDS on	Payment for work contract
Time for Deduction of Tax	At the time of Credit or Payment, whichever is earlier.
Rate of Deduction of Tax [TDS Rate]	<p>For all Contractors and Sub Contractors:</p> <p>(a) If payee is Ind. & HUF – 1%</p> <p>(b) for others payee – 2%</p> <p>Rate of TDS u/s 194C has been reduced from 1% to 0.75%, where the payee is an individual or HUF and 2% to 1.5% in respect of other payees for the period from 14th May, 2020 to 31st March, 2021 [Section 197B].</p> <p>[Benefit of lower or NIL TDS Tax under Section 197 is available]</p>

Non Deduction of TDS:

- (1) No deduction will be required to be made **if the consideration for the contract** (payee-wise) does not exceed ₹ 30,000.

Further, tax will be required to be deducted at source where the amount being credited or paid to a contractor/sub-contractor **exceeds ₹ 30,000 in a single payment or ₹ 100,000 in the aggregate during a financial year.**

- (2) **No Individual or HUF** shall be liable to deduct tax on sum credited or paid to the account of the contractor where such sum is **credited or paid exclusively for personal purposes** of such individual or any member of HUF.

- (3) **In case of Contractor in the business of Plying, Hiring or Leasing goods Carriages:**

No deduction on payment to a contractor, during the course of the business of plying, hiring or leasing goods carriages, if he furnishes his PAN to the deductor & owns 10 or Less goods carriage at any time during the PY

If PAN is not quoted by the Transporter, TDS Rate will be 20% in the absence of PAN as per Section 206AA.

- (4) The deduction of income-tax will be made from sums paid for carrying out any work or for supplying labour for carrying out any work. In other words, **the section will apply only in relation to 'works contracts' and 'labour contracts' and will not cover contracts for sale of goods.**

(5) Work includes –

- (a) advertising;
- (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;
- (c) carriage of goods or passengers by any mode of transport **other than by railways**;
- (d) catering;
- (e) *manufacturing or supplying a product according to the requirement or specification of a customer **by using material purchased from such customer or its associate, being a person placed similarly in relation to such customer as is the person placed in relation to the assessee under the provisions contained in Section 40A(2)(b) but does not include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from a person, other than such customer or associate of such customer.***

*[It may be noted that the term “work” would include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer. **In such a case, tax shall be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, tax shall be deducted on the whole of the invoice value.]***

Insurance commission [Section 194D]

Person Responsible to deduct Tax	Any Insurance company paying Insurance Commission
Payee	Resident Assessee
Rate of TDS	5% if recipient is resident other than company (3.75% from 14.05.2020) 10% if recipient is domestic company (7.5% from 14.05.2020) [Benefit of lower or NIL TDS Tax under Section 197 is available]
Time for Deduction of Tax	At the Time of Credit or payment, whichever is earlier.
Non-deduction of TDS	If the payment does not exceed ₹ 15,000 during financial Year

Payment in respect of life insurance policy [Section 194DA]

Person Responsible to deduct Tax	Insurance Company issuing Life Insurance Policy - Responsible for paying to a Resident any sum under a Life insurance policy, including the sum allocated by way of bonus on such policy
Rate of Deduction of Tax [TDS Rate]	5% on the amount of income comprised in sum paid under life insurance policies i.e., after deducting the amount of insurance premium paid by the resident assessee from the total sum received. <i>Rate of TDS has been reduced from 5% to 3.75% for the period from 14th May, 2020 to 31st March, 2021.</i>
Time for Deduction of Tax	At the Time of Payment
Non-deduction of TDS	1. No TDS, if the aggregate payment is less than ₹ 100,000. 2. No TDS, if maturity is exempt under Section 10(10D).

QUESTION:

Examine the applicability of the provisions for TDS under section 194DA in the above cases -

- (i) Mr. X, a resident, is due to receive ₹ 4.50 lakhs on 31.3.2021, towards maturity proceeds of LIC policy taken on 1.4.2018, for which the sum assured is ₹ 4 lakhs and the annual premium is ₹ 1,25,000.
- (ii) Mr. Y, a resident, is due to receive ₹ 3.25 lakhs on 31.3.2021 on LIC policy taken on 31.3.2012, for which the sum assured is ₹ 3 lakhs and the annual premium is ₹ 30,100.
- (iii) Mr. Z, a resident, is due to receive ₹ 95,000 on 1.8.2020 towards maturity proceeds of LIC policy taken on 1.08.2014 for which the sum assured is ₹ 90,000 and the annual premium was ₹ 10,000.

SOLUTION

- (i) Since the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, the maturity proceeds of ₹ 4.50 lakhs due on 31.3.2021 are not exempt under section 10(10D) in the hands of Mr. X. Therefore, tax is required to be deducted @ 3.75% under section 194DA on the amount of income comprised therein i.e., on ₹ 75,000 (₹ 4,50,000, being maturity proceeds - ₹ 3,75,000, being the entire amount of insurance premium paid).
- (ii) Since the annual premium is less than 20% of sum assured in respect of a policy taken before 1.4.2012, the sum of ₹ 3.25 lakhs due to Mr. Y would be exempt under section 10(10D) in his hands. Hence, no tax is required to be deducted at source under section 194DA on such sum payable to Mr. Y.
- (iii) Even though the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, and consequently, the maturity proceeds of ₹ 95,000 due on 1.8.2020 would not be exempt under section 10(10D) in the hands of Mr. Z, the tax deduction provisions under section 194DA are not attracted since the maturity proceeds are less than ₹ 1 lakh.

Payments to Non-Resident Sportsmen or Sports Association [Section 194E]

Person Responsible to deduct Tax	Any person making payment in nature of income as referred in Section 115BBA
Payee	Non-Resident Sportsman (including athlete) or Entertainer who is not an Indian Citizen / Non-Resident Sports Association
Rate of Deduction of Tax [TDS Rate]	20% + surcharge + cess
Time for Deduction of Tax	At the Time of Credit or payment, whichever is earlier.

Income referred to in Section 115BBA

- income received or receivable **by a non-resident sportsman (including an athlete)** by way of-
 - participation in any game or sport in India (However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein); or
 - advertisement; or
 - contribution of articles relating to any game or sport in India in newspapers, magazines or journals.
- Guarantee amount paid or payable **to a non-resident sports association or institution** in relation to any game or sport played in India. **However, games like crossword puzzles, horse races etc. taxable under section 115BB are not included herein.**
- income received or receivable **by a non-resident entertainer (who is not a citizen of India)** from his performance in India.

QUESTION:

Calculate the amount of tax to be deducted at source (TDS) on payment made to Ricky Ponting, an Australian cricketer non-resident in India, by a newspaper for contribution of articles ₹ 25,000.

SOLUTION

Under section 194E, the person responsible for payment of any amount to a nonresident sportsman for contribution of articles relating to any game or sport in India in a newspaper shall deduct tax @20%. Further, since Ricky Ponting is a non-resident, health and education cess @4% on TDS would also be added.

Therefore, tax to be deducted = ₹ 25,000 x 20.8% = ₹ 5,200.

Payments in respect of deposits under National Savings Scheme

[Section 194EE]

- The person responsible for paying to any person any amount from NSS as mentioned in section 80CCA shall, at the time of payment thereof, deduct income-tax thereon **at the rate of 10% (7.5% from 14/05/2020)**.
- No deduction if payment is less than ₹ 2,500 during the financial year.
- No TDS in case of payment on death to legal heirs of the assessee.

Commission etc. on the sale of lottery tickets [Section 194G]

Under Section 194G, the person responsible for paying any income by way of commission, remuneration or prize (by whatever name called) on lottery tickets in an amount exceeding ₹ 15,000 shall deduct income-tax thereon **at the rate of 5% (3.75% from 14/05/2020)**.

Such deduction should be made at the time of credit or payment, whichever is earlier.

[Benefit of lower or NIL TDS Tax under Section 197 is available]

Commission or brokerage [Section 194H]

Person Responsible to deduct Tax	<p><u>Any Person other than individual and HUF</u></p> <p>- Responsible for paying any income by way of commission (other than insurance commission) or brokerage</p> <p><u>In case of individual or a Hindu undivided family:</u> <i>whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ 1 crore in case of business or ₹ 50 lakh in case of profession the monetary limit specified in Section 44AB during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section.</i></p>
Payee	Resident Person
Rate of Deduction of Tax [TDS Rate]	5% (3.75% from 14/05/2020) [Benefit of lower or NIL TDS Tax under Section 197 is available]
Time for Deduction of Tax	At the Time of Credit or payment, whichever is earlier.
Non-deduction of TDS	No TDS, If the aggregate payment does not exceed ₹ 15,000.

“Commission or brokerage” includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered, or for any services in the course of buying or selling of goods, or in relation to any transaction relating to any asset, valuable article or thing, other than securities.

Further, there would be no requirement to deduct tax at source on commission or brokerage payments by BSNL or MTNL to their public call office (PCO) franchisees.

Applicability of TDS provisions on payments by television channels and publishing houses to advertisement companies for procuring or canvassing for advertisements
[Circular No. 05/2016, dated 29-2-2016]

There are two types of payments involved in the advertising business:

- 1. Payment by client to the advertising agency, and***
- 2. Payment by advertising agency to the television channel/newspaper company***

The applicability of TDS on these payments has already been dealt with in Circular No. 715 dated 8-8-1995, where it has been clarified that while TDS under section 194C (as work contract) will be applicable on the first type of payment, there will be no TDS under section 194C on the second type of payment e.g. payment by advertising agency to the media company.

However, another issue has been raised in various cases as to whether the fees/charges taken or retained by advertising companies from media companies for canvassing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount' for attracting the provisions of section 194H.

The CBDT has clarified that ***no TDS is attracted on payments made by television channels/newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements.***

It is also further clarified that 'commission' referred to in CBDT's Circular No. 715 dated 8-8-1995 does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS referred to in this Circular.

QUESTION:

Moon TV, a television channel, made payment of ₹ 50 lakhs to a production house for production of programme for telecasting as per the specifications given by the channel. The copyright of the programme is also transferred to Moon TV. Would such payment be liable for tax deduction at source under section 194C? Discuss.

Also, examine whether the provisions of tax deduction at source under section 194C would be attracted if the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house.

SOLUTION

In this case, since the programme is produced by the production house as per the specifications given by Moon TV, a television channel, and the copyright is also transferred to the television channel, the same falls within the scope of definition of the term 'work' under section 194C. Therefore, the payment of ₹ 50 lakhs made by Moon TV to the production house would be subject to tax deduction at source under section 194C.

If, however, the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house, there is no contract for "carrying out any work", as required in section 194C(1).

Therefore, such payment would not be liable for tax deduction at source under section 194C.

RENT [SECTION 194-I]

<p>Person Responsible to deduct Tax</p>	<p>Any Person <u>other than individual and HUF</u></p> <p>– Responsible for paying Rent.</p> <p><i>In case of individual or a Hindu undivided family:</i> <i>whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ 1 crore in case of business or ₹ 50 lakh in case of profession the monetary limit specified in Section 44AB during the financial year immediately preceding the financial year in which such commission or brokerage is credited or paid, shall be liable to deduct income-tax under this section.</i></p> <p>“RENT” means any payment under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any –</p> <ol style="list-style-type: none"> i. land; or ii. building (including factory building); or iii. land appurtenant to a building (including factory building); or iv. machinery; or v. plant; or vi. equipment; or vii. furniture; or viii. fittings, <p>whether or not any or all of the above are owned by the payee.</p>	
<p>Payee</p>	<p>Any person being Resident</p>	
<p>TDS Rate</p>	<p>Land/Building/ Furniture/Fittings</p>	<p>Machinery/Plant/Equipment</p>
	<p>10% for all</p>	<p>2 %</p>
<p>Non-deduction of TDS</p>	<p><i>Rate of TDS u/s 194-I has been reduced from 2% to 1.5% (i.e., ¾th of the specified rate), in respect of rent for plant, machinery or equipment and 10% to 7.5% (i.e., ¾th of the specified rate) in respect of other rental payments for the period from 14th May, 2020 to 31st March, 2021 [Section 197B].</i></p> <p>[Benefit of lower or NIL TDS Tax under Section 197 is available]</p> <p>At the Time of Credit or payment, whichever is earlier.</p> <ul style="list-style-type: none"> • No deduction if amount of rent paid/payable does not exceed ₹ 2,40,000 during any financial year. <p>Further, no deduction shall be made under this section from rent credited or paid to a business trust, being a REIT, in respect of any real estate asset owned directly by it.</p> <ul style="list-style-type: none"> • NO TDS if the payee is the Government or a local authority. 	

Tax Points: – 194I applicable

- ✓ If a person has taken a particular space on rent and thereafter sub-lets the same fully or in part for putting up hoarding, he would be liable to TDS u/s 194-I and not u/s 194C.
- ✓ Payment made for the rent to the co-owner each having a definite and ascertainable share in the property is **exceeds the limit of ₹ 2,40,000** per annum in the hands of **each co-owner separately**
- ✓ Payment made to landlord as deposit **if in the nature of advance rent or non-refundable deposit.**
- ✓ **Payment made for Warehousing Charges.** However, **the provisions of 194-I are not applicable to the cooling charges paid by the customers of the cold storage.** However, since the arrangement between the customers and cold storage owners are basically contractual in nature, **the provision of section 194-C will be applicable** to the amounts paid as cooling charges by the customers of the cold storage.
- ✓ Treatment of tax credit in the hands of the Payee, for TDS on Advance Rent: - **pro-rata TDS is allowed according to the rent offered for taxation.**

No requirement to deduct tax at source under section 194-I on remittance of Passenger Service Fees (PSF) by an Airline to an Airport Operator [Circular No. 21/2017, dated 12.06.2017]

Section 194-I requires deduction of tax at source at specified percentage on any income payable to a resident by way of rent. *Explanation* to this section defines the term “rent” as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any (a) land; or (b) building; or (c) land appurtenant to a building; or (d) machinery; (e) plant; (f) equipment (g) furniture; or (h) fitting, whether or not any or all of them are owned by the payee.

The primary requirement of any payment to qualify as rent is that the payment must be for the use of land and building and ***mere incidental/minor/ insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I.***

Accordingly, the CBDT has, *vide* this circular, clarified that the provisions of section 194-I shall **not** be applicable on payment of PSF by an airline to Airport Operator.

Clarification on applicability of TDS provisions of section 194-I on lumpsum lease premium paid for acquisition of long term lease [Circular No. 35/2016, dated 13-10-2016]

The issue of whether or not TDS under section 194-I is applicable on 'lump sum lease premium' or 'one-time upfront lease charges' paid by an assessee for acquiring long-term leasehold rights for land or any other property has been examined by the CBDT.

Accordingly, the CBDT has, *vide* this Circular, clarified that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property **are not payments in the nature of rent** within the meaning of section 194-I. Therefore, such payments are not liable for TDS under section 194-I.

TDS ON PURCHASE OF IMMOVABLE PROPERTY [Section 194-IA]

Person Responsible to deduct Tax	Any person (being a transferee) responsible for paying (other than the person referred to in section 194LA)
Payee	Resident transferor
Payments Covered	Any sum by way of consideration for transfer of any immovable property (other than agricultural land in rural area in India). [Situated in or outside India]
Consideration includes	Consideration for transfer of immovable property include all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.
Rate of Deduction of Tax	1% (0.75% from 14/05/2020)
Time for Deduction of Tax	At the Time of Credit or payment, whichever is earlier.
Non-deduction of TDS	No tax is deductible where the consideration paid or payable for the transfer of an immovable property is less than ₹ 50,00,000.
NOTE: Provisions of section 203A (pertaining to TAN) shall not apply in respect of tax deducted	

TDS ON PAYMENT OF RENT BY CERTAIN IND/HUF [Section 194-IB]

Person Responsible to deduct Tax	Individual or HUF, other than those individual or HUF whose total sales, gross receipts or turnover from the business or profession exceeds ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession in the financial year immediately preceding the financial year in which such rent was credited or paid
Payee	Resident
Payments Covered	Rent Exceeding ₹ 50,000 p.m.
Rate of Deduction of Tax	5% of aggregate rent (3.75% from 14/05/2020)
Time for Deduction of Tax	At the Time of Credit of Rent for the Last Month or Payment, whichever is earlier.
NOTE:	
1. Provisions of Section 203A (pertaining to TAN) shall not apply in respect of tax deducted	
2. In case Section 206AA applies, TDS amount shall not exceed the amount of Rent payable for the last month of the Previous Year/Tenancy Period.	

QUESTION:

Mr. X, a salaried individual, pays rent of ₹ 55,000 per month to Mr. Y from June, 2020. Is he required to deduct tax at source? If so, when is he required to deduct tax? Also, compute the amount of tax to be deducted at source.

Would your answer change if Mr. X vacated the premises on 31st December, 2020? Also, what would be your answer if Mr. Y does not provide his PAN to Mr. X?

SOLUTION

Since Mr. X pays rent exceeding ₹ 50,000 per month in the F.Y. 2020-21, he is liable to deduct tax at source @3.75% of such rent for F.Y. 2020-21 under section 194-IB. Thus, ₹ 20,625 [₹ 55,000 x 3.75% x 10] has to be deducted from rent payable for March, 2021.

If Mr. X vacated the premises in December, 2020, then tax of ₹ 14,438 [₹ 55,000 x 3.75% x 7] has to be deducted from rent payable for December, 2020. In case Mr. Y does not provide his PAN to Mr. X, tax would be deductible @20%, instead of 3.75%.


In case 1 above, this would amount to ₹ 1,10,000 [₹ 55,000 x 20% x 10] but the same has to be restricted to ₹ 55,000, being rent for March, 2021.

In case 2 above, this would amount to ₹ 77,000 [₹ 55,000 x 20% x 7] but the same has to be restricted to ₹ 55,000, being rent for December, 2020.

Payment under specified agreement [Section 194-IC]

[ALSO REFER CG CLASS – SECTION 45(5A)]

1. Applicability and Rate

This section casts responsibility on any person responsible for paying to a resident any sum by way of consideration, **not being consideration in kind**, under a specified agreement under section 45(5A), to deduct income-tax at the rate of 10% **(7.5% from 14.05.2020)**. 

2. Time of deduction

This deduction is to be made at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, **whichever is earlier**.

3. Non-applicability of section 194-IA

Since tax deduction at source for specified agreement under section 45(5A) is covered under section 194-IC, **the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases**.

4. Meaning of specified agreement

Specified agreement under section 45(5A):

- It 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.
- The consideration, in this case, is a share, being land or building or both in such project; Part of the consideration may also be in cash.

Fees for Professional or Technical Services [Section 194J]

Person Responsible to deduct Tax	<p>Any person, other than an individual or a HUF, who is responsible for paying income of specified nature.</p> <p>Individual/HUF, <u>whose total sales, gross receipts or turnover from business or profession carried by him exceeds ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession</u> subjected to tax audit u/s 44AB in the financial year immediately preceding the financial year in which the fees for professional services or fees for technical services is credited or paid is required to deduct tax on such fees.</p>
Payee	Any person being Resident
Payments Covered	<p>(a) Fees for Professional Services</p> <p>(b) Fees for Technical Services</p> <p>(c) Royalty</p> <p>(d) Payments referred u/s 28(va) - Sum received for not carrying out any activity in relation to Business/Profession or not sharing any Know-How, Patent etc. [Non-Compete Fees]</p>
Rate of Deduction of Tax [TDS Rate]	<p>(a) NEW - 2% of such sum in case of fees for technical services (not being a professional services) or royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films and</p> <p>(b) 10% of such sum in other cases</p> <p><i>[2% if payee is engaged only in the business of Operation of Call Centre.]</i></p> <p>NEW - TDS Rate of 2% is reduced to 1.5% & TDS Rate of 10% is reduced to 7.5% from 14.05.2020</p> <p>[Benefit of lower or NIL TDS Tax under Section 197 is available]</p>
Time for Deduction of Tax	At the Time of Credit or payment, whichever is earlier.
Non-deduction of TDS	<ul style="list-style-type: none"> • No tax deduction is required if the amount being credited or paid during a financial year does not exceed ₹ 30,000 for each of four payments separately. • No TDS on Sum paid by Individual / HUF towards professional services exclusively for their personal purposes. • Individuals and HUFs are not required to deduct tax at source under section 194J on royalty and non-compete fees.
<p><u>TDS on remuneration other than salary to a director [Section 194J]</u></p> <p>Section 194J has been amended to provide that tax is required to be deducted on the remuneration or fee or commission etc paid to a director, which is not in the nature of salary, at the rate of 10% of such remuneration.</p>	

Meaning of "Professional services"

"Professional services" means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the CBDT for the purposes of section 44AA or of this section.

Other professions notified for the purposes of section 44AA are as follows:

- a. Profession of "authorised representatives";
- b. Profession of "film artist";
- c. Profession of "company secretary".

The CBDT has notified the services rendered by following persons in relation to the sports activities as Professional Services for the purpose of the section 194J:

- a. Sports Persons,
- b. Umpires and Referees,
- c. Coaches and Trainers,
- d. Team Physicians and Physiotherapists,
- e. Event Managers,
- f. Commentators,
- g. Anchors and
- h. Sports Columnists.

Accordingly, the requirement of TDS as per section 194J would apply to all the aforesaid professions. The term "profession", as such, is of a very wide import. However, the term has been defined in this section exhaustively.

For the purposes of TDS, therefore, all other professions would be outside the scope of section 194J. For example, this section will not apply to professions of teaching, sculpture, painting etc. unless they are notified.

Meaning of "Fees for technical services"

Explanation (b) to Section 194J provides that the term 'fees for technical services' shall have the same meaning as in *Explanation 2* to Section 9(1)(vii).

The term 'fees for technical services' as defined in *Explanation 2* to Section 9(1)(vii) **means any consideration (including any lump sum consideration) for rendering of any of the following services:**

- (i) Managerial services;
- (ii) Technical services;
- (iii) Consultancy services;
- (iv) Provision of services of technical or other personnel.

It is expressly provided that the term 'fees for technical services' will not include following types of consideration:

- (i) Consideration for any construction, assembly, mining or like project, or
- (ii) Consideration which is chargeable under the head 'Salaries'.

Example:

East Bengal Club, a renowned football club, has engaged Raghu, a resident in India, as its coach at a remuneration of ₹ 6 lacs per annum. The club wants to know from you whether it is liable to deduct tax at source from such remuneration.

SOLUTION:

Section 194J requires deduction of tax at source @7.5% from the amount credited or paid by way of fees for professional services, where such amount or aggregate of such amounts credited or paid to a person exceeds ₹ 30,000 in the F.Y. 2020-21. As per *Explanation (a)* to section 194J, professional services include services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purposes of section 194J.

Accordingly, the CBDT has, vide *Notification No. 88 dated 21.8.2008*, in exercise of the powers conferred by clause (a) of the *Explanation* to section 194J notified the services rendered by coaches and trainers in relation to the sports activities as professional services for the purposes of section 194J.

Therefore, the club is liable to deduct tax at source under section 194J from the remuneration payable to the Coach, Raghu.

Consideration for use or right to use of computer software is royalty within the meaning of section 9(1)(vi)

As per section 9(1)(vi), any income payable by way of royalty in respect of any right, property or information is deemed to accrue or arise in India. The term "royalty" means consideration for transfer of all or any right in respect of certain rights, property or information.

The consideration for use or right to use of computer software is royalty by clarifying that, transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

Consequently, the provisions of tax deduction at source under section 194J would be attracted in respect of consideration for use or right to use computer software since the same falls within the definition of royalty.

Note:

The Central Government has, vide *Notification No. 21/2012 dated 13.6.2012*, effective from 1st July, 2012, exempted certain software payments from the applicability of tax deduction under section 194J. **Accordingly, where payment is made by the transferee for acquisition of software from a resident transferor, the provisions of section 194J would not be attracted if -**

- a. the software is acquired in a subsequent transfer without any modification by the transferor;
- b. tax has been deducted under section 194J on payment for any previous transfer of such software; and
- c. the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.

TPAs liable to deduct tax under section 194J on payment to hospitals on behalf of insurance companies

The CBDT has, through *Circular No.8/2009 dated 24.11.2009*, clarified that TPAs (Third Party Administrator's) who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.

This is because the services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable to payments made by TPAs to hospitals etc.

SECTION 194K [TDS on Income in respect of Units] NEW SECTION

Inserted by Finance Act 2020 w.e.f. AY 2021-22

Applicability and rate of tax

Section 194K provides for deduction of tax at source @10% by any person responsible for paying to a resident any income in respect of –

- a. units of a Mutual fund
- b. units from Administrator of the specified undertaking
- c. units from the specified company

NEW Rate of TDS u/s 194K has been reduced from 10% to 7.5% (i.e., $\frac{3}{4}$ th of the specified rate) for the period from 14th May, 2020 to 31st March, 2021 [Section 197B].

[Benefit of lower or NIL TDS Tax under Section 197 is available]

Time of deduction

The deduction is to be made at the time of credit of such sum to the account of the payee or at the time of payment by any mode, **whichever is earlier**.

Non-applicability of section 194K

No tax is required to be deducted if -

- a. the amount of such income or the **aggregate of the amounts** of such income credited or paid or likely to be credited or paid **during a financial year does not exceed ₹ 5,000; or**
- b. the income is of **the nature of capital gains**.

Payment of compensation on acquisition of certain immovable property [Section 194LA]

Person Responsible to deduct Tax	Any person
Payee	Any person being Resident
Payments Covered	Any payment in the nature of compensation/ enhanced compensation on account of compulsory acquisition of any immovable property (other than agricultural land). Here Agricultural land includes Urban Land also.
TDS Rate	10% (3.75% from 14/05/2020) NEW [Benefit of lower or NIL TDS Tax under Section 197 is available]
Time for Deduction of Tax	At the time of payment
Non-deduction of TDS	No tax deduction is required if the aggregate amount during the financial year does not exceed ₹ 250,000

Payment made by an individual or a HUF for contract work or by way of fees for professional services or commission or brokerage [Section 194M]

A. Applicability and rate of TDS

Section 194M, inserted with effect from 1.9.2019, provides for deduction of tax at source @5% (3.75% from 14.05.2020) **by an individual or a HUF** responsible for paying any sum during the financial year to any resident –

- i. for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract; or
- ii. by way of commission (not being insurance commission referred to in section 194D) or brokerage; or
- iii. by way of fees for professional services.

It may be noted that only individuals and HUFs (other than those who are required to deduct income-tax as per the provisions of section 194C or 194H or 194J) are required to deduct tax in respect of the above sums payable during the financial year to a resident.

[Benefit of lower or NIL TDS Tax under Section 197 is available]

B. Time of deduction

The tax should be deducted at the time of credit of such sum or at the time of payment of such sum, whichever is earlier.

C. Threshold limit

No tax is required to be deducted where such sum or, as the case may be, aggregate amount of such sums credited or paid to a resident during the financial year does not exceed ₹ 50,00,000.

D. Non-applicability of TDS under section 194M

An individual or a Hindu undivided family is **not liable to deduct tax at source** under section 194M if –

- i. they are required to deduct tax at source under section 194C for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract i.e., an individual or a HUF **whose total sales, gross receipts or turnover from the business or profession carried on by him exceeds ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession** who is subject to tax audit under section 44AB(a)/(b) in the immediately preceding financial year and such amount is not exclusively credited or paid for personal purposes of such individual or HUF.
- ii. they are required to deduct tax at source under section 194H on commission (not being insurance commission referred to in section 194D) or brokerage i.e., an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him **exceeds ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession** during the immediately preceding financial year.
- iii. they are required to deduct tax at source under section 194J on fees for professional services i.e., an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him **exceeds ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession** during the immediately preceding financial year and such amount is not exclusively credited or paid for personal purposes of such individual or HUF.

E. No requirement to obtain TAN

The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194M.

QUESTION:

Examine whether TDS provisions would be attracted in the following cases, and if so, under which section. Also specify the rate of TDS applicable in each case. Assume that all payments are made to residents.

S. No.	Particulars of the payer	Nature of payment	Aggregate of payments made in the F.Y. 2020-21
1	Mr. Ganesh, an individual carrying on retail business with turnover of ₹ 2.5 crores in the P.Y. 2019-20	Contract Payment for repair of residential house	5 lakhs
		Payment of commission to Mr. Vallish for business purposes	₹ 80,000
2	Mr. Rajesh, a wholesale trader whose turnover was ₹ 95 lakhs in P.Y. 2019-20.	Contract Payment for reconstruction of residential house (made during the period January- March, 2021)	₹ 20 lakhs in January, 2021, ₹ 15 lakhs in Feb 2021 and ₹ 20 lakhs in March 2021.
3	Mr. Satish, a salaried individual	Payment of brokerage for buying a residential house in March, 2021	₹ 51 lakhs
4	Mr. Dheeraj, a pensioner	Contract payment made during October-November 2020 for reconstruction of residential house	₹ 48 lakhs

SOLUTION

S. No.	Particulars of the payer	Nature of payment	Aggregate of payments in the F.Y. 2020-21	Whether TDS provisions are attracted?
1	Mr. Ganesh, an individual carrying on retail business with turnover of ₹ 2.5 crores in the P.Y. 2019-20	Contract Payment for repair of residential house	₹ 5 lakhs	No, TDS under section 194C is not attracted since the payment is for personal purpose and TDS under section 194M is not attracted as aggregate of contract payment to the payee in the P.Y. 2020-21 does not exceed ₹.50 lakh.
		Payment of commission to Mr. Vallish for business purposes	₹ 80,000	Yes, u/s 194H, since the payment exceeds ₹ 15,000, and Mr. Ganesh's turnover exceeds ₹ 1 crore in the P.Y. 2019-20.
2	Mr. Rajesh, a wholesale trader whose turnover was ₹ 95 lakhs in P.Y. 2019-20	Contract Payment for reconstruction of residential house	₹ 55 lakhs	Yes, under section 194M, since the aggregate of payments (i.e., ₹ 55 lakhs) exceed ₹ 50 lakhs. Since, his turnover does not exceed 1 crore in the P.Y.2019-20, TDS provisions under section

				194C are not attracted in respect of payments made in the P.Y. 2020-21.
3	Mr. Satish, a salaried individual	Payment of brokerage for buying a residential house	₹ 51 lakhs	Yes, under section 194M, since the payment of ₹ 51 lakhs made in March 2021 exceeds the threshold of ₹ 50 lakhs. Since Mr. Satish is a salaried individual, the provisions of section 194H are not applicable in this case.
4	Mr. Dheeraj, a pensioner	Contract payment for reconstruction of residential house	₹ 48 lakhs	TDS provisions under section 194C are not attracted since Mr. Dheeraj is a pensioner. TDS provisions under section 194M are also not applicable in this case, since the payment of ₹ 48 lakhs does not exceed the threshold of ₹ 50 lakhs.

Time and mode of payment of tax deducted at source under section 194-IA, 194-IB and 194M to the credit of Central Government, furnishing challan-cum-statement and TDS Certificate

[Rules 30, 31A & 31]

READING PURPOSE ONLY

- a. Such sum deducted u/s 194-IA, 194-IB and 194M shall be paid to the credit of the Central Government **within a period of 30 days from the end of the month** in which the deduction is made and **shall be accompanied by a challan-cum-statement in Form No. 26QB, 26QC and 26QD, respectively [Rule 30].**
- b. Every person responsible for deduction of tax u/s 194-IA, 194-IB and 194M shall also furnish to the PDGIT (Systems)(in case of section 194-IB and 194M) or DGIT (Systems) or any person authorized by them, a challan-cum-statement in Form No. 26QB, 26QC and 26QD, respectively, electronically within 30 days from the end of the month in which the deduction is made [Rule 31A].
- c. Every person responsible for deduction of tax u/s 194-IA, 194-IB and 194M shall **furnish the TDS certificate in Form No. 16B, 16C and 16D, respectively, to the payee within 15 days from the due date for furnishing the challan-cum-statement in Form No. 26QB, 26QC and 26QD, respectively.**

TDS on cash withdrawal [Section 194N]*This Section is substituted by Finance Act 2020 – w.e.f. 01/07/2020***1. Applicability and rate of TDS****Every person, being**

- a **banking company** to which the Banking Regulation Act, 1949 applies (**including any bank or banking institution** referred under section 51 of that Act)
- a co-operative society engaged in carrying on the business of banking, or
- a post office

who is responsible for paying, in cash, **any sum or aggregate of sums** exceeding ₹ 1 crore during the previous year to any person **from one or more accounts** maintained by such recipient-person with it, shall deduct tax at source **@2% of sum exceeding ₹ 1 crore.**

2. Modification in rate of TDS and threshold limit of withdrawal for recipient who has not furnished return of income for last 3 years (w.e.f. 1st July, 2020)

If the recipient has not furnished the returns of income for all the three assessment years relevant to the three previous years, for which the time limit of file return of income under section 139(1) has expired, immediately preceding the previous year in which the payment of the sum is made, the sum shall mean the amount or the aggregate of amounts, as the case may be, in cash exceeding ₹ 20 lakhs during the previous year, and the tax shall be deducted at the rate of-

- **2% of the sum, where the amount or aggregate of amounts, as the case may be, being paid in cash > ₹ 20 lakhs but ≤ ₹ 1 crore**
- **5% of the sum, where the amount or aggregate of amounts, as the case may be, being paid in cash > ₹ 1 crore.**

However, the Central Government is empowered to specify, with the consultation of RBI, by notification, **the recipient in whose case this provision shall not apply or apply at reduced rate, subject to the satisfaction of the conditions specified in such notification.**

3. Time of deduction

This deduction is to be made **at the time of payment of such sum.**

4. Non-applicability of TDS under section 194N

Liability to deduct tax at source under section 194N shall not be applicable to any payment made to-

- the **Government**
- any **banking company** or co-operative society engaged in carrying on the business of banking or a post-office
- any **business correspondent** of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the RBI guidelines
- any **white label ATM operator** of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the RBI under the Payment and Settlement Systems Act, 2007
- such **other person or class of persons notified** by the Central Government in consultation with the RBI.

No tax is required to be deducted at source under section 194N on cash withdrawals by persons or class of persons as notified by the Central Government**REDRAFTED**

The Central Government may specify, with the consultation of RBI, by notification, the recipient in whose case section 194N shall not apply or apply at reduced rate, subject to the satisfaction of the conditions specified in such notification.

Accordingly, the Central Government has, after consultation with the Reserve Bank of India (RBI), specified-

- I. Cash Replenishment Agencies (CRA's) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's) maintaining a separate bank account from which withdrawal is made only for the purposes of replenishing cash in the Automated Teller Machines (ATM's) operated by such WLATMO's and the WLATMO have furnished a certificate every month to the bank certifying that the bank account of the CRA's and the franchise agents of the WLATMO's have been examined and the amounts being withdrawn from their bank accounts has been reconciled with the amount of cash deposited in the ATM's of the WLATMO's.**
- II. Commission agent or trader, operating under Agriculture Produce Market Committee (APMC), and registered under any Law relating to Agriculture Produce Market of the concerned State, who has intimated to the banking company or co-operative society or post office his account number through which he wishes to withdraw cash in excess of ₹ 1 crore in the previous year along with his Permanent Account Number (PAN) and the details of the previous year and has certified to the banking company or co-operative society or post office that the withdrawal of cash from the account in excess of ₹ 1 crore during the previous year is for the purpose of making payments to the farmers on account of purchase of agriculture produce and the banking company or co-operative society or post office has ensured that the PAN quoted is correct and the commission agent or trader is registered with the APMC, and for this purpose necessary evidences have been collected and placed on record.**
- III. (a) the authorised dealer and its franchise agent and sub-agent; and
(b) Full-Fledged Money Changer (FFMC) licensed by the RBI and its franchise agent;**

Such persons should maintain a separate bank account from which withdrawal is made only for the purposes of –

- i. purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians **on their return to India**, in cash as per the directions or guidelines issued by RBI; or**
- ii. disbursement of **inward remittances to the recipient beneficiaries in India in cash** under Money Transfer Service Scheme (MTSS) of the RBI;**

The exemption from the requirement to deduct tax u/s 194N would be available only if a certificate is furnished by the authorised dealers and their franchise agent and sub-agent, and the Full-Fledged Money Changers (FFMC) and their franchise agent **to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the RBI have been adhered to.**

Certain payment by e-commerce operator to e-commerce participant
[Section 194-O] NEW SECTION

[Inserted by Finance Act 2020, w.e.f. 1.10.2020]

**(1) Applicability and rate of TDS**

Notwithstanding anything to the contrary contained in any of the provisions of this Chapter, Section 194-O provides that **where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform**, such e-commerce operator is liable to deduct tax at source @1% of the gross amount of such sales or services or both.

In order to provide more funds at the disposal of the taxpayers for dealing with the economic situation arising out of COVID-19 pandemic, the rate of TDS u/s 194-O for the period upto 31.3.2021 has been reduced from 1% to **0.75%** (i.e., $\frac{3}{4}$ th of the specified rate) **[Section 197B]**.

[Benefit of lower or NIL TDS Tax under Section 197 is available]

(2) Time of deduction

The deduction is to be made at the time of credit of amount of such sale or services or both to the account an e-commerce participant or at the time of payment thereof to such e-commerce participant by any mode, **whichever is earlier**.

(3) Deemed credit

Any payment made by a purchaser of goods or recipient of services directly to **an e-commerce participant** for the sale of goods or provision of services or both, facilitated by an e-commerce operator, **would be deemed to be amount credited or paid by the e-commerce operator to the e-commerce participant**. Accordingly, such payment would be included in the gross amount of such sales or services for the purpose of deduction of income-tax under this section.

(4) Non-applicability of TDS under section 194-O

No tax is required to be deducted under section 194-O

- ✓ in case of any sum credited or paid to an e-commerce participant, being an individual or HUF,
- ✓ where the gross amount of such sale or services or both **during the previous year** does not exceed ₹ 5 lakh **and**
- ✓ such **e-commerce participant** has furnished his PAN/ Aadhaar number to e-commerce operator.

(5) Non-applicability of TDS under any other section

A transaction in respect of which tax has been deducted by the e-commerce operator under this section or which is not liable to tax deduction under this section on account of the exemption discussed in point (4) above, **would not be liable to tax deduction at source under any other provision of Chapter XVII-B of the Act.**

However, this exemption from TDS under Chapter XVII-B would not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator **for hosting advertisements or providing any other services which are not in connection with the sale of goods or services referred to in point (1) above.**

(6) Power of CBDT to issue guidelines

In case any difficulty arises in giving effect to the provisions of this section, the CBDT may issue guidelines for the purpose of removing the difficulty with the approval of the Central Government.

Every guideline issued by the CBDT shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the e-commerce operator.

In exercise of the power to issue guidelines, CBDT has, with the approval of Central Government, vide **Circular no. 17/2020 dated 29.9.2020**, issued the following guidelines for removing certain difficulties-

1. Applicability on transactions carried through various Exchanges:

In order to remove practical difficulties in implementing section 194-O in case of certain exchanges and clearing corporations, it has been provided that section 194-O shall **not be applicable** in relation to-

- transactions in securities and commodities which **are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation**, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre;
- transactions in electricity, renewable energy certificates and energy saving certificates **traded through power exchanges** registered in accordance with Regulation 21 of the CERC (Central Electricity Regulatory Commission).

2. Applicability on payment gateway:

In e-commerce transactions, the payments are generally facilitated by payment gateways. Consequently, it is possible that there may be applicability of section 194-O twice i.e., once on the main ecommerce operator who is facilitating sale of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service.

To illustrate, a buyer buys goods worth ₹ 1 lakh on e-commerce website "XYZ". He makes payment of ₹ 1 lakh through digital platform of "ABC". On these facts, liability to deduct tax under Section 194-O may fall on both "XYZ" and "ABC".

In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-O of the Act on a transaction, if the tax has been deducted by the ecommerce operator under Section 194-O of the Act, on the same transaction.

Hence, in the above example, if "XYZ" has deducted tax under section 194-O on ₹ 1 lakh, "ABC" will not be required to deduct tax under section 194-O of the Act on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.

3. Applicability on insurance agent or insurance aggregator:

Insurance agents or insurance aggregators in many cases have no involvement in transactions between the insurance company and the buyer for subsequent years. Therefore, in subsequent years, the liability to deduct tax may arise on the insurance agents or insurance aggregators, even if the transactions have been completed directly with the insurance company. This may result into hardship for the insurance agents/aggregators.

*In order to remove difficulty, it is provided that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between the insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 194-O for those subsequent years. **However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.***

4. Calculation of threshold in case of Individual and HUF for the F.Y. 2020-21:

Since the threshold of five lakh rupees for an individual/ Hindu undivided family (being ecommerce participant who has furnished his PAN/Aadhaar) is with respect to the previous year, calculation of amount of sale or services or both for triggering deduction under section 194-O shall be counted from 1st April, 2020.

*Hence, if the gross amount of sale or services or both facilitated during the previous year 2020-21 (including the period up to 30th Sept 2020) in relation to such an individual/ Hindu undivided family exceeds five lakh rupees, **the provision of section 194-O shall apply in respect of any sum credited or paid on or after 1st October, 2020.***

(7) Person responsible for paying

*For the purpose of this section, **e-commerce operator** shall be deemed to be the person responsible for paying to e-commerce participant.*

(8) Meaning of certain terms

S. No.	Terms	Meaning
(i)	<i>Electronic commerce</i>	<i>The supply of goods or service or both, including digital products, over digital or electronic network.</i>
(ii)	<i>E-commerce operator</i>	<i>A person who owns, operates or manages digital or electronic facility or platform for electronic commerce.</i>
(iii)	<i>E-commerce participant</i>	<i>A person resident in India selling goods or providing services or both, including digital products, through digital or electronic facility or platform for electronic commerce.</i>
(iv)	<i>Services</i>	<i>It includes fees for technical services and fees for professional services as defined in section 194J.</i>

MISCELLANEOUS PROVISIONS

Income payable “net of tax” [Section 195A]

1. Where, under an agreement or other arrangement, the tax chargeable on any income referred to in the foregoing provisions of this Chapter is to be borne by the person by whom the income is payable, then, **for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon, be equal to the net amount payable under such agreement or arrangement.**
2. However, no grossing up is required in the case of tax paid under section 192(1A) by an employer on the non-monetary perquisites provided to the employee.

Interest or dividend or other sums payable to Government, Reserve Bank or certain corporations [Section 196]

No deduction of tax shall be made by any person from any sums payable to-

- i. the Government; or
- ii. the Reserve Bank of India; or
- iii. a corporation established by or under a Central Act, which is, under any law for the time being in force, exempt from income-tax on its income; or
- iv. a Mutual Fund.

CERTIFICATE FOR DEDUCTION OF TAX AT A LOWER RATE [SECTION 197]

READING PURPOSE

1. This section applies where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or payment, as the case may be at the rates in force **as per the provisions of sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, 194LBB, 194LBC, 194M, 194-O and 195.**
2. In such cases, the **assessee can make an application to the Assessing Officer** for deduction of tax at a lower rate or for non-deduction of tax.
3. If the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at lower rates or no deduction of income-tax, as the case may be, **he may give to the assessee such certificate, as may be appropriate.**
4. Where the Assessing Officer issues such a certificate, then the person responsible for paying the income shall deduct income-tax at such lower rates **specified in the certificate** or deduct no tax, as the case may be, **until such certificate is cancelled by the Assessing Officer.**

NO DEDUCTION IN CERTAIN CASES [SECTION 197A]**READING PURPOSE****(1) Enabling provision for filing of declaration for receipt of NSS payment (Section 194EE) and dividend (Section 194) without deduction of tax [Sub-section (1)]**

This sub-section enables **an individual, who is resident in India**, to receive dividend or any sum out of National Savings Scheme Account, without deduction of tax at source under section 194 or 194EE, respectively, on furnishing a **declaration (Form 15G)** in duplicate in the prescribed form and verified in the prescribed manner to the effect that the **tax on the estimated total income of the declarant of the previous year** in which such income is to be included in computing his total income will be **Nil**.

(2) Enabling provision for filing of declaration for non-deduction of tax under section 192A or 193 or 194A or 194D or 194DA or 194-I or 194K by persons, other than companies and firms [Sub-section (1A)]

No deduction of tax shall be made under the above provisions of the Act, where **a person, who is not a company or a firm**, furnishes to the person responsible for paying any income of the nature referred to in these sections, a declaration in writing in duplicate in the prescribed form to the effect that the **tax on his estimated total income** of the previous year in which such income is to be included in computing his total income will be **Nil**.

(3) Filing declaration not permissible if income/aggregate of incomes exceed basic exemption limit [Sub-section (1B)]

Declaration cannot be furnished as per the above provisions, where-

- i. payments of dividend; or
- ii. payments in respect of deposits under National Savings Schemes, etc.; or
- iii. payment of premature withdrawal from Employee Provident Fund; or
- iv. income from interest on securities or interest other than "interest on securities" or units; or
- v. insurance commission; or
- vi. payment in respect of life insurance policy; or
- vii. rent; or
- viii. income from units; or
- ix. the aggregate of the amounts of such incomes in (i) to (viii) above credited or paid or likely to be credited or paid during the previous year in which such income is to be included **exceeds the basic exemption limit**.

(4) Enabling provision for filing of declaration by resident senior citizens for non-deduction of tax at source [Sub-section (1C)]

For a resident individual, who is of the age of 60 years or more at any time during the previous year, no deduction of tax shall be made under section 192A or section 193 or section 194 or section 194A or section 194D or section 194DA or section 194EE or section 194-I or section 194K, if such individual furnishes **a declaration (Form 15H)** in writing in duplicate to the payer, that **tax on his estimated total income of the previous year** in which such income is to be included in computing his total income is **Nil**.

The restriction contained in sub-section (1B) will not apply to resident senior citizens.

(5) Non-deduction of tax in certain cases**(a) Interest payments by an Offshore Banking Unit to a non-resident/not ordinarily resident in India [Sub-section (1D)]**

No deduction of tax shall be made by an Offshore Banking Unit from the interest paid on-

- a. deposit made by a non-resident/not-ordinarily resident on or after 1.4.2005; or
- b. borrowing from a non-resident/not-ordinarily resident on or after 1.4.2005.

(b) Payment to any person for, or on behalf of, the NPS Trust [Sub-section (1E)]

No deduction of tax at source shall be made from any payment to any person for, or on behalf of, the New Pension System Trust.

(c) Payments to notified person or class of persons including institutions/class of institutions etc. [Sub-section (1F)]

No deduction of tax shall be made **or deduction of tax shall be made at such lower rate,** from such payment to such person or class of persons, including institution, association or body or class of institutions or associations or bodies **as may be notified by the Central Government in the Official Gazette in this behalf.**

Therefore, in respect of such payments made to notified person or class of persons, no tax is to be deducted at source or tax is to be deducted at lower rate.

(6) Time limit for delivery of one copy of declaration [Sub-section (2)]

On receipt of the declaration referred to in sub-sections (1), (1A) or (1C), the person responsible for making the payment will be required to deliver or cause to be delivered to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, one copy of the declaration **on or before the 7th of the month following the month in which the declaration is furnished to him.**

Tax Deducted is income received [Section 198]

- (1) All sums deducted in accordance with the foregoing provisions shall, for the purpose of computing the income of an assessee, **be deemed to be income received.**
- (2) However, the following tax paid or deducted would not be deemed to be income received by the assessee for the purpose of computing the total income—
 - i. the tax paid by an employer under section 192(1A) on non-monetary perquisites provided to the employees
 - ii. **tax deducted under section 194N**

Credit for Tax Deducted At Source [Section 199]

1. *Tax deducted at source in accordance with the above provisions and paid to the credit of the Central Government shall be treated as payment of tax on behalf of the deductee.*
2. *Any sum referred to in section 192(1A) and paid to the Central Government, shall be treated as the tax paid on behalf of the employee. [Tax on Non-Monetary Perquisite]*
3. *The CBDT is empowered to frame rules for the purpose of giving credit in respect of tax deducted or tax paid under this Chapter. The CBDT also has the power to make rules for giving credit to a person other than the persons mentioned in (1) and (2) above. Further, the CBDT can specify the assessment year for which such credit may be given.*

Rule 37BA – Credit for tax deducted at source for the purposes of section 199

1. *Credit for tax deducted at source and paid to the Central Government would be given to the person to whom the payment has been made or credit has been given (i.e., the deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.*
2. *Where under any provisions of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, **credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee.***
3. *Credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.*

*Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, **credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.***

4. ***For the purposes of section 194N, credit for tax deducted at source shall be given to the person from whose account tax is deducted and paid to the Central Government account for the assessment year relevant to the previous year in which such tax deduction is made.***

Duty of person deducting tax - Section 200

[Only Relevant Text is taken]

1. Any person deducting any sum in accordance with the foregoing provisions of this Chapter **shall pay within the prescribed time, the sum so deducted to the credit of the Central Government or as the Board directs.**
2. Any person being an employer, referred to in sub-section (1A) of section 192 **shall pay, within the prescribed time, the tax to the credit of the Central Government or as the Board directs.**

Rule 30 – Prescribed time and mode of payment to Government account of TDS or tax paid under section 192(1A)

- a. All sums deducted in accordance with Chapter XVII-B by an office of the Government shall be paid to the credit of the Central Government on
 - the **same day** where the tax is paid **without production of an income-tax challan** and
 - **on or before 7 days** from the end of the month in which the deduction is made or income-tax is due under section 192(1A), where tax is paid accompanied by an income-tax challan.
- b. All sums deducted in accordance with Chapter XVII-B by **deductors other than a Government office** shall be paid to the credit of the Central Government
 - **on or before 30th April**, where the income or amount is credited or paid in the month of March.
 - In any other case, the tax deducted should be **paid on or before 7 days** from the end of the month in which the deduction is made or income-tax is due under section 192(1A).
- c. **Tax deducted under sections 194-IA, 194-IB and 194M** have to be remitted within 30 days from the end of the month of deduction. **A challan-cum-statement in Form 26QB/26QC/26QD has to be furnished within 30 days from the end of the month of deduction.**

3. **[SECTION 200(3)]** Any person deducting any sum in accordance with the foregoing provisions of this Chapter or, as the case may be, any person being an employer referred to in sub-section (1A) of section 192 shall, **after paying the tax deducted** to the credit of the Central Government within the prescribed time, **prepare such statements** for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed:

Provided that the person may also deliver to the prescribed authority **a correction statement** for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be specified by the authority.

Rule 31A – Submission of quarterly statements

Every person responsible for deduction of tax under Chapter XVII-B shall deliver, or cause to be delivered, **the following quarterly statements to the DGIT (Systems) or any person authorized by him, in accordance with section 200(3):**

- i. Statement of TDS under section 192 in Form No.24Q;
- ii. Statement of TDS under other sections **from section 193 to section 196D** in Form No. 26Q in respect of all deductees **other than a deductee being a non-corporate non-resident or a foreign company or resident but not ordinarily resident in which case the relevant form would be Form No. 27Q.**

Such statements have to be furnished within the due date for each quarter specified below:

S. No.	Date of ending of the quarter of the financial year	Due date
1	<i>30th June</i>	<i>31st July of the financial year</i>
2	<i>30th Sept</i>	<i>31st October of the financial year</i>
3	<i>31st Dec</i>	<i>31st January of the financial year</i>
4	<i>31st March</i>	<i>31st May of the financial year immediately following the financial year in which the deduction is made.</i>

Processing of statements of tax deducted at source – Section 200A

READING PURPOSE

Correction of arithmetic mistakes and adjustment of incorrect claim during computerized processing of TDS statements

[At present, all statements of tax deducted at source are filed in an electronic mode, thereby facilitating computerised processing of these statements. Therefore, in order to process TDS statements on computer, electronic processing on the same lines as processing of income-tax returns has been provided in section 200A]

1. Where a statement of tax deduction at source or a correction statement has been made by a person deducting any sum (hereafter referred to in this section as deductor) under section 200, **such statement shall be processed in the following manner, namely:-**

- a. the sums deductible under this Chapter shall be computed after making the following adjustments, namely:-
 - (i) any arithmetical error in the statement; or
 - (ii) an incorrect claim, apparent from any information in the statement;
- b. the interest, if any, shall be computed on the basis of the sums deductible as computed in the statement;
- c. the fee, if any, shall be computed in accordance **with the provisions of section 234E**;

[Section 234E - A fee of ₹ 200 for every day would be levied under section 234E for late furnishing of TDS/TCS statement from the due date of furnishing of TDS/TCS statement to the date of furnishing of TDS/TCS statement. However, the total amount of fee shall not exceed the total amount of tax deductible/collectible and such fee has to be paid before delivering the TDS/TCS statement.]

- d. the sum payable by, or the amount of refund due to, the deductor shall be determined after adjustment of the amount computed under clause (b) and clause (c) against any amount paid under section 200 or section 201 or section 234E and any amount paid otherwise by way of tax or interest or fee;
- e. an intimation shall be prepared or generated and sent to the deductor specifying the sum determined to be payable by, or the amount of refund due to, him under clause (d); and
- f. the amount of refund due to the deductor in pursuance of the determination under clause (d) shall be granted to the deductor:

Provided that no intimation under this sub-section shall be sent after the expiry of 1 year from the end of the financial year in which the statement is filed.

Explanation-

For the purposes of this sub-section, "an incorrect claim apparent from any information in the statement" shall mean a claim, on the basis of an entry, in the statement-

- (i) of an item, which is inconsistent with another entry of the same or some other item in such statement;
- (ii) in respect of rate of deduction of tax at source, where such rate is not in accordance with the provisions of this Act.

2. For the purposes of processing of statements under sub-section (1), the **Board may make a scheme for centralised processing of statements of tax deducted at source** to expeditiously determine the tax payable by, or the refund due to, the deductor as required under the said sub-section.

Consequences of failure to deduct or pay [Section 201]

(1) The following persons **shall be deemed to be an assessee in default** if they do not deduct the whole or any part of the tax or after deducting fails to pay the tax -

- (i) any person including the principal officer of a company, who is required to deduct any sum in accordance with the provisions of the Act; and
- (ii) an employer paying tax on non-monetary perquisites under section 192(1A) .

Provided such person shall not be deemed to be an assessee in default in respect of such tax if payee (resident or non-resident)-

- (a) ***has furnished his ROI u/s 139;***
- (b) ***has taken into account such sum for computing income in his ROI; and***
- (c) ***has paid the tax due on the income declared by him,***
and the person furnishes a certificate from a chartered accountant in prescribed manner.

(2) Such person shall also be liable to pay simple interest:

- (i) At **one percent [1%]** for every month or part of a month on the amount of such tax was deductible to the date on which such tax is deducted; and
- (ii) At **one and one-half percent [1.5%]** for every month or part of a month on the amount of such tax was deducted to the date on which such tax is actually paid.

Provided that if payee has furnished his ROI as aforesaid, the interest shall be payable from date on which tax was deductible to the date of furnishing ROI only.

(3) No order shall be made under this Section deeming a person to be an assessee in default for failure to deduct the whole or any part of the tax from a person resident in India, at any time **after the expiry of**

- **7 years from the end of the financial year** in which the payment is made or credit is given OR
- **2 years from the end of financial year in which the correction statement is delivered under proviso to Section 200(3),**

whichever is later.

QUESTION:

An amount of ₹ 40,000 was paid to Mr. X on 1.7.2020 towards fees for professional services without deduction of tax at source. Subsequently, another payment of ₹ 50,000 was due to Mr. X on 28.2.2021, from which tax@7.5% (amounting to ₹ 6,750) on the entire amount of ₹ 90,000 was deducted. However, this tax of ₹ 6,750 was deposited only on 22.6.2021. Compute the interest chargeable under section 201(1A).

SOLUTION

Interest under section 201(1A) would be computed as follows:

Particulars	Amount (₹)
1% on tax deductible but not deducted i.e., 1% on ₹ 3,000 for 8 months	240
1½% on tax deducted but not deposited i.e. 1½% on ₹ 6,750 for 4 months	405
Total	645

Deduction only one mode of recovery [Section 202]

1. Recovery of tax through deduction at source is only one method of recovery.
2. The Assessing Officer can use any other prescribed methods of recovery in addition to tax deducted at source.

Certificate for tax deducted [Section 203]

1. Every person deducting tax at source have to issue a certificate to the effect that tax has been deducted and specify the amount so deducted, the rate at which tax has been deducted and such other particulars as may be prescribed.
2. Every person, being an employer, **referred to in section 192(1A)** shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed.

3. Certificate of TDS to be furnished under section 203 [Rule 31]

The certificate of deduction of tax at source to be furnished under section 203 shall be in Form No.16 in respect of tax deducted or paid under section 192 and in any other case, Form No.16A.

Form No.16 shall be issued to the employee annually by 15th June of the financial year immediately following the financial year in which the income was paid and tax deducted.

Form No.16A shall be issued quarterly within 15 days from the due date for furnishing the statement of TDS under Rule 31A.

Form No. 16B, 16C or 16D shall be issued by the every person responsible for deduction of tax under section 194-IA, 194-IB or 194M to the payee within 15 days from the due date for furnishing the challan-cum-statement in Form No. 26QB, 26QC or 26QD, respectively, under rule 31A.

Common number for TDS [Section 203A]

- A. Persons responsible for deducting tax shall apply to the AO for the allotment of a **“Tax deduction and Collection account number” in Form No. 49B.** [TAN]
- B. The same is to be obtained **within 1 month from the end of the month** in which the tax was deducted.
- C. **TDS No. [TAN] has to be compulsorily quoted in** challans for payment of any tax deducted; TDS Certificates; TDS Statements; TDS Returns; and other documents as prescribed.

No Direct Demand on Assessee/Payee [Section 205]

Where tax is deductible at source under the forgoing provisions of this chapter, the assessee shall not be called upon to pay the tax himself **to the extent to which tax has been deducted from that income.**

Mandatory requirement of furnishing PAN in all TDS Matters [Sec 206AA]:

- A. Any person whose receipts are subject to TDS i.e. the deductee, **shall mandatorily furnish his PAN** to the deductor **otherwise the deductor shall deduct tax at source at higher of the following rates –**
 - (i) the rate prescribed in the Act;
 - (ii) at the rate in force i.e., the rate mentioned in the Finance Act; or
 - (iii) **at the rate of 20% (5% in case of Section 194-O).**
- B. Furnishing of PAN is mandatory also in cases where the taxpayer files a declaration **in Form 15G or 15H (under section 197A) for non deduction of TDS otherwise, abovementioned rates will apply.**
- C. Further, No certificate u/s 197 (Lower TDS) will be granted by the AO unless the PAN is furnished by the applicants.

[Few Provisions of this section will discuss in DT Volume 4 – Taxation of Non-Resident]



TAX COLLECTION AT SOURCE [Section 206C]

1. **[Section 206C(1)] Every Seller shall, at the time of debiting the buyer with the amount payable by the buyer or at the time of receipt of such amount from the said buyer, whichever is earlier, collect tax at the followings rates from buyers engaged in business of alcoholic liquor, forest produce, scrap, timber, tendu leaves, etc.:**

Sr. No.	Nature of goods	TCS Rate	
		From 1.4.2020 to 13.5.2020	From 14.5.2020 to 31.3.2021 [Section 206C(10A)]
1	Alcoholic liquor for human consumption (other than Indian made foreign liquor)	1%	1%
2	Tendu Leaves	5%	3.75%
3	Timber obtained under a forest lease	2.5%	1.875%
4	Timber obtained by mode other than under a forest lease	2.5%	1.875%
5	Any other forest produced not being timber or tendu leaves	2.5%	1.875%
6	Scrap	1%	0.75%
7	Minerals, being Coal or lignite or iron ore	1%	0.75%

[Section 206C(1A)] Such tax is not to be collected if the purchase of above goods is made by buyer (Resident in India) for the purpose of manufacturing, processing or producing articles or things or for the purposes of generation of power.

Here, Buyer does not include

- a Public Sector Company, the CG, SG and an Embassy, a High Commission, Legation, Commission, Consulate and the trade representation of a foreign state **and a club**
- A buyer in the **retail sale of such goods** purchased by him for personal consumption.

Here "Seller" means

- the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society and
- also includes 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 the goods of the nature specified in the Table are sold.

However, with effect from 1st October, 2020, seller includes an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the financial year immediately preceding the financial year in which the goods of the nature specified above are sold.

[Amended by Finance Act 2020, w.e.f. 01/10/2020]

2. **[Section 206(1C)]** Sub-section (1C) provides for collection of tax **[at the rate of 2%]** by every person who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest in any

- parking lot or
- toll plaza or
- a mine or a quarry

to another person (other than a public sector company) for the use of such parking lot or toll plaza or mine or quarry for the purposes of business.

In order to provide more funds at the disposal of the taxpayers for dealing with the economic situation arising out of COVID-19 pandemic, the rate of TCS u/s 206C(1C) has been reduced from 2% to 1.5% (i.e., ¾th of the specified rate) for the period from 14th May, 2020 to 31st March, 2021 [Section 206C(10A)].

3. **[Section 206(1F)]** Every Person, being a Seller, who receives any amount as consideration for sale of a motor vehicle (at retail level) of the **value exceeding ten lakh rupees**, shall, **at the time of receipt** of such amount, collect from the buyer, a sum equal to **1% of the sale consideration** (any mode) as income-tax.

[Rate is reduced to 0.75% for the period between 14.05.2020 to 31.03.2021]

Here, Buyer doesn't include

- (a) Public Sector company which is engaged in the business of carrying passengers
- (b) A Local Authority
- (c) CG, SG and an Embassy, High Commission, Legation, Commission, Consulate & the Trade representation of a foreign State.

Here "Seller" means [Same as Section 206C(1)]

- the Central Government, a State Government or any local authority or corporation or authority established by or under a Central, State or Provincial Act, or any company or firm or co-operative society and
- also includes 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 the goods of the nature specified in the Table are sold.

However, with effect from 1st October, 2020, seller includes an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the financial year immediately preceding the financial year in which the goods of the nature specified in the Table are sold.

[Amended by Finance Act 2020, w.e.f. 01/10/2020]

CBDT Clarification relating to certain issues with respect to section 206C(1F)

1. **Whether TCS@1% is on sale of motor vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/ distributors?**

Answer:

A. To bring high value transactions within the tax net, section 206C has been amended to provide that the seller shall collect the tax @ 1% from the purchaser on sale of motor vehicle of the value exceeding ₹ 10 lakhs. This is brought to cover all transactions of retail sales and accordingly, it **will not apply on sale of motor vehicles by manufacturers to dealers/distributors.**

2. **Whether TCS@1% on sale of motor vehicle is applicable only to luxury cars?**

Answer:

No, as per section 206C(1F), the seller shall collect tax@1% from the purchaser on sale of any motor vehicle of the value exceeding ₹ 10 lakhs.

3. **Whether TCS@1% is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions, of motor vehicle or any other goods or provision of services?**

Answer:

Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State shall not be liable to levy of TCS@1% under sub-section (1F) of section 206C.

4. **Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?**

Answer:

Tax is to be collected at source@1% on sale consideration of a motor vehicle exceeding ₹ 10 lakhs. It is applicable to each sale and not to aggregate value of sale made during the year.

5. **Whether TCS@1% on sale of motor vehicle is applicable in case of an individual?**

Answer:

The definition of "Seller" as given in clause (c) of the *Explanation* below sub-section (11) of section 206C shall be applicable in the case of sale of motor vehicles also. Accordingly, an individual who is liable to audit as per the provisions of section 44AB during the financial year immediately preceding the financial year in which the motor vehicle is sold shall be liable for collection of tax at source on sale of motor vehicle by him.

6. **How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?**

Answer:

The provisions of TCS on sale of motor vehicle exceeding ₹ 10 lakhs is not dependent on mode of payment. Any sale of motor vehicle exceeding ₹ 10 lakhs would attract TCS@1%.

4. **[Section 206C(1G)] Overseas remittance or an overseas tour package [w.e.f. 1.10.2020]**

[Inserted by Finance Act 2020, w.e.f. 01/10/2020] ★

Section 206C(1G) provides for collection of tax by every person,

- being **an authorized dealer**, who receives amount, under the Liberalised Remittance Scheme of the RBI, for overseas remittance from a buyer, being a person remitting such amount out of India;
- being **a seller of an overseas tour programme package** who receives any amount from the buyer who purchases the package

at the rate of 5% of such amount.

Tax has to be collected at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier.

Overseas tour program package


Any tour package which offers visit to a country/(ies) or territory/(ies) outside India. It includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

Rate of TCS in case of collection by an authorized dealer

S. No.	Amount and purpose of remittance	Rate of TCS
(i)	(a) Where the amount is remitted for a purpose other than purchase of overseas tour programme package; and (b) the amount or aggregate of the amounts being remitted by a buyer is less than ₹ 7 lakhs in a financial year	Nil (No tax to be collected at source)
(ii)	(a) where the amount is remitted for a purpose other than purchase of overseas tour programme package; and (b) the amount or aggregate of the amounts in excess of ₹ 7 lakhs is remitted by the buyer in a financial year	5% of the amt or agg. of amts in excess of ₹ 7 lakh
(iii)	(a) where the amount being remitted out is a loan obtained from any financial institution, for the purpose of pursuing any education; and (b) the amount or aggregate of the amounts in excess of ₹ 7 lakhs is remitted by the buyer in a financial year	0.5% of the amt or agg. of amts in excess of ₹ 7 lakh

Cases where no tax is to be collected

(i)	No TCS by the authorized dealer on an amount in respect of which the sum has been collected by the seller
(ii)	No TCS, if the buyer is liable to deduct tax at source under any other provision of the Act and has deducted such tax
(iii)	No TCS, if the buyer is the Central Government, a State Government, an embassy, a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority or any other person notified by the Central Government, subject to fulfillment of conditions stipulated thereunder

5. [Section 206C(1H)] Sale of goods of value exceeding ₹ 50 lakh [w.e.f. 1.10.2020]
[Inserted by Finance Act 2020, w.e.f. 01/10/2020] 

- (a) As per section 206C(1H), tax is also required to be collected by a seller, who receives any amount as consideration for sale of goods of the value or aggregate of such value exceeding ₹ 50 lakhs in a previous year **[other than exported goods or goods covered under sub-sections (1)/(1F)/(1G)]**.
- (b) Tax is to be collected at source @ 0.1% u/s 206C(1H) of the sale consideration exceeding ₹ 50 lakhs, **at the time of receipt of consideration.**
[Rate is reduced to 0.075% for the period between 14.05.2020 to 31.03.2021]
- (c) Tax is, however, not required to be collected if the buyer is liable to deduct tax at source under any other provision of the Act on the goods purchased by him from the seller **and has deducted such tax.**
- (d) In case of non-furnishing of PAN or Aadhar number by the buyer to the seller, tax is required to be collected **at the higher of –**
- (i) twice the rate specified in this sub-section; and
 - (ii) 1%.

Here, Buyer means a person who purchases any goods but does not include –

- A. the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State, or
- B. a local authority; or
- C. a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to stipulated conditions.

Further, Seller means a person whose total sales, gross receipts or turnover from the business carried on by him exceed ₹ 10 crores during the financial year immediately preceding the financial year in which sale of goods is carried out. However, seller does not include a person as notified by the Central Government for this purpose, subject to fulfillment of conditions stipulated

Power to the CBDT to issue guidelines

In case of any difficulty arises to give effect to the provisions of section 206C(1G)/(1H), the CBDT is empowered to issue guidelines, with the approval of the Central Government, for the purpose of removing the difficulty **[Section 206C(1-I)]**

Every guideline issued by the CBDT shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person liable to collect tax **[Section 206C(1J)]**

Clarification relating to certain issues with respect to Section 206C(1H)**CBDT Circular no. 17/2020 dated 29.9.2020****1. Applicability on transactions carried through various Exchanges:**

In order to remove practical difficulties in implementing Section 206C(1H) in case of certain exchanges and clearing corporations, it has been provided that Section 206C(1H) shall **not be applicable** in relation to -

- transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre;
- transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC (Central Electricity Regulatory Commission).

2. Calculation of threshold for the financial year 2020-21:

Since section 206C(1H) is applicable w.e.f. 1st October, 2020, following clarifications have been provided regarding thresholds specified under the sub-section and whether the tax is required to be collected in respect of amounts received before 1st October, 2020.

- Since section 206C(1H), applies on receipt of sale consideration, the provision of this sub-section shall not apply on any sale consideration received before 1st October, 2020. Consequently, it would apply on all sale consideration (including advance received for sale) received on or after 1st October, 2020, even if the sale was carried out before 1st October, 2020
- Since the threshold of ₹ 50 lakhs is with respect to the previous year, calculation of receipt of sale consideration for triggering TCS under section 206C(1H) shall be computed from 1st April, 2020. **Hence, if a person being seller has already received ₹ 50 lakhs or more up to 30th September, 2020 from a buyer, the TCS under section 206C(1H) shall apply on all receipt of sale consideration during the previous year, on or after 1st October, 2020, from such buyer.**

Example - A seller who has received ₹ 1 crore before 1st October, 2020 from a particular buyer and receives ₹ 5 lakhs after 1st October, 2020 would be required to collect tax on ₹ 5 lakhs only and not on ₹ 55 lakhs [i.e ₹ 1.05 crore - ₹ 50 lakh (threshold)] by including the amount received before 1st October, 2020. The seller has to collect tax on receipt of ₹ 5 lakhs after 1st October, 2020 because the receipts from 1st April, 2020 i.e. ₹ 1.05 crore exceeded the specified threshold of ₹ 50 lakhs.

3. Applicability on sale of Motor vehicle:

The provisions of section 206C(1F) apply to sale of motor vehicle of the value exceeding ₹ 10 lakhs. Section 206C(1H) excludes from its applicability goods covered under section 206C(1F). It may be noted that the scope of sections 206C(1H) and (1F) are different.

While section 206C(1F) is based on single sale of motor vehicle, section 206C(1H) is for receipt above ₹ 50 lakhs.

Hence, in order to remove difficulty that whether all motor vehicles are excluded from the applicability of section 206C(1H), it is clarified that,-

- Receipt of sale consideration from a dealer would be subjected to TCS under section 206C(1H), if such sales are not subjected to TCS under section 206C(1F)
- In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of ₹ 10 lakhs or less to a buyer would be subjected to TCS under section 206C(1H), if the receipt of sale consideration for such vehicles during the previous year exceeds ₹ 50 lakhs during the previous year.

- In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ₹ 10 lakhs would not be subjected to TCS under section 206C(1H) if such sales are subjected to TCS under section 206C(1F).

4. Adjustment for sale return, discount or indirect taxes:

It is been clarified that no adjustment on account of sale return or discount or indirect taxes including GST is required to be made for collection of tax under section 206C(1H) **since the collection is made with reference to receipt of amount of sale consideration.**

5. Fuel supplied to non-resident airlines at airports in India:

It is provided that the provisions of section 206C(1H) **shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.**

Time of Collection of tax

The tax should be collected at the time of debiting of the amount payable by the buyer or licensee or lessee, as the case may be, to his account or at the time of receipt of such amount from the buyer or licensee or lessee, as the case may be, by any mode, whichever is earlier.

In case of sale of a motor vehicle of the value exceeding ₹ 10 lakhs or sale of goods exceeding ₹ 50 lakhs [other than exported goods and goods mentioned in section 206C(1)], **tax shall be collected at the time of receipt of such amount under section 206C(1F) and 206C(1H), respectively.**

Non-applicability of TCS [Section 206C(1A)]

No collection of tax shall be made under section 206C(1), in the case of a resident buyer, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that goods referred to in section 206C(1) **above are to be utilised for the purpose of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.**

[No declaration under sub-section (1A) of section 206C shall be valid **unless the person furnishes his Permanent Account Number in such declaration.** (Section 206CC(2))

Section 206CC - Requirement to furnish Permanent Account number by collectee.

- (1) Notwithstanding anything contained in any other provisions of this Act, any person paying any sum or amount, on which tax is collectible at source under Chapter XVII-BB (herein referred to as collectee) **shall furnish his Permanent Account Number** to the person responsible for collecting such tax (herein referred to as collector), failing which tax shall be collected at the **higher of the following rates**, namely:—
- at twice the rate specified in the relevant provision of this Act; or
 - at the rate of 5% **[1% in case of Section 206(1H)]**
- (2) The provisions of this section shall **not apply to a non-resident who does not have permanent establishment** in India.

PRACTICAL QUESTIONS - SET A

1. Compute the amount of tax deduction at source on the following payments made by M/s. S Ltd. during the FY 2020-21 as per the provisions of the Income-tax Act, 1961.

S. No.	Date	Nature of Payment
(i)	1-10-2020	Payment of ₹ 2,00,000 to Mr. "R" a transporter (owns 8 Truck) who is having PAN.
(ii)	1-11-2020	Payment of fee for technical services of ₹ 25,000 and Royalty of ₹ 20,000 to Mr. Shyam who is having PAN.
(iii)	30-06-2020	Payment of ₹ 25,000 to M/s X Ltd. for repair of building.
(iv)	01-01-2021	Payment of ₹ 2,00,000 made to Mr. A for purchase of diaries made according to specifications of M/s S Ltd. However, no material was supplied for such diaries to Mr. A by M/s S Ltd.
(v)	01-01-2021	Payment made ₹ 1,80,000 to Mr. Bharat for compulsory acquisition of his house as per law of the State Government.
(vi)	01-02-2021	Payment of commission of ₹ 14,000 to Mr. Y.

Solution:

- (i) No tax is required to be deducted at source under section 194C by M/s S Ltd. on payment to transporter Mr. R, since he satisfies the following conditions:

- (1) He owns ten or less goods carriages at any time during the previous year.
- (2) He is engaged in the business of plying, hiring or leasing goods carriages;
- (3) He has furnished a declaration to this effect along with his PAN.

- (ii) As per Section 194J, liability to deduct tax is attracted only in case the payment made as fees for technical services and royalty, individually, exceeds ₹ 30,000 during the financial year. In the given case, since, the individual payments for fee of technical services i.e., ₹ 25,000 and royalty ₹ 20,000 is less than ₹ 30,000 each, there is no liability to deduct tax at source. It is assumed that no other payment towards fees for technical services and royalty were made during the year to Mr. Shyam.

- (iii) Provisions of section 194C are not attracted in this case, since the payment for repair of building on 30.06.2020 to M/s. X Ltd. is less than the threshold limit of ₹ 30,000.

- (iv) According to section 194C, the definition of "work" does not include the manufacturing or supply of product according to the specification by customer in case the material is purchased from a person other than the customer.

Therefore, there is no liability to deduct tax at source in respect of payment of ₹ 2,00,000 to Mr. A, since the contract is a contract for 'sale'.

- (v) As per section 194LA, any person responsible for payment to a resident, any sum in the nature of compensation or consideration on account of compulsory acquisition under any law, of any immovable property, is responsible for deduction of tax at source if such payment or the aggregate amount of such payments to the resident during the financial year exceeds ₹ 2,50,000.

In the given case, no liability to deduct tax at source is attracted as the payment made does not exceed ₹ 2,50,000.

- (vi) As per section 194H, tax is deductible at source @5% if the amount of commission or brokerage or the aggregate of the amounts of commission or brokerage credited or paid during the financial year exceeds ₹ 15,000.

Since the commission payment made to Mr. Y does not exceed ₹ 15,000, the provisions of section 194H are not attracted.

2. State the applicability of TDS provisions and TDS amount in the following cases:

- (a) Rent paid for hire of machinery by B Ltd. to Mr. Raman ₹ 2,60,000 on 27.09.2020.
- (b) Fee paid on 01.12.2020 to Dr. Srivatsan by Sundar (HUF) ₹ 35,000 for surgery performed to a member of the family.

Solution:

- (a) Since the rent paid for hire of machinery by B. Ltd. to Mr. Raman **exceeds ₹ 2,40,000**, the provisions of section 194-I for deduction of tax at source are attracted.

The rate applicable for **deduction of tax at source under Section 194-I on rent paid for hire of plant and machinery is 1.5%** assuming that Mr. Raman had furnished his permanent account number to B Ltd.

Therefore, the amount of tax to be deducted at source = ₹ 2,60,000 x 1.5% = ₹ 3,900.

Note: In case Mr. Raman does not furnish his permanent account number to B Ltd., tax shall be deducted @ 20% on ₹ 2,50,000, by virtue of provisions of section 206AA.

- (b) As per the provisions of section 194J, a Hindu Undivided Family is required to deduct tax at source on fees paid for professional services **only if the total sales, gross receipts or turnover from the business or profession exceed ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession**, as the case may be, in the financial year preceding the current financial year and such payment made for professional services is not exclusively for the personal purpose of any member of Hindu Undivided Family.

Section 194M, provides for deduction of tax at source by a HUF (which is not required to deduct tax at source under section 194J) in respect of fees for professional service if such sum or aggregate of such sum exceeds ₹ 50 lakhs during the financial year.

In the given case, the fees for professional service to Dr. Srivatsan is paid on 1.12.2020 for a personal purpose, therefore, section 194J is not attracted. Section 194M would have been attracted, if the payment or aggregate of payments exceeded ₹ 50 lakhs in the P.Y. 2020-21.

However, since the payment does not exceed ₹ 50 lakh in this case, there is no liability to deduct tax at source under section 194M also.

3. **What are the provisions relating to tax deduction at source in respect of:**

- (a) **ABC and Co. Ltd. paid ₹ 19,000 to one of its Directors as sitting fees on 1-01-2021.**
 (b) **Mr. X sold his house to Mr. Y on 01-02-2021 for ₹ 60 lacs?**

Solution:

- (a) Section 194J provides for **deduction of tax at source @7.5%** from any sum paid by way of any remuneration or fees or commission, by whatever name called, to a resident director, which is not in the nature of salary on which tax is deductible under section 192. The threshold limit of ₹ 30,000 upto which the provisions of tax deduction at source are not attracted in respect of every other payment covered under section 194J is, however, not applicable in respect of sum paid to a director.

Therefore, tax@7.5% has to be deducted at source under section 194J in respect of the sum of ₹ 19,000 paid by ABC Ltd. to its director.

Therefore, the amount of tax to be deducted at source:

$$= ₹ 19,000 \times 7.5\% = ₹ 1,425$$

- (b) Section 194-IA requires every person, being a transferee, responsible for paying any sum as consideration for transfer of any immovable property (other than agricultural land), **to deduct tax@0.75% of such sum**, at the time of credit of such sum to the account of the resident transferor or at the time of payment of such sum to a resident transferor, whichever is earlier.

Such tax is required to be deducted at source where the consideration for transfer of immovable property is ₹ 50 lakhs or more.

In this case, since the consideration for transfer of house exceeds ₹ 50 lakhs, Mr. Y is **liable to deduct tax at source@0.75% under section 194-IA** on the consideration of ₹ 60 lakhs payable for transfer of house to Mr. X.

4. Ashwin doing manufacture and wholesale trade furnishes you the following information : Total turnover for the financial year

Particulars	₹
2019-20	1,05,00,000
2020-21	95,00,000

State whether tax deduction at source provisions are attracted for the below said expenses incurred during the financial year 2020-21:

Particulars	₹
Interest paid to UCO Bank on 15.08.2020	41,000
Contract payment to Raj (2 contracts of ₹ 12,000 each) on 12.12.2020	24,000
Shop rent paid (one payee) on 21.01.2021	2,90,000
Commission paid to Balu on 15.03.2021	7,000

Solution:

As the turnover of business carried on by Ashwin for F.Y. 2019-20, **has exceeded ₹ 1 crore**, he has to comply with the tax deduction provisions during the financial year 2020-21, subject to, the exemptions provided for under the relevant sections for applicability of TDS provisions.

Interest paid to UCO Bank

TDS under section 194A is not attracted in respect of interest paid to a banking company.

Contract payment of ₹ 24,000 to Raj for 2 contracts of ₹ 12,000 each

TDS provisions under section 194C would not be attracted if the amount paid to a contractor does not exceed ₹ 30,000 in a single payment or ₹ 1,00,000 in the aggregate during the financial year. Therefore, TDS provisions under section 194C are not attracted in this case.

Shop Rent paid to one payee –

Tax has to be deducted under section 194-I as the rental payment exceeds ₹ 2,40,000.

Commission paid to Balu –

No, tax has to be deducted under section 194-H in this case as the commission does not exceed ₹ 15,000.

5. State the concessions granted to transport operators onwards in the context of cash payments under section 40A(3) and deduction of tax at source under section 194-C.

Solution:

Section 40A(3) provides for disallowance of expenditure incurred in respect of which payment or aggregate of payments made to a person in a day exceeds ₹ 10,000, and such payment or payments are made otherwise than by account payee cheque or account payee bank draft or use of electronic clearing system through bank account or through other prescribed electronic modes.

However, in case of payment made to transport operators for plying, hiring or leasing goods carriages, the disallowance will be attracted only if the payment made to a person in a day exceeds ₹ 35,000. Therefore, payment or aggregate of payments up to ₹ 35,000 in a day can be made to a transport operator otherwise than by way of account payee cheque or account payee bank draft or use of electronic system through bank account or through other prescribed electronic modes, without attracting disallowance u/s 40A(3).

Under section 194C, tax had to be deducted in respect of payments made to contractors at the rate of 1%/0.75%, in case the payment is made to individual or Hindu Undivided Family or at the rate of 2%/1.5%, in any other case.

However, no deduction is required to be made from any sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor, during the course of the business of plying, hiring or leasing goods carriages, if the following conditions are fulfilled:-

- (1) He owns ten or less goods carriages at any time during the previous year.
- (2) He is engaged in the business of plying, hiring or leasing goods carriages;
- (3) He has furnished a declaration to this effect along with his PAN.

6. *Mrs. Indira, a landlord, derived income from rent from letting a house property to M/s Vaibhav Corporation Ltd. of ₹ 1,00,000 per month from 01.06.2020. She charged GST @ 15% on lease rent charges. Calculate the deduction of tax at source (TDS) to be made by M/s Vaibhavi Corporation Ltd. on payment made to Mrs. Indira and narrate related formalities in relation to TDS.*

Solution:

- (1) As per Circular No. 23/2017 issued by the CBDT, there will be no TDS on GST components in any Section. Therefore, tax deducted at source under section 194-I would be required to be made on the amount of rent paid or payable excluding the amount of GST.
 - (2) **Tax is deductible @ 7.5%** under section 194-I.
 - (3) Hence, in the given case, TDS under section 194-I would amount to ₹ 7,500, to be deducted every month.
 - (4) Tax deducted should be deposited within prescribed time i.e. on or before seven days from the end of the month in which the deduction is made and upto 30th April for the month of March.
7. *Examine the obligation of the person responsible for paying the income to deduct tax at source and indicate the due date for payment of such tax wherever applicable in respect of the following item:*

MSP Manufactures Ltd., the employer credited salary due for the financial year 2020-21 amounting to ₹ 2,80,000 to the account of Q, the employee, in its books of account on 31.3.2021. Q has not furnished any information about his income/loss from any other head or proof of Investments/payments qualifying for deduction under Section 80C.

Solution:

Sec 192 of the Income Tax Act warrants deduction of tax at source in respect of payment of salary to employees. The Section is casting responsibility on the employer to deduct tax at source at the time of making payment of salary to the employee. In case credit entries are passed in the books of the employer for salary due to employees, the liability to deduct tax u/s.192 does not arise. Accordingly, in the given case, MSP Ltd is not liable to deduct tax on salaries. Non- furnishing of information relating to investments, deductions etc of the employee is not relevant to the given situation.

8. *X is a sole proprietor. His annual turnover is more than ₹ 100,00,000 since last 5 years. During the financial year 2020-21, he makes the following payments –*
1. *Brokerage paid to a broker for arranging purchase of a residential property for his personal use (amount of brokerage paid on March 1, 2021: ₹ 5,00,000)*
 2. *Commission paid to salesman for selling goods manufactured by X (amount of brokerage paid on March 21, 2021: ₹ 6,00,000)*
- U/s 194H, tax is deductible on brokerage or commission. Discuss whether the aforesaid payments are covered by this provision.*

Solution:

X, the payer, is an individual & **turnover of his business exceeds ₹ 1 crore** in preceding financial year. Consequently, tax is deductible on commissioner or brokerage u/s 194H. Section 194H is applicable in such a case regardless of the fact whether payment of commission or brokerage is for personal purpose or business purposes. Tax will be deductible on ₹ 5,00,000 as well as ₹ 6,00,000 **at the rate of 3.75%**

9. *X is sole proprietor. His annual turnover is more than ₹ 100,00,000 since last 5 years. During the financial year 2020-21, he makes the following payments of rent-*
1. *Rent paid to A Ltd. for a residential property for his personal use (amount of Rent paid on March 1, 2021: ₹ 5,00,000)*
 2. *Rent paid to B Ltd. for taking a machinery on rent (amount of Rent paid on March 21, 2021): ₹ 6,00,000).*
- U/s 194-I, tax is deductible on rent payment. Discuss whether the aforesaid payments are covered by this provision.*

Solution:

X, the payer, is an individual & **turnover of his business exceeds ₹ 1 crore** in preceding financial year. Consequently, tax is deductible on payment/credit of rent u/s 194-I. Section 194-I is applicable in such a case regardless of the fact whether payment of payment/credit of rent is for personal purpose or business purposes. Tax will be deductible on ₹ 5,00,000 as well as ₹ 6,00,000. **TDS rate is 1.5% of rent for use of machinery, plant or equipment. It is 7.5% of rent for use of land, building, furniture or fixture.**

10. X is sole proprietor. His annual turnover is more than ₹ 130,00,000 since last 5 years. During the financial year 2020-21, he makes the following payments:

1. Payment of royalty for business purpose: ₹ 20,00,000 on January 2021.
2. Payment of professional fees to an architect for construction of a residential building for his own use: ₹ 6,00,000 on January 3, 2021.
3. Payment of professional fees to an advocate for filing an appeal in the Bombay High Court pertaining to a business transaction: ₹ 7,00,000 on January 10, 2021.
4. Payment of technical fees to an engineer for preparation of a project report (which will be set up in a backward area in Jharkhand): ₹ 8,00,000 during August 2020.

Discuss the TDS Deductibility.

Solution:

X, the payer, is an individual. Turnover of his business exceeds ₹ 1 Crore in preceding financial year. In such case, u/s 194J, tax is deductible by an individual/HUF as follows –

1. Tax is deductible on payment/credit of technical fees (whether it is for business purpose or otherwise).
2. Tax is deductible on payment/credit of professional fees **only when it is for business purpose**.
3. Tax is **not deductible** at all on payment/credit of royalty by an individual/HUF.

Consequently, in the given problem tax will be deductible as follows –

	<u>Amount of TDS (i.e., @ 7.5% of payment/credit)</u>
1. Payment of royalty for business purposes (no TDS by an individual/HUF u/s 194J)	Nil
2. Payment of professional fees for personnel purposes (no TDS by an individual/HUF u/s 194J on professional fees for personal purposes)	Nil
3. Payment of professional fees for business purposes (tax is deductible)	52,500
4. Payment of technical fees (tax is deductible)	60,000
Total	1,12,500

Note:

TDS provisions under section 194M are also not applicable in this case, since the payment does not exceed the threshold of ₹ 50 lakhs.

11. M, an individual, had let out his building on a monthly rent of ₹ 25,000. The tenant deducted tax u/s 194-I from the Rent paid to M, but did not remit such tax to the credit of the Central Government. M filed his return of income for the Assessment Year 2020-21 including therein the Rental Income from the said building and paid the balance tax on his total income after taking credit for tax deducted at source by the Tenant. The AO has called upon M to pay the tax to the extent of TDS. Is the AO justified

Solution:

Section 205 provides that where tax is deductible at source, under the provision of the Act, the assessee shall not be called upon to pay the tax himself to the extent to which the tax has been deducted from that income. In view of the above specific provisions, Mr. M cannot be held liable to pay tax to the extent TDS. Hence, the action of AO is not justifiable.

12. Bharathi Cements Ltd. purchased jute bags from Raj Kumar & Co. The latter has to supply the jute bags with the logo and address of the assessee, printed on it. From 01.09.2020 to 20.03.2021, the value of jute bags supplied is ₹ 8,00,000, for which the invoice has been raised on 20.03.2021. While effecting the payment for the same, is the assessee bound to deduct tax at source, assuming that the value of the printing component involved is ₹ 1,10,000. You are informed that the assessee has not sold any material to Raj Kumar & Co. and that the latter has to manufacture the jute bags in its plant using raw materials purchased by it from outsiders.

Solution:

As per the definition under section 194C, "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer or associate of such customer. This is regardless of the quantum of expenditure incurred towards printing or processing comprised in the bill amount.

The problem clearly states that Raj Kumar & Co. has to manufacture the jute bags using raw materials purchased from outsiders and that the assessee Bharathi Cements Ltd has not sold any material to them. Therefore, in this case, it is a contract of sale.

Hence, the provisions of section 194C are not attracted and no liability to deduct tax at source would arise.

13. Alap Ltd. has made following payments on various dates in financial year 2020-21 to Vilambit Ltd. towards work done under different contracts:

Contract Number	Date of payment	Amount (₹)
1.	31.5.2020	20,000
2.	6.6.2020	15,000
3.	8.8.2020	25,000
4.	10.12.2020	25,000
5.	29.01.2021	17,000

Alap Ltd. claims that it is not liable for deduction of tax at source under section 194C. Examine the correctness of the claim made by the company. What would be the position if the value of the contract no. 5 is ₹ 14,000 only and there was no further contract during the year?

Solution:

As per section 194C(5), tax has to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds ₹ 30,000 in a single payment or ₹ 1,00,000 in aggregate during the financial year.

Therefore, in the given case, even though the value of each individual contract does not exceed ₹ 30,000, the aggregate amount exceeds ₹ 1,00,000. Hence, Alap Ltd's contention is not correct and tax is required to be deducted at source on the whole amount of ₹ 1,02,000 from the last payment of ₹ 17,000 towards Contract No. 5 on account of which the aggregate amount exceeded ₹ 1,00,000.

However, no tax deduction is to be made if the value of the last contract is ₹ 14,000 as the aggregate amount in such case would only be ₹ 99,000, which is below the aggregate monetary limit of ₹ 1,00,000.

14. ABC Ltd. took on sub-lease a building from J, an individual, with effect from 1.9.2020 on a rent of ₹ 25,000 per month. It also took on hire machinery from J with effect from 1.10.2020 on hire charges of ₹ 15,000 per month. ABC Ltd. entered into two separate agreements with J for sub-lease of building and hiring of machinery. The rent of building and hire charges of machinery for the financial year 2020-21 were ₹ 1,75,000 and ₹ 90,000, respectively, which were credited by ABC Ltd. to the account of J in its books of account on 31.3.2021. Examine the obligation of ABC Ltd. with regard to deduction of tax at source in respect of the rent and hire charges.

Solution:

As per section 194-I dealing with deduction of tax at source from payment of rent, the rate of TDS applicable is 1.5% for machinery hire charges and 7.5% for building lease rent. The scope of the section includes within its ambit, rent for machinery, plant and equipment. Tax is required to be deducted at source from payment of rent, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of building and machinery, irrespective of whether such assets are owned or not by the payee.

The limit of ₹ 2,40,000 for tax deduction at source will apply to the aggregate rent of all the assets. Even if two separate agreements are entered into, one for sub-lease of building and another for hiring of machinery, rent and hire charges under the two agreements have to be aggregated for the purpose of application of the threshold limit of ₹ 2,40,000.

In this case, since the payment for rent and hire charges credited to the account of J, the payee, aggregates to ₹ 2,65,000 (₹ 1,75,000 + ₹ 90,000), tax is deductible at source under section 194-I. **Tax is deductible @7.5% on ₹ 1,75,000 (rent of building) and @1.5% on ₹ 90,000 (hire charges of machinery).**

15. Mr. X sold his house property in Bangalore as well as his rural agricultural land for a consideration of ₹ 60 lakh and ₹ 15 lakh, respectively, to Mr. Y on 1.8.2020. He has purchased the house property and the land in the year 2019 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 1.8.2020, is ₹ 85 lakh and ₹ 20 lakh for the house property and rural agricultural land, respectively. Determine the tax implications in the hands of Mr. X and Mr. Y and the TDS implications, if any, in the hands of Mr. Y, assuming that both Mr. X and Mr. Y are resident Indians.

Solution:

(i)	<u>Tax implications in the hands of Mr. X</u>
	As per section 50C, the stamp duty value of house property (i.e. ₹ 85 lakh) would be deemed to be the full value of consideration arising on transfer of property since stamp duty value <u>exceeds 110% of the consideration</u> received. Therefore, ₹ 45 lakh (i.e., ₹ 85 lakh – ₹ 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.2021-22. Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. X.
(ii)	<u>Tax implications in the hands of Mr.Y</u>
	In case immovable property is received for inadequate consideration, the difference between the stamp value and actual consideration would be taxable under section 56(2)(x), if such difference exceeds higher of ₹ 50,000 <u>or 10% of the consideration.</u> Therefore, in this case ₹ 25 lakh (₹ 85 lakh – ₹ 60 lakh) would be taxable in the hands of Mr. Y under section 56(2)(x). Since agricultural land is not a capital asset, the provisions of section 56(2)(x) are not attracted in respect of receipt of agricultural land for inadequate consideration, since the definition of “property” under section 56(2)(x) includes only capital assets specified thereunder.
(iii)	<u>TDS implications in the hands of Mr. Y</u>
	Since the sale consideration of house property exceeds ₹ 50 lakh, Mr. Y is required to deduct tax at source under section 194-IA. The tax to be deducted under section 194-IA would be ₹ 45,000, <u>being 0.75% of ₹ 60 lakh.</u> TDS provisions under section 194-IA are not attracted in respect of transfer of rural agricultural land.

16. *Smt. Vijaya, proprietor of Lakshmi Enterprises, made turnover of ₹ 210 lakhs during the previous year 2019-20. Her turnover for the year ended 31-3-2021 was ₹ 90 lakhs.*

Decide whether provisions relating to deduction of tax at source are attracted for the following payments made during the financial year 2020-21:

- (i) *Purchase commission paid to one agent ₹ 25,000 on 13.6.2020 towards purchases made during the year.*
- (ii) *Payments to Civil engineer of ₹ 5,00,000 on 23rd August, 2020 for construction of residential house for self use.*

Solution:

Since Smt. Vijaya's turnover from business was ₹ 210 lakhs **in the immediately preceding financial year** (i.e., F.Y. 2019-20), she is liable to deduct tax at source in the P.Y. 2020-21, irrespective of her turnover being only ₹ 90 lakhs in the F.Y.2020-21.

- (i) **Tax @3.75% has to be deducted** under section 194H in respect of purchase commission of ₹ 25,000 to an agent for purchases made during the year, since the same exceeds the threshold limit of ₹ 15,000 for non-deduction of tax at source thereunder.
- (ii) Tax has to be deducted under section 194C in case of payment to resident contractors. **The rate of tax is 1% (0.75% from 14.5.2020-31.3.2021) if the payee is an individual or HUF and 2% (1.5% from 14.5.2020-31.3.2021) in case of payees, other than individuals and HUFs.**

However, as per section 194C(4), no individual or Hindu undivided family shall be liable to deduct income tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of the Hindu undivided family.

In this case, since Smt. Vijaya, an individual, makes payment of ₹ 5 lakh to a civil engineer for construction of residential house for self use, she is not liable to deduct tax at source under section 194C from such sum.

Further, Section 194M is also not applicable here as payment does not exceeds ₹ 50 Lakhs.

17. The following issues arise in connection with the deduction of tax at source under this chapter.

Examine the liability for tax deduction in these cases:

- (a) An employee of the Central Government receives arrears of salary for the earlier 3 years. He enquires whether he is liable for deduction of tax on the entire amount during the current year.
- (b) A T.V. channel pays ₹ 10 lakh on 1.9.2020 as prize money to the winner of a quiz programme, "Who will be a Millionaire"?
- (c) State Bank of India pays ₹ 50,000 per month as rent to the Central Government for a building in which one of its branches is situated.
- (d) A television company pays ₹ 80,000 to a cameraman on 6th January, 2020 for shooting of a documentary film.
- (e) A State Government pays ₹ 22,000 on 2.7.2020 as commission to one of its agents on sale of lottery tickets.
- (f) A Turf Club awards a jack-pot of ₹ 5 lakh to the winner of one of its races on 1.2.2021.

Solution:

- (a) As per Section 192, tax is deductible at source by any person who is responsible for paying any income chargeable under the head 'Salaries'. Further, the employee will be entitled to relief u/s 89 and consequently he will be required to furnish to the person responsible for making the payment, such particulars in the prescribed form (i.e., Form No.10E).

The person responsible for making the payment shall compute the relief and take into account the same while deducting tax at source from salary.

- (b) Under section 194B, the person responsible for paying by way of winnings from any card game and other game in an amount exceeding ₹ 10,000 shall at the time of payment deduct income-tax at 30%. Therefore, tax of ₹ 3 lakh has to be deducted at source from the prize money of ₹ 10 lakh payable to the winner.
- (c) Section 194-I, which governs the deduction of tax at source on payment of rent, exceeding ₹ 2,40,000 p.a., is applicable to all taxable entities except individuals and HUFs, whose total sales, gross receipts or turnover from the business or profession carried on by him **does not exceed ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession** during the financial year immediately preceding financial year in which such rent was credited or paid, is liable to deduct tax at source.

Section 196, however, provides exemption in respect of payments made to Government from application of the provisions of tax deduction at source.

Therefore, no tax is required to be deducted at source by State Bank of India from rental payments to the Government.

- (d) If the cameraman is an employee of the T.V. company, the provisions of section 192 will apply. However, if he is a professional, TDS provisions under section 194-J will apply. **Tax at 7.5% will have to be deducted at the time of credit** of ₹ 80,000 or on its payment, whichever is earlier.
- (e) Under section 194G, the person responsible for paying to any person, stocking, distributing, purchasing or selling lottery tickets shall at the time of credit of the commission or payment thereof, whichever is earlier, amounting to more than ₹ 15,000, **deduct income-tax at source @3.75%.**

Accordingly, tax @3.75% under section 194G amounting to ₹ 825 has to be deducted from commission payment of ₹ 22,000 to the agent of the State Government.

- (f) The TDS on payment by way of winnings from horse race is governed by section 194BB. Under this section, the person responsible for payment shall, at the time of payment, deduct tax at source @ 30%, if the payment exceeds ₹ 10,000.

Accordingly, tax @30% amounting to ₹ 1,50,000 has to be deducted from the winnings of ₹ 5 lakh payable to the winner of the race.

18. Examine and compute the liability for deduction of tax at source, if any, in the cases stated hereunder, for the financial year ended 31st March, 2021:

- (i) On 20.6.2020, Mr. X, a resident, made three separate transactions for acquiring house property at Mumbai from Mr. Y for a consideration of ₹90 lakhs, an urban plot in Kolkata from Mr. C for a sum of ₹49,50,000 and rural agricultural land from Mr. D for a consideration of ₹60 lakhs.
- (ii) On 17.6.2020, a commission of ₹50,000 was retained by the consignee 'ABC Packaging Ltd.' and not remitted to the consignor 'XYZ Developers', while remitting the sale consideration. Examine the obligation of the consignor to deduct tax at source.
- (iii) Raj is working with AB Ltd. He is entitled to a salary of ₹55,000 per month w.e.f. 1.4.2020. He has a house property which is self-occupied. He paid an interest of ₹80,000 on loan, during the previous year 2020-21. The loan was taken for construction of house. He has notified his employer AB Ltd. that there will be a loss of ₹80,000 in respect of this house property for financial year ended 31.3.2021. Raj is not opting for the provisions of section 115BAC.

Solution:

		Amount of TDS (₹)
(i)	<p>Since the consideration for transfer of house property at Mumbai exceeds ₹50 lakhs,</p> <p>Mr. X, being the transferee, is required to deduct tax @0.75% under section 194-IA on ₹90 lakhs, being the amount of consideration for transfer of property, at the time of credit to the transferor account or payment, whichever is earlier.</p> <p>Mr. X is not required to deduct tax as source under section 194-IA from the consideration of ₹49,50,000 paid to Mr. C for transfer of urban plot, since the consideration is less than ₹50 lakhs.</p> <p>Mr. X is also not required to deduct tax at source under section 194-IA from the consideration of ₹60 lakhs paid to Mr. D for transfer of rural agricultural land, since the same is specifically excluded from the scope of immovable property for the purpose of tax deduction under section 194-IA.</p> <p>Note - Section 194-IA requires every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to deduct tax, at the rate of 0.75% of such sum, at the time of credit of such sum to the account of the resident transferor or at the time of payment of such sum to the resident transferor, whichever is earlier. However, no tax is required to be deducted where the consideration for transfer of an immovable property is less than ₹50 lakhs.</p>	<p>67,500</p> <p>Nil</p> <p>Nil</p>
(ii)	<p>Section 194H requires deduction of tax at source @5% (3.75% from 14.5.2020 to 31.3.2021) from commission and brokerage payments to a resident. However, no tax is to be deducted at source where the amount of such payment does not exceed ₹15,000.</p> <p>In the given case, 'ABC Packaging Ltd.', the consignee, has not remitted the commission of ₹50,000 to the consignor 'XYZ Developers' while remitting the sales consideration.</p> <p>Since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission.</p> <p>Therefore, XYZ Developers has to deduct tax at source on ₹50,000 at the rate of 3.75%.</p>	<p>1,875</p>

(iii)	<p>Section 192 provides that tax is required to be deducted on the payment made as salaries. Tax is to be deducted on the estimated income at the average of income tax computed on the basis of the rates in force for the financial year in which payment is made.</p> <p>The employee may declare details of his other incomes (including loss under the head "Income from house property" but not any other loss) to his employer. In this case, since Mr. Raj has notified his employer AB Ltd. of loss from self-occupied house property, the employer has to take the same into consideration for deduction of tax at source.</p> <p>Therefore, AB Ltd. is required to deduct tax at source on the salary of ₹ 55,000 per month paid to Mr. Raj, in the following manner:</p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">Income under the head salaries (₹ 55,000 x 12)</td> <td style="text-align: right;">6,60,000</td> </tr> <tr> <td>Less: Standard deduction under section 16(ia)</td> <td style="text-align: right;"><u>50,000</u></td> </tr> <tr> <td></td> <td style="text-align: right;">6,10,000</td> </tr> <tr> <td>Income under the head "house property"</td> <td style="text-align: right;"><u>(80,000)</u></td> </tr> <tr> <td>Gross total income</td> <td style="text-align: right;">5,30,000</td> </tr> <tr> <td>Less: Deduction under Chapter VI-A</td> <td style="text-align: right;"><u>Nil</u></td> </tr> <tr> <td>Total Income</td> <td style="text-align: right;"><u>5,30,000</u></td> </tr> <tr> <td>Tax on ₹ 5,30,000</td> <td style="text-align: right;">18,500</td> </tr> <tr> <td>Add: Health and Education cess@4%</td> <td style="text-align: right;"><u>740</u></td> </tr> <tr> <td>Tax to be deducted at source</td> <td style="text-align: right;"><u>19,240</u></td> </tr> </table>	Income under the head salaries (₹ 55,000 x 12)	6,60,000	Less: Standard deduction under section 16(ia)	<u>50,000</u>		6,10,000	Income under the head "house property"	<u>(80,000)</u>	Gross total income	5,30,000	Less: Deduction under Chapter VI-A	<u>Nil</u>	Total Income	<u>5,30,000</u>	Tax on ₹ 5,30,000	18,500	Add: Health and Education cess@4%	<u>740</u>	Tax to be deducted at source	<u>19,240</u>	19,240
Income under the head salaries (₹ 55,000 x 12)	6,60,000																					
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Add: Health and Education cess@4%	<u>740</u>																					
Tax to be deducted at source	<u>19,240</u>																					

19. Examine in the following cases the obligation of the person paying the income in respect of tax deduction at source and indicate the due date for payment of such tax, wherever applicable:

- (i) MNO Ltd., the employer, credited salary due for the financial year 2020-21 amounting to ₹ 3,40,000 to the account of Q, an employee, in its books of account on 31.3.2021. Q has not furnished any information about his income/loss from any other head or proof of investments/payments qualifying for deduction under section 80C.
- (ii) T, an individual whose total sales in business during the year ended 31.3.2020 was ₹ 2.20 crores, paid ₹ 9 lacs by cheque on 1.1.2021 to a contractor (an individual), for construction of his factory building. No amount was credited earlier to the account of the contractor in the books of T.
- (iii) BCD Ltd. credited ₹ 28,000 towards fees for professional services and ₹ 27,000 towards fees for technical services to the account of HG in its books of account on 6.10.2020. The total sum of ₹ 55,000 was paid by cheque to HG on 18.12.2020.

Solution:

- (i) Section 192 requires deduction of tax from salary at the time of payment. Thus, the employer is not required to deduct tax at source when salary has not been paid but is merely credited to the account of the employee in its books of account. MNO Ltd. therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee Q which is not paid.

If salary has been paid during the year to Q, then, MNO Ltd has to obtain from Q, the evidence/proof/particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in such form and manner as may be prescribed.

If Q has not furnished any information about his income/loss under any other head or proof of investments/expenditure qualifying for deduction under section 80C, then, the employer has to deduct tax without considering any claim for any expenditure or set-off of losses or deduction under section 80C.

- (ii) An individual who has **total sales, gross receipts or turnover from the business carried on by him exceeding ₹ 1 crore** in the immediately preceding financial year 2019-20 is liable to deduct tax at source under section 194C for the financial year 2020-21 in respect of the payment made to contractor exceeding ₹ 30,000 in a single contract and ₹ 1,00,000 in aggregate of contracts during the financial year. Since, turnover of the individual T is ₹ 2.20 crores in the financial year 2019-20 and as the payment during financial year 2020-21 to the contractor has exceeded the limits prescribed in section

194C, tax has to be deducted under section 194C.

The **rate of tax deduction is 0.75%** as the contractor is an individual.

- (iii) The limit of ₹ 30,000 for non-deduction of tax under section 194J would apply separately for fees for professional services and fees for technical services. This means that if a person has rendered services falling under both the categories, tax need not be deducted if the fee for each category does not exceed ₹ 30,000 even though the aggregate of the amounts credited to the account of such person or paid to him for both the categories of services exceed ₹ 30,000. Therefore, BCD Ltd. is not required to deduct tax at source in respect of the fees either at the time of credit or at the time of payment.

20. Examine the liability for tax deduction at source in the following cases for the assessment year 2021-22:

- (i) *Mr. Anand has been running a sole proprietary business with turnover of ₹ 202 lakhs for the A.Y. 2020-21. He pays a monthly rent of ₹ 15,000 for the office premises to Mr. R, the owner of building and an individual. Besides, he also pays service charges of ₹ 6,000 per month to Mr. R towards the use of furniture, fixtures and vacant land appurtenant thereto.*
- (ii) *By virtue of an agreement with a nationalised bank, a catering organisation receives a sum of ₹ 50,000 per month towards supply of food, water, snacks etc. during office hours to the employees of the bank.*
- (iii) *An Indian company pays gross salary including allowances and monetary perquisites amounting to ₹ 7,30,000 to its General Manager. Besides, the company provides non-monetary perquisites to him whose value is estimated at ₹ 1,20,000. General manager is not opting for the provisions of section 115BAC.*

Solution:

- (i) Where the payer is an individual or HUF **whose total sales, gross receipts or turnover from the business carried on by him exceed ₹ 1 crore** during the financial year immediately preceding financial year in which such rent was credited or paid, is liable to deduct tax at source. Since the turnover from business of Mr. Anand was ₹ 202 lakhs for the A.Y.2020-21, he is liable to deduct tax at source under section 194-I in respect of rental payments during the financial year 2020-21.

Accordingly, Mr. Anand is liable to deduct tax at source under section 194-I on the rental payments made. Section 194-I provides that rent includes any payment, by whatever name called, for the use of land or building together with furniture, fittings etc. Therefore, in the given case, apart from monthly rent of ₹ 15,000 p.m., service charge of ₹ 6,000 p.m. for use of furniture and fixtures would also attract TDS under section 194-I. Since the aggregate rental payments of ₹ 2,52,000 to Mr. R during the financial year 2020-21 exceeds ₹2,40,000, **Mr. Anand is liable to deduct tax at source @10% under section 194-I from rent paid to Mr. R for April month and @7.5% from the rent paid for May, 2020 to March, 2021.**

- (ii) The definition of “work” under Explanation to section 194-C includes catering services and therefore, TDS provisions under section 194C are attracted in respect of payments to a caterer. As the payment exceeds ₹ 30,000, the **nationalised bank is required to deduct tax at source at 2% on the payments made to catering organisation for April, 2020 and 1.5% for May, 2020 to March, 2021.** If the catering organization is an individual or HUF, then the tax deduction shall be @1% and 0.75% for the respective months.

- (iii)

	₹
Gross salary, allowances and monetary perquisites	7,30,000
Non-Monetary perquisites	1,20,000
	<u>8,50,000</u>
Less: Standard deduction under section 16(ia)	50,000
	<u>8,00,000</u>
Tax Liability	75,400
Average rate of tax (₹ 75,400 / ₹ 8,00,000 × 100)	9.425%

The company can deduct ₹ 75,400 at source from the salary of the General Manager at the time of payment.

Alternatively, the company can pay tax on non-monetary perquisites as under – Tax on non-monetary perquisites = 9.425% of ₹ 1,20,000 = ₹ 11,310

Balance to be deducted from salary = ₹ 64,090

If the company pays tax of ₹ 11,310 on non-monetary perquisites, the same is not a deductible expenditure as per section 40(a). The amount of tax paid towards non-monetary perquisite by the employer, however, is not chargeable to tax in the hands of the employee as per section 10(10CC).

21. **Mr. Vinod Dutta, an Indian resident, won a Tata Indica worth ₹ 6 Lakhs, as the first prize in a lottery. According to Section 194B of the Income Tax Act, 1961, tax has to be deducted at source from the winnings of lottery at the time of payment of the prize money.**

Explain the procedure to be adopted before handing over the Tata Indica (the lottery prize) to Mr. Vinod Dutta.

Solution:

Section 194B of the Income Tax Act, 1961 provides that where the winnings are wholly in kind or partly in kind and partly in cash, but the cash part of it is not sufficient to meet the liability for tax deduction at source, in respect of the whole of the winnings, the person responsible shall, before releasing the winnings, ensure that, the tax has been paid in respect of the winnings. Therefore, in the case under consideration, the entire winnings being in kind, a sum equal to the tax to be deducted at source (i.e. ₹ 1,80,000 being 30% of ₹ 6,00,000) must be collected from the assessee, by the agent and remitted to the Government account before releasing the lottery prize to him.

Thus, ₹ 1,80,000 - being 30% of ₹ 6,00,000 must be collected from the assessee, by the agent and remitted to the Government account before releasing the Tata Indica to him.

22. **Mrs. Kavita Agarwal, a resident, plans to sell the following properties to residents in India, during the last quarter of 2020-21:**
- Agricultural lands in urban area for ₹ 55 lacs;**
 - Agricultural lands in non-urban area (situate in a place which is at an aerial distance of 30 kms from nearby municipality) for ₹ 80 lacs;**
 - Residential house for ₹ 90 lacs. The valuation for stamp duty purposes is ₹ 110 lacs.**

She wants to know whether she would suffer any tax deduction at source (TDS) under the provisions of the Income-tax Act, 1961, and if yes, the applicable rate and the quantum of TDS.

Solution:

TDS on sale of immovable property u/s 194-IA Deduction of tax at source has to be made u/s 194-IA where there is transfer of immovable property for a consideration of ₹ 50 lacs or more. The TDS rate is 0.75% of the total consideration. "Immovable property" means any land (other than rural agricultural land) or any building or part of a building.

Therefore, the TDS obligation will be:

- Agricultural lands in urban area for ₹ 55 lacs:** The provisions of section 194-IA are attracted. **TDS rate is 0.75%** and TDS to be deducted is ₹ 41,250
- Agricultural lands in non-urban area for ₹ 80 lacs :** The provision of section 194-IA are NOT attracted.
- Residential house for ₹ 90 lacs:** The provisions of section 194-IA are attracted. **TDS rate is 0.75% on actual consideration** and TDS to be deducted is ₹ 67,500. What is relevant is actual consideration and not the valuation for stamp duty purposes.

23. **Examine and state the applicability of provisions under Income Tax Act for deductions of Income Tax at source under Income Tax Act/rules on following cases for Asst. Year 2021-22.**
- Mr. K an employee of Central Government is due to receive arrear of salary for the earlier three previous years that are 2017-18 to 2019-20 during the previous year 2020-21. Whether such arrear salary is subject to deduction of tax during previous year 2020-21.**
 - MIS X Ltd. enter into an agreement with MIS ABC Consultants for providing engineering services to the Company for a Consideration of ₹ 10,000 per month. MIS ABC Consultants requires MIS X Ltd. to deduct tax at source @2%/1.5% u/s 194C. Finance department of the view that tax deduction should be 10%/7.5% u/s 194J of Income Tax Act.**

Solution:

- (i) Arrear of salary for the previous year 2017-18 to 2019-20 are taxable in the previous year 2020-21 on receipt as not taxed earlier on accrual basis in the hands of Mr. K, an employee. The authorized person of the Central Govt. would be liable to deduct tax at source from such arrear. However Mr. K can claim relief u/s 89(1) of the Income Tax Act provided the employee would produced the details in the prescribed Form 10E to his employer to consider the relief u/s 89 while deducting tax at source.
- (ii) The definition of professional service on which tax is to be deductible under section 194J includes engineering services also. So fee of ₹ 10,000 per month paid M/S ABC Consultant represent fee for professional Services & the income tax deduction at source on payment is to be made @ 10%/7.5% under such section that is 194J. M/S ABC Consultants requirement for deduction of tax at source @ 2%/1.5% u/s 194C is not correct.

24. State in brief the applicability of tax deduction at source provisions, the rate and amount of tax deduction in the following cases for the financial year 2020-21:

- (i) **Payment of ₹ 27,000 made to Jacques Kallis, a South African cricketer, by an Indian newspaper agency on 02.07.2020 for contribution of articles in relation to the sport of cricket.**
- (ii) **Rent of ₹ 1,70,000 paid by a partnership firm for use of plant and machinery.**
- (iii) **Winnings from horse race - ₹ 1,50,000.**
- (iv) **Sitting fees of ₹ 16,000 paid to director of the company on 30.12.2020.**
- (v) **₹ 2,30,000 paid to Mr. A, a resident individual on 22.02.2021 by the State Government of Uttar Pradesh on compulsory acquisition of his urban land.**
- (vi) **Payment made by a company to Mr. Ram, sub-contractor, ₹ 3,00,000 with outstanding balance of ₹ 1,20,000 shown in the books as on 31-03-2021.**

Solution:

- (i) Under section 194E, where any income referred to in section 115BBA is payable to a non-resident sportsman for contribution of articles relating to any game or sport in India in a newspaper, such income shall be liable to tax @ 20%. Further, since Jacques Kallis is a non-resident, health & education cess @ 4% on TDS would also be added.

Therefore, tax to be deducted = ₹ 27,000 x 20.80% = ₹ 5,616.

- (ii) As per section 194-I, tax is deductible at the time of credit or payment, whichever is earlier @ 2%/1.5% on payment of rent for plant and machinery, only if the credit or payment **exceeds ₹ 2,40,000** during the financial year. Since rent of ₹ 1,70,000 paid by a partnership firm does not exceed ₹ 2,40,000, tax is not deductible.
- (iii) Provisions for tax deduction at source under section 194BB @ 30% are attracted in respect of income arising by way of winnings from any horse race at the time of payment thereof, if the winnings exceed ₹ 10,000. Tax to be deducted = ₹ 1,50,000 x 30% = ₹ 45,000
- (iv) As per section 194J, the company shall be liable to **deduct tax at source @ 7.5% on any fees paid to a director on or after 23.05.2020**, on which the tax is not deductible under section 192. **The threshold limit of ₹ 30,000 for non-deduction of tax at source under section 194J is not applicable in case of any remuneration or fees or commission payable to director of a company.** Tax to be deducted = ₹ 16,000 x 7.5% = ₹ 1,200
- (v) Tax shall be deducted at source under section 194LA if the consideration or enhanced consideration paid to a resident individual during the financial year exceeds ₹ 2,50,000 in aggregate. Since in this case, the amount paid to Mr. A, a resident individual, on 22.2.2020 does not exceed ₹ 2,50,000, tax is not deductible under section 194LA
- (vi) Provisions of tax deduction at source under section 194C are attracted in respect of payment by a company to a sub-contractor. Under section 194C, tax is deductible at the time of credit or payment, whichever is earlier **@ 0.75% in case the payment is made to an individual.**

Since the aggregate amount credited or paid during the year is ₹ 4,20,000, tax is deductible @ 0.75% on ₹ 4,20,000.

Tax to be deducted = ₹ 4,20,000 x 0.75% = ₹ 3,150.

25. Mr. Sunil sold his house property in Hyderabad as well as his rural agricultural land for a consideration of ₹ 70 lakh and ₹ 20 lakh, respectively, to his friend Mr. Ravi on 11.04.2020. He has purchased the house property and the land in the year 2018 for ₹ 45 lakh and ₹ 12 lakh, respectively. The stamp duty value on the date of transfer, i.e., 11.04.2020, is ₹ 78 lakh and ₹ 22 lakh for the house property and rural agricultural land, respectively. Determine the tax implications in the hands of Mr. Sunil and Mr. Ravi and the TDS implications, if any, in the hands of Mr. Ravi, assuming that both Mr. Sunil and Mr. Ravi are resident Indians.

Solution:

Tax implications on sale of house property and rural agricultural land at a price lower than the stamp duty value

(i) **Tax implications in the hands of Mr. Sunil** As per section 50C, the stamp duty value of house property (i.e. ₹ 78 lakh) would be deemed to be the full value of consideration arising on transfer of property.

Therefore, ₹ 33 lakh (i.e. ₹ 78 lakh – ₹ 45 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y. 2021-22. Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. Sunil.

(ii) **Tax implications in the hands of Mr. Ravi** In case immovable property is received for inadequate consideration, the difference between the stamp value and actual consideration would be taxable under section 56(2)(x), if such difference exceeds ₹ 50,000 or 10% of sales consideration.

Therefore, in this case ₹ 8 lakh (₹ 78 lakh – ₹ 70 lakh) would be taxable in the hands of Mr. Ravi under section 56(2)(x).

Since rural agricultural land is not a capital asset, the provisions of section 56(2)(x) are not attracted in respect of receipt of rural agricultural land for inadequate consideration, since the definition of “property” under section 56(2)(x) includes only the capital assets specified thereunder.

(iii) **TDS implications in the hands of Mr. Ravi** Since the sale consideration of house property exceeds ₹ 50 lakh, Mr. Ravi is required to deduct tax at source under section 194-IA. The tax to be deducted under section 194-IA would be ₹ 70,000, being 1% of ₹ 70 lakh (as Transaction date is 11.04.2020).

TDS provisions under section 194-IA are not attracted in respect of transfer of rural agricultural land

26. ABC Ltd. makes the following payments to Mr. X, a contractor, for contract work during the P.Y. 2020-21:

₹20,000 on 1.6.2020
 ₹25,000 on 1.8.2020
 ₹28,000 on 1.12.2020

On 1.3.2021, a payment of ₹ 30,000 is due to Mr. X on account of a contract work. Discuss whether ABC Ltd. is liable to deduct tax at source under section 194C from payments made to Mr. X.

Solution:

In this case, the individual contract payments made to Mr. X does not exceed ₹ 30,000. However, since the aggregate amount paid to Mr. X during the P.Y. 2020-21 exceeds ₹ 1,00,000 (on account of the last payment of ₹ 30,000, due on 1.3.2021, taking the total from ₹ 73,000 to ₹ 1,03,000), the TDS provisions under section 194C would get attracted.

Tax has to be deducted @0.75% on the entire amount of ₹ 1,03,000 from the last payment of ₹ 30,000 and the balance of ₹ 29,227 (i.e., ₹ 30,000 – ₹ 773) has to be paid to Mr. X.

27. *Siddharth Hospitals Pvt. Ltd. has recently been accorded recognition by several insurance companies to admit and treat patients on cashless hospitalization basis. Payment to the assessee hospital will be made by Third Party Administrators (TPA) who will process the claims of the patients admitted and make payments to the various hospitals including the assessee. All TPAs are corporate entities. The assessee wants to know whether the TPAs are bound to deduct tax at source under section 194J or under section 194C?*

Solution:

This issue has been clarified by the CBDT Circular No.8/2009 dated 24.11.2009. As per provisions of section 194J(1), any person, who is responsible for paying to a resident any sum by way of fees for professional services, shall, at the time of credit of such sum 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, **deduct an amount equal to 10% (7.5% from 14.5.2020-31.3.2021)** of such sum as TDS.

Further, as per clause (a) of Explanation to section 194J "professional services" includes services rendered by a person in the course of carrying on medical profession.

The services rendered by hospitals to various patients are primarily medical services and, therefore, **the provisions of section 194J are applicable on payments made by TPAs to hospitals** etc. Further, for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital.

Therefore, TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/ insurance claims etc. under various schemes including Cashless Schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.

In view of the above, all such transactions between TPAs and hospitals would fall within the ambit of provisions of section 194J.

28. *Examine in the context of provisions contained in Chapter XVII-B of the Act and also work out the amount of tax to be deducted by the payer of income in the following cases:*

- (i) *Payment of ₹ 5 lakh made by JCP & Co. to Pingu Events Co. Ltd. on 4th September, 2020 for organizing a debate competition on the subject "Preservation of Rural Heritage of Rajasthan".*
- (ii) *KD, a part time director of DAF Pvt. Ltd. was paid an amount of ₹ 2,25,000 as fees which was actually in the nature of commission on sales for the period 1.7.2020 to 30.9.2020.*

Solution:

- (i) The services of Event Managers in relation to sports activities alone have been notified by the CBDT as "professional services" for the purpose of section 194J. In this case, payment of ₹ 5 lakh was made to an event management company for organization of a debate competition. Hence, the provisions of section 194J are not attracted.

However, TDS provisions under section 194C relating to contract payments would be attracted and consequently, **tax has to be deducted @1.5% under section 194C. The tax deductible under section 194C would be ₹ 7,500, being 1.5% of ₹ 5 lakh.**

- (ii) Section 194J provides for **deduction of tax at source @7.5%** on any remuneration or fees or commission, by whatever name called, paid to a director, which is not in the nature of salary in respect of which tax is deductible at source under section 192.

Hence, tax is to be deducted at source under section 194J @7.5% by DAF Pvt. Ltd. on the commission of ₹ 2,25,000 paid to KD, a part-time director. The tax deductible under section 194J would be ₹ 16,875, being 7.5% of ₹ 2,25,000.

29. *What is the rate at which the tax is either to be deducted or collected under the provisions of the Act in the following cases?*

- (i) *A partnership firm making sales of timber in September 2020 which was procured and obtained under a forest lease.*
- (ii) *A nationalized bank receiving professional services from a registered society made provision on 31-03-2021 of an amount of ₹ 25 lakh against the service charges bills to be received.*
- (iii) *Payment of ₹ 5 lakhs on 8th December, 2020 made to Mr. Phelps who is an athlete by a manufacturer of a swim wear for brand ambassador.*

Solution:**Applicable Rate of TDS/TCS**

Situation	TCS/TDS	Rate	Note
(i) Partnership firm selling timber obtained under forest lease	TCS	1.875%	1
(ii) Professional services rendered by a registered society to a nationalised bank	TDS	7.5%	2
(iii) Payment by a manufacturer of swim wear to its brand ambassador Mr. Phelps, an athlete If Mr. Phelps is a resident If Mr. Phelps is a non-resident	TDS	7.5% 20.8%	3

Notes:

- (1) As per section 206C(1), tax has to be collected at source @1.875% by the partnership firm, being a seller, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount, whichever is earlier.
- (2) Tax has to be deducted at source @7.5% under section 194J, by the nationalized bank at the time of credit of fees for professional services to the account of the registered society (i.e., on 31.3.2021), even though payment is to be made after that date.
- (3) Tax has to be deducted at source @7.5% under section 194J in respect of income of ₹ 5 lakh paid to Mr. Phelps, an athlete, for advertisement, on the inherent presumption that Mr. Phelps is a resident.

Alternatively, if Mr. Phelps is assumed to be a non-resident, who is not a citizen of India, tax has to be deducted at source @20.8% (20% plus cess 4%) under section 194E in respect of income of ₹ 5 lakh paid to Mr. Phelps, an athlete, for advertisement referred under section 115BBA.

30. Mr. Harish, Vice President of ABC Bank, sold his house property in Chennai as well as his rural agricultural land for a consideration of ₹ 60 lakh and ₹ 15 lakh, respectively, to Mr. Suresh, a retail trader of garments, on 10.10.2020. Mr. Harish had purchased the house property and rural agricultural land in December 2018 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 10.10.2020, is ₹ 85 lakh and ₹ 20 lakh for the house property and rural agricultural land, respectively.

- (a) **Determine the tax implications in the hands of Mr. Harish and Mr. Suresh, if the date of agreement for sale of house property and rural agricultural land is 1.7.2020 and the stamp duty value on the said date was ₹ 75 lakh and ₹ 15 lakh, respectively. On the said date, Mr. Suresh made payment of ₹ 5 lakh by way of account payee cheque to Mr. Harish for purchase of house property. Also, discuss the TDS implications, if any, in the hands of Mr. Suresh, assuming that both Mr. Harish and Mr. Suresh are resident Indians.**
- (b) **Would your answer be different if Mr. Harish is a property dealer and sold the house property in the course of his business?**

Solution:**(a) Tax implications on sale of rural agricultural land and house property representing a capital asset in the hands of Mr. Harish, a salaried employee**

(i)	<u>Tax implications in the hands of Mr. Harish, a salaried employee</u>
	<p>Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. Harish. However, capital gains would arise on sale of house property, being a capital asset.</p> <p>As per section 50C(1), the stamp duty value of house property on the date of agreement (i.e., ₹ 75 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, ₹ 35 lakh (i.e., ₹ 75 lakh – ₹ 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y. 2021-22.</p> <p>It may be noted that as the date of agreement is different from the date of registration and part of the consideration was received on or before the date of agreement by way of account payee cheque, the stamp duty value on the date of agreement is to be adopted as the deemed sale consideration.</p>
(ii)	<u>Tax implications in the hands of the buyer – Mr. Suresh, a retail trader</u>
	<p>The house property purchased would be a capital asset in the hands of Mr. Suresh, who is a retail trader of garments. The provisions of section 56(2)(x) is attracted in the hands of Mr. Suresh who has acquired the immovable property, being a capital asset, for inadequate consideration. For the purpose of section 56(2)(x), Mr. Suresh can take the stamp duty value on the date of agreement instead of the date of registration since he has paid a part of the consideration by account payee cheque on the date of agreement.</p> <p>Therefore, ₹ 15 lakh, being the difference between the stamp duty value of the property on the date of agreement (i.e., ₹ 75 lakh) and the actual consideration (i.e., ₹ 60 lakh) would be taxable as per section 56(2)(x) under the head “Income from other sources” in the hands of Mr. Suresh, since such difference exceeds the higher of ₹ 50,000 or 10% of consideration.</p> <p>As rural agricultural land is not a capital asset, the provisions of section 56(2)(x) are not attracted in respect of acquisition of agricultural land for inadequate consideration, since the definition of “property” under section 56(2)(x) includes only capital assets specified thereunder.</p>
(iii)	<u>TDS implications in the hands of the buyer, Mr. Suresh</u>
	<p>Since the sale consideration of house property exceeds ₹ 50 lakh, Mr. Suresh is required to deduct tax at source under section 194-IA. The tax deduction under section 194-IA would be ₹ 45,000, being 0.75% of ₹ 60 lakh.</p> <p>TDS provisions under section 194-IA are not attracted in respect of transfer of rural agricultural land.</p>

(b) Tax implications on sale of house property representing stock-in-trade in the hands of Mr. Harish, a property dealer:

(i)	<u>Tax implications in the hands of Mr. Harish for A.Y. 2021-22</u>
	<p>If Mr. Harish is a property dealer who has sold the house property in the course of his business, the provisions of section 43CA would be attracted, since the house property represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value.</p> <p>For the purpose of section 43CA, Mr. Harish can take the stamp duty value on the date of agreement instead of the date of registration, since he has received part of the sale consideration by an account payee cheque on the date of agreement and it exceeds 110% of consideration.</p> <p>Therefore, ₹ 35 lakh, being the difference between the stamp duty value on the date of agreement (i.e., ₹ 75 lakh) and the purchase price (i.e., ₹ 40 lakh), would be chargeable as business income in the hands of Mr. Harish.</p>

(ii)	TDS implications and taxability in the hands of Mr. Suresh for A.Y. 2021-22
	<p>There would be no difference in the TDS implications or taxability in the hands of Mr. Suresh, whether Mr. Harish is a property dealer or a salaried employee.</p> <p>Therefore, the provisions of section 56(2)(x) would be attracted in the hands of Mr. Suresh who has received house property, being a capital asset, for inadequate consideration. The TDS provisions under section 194-IA would also be attracted since the actual consideration for house property exceeds ₹ 50 lakh.</p>

Deduction to SEZs UNITS [SECTION 10AA]

No Deduction to New units from “Assessment Year 2021-22”

A deduction of profits and gains which are derived by an assessee being an entrepreneur **from the export of articles or things or providing any service**, shall be allowed from the **TOTAL INCOME** of the assessee.

(1) **Eligible Assesseees:** All categories of Assesseees

(2) **Conditions:**

- i) It has begun or begins to manufacture or produce articles or things **including computer software** or provide **any service on or after 1.4.2005 (PY 05-06) in any SEZ but before the 01.04.2020 (PY 19-20 is the last year).**

[No Deduction from AY 21-22 to NEW UNITS]

- ii) The sale proceeds from exports should be received in or brought into India, in convertible foreign exchange. ~~within a period of 6 months from the end of the Previous Year~~ or within extended period allowed by RBI.

(3) **New Business / New Plant & Machinery:**

- i) It should **not be formed** by splitting up or reconstruction of a existence business

[Provided that nothing contained in this clause shall apply in respect of a business which is formed as a result of re-establishment, reconstruction or revival by the assessee of the business in the circumstances and within the period specified in **Section 33B**]

- ii) It should **not be formed** by transfer of plant and machinery previously used for any purpose **exceeding 20% of the total value of machinery and plant** used in the business. **[20% old – Allowed]**

For this purpose, 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:

- (a) such machinery or plant was not at any time used in India;
- (b) such machinery or plant is imported into India from any country outside India; and
- (c) no deduction on account of depreciation has been allowed in respect of such machinery or plant to any person earlier.

(4) **Quantum and Period of Deduction:**

i) **For First 5 AYS** : 100% of the profits derived from exports.

ii) **For next 5 Consecutive AYS** : 50% of such profits

iii) **For next 5 Consecutive AYS** : **Least of the below two:**

(a) 50% of Such Profits

(b) Reserve credited to SEZ Re-Investment Allowance Reserve Account



Following Explanation shall be inserted in Section 10AA(1) by the Finance Act, 2017, w.e.f. 1-4-2018:

Explanation: For the removal of doubts, it is hereby declared that the amount of deduction under this Section shall be allowed from the Total Income of the assessee computed in accordance with the provisions of this Act, before giving effect to the provisions of this section and the deduction under this section shall not exceed such total income of the assessee.

“It means Deduction u/s 10AA will be available after deduction under chapter VIA & not under the head PGBP.”

IMPORTANT FOR EXAM:

Deduction under Section 10AA can be claimed in PY 2020-21 (AY 2021-22) even if it is First year of production

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 

In case where letter of approval, required to be issued in accordance with the provisions of the SEZ Act, 2005, has been issued on or before 31st March, 2020 and the manufacture or production of articles or things or providing services has not begun on or before 31st March, 2020 then, the date for manufacture or production of articles or things or providing services has been extended to 31st March, 2021 or such other date after 31st March, 2021, as notified by the Central Government.

Example: *If the SEZ unit has received the necessary approval by 31.3.2020 and begins manufacture or production of articles or things or providing services on or before 31st March, 2021, then it **would be eligible for exemption under section 10AA in PY 2020-21.***

(5) Conditions to be satisfied for claiming deduction for further 5 years (after 10 years):

The amount credited to the Special Economic Zone Re-investment Reserve Account is utilized-

- a) for the purposes of **acquiring machinery or plant** which is first put to use before the expiry of a period of **three years** following the previous year in which the reserve was created; and
- b) until the acquisition of the machinery or plant as aforesaid, for the purposes of the business of the undertaking. **However, it should not be utilized for**
 - i. distribution by way of dividends or profits; or
 - ii. for remittance outside India as profits; or
 - iii. for the creation of any asset outside India;

(6) CONSEQUENCES OF MIS-UTILISATION / NON-UTILISATION OF RESERVE:

- (a) Mis-Utilised amount shall be deemed to be the **profits in the year in which the amount was so utilised**; or
- (b) Unutilised amount shall be deemed to be the profits **in the year immediately following the said period of three years**.

(7) Computation of Exemption u/s 10AA:

The profits derived from export of articles/things or services (including computer software) shall be:

Profits of the Business of the undertaking (Excludes Export Incentives)	X	$\frac{\text{Export Turnover}}{\text{Total Turnover}}$
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Note:


1. "Export Turnover" means the **consideration received in or brought into India** by the assessee in convertible foreign exchange **but does not include:**
 - a) Freight, Telecommunication Charges and Insurance **attributable to the delivery** of the articles or things outside India; or
 - b) **Expenses incurred in foreign exchange** in providing the technical services outside India.
2. Here, profits includes **profits derived from on-site development of computer software (including services for development of software) outside India** for the purpose of determining profits derived from export of computer software outside India

Circular 4/2018

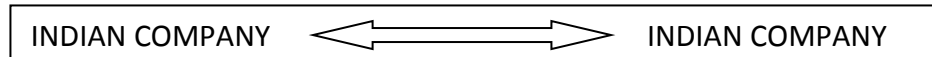
CBDT has clarified that **freight, telecommunication charges & insurance expenses** are to be excluded both from "Export Turnover" and "Total turnover" while working out deduction admissible under Section 10AA to the extent they are attributable to the delivery of articles or things outside India.

Similarily **expenses incurred in foreign exchange for rendering services** outside India are to be excluded from both "Export Turnover" and "Total Turnover" while computing deduction admissible u/s 10AA.

(8) OTHER COMMON POINTS:

- a) **AUDIT:** The deduction under this section shall not be admissible for any assessment year unless the assessee furnishes in the prescribed form, the report of an accountant, as defined in the Explanation below sub-section (2) of section 288 **before the specified date referred to in section 44AB (i.e., one month prior to the due date for filing return of income)**, certifying that the deduction has been correctly claimed in accordance with the provisions of this section. 
- b) **INTER-UNIT TRANSFER:** Where **any goods or services of eligible business** are transferred to any other business (or vice versa) otherwise than at Market Value on date of transfer, **then the profits and gains of the eligible business shall be computed as if the transfer was made at market value.**

- c) **NO DOUBLE OR EXCESS DEDUCTION:** The deductions claimed and allowed under this section **shall not exceed the profits and gains of the eligible business**. Further, profits and gains allowed as deduction under this section will not be considered for deduction under any other provisions of the Act.
- d) **EXCESSIVE PROFITS:** Where it appears to the AO that the **assessee derives more than ordinary profits** from the eligible business due to close connection between the assessee and any other person, the AO may consider such profits as may be reasonable for the purpose of computing deduction under this section.
- e) **AMALGAMATION/DEMARGER:**



In the case of any amalgamation or demerger, **by virtue of which the Indian company carrying on the eligible business is transferred to another Indian company:**

- (i) No deduction will be available to the amalgamating company/demergered company, in the year of amalgamation/demerger.
- (ii) **The deduction will be available to the amalgamated/resulting company for unexpired period.**
- f) Where a deduction under this section is claimed and allowed in relation to any specified business eligible for investment-linked deduction under section 35AD, **no deduction shall be allowed under section 35AD in relation to such specified business for the same or any other assessment year.**
- (9) **Few Points:**
- A. Sale proceeds referred shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the RBI
- B. **Section 10AA is a deduction and not an exemption. Therefore, losses and depreciation of the undertaking to which Section 10AA applies shall be carried forward normally.**
- C. In case of LIBERTY India, SC held that EXPORT INCENTIVE like
- (a) Cash Compensatory Support
 - (b) Duty Drawback
 - (c) Profit on sale of import entitlement licenses
 - (d) Duty Exemption Pass Book

Shall NOT form part of profit of the eligible undertaking for the purpose of Section 10AA / Section 80-IA to 80-IE. No deduction is available on these income.

PRACTICAL QUESTIONS – Section 10AA

- 1) PR Industries Ltd., a unit established in Special Economic Zone, for providing various services furnishes the following particulars of **its Third year** of its operation ended on 31.03.2021 (amounts in ₹ Lakhs):

Total receipts from provisions of services	50
Receipts from export of services	40
Profits of business	5

Out of the total export, ₹ 8 lakhs could not be realized on account of death of the Foreign Service recipient. The plant and machinery used in the business had been depreciated @ 25% on SLM basis and depreciation of ₹ 2 lakhs was charged in the P&L A/c. Compute the taxable income of the company.

Solution:

The assessee is eligible for the deduction u/s 10AA for the AY 2021-22.

Thus, its total income shall be calculated as follows –

Computation of taxable income of the company (All amount in ₹)

Net Profit as per P&L A/c	5,00,000
Add: Depreciation as per books	2,00,000
	7,00,000
Less: Depreciation as per IT Rules (15% of 8 lakhs) [Cost of machinery = 2 lakhs / 25%]	1,20,000
Profits and Gains of Business / GTI	5,80,000
Less: Deduction u/s 10AA [100% of {(5,80,000 / 50,00,000) X 32,00,000}]	3,71,200
Taxable Income	2,08,800

- 2) A company is engaged in the development and sale of computer software applications. It has started **a new undertaking in SEZ in 2018**. It furnishes the following data and requests you to compute the deduction allowable to it under Sec. 10AA in respect of AY 2021-22

Particulars	(₹ in lakhs)
Total profit of the company for the previous year	50
Total turnover, i.e. Export sales and Domestic sales for the previous year	550
Consideration received in respect of export of software received in convertible foreign exchange in India	250
Sale proceeds credited to a separate account in a bank outside India with the approval of RBI	50
Telecom and insurance charges attributable to export of software	10
Staff costs and travel expenses incurred in foreign exchange to provide technical assistance outside India to a client	40

Solution:

Computation of income of an undertaking in SEZ: AY 2021-22

Particulars	(₹ in lakh)
Total profit / GTI	50
Less: Deduction under Sec. 10AA: $\frac{\text{Export turnover} \times \text{Total}}{\text{Total turnover}} = 50 \times \frac{250}{500}$	<u>25</u>
Taxable Income	25

Note:

Export turnover	(₹ in lakhs)
(i) Sale proceeds of software received in convertible foreign exchange	250
(ii) Sale proceed in convertible foreign exchange kept outside India with the approval of RBI	50
Less: (i) Telecom and insurance attributable to export turnover	(-) 10
(ii) Expenses incurred in foreign exchange outside India to provide technical assistance to a client there	(-) 40
Export turnover	250

3) From the following particulars compute the **deduction u/s 10AA (4th Year of operations)** and the taxable profit:

Particulars	A Ltd.	B Ltd.
	₹ in lakhs	
Export Turnover	125	240
Domestic Turnover	68	42
Profits of the business	21	28

Additional information: The export turnover of A Ltd. includes charges received from on site development of computer software outside India to the extent of ₹ 30 Lakhs. B Ltd. has realized only 90% of its Export turnover and the remaining 10% has become irrecoverable.

4) Nathan Aviation Ltd. is running two industrial undertakings, one in a SEZ (Unit S) and another in a normal area (Unit N). The brief summarized details for the year ended 31-3-2021 are as under:

	(₹ in lakhs)	
	S	N
Domestic turnover	10	100
Export turnover	120	Nil
Gross profit	20	10
Less: Expenses and depreciation	7	6
Profits derived from the unit	13	4

The brought forward business loss pertaining to Unit N is ₹ 2 lakhs. Briefly compute the business income of the assessee.

Solution:

Computation of income of Nathan Aviation Ltd.

	Unit S (SEZ)	Unit N (Outside SEZ)
	₹	₹
Profit derived from the unit	13,00,000	4,00,000
Less: Brought forward loss of unit N	Nil	(2,00,000)
Gross Total Income	13,00,000	2,00,000
Less: Deduction under section 10AA [₹ 13 Lakh × ₹ 120 lakh ÷ ₹ 130 lakh]	12,00,000	Nil
Total Income	1,00,000	2,00,000

The following assumptions have been made-

- Unit S satisfies all conditions of Section 10AA **and it was set up on or after April 1, 2016 but on or before 31.03.2020 (100% deduction is available only in first 5 years); and**
- Brought forward loss of unit N pertains **to the AY 2013-14** (or any subsequent assessment year) (loss can be carried forward only for 8 years).

INCOMES NOT INCLUDED IN TOTAL INCOME [SECTION 10]**FROM 18th EDITION – Assessment Year 2021-22****CMA INTER DT STUDENTS****(EXAM IN JUNE 2021 & DEC 2021)****Exemption under section 10 vis-a-vis Deduction under Chapter VI-A**

The various items of income referred to in the **different clauses of section 10** are excluded from the total income of an assessee. These incomes are known as exempted incomes. Consequently, such income shall not enter into the computation of taxable income.

Moreover, there are certain other incomes which are included in Gross total income but are wholly or partly allowed as deductions under Chapter VI-A in computation of total income.

EXEMPTIONS UNDER SECTION 10

The incomes which are exempt under section 10 **will not be included** for computing total income.

DEDUCTIONS UNDER CHAPTER VI-A

Incomes from which deductions are allowable under Chapter VI-A will **first be included** in the gross total income (GTI) and **then the deductions will be allowed** from GTI.

VARIOUS CLAUSES OF SECTION 10

- **Agricultural Income from Land Situated in India [Section 10(1)]**
[Refer 'Agriculture Income' Chapter]

- **Amounts received by a member from the income of the HUF [Section 10(2)]**

Subject to the provisions of sub-section (2) of section 64, any sum received by an individual as a member of a Hindu undivided family, where such sum has been **paid out of the income of the family**, or, in the case of any impartible estate, where such sum has been **paid out of the income of the estate belonging to the family**. [SATC: Section 64(2) is discussed in Clubbing of Income Chapter]

- **Share Profit of a partner from partnership firm or LLP [Section 10(2A)]**

Circular No 8/2014: The CBDT has clarified that the **entire profit** credited to the Partner's accounts in the firm would be exempt from tax in the hands of such partners, **even if the income chargeable to tax becomes NIL in the hands of the firm on account of any exemption or deduction**.

- **Exemption to non-residents and person resident outside India from Interest credited in Non-resident (External) Account in India [Sec 10(4)(ii)]**

As per section 10(4)(ii), in the case of an individual, any income by way of interest on moneys standing to his credit in a **Non-resident (External) Account (NRE A/c)** in **any bank in India** in accordance Foreign Exchange Management Act, 1999 (FEMA, 1999), and the rules made thereunder, would be exempt, **provided such individual-**

- ✓ is a **person resident outside India**, as defined in FEMA, 1999, or
- ✓ is a person who has been **permitted by the Reserve Bank of India** to maintain such account.

The benefit of exemption under section 10(4)(ii) will be available **to joint account holders also**, subject to fulfillment of other conditions contained in the section by each of the individual joint account holders.

➤ **Remuneration received by individuals, who are not citizens of India [Section 10(6)]**

Individual assessee **who are not citizens of India** are entitled to certain exemptions:

- i. **Remuneration received by officials of Embassies etc. of Foreign States [Section 10(6)(ii)]**
The remuneration received by a person for services as an official of an embassy, high commission, legation, commission, consulate or the trade representation of a foreign State or as a member of the staff of any of these officials is exempt.

Conditions:

- (a) The remuneration received by our corresponding Government officials or members of the staff resident in such foreign countries should be exempt.
- (b) The above-mentioned members of the staff should be the subjects of the respective countries represented and should not be engaged in any other business or profession or employment in India.

- ii. **Remuneration received for services rendered in India as an employee of foreign enterprise [Section 10(6)(vi)]**

Remuneration received by a foreign national as an employee of a foreign enterprise for service rendered by him during his stay in India is also exempt from tax.

Conditions:

- (a) The foreign enterprise is not engaged in any business or trade;
- (b) The employee's stay in India **does not exceed 90 days** during the previous year;
- (c) The remuneration is not liable to be deducted from the employer's income chargeable to tax under the Act.

- iii. **Salary received by a non-citizen non-resident for services rendered in connection with employment on foreign ship [Section 10(6)(viii)]**

Salary income received by or due to a non-citizen of India who is also non-resident for services rendered in connection with his employment on a foreign ship is exempt where his total stay in India **does not exceed 90 days** during the previous year.

- iv. **Remuneration received by Foreign Government employees during their stay in India for specified training [Section 10(6)(xi)]**

Any remuneration received by employees of foreign Government from their respective Government during their stay in India, is exempt from tax, if such remuneration is received in connection with their training in any establishment or office of or in any undertaking owned by –

- the Government; or
- any company wholly owned by the Central or any State Government(s) or jointly by the Central and one or more State Governments; or
- any company which is subsidiary of a company referred to in (b) above; or
- any statutory corporation; or
- any society registered under the Societies Registration Act, 1860 or any other similar law, which is wholly financed by the Central Government or any State Government(s) or jointly by the Central and one or more State Governments.

- *Any income arising to such foreign company, as the Central Government may, by notification in the Official Gazette, specify in this behalf, **by way of royalty or fees for technical services** received in pursuance of an agreement entered into with that **Government for providing services in or outside India in projects connected with security of India [Section 10(6C)]***

- **Royalty income or fees for technical services received from National Technical Research Organisation (NTRO) [Section 10(6D)]**

*Income arising to non-corporate non-residents and foreign companies, by way of royalty from or fees from technical services rendered in or outside India to, **the National Technical Research Organisation (NTRO) is exempt***

➤ **Allowances payable outside India [Section 10(7)]**

[Refer 'Residential Status' Chapter]

➤ **Payments to Bhopal Gas Victims [Section 10(10BB)]**

Any payment made to a person under Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 and any scheme framed thereunder **will be fully exempt**.

However, payments made to any assessee in connection with Bhopal Gas Leak Disaster to the extent **he has been allowed a deduction under the Act** on account of any loss or damage caused to him by such disaster **will not be exempted**. (SATC Note: No double benefit)

➤ **Exemption of compensation received on account of disaster from CG/SG or local authority to Individual or legal heirs [Sec 10(10BC)]**

- (i) This clause exempts any amount received or receivable as compensation **by an individual or his legal heir** on account of any disaster.
- (ii) Such compensation should be granted by the Central Government or a State Government or a local authority.
- (iii) However, exemption **would not be available** in respect of compensation for alleviating any damage or loss, which has already been allowed as deduction under the Act.

Example:

Compensation on account of disaster received from a local authority by an individual or his/her legal heir is taxable. Examine the correctness of the statement with reference to the provisions of the Income-tax Act, 1961.

Solution:

The statement is **not** correct. As per section 10(10BC), any amount received or receivable as compensation by an individual or his/her legal heir on account of any disaster from the Central Government, State Government or a local authority is exempt from tax.

However, the exemption is not available to the extent such individual or legal heir has already been allowed a deduction under this Act on account of such loss or damage caused by such disaster.

➤ **Receipts from LIC [Section 10(10D)]**

[Refer 'Deduction' Chapter]

➤ **Any Payment from SPF/PPF [Section 10(11)]**

[Refer 'Salary' Chapter]

➤ **Any Payment from Sukanya Samriddhi Account [Section 10(11A)]**

(Also Refer Deduction under Section 80C class)

Section 10(11A) provides that any payment from an account opened in accordance with the Sukanya Samriddhi Account Rules, 2014, made under the Government Savings Bank Act, 1873, shall not be included in the total income of the assessee.

Accordingly, the interest accruing on deposits in, and withdrawals from any account under the said scheme would be exempt.

➤ **Any Payment from RPF [Section 10(12)]**

[Refer 'Salary' Chapter]

- Any payment from the National Pension System Trust to an assessee on closure of his account or on his opting out of the pension scheme referred to in section 80CCD, **to the extent it does not exceed 60% of the total amount payable to him** at the time of such closure or his opting out of the scheme **[Section 10(12A)]**

- Any payment from the National Pension System Trust **to an employee** under the pension scheme referred to in section 80CCD, **on partial withdrawal** made out of his account in accordance with the terms and conditions, specified under the Pension Fund Regulatory and Development Authority Act, 2013 and the regulations made thereunder, **to the extent it does not exceed 25% of the amount of contributions made by him [Section 10(12B)]**
- **Any Payment from Approved Superannuation Fund [Section 10(13)]**
[Refer 'Salary' Chapter]
- **Interest income from Notified securities etc. [Section 10(15)]**
[Refer 'Income from Other Sources' Chapter for long list]
- **Education Scholarship - Exempt [Section 10(16)]**
Scholarships granted to meet the cost of education is fully exempt.
- **Daily Allowance & Constituency Allowances to MP/MLA - Exempt [Section 10(17)]**
[Refer 'Income from Other Sources' Chapter]
- **Government Rewards / Awards [Sec. 10(17A)]**
Any award instituted in the public interest by the Central/State Government or by any other body approved by the Central Government and a reward by Central/State Government for such purposes as may be approved by the Central Government in public interest, will enjoy exemption under this clause.
- **Pension received by recipient of gallantry awards [Section 10(18)]**
[Refer 'Income from Other Sources' Chapter]
- **Income of local authorities [Section 10(20)]**
Following Income of a local authority is Exempt:
 - a. *Income Chargeable under the head Income from HP, CGs or IOS*
 - b. *Income from supply of commodities (other than water or electricity) or services, within its own jurisdiction.*
 - c. *Income from supply of water services or electricity within or outside its Jurisdiction.*
- **Income of Mutual Fund [Section 10(23D)] is exempt from tax.**
- **Income of member of a Scheduled Tribe [Section 10(26)]**
A member of a Scheduled Tribe residing in -
 - i. any area specified in the Constitution i.e., The North Cachar Hills District, The Karbi Anglong District, The Bodoland Territorial Areas District, Khasi Hills District, Jaintia Hills District or The Garo Hills District or
 - ii. in the States of **Manipur, Tripura, Arunachal Pradesh, Mizoram and Nagaland**, or
 - iii. in **Ladakh****is exempt from tax on his income arising or accruing-**
 - a. from any source in the areas or States aforesaid.
 - b. **by way of dividend or interest on securities.**

➤ **Exemption of income of a Sikkimese Individual [Section 10(26AAA)]**

The following income, which accrues or arises to a Sikkimese individual, would be exempt from income-tax-

- a. income from any source in the State of Sikkim; or
- b. **income by way of dividend or interest on securities (Not necessary from Sikkim).**

Imp: However, this exemption will not be available to a Sikkimese woman who, on or after 1st April, 2008, marries a non-Sikkimese individual.

Example:

"Exemption is available to a Sikkimese individual, only in respect of income from any source in the State of Sikkim". Examine the correctness of the statement with reference to the provisions of the Income-tax Act, 1961.

Solution:

The statement is **not** correct. Exemption under section 10(26AAA) is available to a Sikkimese individual not only in respect of the said income, **but also in respect of income by way of dividend or interest on securities.**

➤ **Tea board subsidy [Section 10(30)]**

The amount of any subsidy received by any assessee engaged **in the business of growing and manufacturing tea** in India **through or from the Tea Board** will be wholly exempt from tax.

Conditions:

- a. The subsidy should have been received under any scheme for replantation or replacement of the bushes or for rejuvenation or consolidation of areas used for cultivation of tea, as notified by the Central Government.
- b. The assessee should furnish a certificate from the Tea Board, as to the amount of subsidy received by him during the previous year, to the Assessing Officer along with his return of the relevant assessment year or within the time extended by the Assessing Officer for this purpose.

➤ **Other subsidies [Section 10(31)]**

Amount of any **subsidy received by an assessee engaged in the business of growing and manufacturing** rubber, coffee, cardamom or other specified commodity in India, as notified by the Central Government, will be wholly exempt from tax.

Conditions:

- (a) The subsidies should have been received from or through the Rubber Board, Coffee Board, Spices Board or any other Board in respect of any other commodity under any scheme for replantation or replacement of rubber, coffee, cardamom or other plants or for rejuvenation or consolidation of areas used for cultivation of all such commodities.
- (b) The assessee should **furnish a certificate from the Board**, as to the amount of subsidy received by him during the previous year, to the Assessing Officer along with his return of the relevant assessment year or within the time extended by the Assessing Officer for this purpose.

➤ **Exemption in respect of clubbed income of Minor [Section 10(32)]**

[Refer 'Clubbing of Income' Chapter]

- **Exemption of capital gain on transfer of a unit of Unit Scheme, 1964 (US 64) [Section 10(33)]**
Any income arising from the transfer of a capital asset, being a unit of the Unit Scheme, 1964 (Units of US 1964) referred to in Schedule I to the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002) and where the **transfer of such asset takes place on or after the 1st day of April, 2002**
- **Dividend income from Domestic Companies [Section 10(34)] - Now, Taxable from AY 2021-22**
[Refer 'Income from Other Sources' Chapter]
- Any income arising to an assessee, being a shareholder, on account of buy back of shares by the company as referred to in section 115QA [Section 10(34A)]
[Refer 'Capital Gains' Chapter]
- **Income from units of a Mutual fund or UTI [Section 10(35)] - Now, Taxable from AY 2021-22**
[Refer 'Income from Other Sources' Chapter]
- **Income received in a transaction of reverse mortgage [Sec 10(43)]**
[Refer 'Capital Gains' Chapter]
- **Income received by any person on behalf of NPS Trust [Sec 10(44)]**
Any income received by any person for, or on behalf of, the New Pension System Trust established under the provisions of the Indian Trusts Act, 1882.
[Detailed discussion about NPS Trust – Refer 'Deduction under Section 80CCD' Class]
- ***Section 10(45) [Few exemptions to Serving/Retired Chairman/Members of UPSC] is omitted from AY 2021-22 vide Finance Act 2020.*** ★

VARIOUS CLAUSES OF SECTION 10 – PART B***Few More Exemption's Clauses***

- **Palace of Ex-ruler [Sec. 10(19A)]**
The annual value in respect of any one palace, which is in the occupation of an ex-ruler
- **Income of Scientific Research Association [Sec. 10(21)]**
Any income of a scientific research association [being approved for the purpose of Sec. 35(1)(ii)] or research association which has its object, undertaking research in social science or statistical research [being approved and notified for the purpose of Sec. 35(1)(iii)], is exempt provided such association-
 - a. applies its income, or accumulates it for application, wholly and exclusively to the objects for which it is established; and
 - b. invest or deposit its funds in specified investments.
- **Income of News Agency [Sec. 10(22B)]**
Any income of specified news agency (Press Trust of India Ltd., New Delhi) set up in India solely for collection and distribution of news shall be exempt provided:
 - a. The news agency applies its income or accumulates it for application solely for collection and distribution of news; and
 - b. It does not distribute its income in any manner to its members.
- **Income of Professional Institutions [Sec. 10(23A)]**
Any income (other than income chargeable under the head “Income from house property” or any income received for rendering any specific services or income by way of interest or dividends derived from its investments) of professional association shall be exempt provided –
 - a. Such association or institution is established in India having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or other specified profession;
 - b. Such association or institution applies its income, or accumulates it for application, solely to the objects for which it is established; and
 - c. The association or institution is approved by the Central Government.
- **Income of the IRDA [Section 10(23BBE)]**
- **Income of Prasar Bharti (Broadcasting Corporation of India) [Section 10(23BBH)]**
- **Income of PMNRF, PM CARES Fund, Swachh Bharat Kosh; Clean Ganga Fund [Section 10(23C)]**
- **Income of a Securitisation Trust from the activity of Securitisation [Section 10(23DA)]**
- **Exemption of income of Investor Protection Fund set up by Recognized Stock Exchange [Section 10(23EA)]**
- **Exemption of income of Investor Protection Fund set up by Depositories [Section 10(23ED)]**
- **Income of Registered Trade Unions [Section 10(24)]** under the heads “Income from House Property” and “Income from Other Sources”
- **Income of P. Funds, Superannuation Funds, Gratuity Funds [Sec 10(25)]**
- **Income of Employees State Insurance (ESI) Fund [Sec 10(25A)]**

- **Income of an Agricultural produce Market Committee [Sec. 10(26AAB)]**
Income of an agricultural produce market committee or board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce is exempt.
- **Income of Corporation for promoting the Interests of the Members of the Scheduled Castes or the Scheduled Tribe or Backward Classes [Sec. 10(26B)]**
- **Income of Corporation for promoting Interest of Members of a Minority Community [Sec. 10(26BB)]**
- **Income of Corporation for the Welfare and Economic Upliftment of Ex-servicemen [Sec. 10(26BBB)]**
- **Income of a Co-operative Society for promoting the Interests of the Members of Scheduled Castes or Scheduled Tribes [Sec. 10(27)]**
- **Income of specified Boards [Sec. 10(29A)]**
Any income accruing or arising to The Coffee Board; The Rubber Board; The Tea Board; The Tobacco Board; The Marine Products Export Development Authority; The Coir Board; The Agricultural and Processed Food Products Export Development Authority and The Spices Board.
- **Exemption of specified income arising from any international sporting event in India [Sec 10(39)]**
- **Income (Specified below) of Competition Commission of India [Section 10(46)]**
 - (i) Amount received in the form of Government grants;
 - (ii) Fee received under the Competition Act, 2002; and
 - (iii) Interest income accrued on Government grants and interest accrued on fee received under the Competition Act, 2002.
- **Income (Specified below) of National Skill Development Corporation (NSDC) [Section 10(46)]**
 - (i) Long-term or short-term capital gain out of investment in an organization for skill development;
 - (ii) Dividend and royalty from skill development venture supported or funded by NSDC;
 - (iii) Interest on loans to Institutions for skill development;
 - (iv) Interest earned on fixed deposits with banks; and
 - (v) amount received in the form of Government grants.
- **Exemption in respect of income of an Infrastructure Debt Fund [Sec. 10(47)]**
Income of any Infrastructure Debt Fund, as notified by CG, shall be exempt u/s 10(47).
- **Exemptions in respect of income received by certain foreign companies [Sec. 10(48)]**
Any income of a foreign company received in India in Indian currency on account of sale of crude oil **or on account of sale of any other goods or rendering of services** to any person in India is exempt u/s 10(48) subject to the following conditions:
 - a) The receipt of money is under an agreement or an arrangement which is **either entered into by the CG or approved by it.**
 - b) The foreign company and such arrangement/agreement has been notified by the CG.
 - c) The receipt of the money is the **only activity carried out by the foreign company in India.**
(Ex: **National Iranian Oil Company** is notified as Foreign Company)

➤ **Storage of Crude Oil [Section 10(48A)]:**

Any income accruing or arising to a foreign company on account of **storage of crude oil** in a facility in India and sale of crude oil therefrom to any person **resident in India**:

Provided that

- i. the **storage and sale** by the foreign company is pursuant to an **agreement** or an arrangement entered into by the **Central Government** or **approved** by the Central Government; and
- ii. having regard to the **national interest**, the foreign company and the agreement or arrangement are **notified** by the Central Government in this behalf;

➤ **Sale of Leftover stock of crude oil [Section 10(48B)]:**

Any income accruing or arising to a **foreign company** on account of **sale of leftover stock of crude oil**, if any, from the facility in India after the expiry of the agreement or the arrangement referred to in clause (48A) **or on termination of the said agreement or the arrangement, in accordance with the terms mentioned therein, as the case may be (added by Finance Act 2018)**, subject to such conditions as may be notified by the Central Government in this behalf

➤ **Income of Indian Strategic Petroleum Reserves Limited [Sec. 10(48C)]**

[Inserted by Finance Act 2020, w.e.f. AY 2021-22]

Any income accruing or arising to the Indian Strategic Petroleum Reserves Ltd., being a wholly owned subsidiary of the Oil Industry Development Board under the Ministry of Petroleum and Natural Gas, as a result of arrangement for replenishment of crude oil stored in its storage facility in pursuance of directions of the Central Government in this behalf is exempt.

However, nothing contained in this clause shall apply to an arrangement, if the crude oil is not replenished in the storage facility within 3 years from the end of the financial year in which the crude oil was removed from the storage facility for the first time.

➤ **Income subjected to Equalization Levy [Section 10(50)]:**

*Any income arising from **any specified service** provided **or arising from any e-commerce supply or services made or provided or facilitated on or after the 1st day of April, 2021** and **chargeable to equalisation levy** under Chapter VIII of Finance Act 2016.*

SATC NOTE:

Clause 1 to Clause 50 are listed in Section 10. All clauses are not relevant for CMA INTER Syllabus.

LIST OF EXEMPTIONS BEING DISCUSSED IN RESPECTIVE CHAPTERS**Residential Status**

- Allowance payable outside India by the Government to a citizen of India

Salaries

- Leave travel concession [Section 10(5)]
- Gratuity [Section 10(10)]
- Commutation of pension [Section 10(10A)]
- Leave Encashment [Section 10(10AA)]
- Retrenchment Compensation [Section 10(10B)]
- Voluntary Retirement Receipts [Section 10(10C)]
- Income-tax paid by employer on non-monetary perquisite [Section 10(10CC)]
- Payment from Provident Fund [Section 10(11)]
- Payment from Superannuation Fund [Section 10(13)]
- House Rent Allowance [Section 10(13A)]
- Special Allowance or benefit to meet expenses relating to duties or personal expenses [Section 10(14)]

Capital Gains

- Income received on buy-back of shares of domestic company [Section 10(34A)]
- Capital gain on compulsory acquisition of agricultural land within specified urban limits [Section 10(37)]
- Income received in transaction of reverse mortgage [Section 10(43)]

Income from Other Sources

- Allowances to MP/MLA [Section 10(17)]
- Interest income arising to certain persons [Section 10(15)]
- Family pension received by widow/children/nominated heirs of armed forces members [Section 10(18) & Section 10(19)]
- Dividend from Domestic Companies [Section 10(34)] **(Now, Taxable from AY 2021-22)**
- Income from Units of Mutual Fund or UTI [Section 10(35)] **(Now, Taxable from AY 2021-22)**

Income of Other Persons Included in Assessee's Total Income

- Exemption in respect of minor's income included in the hands of parent [Section 10(32)]

Deductions from Gross Total Income

- Receipts from LIC [Section 10(10D)]
- Payment from NPS Trust to an assessee on closure of his account or on his opting out of the pension scheme. [Section 10(12A)]
- Payment from NPS Trust to an employee on partial withdrawal [Section 10(12B)]

RESTRICTIONS ON ALLOWABILITY OF EXPENDITURE [SECTION 14A]

As per Section 14A, expenditure incurred in relation to any exempt income is not allowed as a deduction while computing income under any of the five heads of income [Sub-section (1)].

The Assessing Officer is empowered to determine the amount of expenditure incurred in relation to such income which does not form part of total income in accordance with such method as may be prescribed [Sub-section (2)].

Such method should be adopted by the Assessing Officer in the following cases:

- a. if he is not satisfied with the correctness of the claim of the assessee, having regard to the accounts of the assessee; or
- b. where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of total income.

Rule 8D lays down the method for determining the amount of expenditure in relation to income not includible in total income.

If the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with –

- a. the correctness of the claim of expenditure by the assessee; or
- b. the claim made by the assessee that no expenditure has been incurred in relation to exempt income for such previous year, he shall determine the amount of expenditure in relation to such income in the manner provided hereunder –

The expenditure in relation to income not forming part of total income shall be the aggregate of the following:

- i. the amount of expenditure directly relating to income which does not form part of total income;
- ii. an amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not form part of total income.

However, the amount referred to in clause (i) and clause (ii) shall not exceed the total expenditure claimed by the assessee.

Clarification regarding disallowance of expenses under section 14A in cases where corresponding exempt income has not been earned during the financial year [Circular No. 5/2014, dated 11.2.2014]

Section 14A provides that no deduction shall be allowed in respect of expenditure incurred relating to income which does not form part of total income. A controversy has arisen as to whether disallowance can be made by invoking section 14A even in those cases where no income has been earned by an assessee, which has been claimed as exempt during the financial year.

The CBDT has, through this Circular, clarified that the legislative intent is to allow only that expenditure which is relatable to earning of income. Therefore, it follows that the expenses which are relatable to earning of exempt income have to be considered for disallowance, irrespective of the fact whether such income has been earned during the financial year or not.

The above position is clarified by the usage of the term “includible” in the heading to section 14A [Expenditure incurred in relation to income not includible in total income] and Rule 8D [Method for determining amount of expenditure in relation to income not includible in total income], which indicates that it is not necessary that exempt income should necessarily be included in a particular year’s income, for triggering disallowance.

Also, the terminology used in section 14A is “income under the Act” and not “income of the year”, which again indicates that it is not material that the assessee should have earned such income during the financial year under consideration.

In effect, section 14A read along with Rule 8D provides for disallowance of expenditure even where the taxpayer has not earned any exempt income in a particular year.

PRACTICAL QUESTIONS - SET A

1. Examine whether the following are chargeable to tax, and if so, compute the amount liable to tax:
- i. Arvind received ₹ 20,000 as his share from the income of the HUF.
 - ii. Mr. Xavier, a 'Param Vir Chakra' awardee, who was formerly in the service of the Central Government, received a pension of ₹ 2,20,000 during the financial year 2020-21.
 - iii. Agricultural income of ₹ 1,27,000 earned by a resident of India from a land situated in Malaysia.
 - iv. Rent of ₹ 72,000 received for letting out agricultural land for a movie shooting.

Solution:

S. No.	Taxable / Not Taxable	Amount	Reason liable to tax (₹)
(i)	Not Taxable	-	Share received by member out of the income of the HUF is exempt under section 10(2).
(ii)	Not Taxable	-	Pension received by Mr. Xavier, a former Central Government's employee who is a 'Param Vir Chakra' awardee, is exempt under section 10(18).
(iii)	Taxable	1,27,000	Agricultural income from a land in any foreign country is taxable in the case of a resident taxpayer as income under the head "Income from other sources". Exemption under section 10(1) is not available in respect of such income.
(iv)	Taxable	72,000	<p>Agricultural income is exempt from tax as per section 10(1). Agricultural income means, inter alia, any rent or revenue derived from land which is situated in India and is used for agricultural purposes.</p> <p>In the present case, rent is being derived from letting out of agricultural land for a movie shoot, which is not an agricultural purpose. In effect, the land is not being put to use for agricultural purposes.</p> <p>Therefore, ₹ 72,000, being rent received from letting out of agricultural land for movie shooting, is not exempt under section 10(1).</p> <p>The same is chargeable to tax under the head "Income from other sources".</p>

2. Examine with reasons in brief whether the following statements are true or false with reference to the provisions of the Income-tax Act, 1961:
- (i) Exemption is available to a Sikkimese individual, only in respect of income from any source in the State of Sikkim.
 - (ii) Pension received by a recipient of gallantry award, who was a former employee of Central Government, is exempt from income-tax.
 - (iii) Mr. A, a member of a HUF, received ₹ 10,000 as his share from the income of the HUF. The same is to be included in his chargeable income.

Solution:

- (i) **False:** Exemption under section 10(26AAA) is available to a Sikkimese individual not only in respect of the said income, but also in respect of income by way of dividend or interest on securities.
- (ii) **True:** Section 10(18) exempts any income by way of pension received by individual who has been in service of Central Government and has been awarded "ParamVir Chakra" or "MahaVir Chakra" or "Vir Chakra" or such other gallantry award as the Central Government, may, by notification in the Official Gazette, specify in this behalf.
- (iii) **False:** Section 10(2) exempts any sum received by an individual as a member of a HUF where such sum has been paid out of the income of the family. Therefore, ₹ 10,000 should not be included in Mr. A's chargeable income.

ALTERNATE MINIMUM TAX (AMT)

(Alternate Minimum Tax to any person *other than company*)
Section 115JC - W.e.f. AY 2012-13

CMA INTER DT - JUNE & DEC 2021 EXAM

Assessment Year 2021-22 (From 18th Edition Book)

(Refer Page 435 to 437 of ICMAI NEW DIRECT TAX MODULE – JAN 2021 Edition)

W.e.f AY 2013-14; Section 115JC is applicable to any person other than company. In AY 12-13, it was only applicable to LLP.

Section 115JC(1): Where the regular income-tax payable for a previous year by a person (other than company) is **less than 18.5% of its Adjusted Total Income (AMT)**, such **adjusted total income shall be deemed to be the total income** of such person and it shall be liable to pay income-tax on such total income **at the rate of 18.5%**.

NOTE: MAT RATE (ON COMPANIES) IS REDUCED TO 15% FROM AY 2020-21 & NOT AMT RATE.

Section 115JC(4): In case of a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange, AMT Rate will be 9% instead of 18.5%.

Section 115JC(2): Adjusted Total Income shall be the Total Income as increased by

- A. Deductions **claimed** under any section in chapter VIA under the heading "C - Deductions in respect of certain incomes" (Other than 80P),
- B. Deduction **claimed** u/s 10AA &
- C. Deduction **claimed** u/s 35AD as reduced by the amount of depreciation allowable u/s 32 as if no deduction u/s 35AD was allowed.

Section 115JC(5): *The provisions of this section shall not apply to a person who has exercised the option referred to in section 115BAC or section 115BAD.*

[Inserted by Finance Act 2020, w.e.f AY 2021-22]

To whom Alternate Minimum Tax shall be applicable [Section 115JEE(1)]

The provisions of Alternate Minimum Tax shall apply to a non-corporate assessee who has claimed any deduction under:

- (a) Sections 80-IA to 80RRB **other than section 80P**; or
- (b) Section 10AA; or
- (c) Section 35AD

To whom Alternate Minimum Tax shall not be applicable [Section 115JEE(2)]

However, provisions of AMT is not applicable if, Adjusted TI of

- a. Individual
- b. HUF
- c. AOP/BOI
- d. AJP;

doesn't exceeds ₹ 20,00,000.

Section 115JEE(3): Notwithstanding anything contained in sub-section (1) or (2), **the credit for tax paid under Section 115JC shall be allowed in accordance with the provisions of Section 115JD.**

Steps involving calculation of Tax where Alternate Minimum Tax provisions applies:

- Step 1:** Calculate the **regular Income-tax liability** of the non-corporate assessee ignoring the provisions of Sections 115JC to 115JF.
- Step 2:** Calculate **Adjusted Total Income** of the non-corporate assessee.
- Step 3:** Calculate **Alternate Minimum Tax** by applying **18.5% + Surcharge (if applicable) + 4% H & EC** on Adjusted Total Income computed under Step 2.
- Step 4:** Compare tax liability computed under Step 1 and AMT computed under Step 3. If amount computed under Step 1 is equal to or more than amount computed under Step 3, then the provisions of Alternate Minimum Tax **will not apply**.
- Step 5:** If amount computed under Step 1 is less than amount computed under Step 3, then amount computed under Step 3 will be deemed as tax liability of the non-corporate assessee for such Previous Years.

Report from a Chartered accountant [Section 115JC(3)]:

~~Every person to whom this section applies shall obtain a report, in such form as may be prescribed, from an accountant, certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report on or before the due date of furnishing of return of income under sub-section (1) of section 139~~ **before the specified date referred to in section 44AB (i.e., one month prior to the due date for filing return of income), in such form as may be prescribed, from an accountant referred to in the Explanation below sub-section (2) of section 288 (i.e. a Chartered Accountant), certifying that the adjusted total income and the alternate minimum tax have been computed in accordance with the provisions of this Chapter and furnish such report by that date.**

[Amended by Finance Act 2020, w.e.f AY 2021-22]

Tax credit for Alternate Minimum Tax [Section 115JD]:

1. The credit for tax paid by a person under section 115JC shall be allowed to him in accordance with the provisions of this section.
2. The tax credit of an assessment year to be allowed under sub-section (1) shall be the excess of alternate minimum tax paid over the regular income-tax payable of that year:
3. No interest shall be payable on tax credit allowed under sub-section (1).
4. The amount of tax credit shall be carried forward and set off in accordance with the provisions of this section but such carry forward shall not be allowed beyond 15th assessment year immediately succeeding the assessment year for which tax credit becomes allowable.
5. In any assessment year in which the regular income-tax exceeds the alternate minimum tax, the tax credit shall be allowed to be set off to the extent of the excess of regular income-tax over the alternate minimum tax and the balance of the tax credit, if any, shall be carried forward.
6. 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.
7. **The provisions of this section shall not apply to a person who has exercised the option referred to in section 115BAC or section 115BAD. [Inserted by Finance Act 2020, w.e.f AY 2021-22]**

PRACTICAL QUESTIONS ON AMT

1. ABC LLP has income of ₹ 14,00,000 under the head "Profit and Gains of Business or Profession" during the PY 2020-21. One of its businesses is eligible for deduction @100% of profits u/s 80IB for the AY 2021-22. The profit from such business included in the business income is ₹ 7,00,000. Compute the tax payable by the LLP assuming it has no other income during the PY 2020-21.

Answer:

**Computation of tax payable under Income Tax of ABC LLP
for the A.Y. 2021-22 relating to the P.Y. 2020-21**

Particulars	Amount (₹)
Profit and Gains from Business or Profession	14,00,000
GTI	14,00,000
Less: Deduction u/s 80-IB	7,00,000
Total Income	7,00,000
Tax Payable (₹ 7,00,000 × 30%)	2,10,000
Add: Health & Education Cess @ 4%	8,400
Total Tax Payable	2,18,400

**Computation of Alternate Minimum Tax (AMT) of ABC LLP
for the A.Y. 2021-22 relating to the P.Y. 2020-21**

Particulars	Amount (₹)
Total Income as per the provisions of Income Tax Act, 1961	7,00,000
Add: Deduction u/s 80-IB	7,00,000
Adjusted Total Income	14,00,000
Alternate Minimum Tax Payable (₹ 14,00,000 × 18.5%)	2,59,000
Add: Health & Education Cess @ 4%	10,360
Total Tax Payable	2,69,360

- (i) Since the Income Tax payable as per the provision of the Income Tax Act is less than the Alternate Minimum Tax, the Adjusted Total Income of ₹ 14,00,000 would be deemed to be the Total Income of the LLP and the LLP would be liable to pay tax @18.5% thereof.
- (ii) The amount of tax payable by ABC LLP for the A.Y. 2021-22 would therefore be ₹ 2,69,360.
- (iii) ABC LLP is eligible for credit to the extent of ₹ 50,960 (i.e. ₹ 2,69,360 – ₹ 2,18,400) to be set off in the year in which tax on Total Income computed under the regular provision of the Act exceeds the Alternate Minimum Tax. The credit shall be allowed to be carried forward **up to the 15th assessment year** immediately succeeding the assessment year for which such credit is allowable.

Question:

2. The following is the profit and loss account for the year ending 31.3.2021 of XYZ (LLP) having 3 partners :

Profit and Loss Account

Establishment & other expenses	48,00,000	Gross profit	68,20,000
Interest to partner @ 15%		Rent from house property	1,60,000
X	90,000	Interest on bank deposits	10,000
Y	1,20,000	Profit on equity shares sold after	
Z	<u>60,000</u>	10 months through RSE	2,60,000
Salary to designated partners			
X	2,40,000		
Y	<u>1,80,000</u>		
Net profit			
	<u>17,60,000</u>		
	<u>72,50,000</u>		<u>72,50,000</u>

Additional information:

- Establishment expenses include ₹ 1,20,000 on account of bonus which was due on 31.3.2021.
- The LLP is eligible for 100% deduction under section 80-IC as it is established in notified area in Himachal Pradesh.
- Shares were sold through recognized stock exchange and securities transaction tax of ₹ 1000 is included in the establishment expenses on account of the same.

Compute the tax payable by the Limited Liability Firm

Solution:**Computation of total income of XYZ (LLP) for the AY 2021-22**

	₹	₹	₹
Income under the head house property			
Actual Rent		1,60,000	
Less: Deduction 30%		<u>48,000</u>	1,12,000
Business income			
Net profit as per P&L A/c			17,60,000
Less: Income credited but either exempt or taxable under other head			
Rent	1,60,000		
Interest on bank deposit	10,000		
Profit on sale of shares sold after 10 months	<u>2,60,000</u>	<u>4,30,000</u>	
			13,30,000
Add: Expenses disallowed			
Bonus as per section 43B	1,20,000		
Securities Transaction Tax	1,000		
Interest to partners in excess of 12%	54,000		
Salary to partners	<u>4,20,000</u>	<u>5,95,000</u>	
Book Profit			19,25,000
Less : Salary as per section 40(b) (See working note)		<u>4,20,000</u>	15,05,000
Short-term capital gain on sale of equity shares			2,60,000
Income from other sources			10,000
Gross Total Income			18,87,000
Less: Deduction under section 80-IC			<u>15,05,000</u>
Total income			3,82,000

Regular income tax payable on total income

(1) Short-term capital gain of ₹ 2,60,000 @ 15%	39,000
(2) Balance total income ₹ 1,22,000 @ 30%	<u>36,600</u>
	75,600

Adjusted total income

Total income	3,82,000
Add : Deduction u/s Chapter VIA	<u>15,05,000</u>
	18,87,000

Alternate Minimum Tax (AMT) 18.5% on ₹ 18,87,000 = ₹ 3,49,095

Hence, adjusted total income shall be total income and the tax payable shall be the alternate minimum tax i.e. on ₹ 18,87,000 @ 18.5% + 4% (H&EC).

Tax payable

Alternate minimum tax 18.5% on ₹ 18,87,000	3,49,095
Add : 4% H&EC	<u>13,964</u>
	3,63,059
Rounded off	3,63,060

Working Note:**Salary allowed u/s 40(b)**

Book profit		19,25,000
Maximum salary allowed		
First 3,00,000 of book profit @ 90%	2,70,000	
Balance ₹ 16,25,000 of book profit @ 60%	<u>9,75,000</u>	12,45,000
Salary allowed u/s 40(b) shall be ₹ 12,45,000 or ₹ 4,20,000 whichever is lower i.e. ₹ 4,20,000.		

Tax Payable

Particular	₹
Alternate Minimum Tax 18.5% on ₹ 18,66,000	3,45,210
Add : 4% Health & Education Cess	13,808
Total Tax	3,59,018
Rounded off	3,59,020
Working Note:	
Book Profit (Refer Section 40(b))	21,54,000
Maximum salary allowed	
First 3,00,000 of book profit - 90%	2,70,000
Balance ₹ 18,54,000 of book profit - 60%	11,12,400
	13,82,400

Salary allowed shall be ₹ 13,82,400 or ₹ 4,20,000 whichever is lower i.e. ₹ 4,20,000. **AMT Credit of ₹ 3,17,840 (3,59,020 – 41,180) [Tax including cess]** is available which can be carried forward for 15 Assessment Years.

4. **IMP:** VKS Polymers LLP is a LLP consisting of the partners L, M and N. The LLP derives income from a trading unit (D) as well as a manufacturing unit (E). The summarised details of the profits and other related aspects for the year ended are as under:

	₹ in lacs
Profits from unit D	40
Profits from unit E	60

The turnover of the LLP is 120 crores (30% cash sales) and transfer pricing provisions are not attracted. Unit E is eligible to claim 100% deduction under section 80-IE and all necessary conditions stand fulfilled. The assessee is planning to file the return of income on 31st October, 2021. Compute the total income and tax payable for the assessment year 2021-22. There is some doubt in the mind of the Taxation Manager over two issues relating to unit D. The assessee seeks your view whether it can file the return of income on 1st Dec, 2021, after the issues are settled.

The assessee has prepaid taxes to the extent of ₹ 13 lacs and hence it is felt that there will be no interest chargeable under sections 234A, 234B and 234C. Advise the assessee suitable.

Answer: When the return of income has been filed on 31-10-2021 [within due date as per sec 139(1)]
Computation of Total Income and tax as per normal provisions

Particulars	(₹ in Lacs)
Gross Total Income	100.00
Less: Deduction U/S 80-IE	60.00
Total Income	40.00
Tax Liability as per normal provisions @ 31.2%	12.48

Computation of Adjusted Total Income and AMT as per section 115JC

Particulars	(₹ in Lac)
Total Income	40.00
Add: Deduction u/s 80-IE	60.00
Adjusted Total Income	100.00
Tax Liability @ 19.24% u/s 115JC (18.5% + H&EC@4%)	19.24
Tax Payable (Higher of Tax on Adjusted Total Income and Total Income)	19.24

When the return of income has NOT been filed within due date laid down in s. 139(1) As per the provisions of section 80AC, no deduction will be available u/s 80-IE when the return of income is filed beyond the due date laid down in section 139(1). When no deduction is available u/s 80-IE, the AMT provisions u/s 115JC will not apply. The total income and tax payable as per normal provisions will be as under:

Particulars	(₹ in Lacs)
Gross Total Income	100.00
Less: Deduction U/S 80-IE (Not allowable in view of Sec 80AC)	Nil
Total Income	100.00
Tax Liability as per normal provisions @ 31.2%	31.20

It can be seen from above that there will be a heavily increased tax liability, if the return is filed on 1st Dec, 2021. The assessee is therefore advised to file the return of income on 31-10-2021.

In case of any error, a revised return can be filed on 1-12-2021.

PRACTICE QUESTIONS – AMT

1. Monohar & Hari LLP is engaged in multiple business activities. The following information is furnished for the year ended 31.03.2021:

- (i) Net profit as per Profit and Loss Account ₹ 52 lakhs.
- (ii) Working partner salary debited to profit and loss account ₹ 40,20,000 as authorized by the LLP agreement.
- (iii) Interest on capital paid to partners @ 15% ₹ 15,75,000. This is authorized by the LLP agreement.
- (iv) Depreciation debited to profit and loss account ₹ 8,10,000.
- (v) Eligible depreciation under section 32 ₹ 10,35,000.
- (vi) The Net Profit includes profit from under taking located in SEZ (4th year) ₹ 20 lakhs. The total turnover is ₹ 200 lakhs and the export turnover is ₹ 150 lakhs.
- (vii) The unit has earned income from generation of power and the eligible deduction under section 80-IA amounts to ₹ 8 lakhs.

You are required to compute the total income of the firm and also the alternative minimum tax (AMT) and decide the final tax liability of the firm for the assessment year 2021-22.

Solution

Manohar & Hari LLP Computation of the Total Income for the Asst. Year 2021-22

As per Normal Provisions	₹
Net Profit as per Profit and Loss Account	52,00,000
Add:	
Working partner salary debited to Profit and loss account	40,20,000
Interest on capital in excess of 12% disallowed	3,15,000
Depreciation debited to P&L account	8,10,000
	<u>1,03,45,000</u>
Less:	
Eligible depreciation under section 32	<u>10,35,000</u>
Book Profit	93,10,000
Less: Deduction U/s 40(b)	
On first ₹ 3 lakhs @ 90%	2,70,000
On the balance ₹ 90,10,000 @ 60%	<u>54,06,000</u> 56,76,000
Restricted to the amount authorized by LLP Agreement	40,20,000
Gross Total Income	52,90,000
Less: Deduction u/s 10AA in respect of unit in SEZ	
₹ 20,00,000 × 150 /200	15,00,000
Deduction u/s 80-IA	8,00,000 23,00,000
Total Income	29,90,000
Tax there on @ 30%	(A) 8,97,000

Computation of adjusted total income u/s 115JC

Total income as per normal provisions		29,90,000
Add: Deduction under section 80-IA		8,00,000
Deduction U/s. 10AA		<u>15,00,000</u>
Adjusted total income		52,90,000
Tax thereon @ 18.5%	(B)	9,78,650

Computation of final tax liability

Higher of (A) or (B) shall be the tax payable		9,78,650
Add: Education cess @ 4%		39,146
Total Tax Payable		10,17,796/10,17,800

2. ACHARYA LLP, a limited liability partnership in India is engaged in development of software and providing IT enabled services through two units, one of which is located in a notified Special Economic Zone (SEZ) in Chennai (commenced from 01.04.2010).

The particulars relating to previous year 2020-21 furnished by the assessee are as follows:

Total Turnover: SEZ unit ₹ 120 lakhs and the other unit ₹ 100 lakhs

Export Turnover: SEZ unit ₹ 100 lakhs and the other unit 60 lakhs

Profit: SEZ unit ₹ 48 lakhs and the other unit ₹ 42 lakhs

Amount debited to Profit and Loss Account towards Special Economic Zone Re- Investment Reserve Account ₹ 21 lakhs.

The Assessee has no other income during the year.

Compute tax payable by ACHARYA LLP for the Assessment Year 2021-22.

Will the amount of tax payable change, if ACHARYA LLP is an overseas entity?

Solution

Computation of total income and tax liability of ACHARYA LLP as per the normal provisions of the Act for A.Y. 2021-22

Particulars		₹ (in lakh)
Business income (before deduction under section 10AA)(₹ 48 lacs + ₹ 42 lacs)		90.00
Add: Amount debited to SEZ Re-investment Reserve		21.00
PGBP/GTI		111.00
Less: Deduction under section 10AA		
= ₹ (48 +21) lacs × ₹ 100 lacs / ₹ 120 lacs = 57.5 × 50% (being the 11 th year)	28.75	
Amount debited to SEZ Re-investment Reserve Account	21.00	
Whichever is less is deductible		21.00
Total Income		90.00
Tax on total income@30%		27.00
Add: Health & Education cess @4%		1.08
Tax liability (as per normal provisions)		28.08

Computation of Adjusted total income and Alternate Minimum tax of ACHARYA LLP as per the provisions of section 115JC for A.Y. 2021-22

Particulars	₹ (in lakh)
Total income as per the normal provisions	90.00
Add: Deduction under section 10AA	21.00
Adjusted total income	111.00
Tax @18.5% of Adjusted Total Income	20.535
Add: Surcharge @12% as the adjusted total income is > ₹ 1 crore	2.4642
	22.9992
Add: Health & Education cess @4%	0.9199
Alternate Minimum Tax as per section 115JC	23.9191

Since the tax payable as per the normal provisions of the Act is more than the alternate minimum tax payable, the total income as per normal provisions shall be liable to tax and the tax payable for A.Y. 2020-21 shall be ₹ 28.08 lakhs.

There would be no tax credit for ACHARYA LLP to carry forward and set off against income-tax payable in the subsequent 15 assessment years.

The provisions of alternate minimum tax would also be applicable to an overseas LLP. Hence, the tax liability would remain the same even where ACHARYA LLP is an overseas entity.

3. Mr. Prem commenced operations of the businesses of setting up a warehousing facility for storage of food grains, sugar and edible oil on 1.4.2020.

S. No.		Food grains	Sugar	Edible Oil
		₹ in lakhs		
1	Profits from business (computed) before allowing deduction under section 35AD/section 32	125	60	30
2	Capital expenditure on land and building purchased exclusively for the business (January 2020 - March 2020) and capitalized in the books of account as on 1st April, 2020	120	90	75
3	Cost of land included in (2) above	75	60	45
4	Capital expenditure incurred during P.Y. 2020-21 on extension/reconstruction of building purchased and used exclusively for the business	30	20	10

Compute Mr. Prem's total income and tax liability for the A.Y. 2021-22, assuming that Mr. Prem does not have any income other than income from the above businesses.

Ignore Section 115BAC.

Solution**Computation of total income of Mr. Prem for A.Y. 2021-22**

Particulars	₹ (in lakhs)	
Profits and gains of business or profession		
Profits and gains from the specified business of setting up a warehousing facility for storage of food grains and sugar [See Working Note below]		60.00
Profit from business of setting up of warehouse for storage of edible oil (before providing for depreciation under section 32)		30.00
Less: Depreciation under section 32		
10% of ₹ 40 lakh, being (₹ 75 lakh – ₹ 45 lakh + ₹ 10 lakh)	4.00	26.00
Total Income		86.00

Computation of tax liability for A.Y. 2021-22

Particulars	₹ in lakhs	
Tax liability under the normal provisions of the Income-tax Act, 1961 [30% of ₹ 76 lakhs (₹ 86 lakhs – ₹ 10 lakhs) + ₹ 1,12,500]		23.93
Add: Surcharge @10% (Since total income > ₹ 50 lakhs but does not exceed ₹ 1 crore)	<u>2.39</u>	26.32
Add: Health and education cess @4%		1.05
Total tax liability		27.37

Adjusted Total Income	₹ in lakhs	
Total Income		86.00
Add: Deduction under section 35AD [See Working Note below]	125.00	
Less: Depreciation under section 32 [10% of ₹ 125 lakh]	12.50	<u>112.50</u>
Adjusted Total Income		198.50
AMT @18.5%		36.72
Add: Surcharge@15% (Since adjusted total income > ₹ 1 crore)		<u>5.51</u>
		42.23
Add: Health and Education cess @4%		1.69
Tax liability under section 115JC		43.92
Since the regular income-tax payable is less than the AMT payable, the adjusted total income of ₹ 198.50 lakhs shall be deemed to be the total income of Mr. Prem and tax is payable @18.5% thereof plus surcharge@15% (since adjusted total income exceeds ₹ 1 crore) plus cess@4%. Therefore, the tax liability is ₹ 43.92 lakhs.		
AMT Credit to be carried forward under section 115JD		43.92
Tax liability under section 115JC		27.37
Less: Tax liability under the regular provisions of the Income-tax Act, 1961		
		16.55

Working Note:**Computation of income from specified business under section 35AD**

Particulars		Food Grains	Sugar	Total
		₹ (in lakhs)		
(A)	Profits from the specified business of setting up a warehousing facility (before providing deduction under section 35AD)	125	60	185
	Less: Deduction under section 35AD			
(B)	Capital expenditure incurred prior to 1.4.2020 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2020 (excluding the expenditure incurred on 1.4.2020 (excluding the expenditure incurred on acquisition of land) = ₹ 45 lakh (₹ 120 lakh – ₹ 75 acquisition of land) = ₹ 30 lakh (₹ 90 lakh – ₹ 60 lakh)	45	30	75
(C)	Capital expenditure incurred during the P.Y. 2020-21	30	20	50
(D)	Total capital expenditure (B + C)	75	50	125
(E)	Deduction under section 35AD - 100% of capital expenditure	75	50	125
(F)	Profits from specified business of setting up and operating a warehousing facility for storage of food grains and sugar (A-E)	50	10	60

Notes:

- (i) Deduction of 100% of the capital expenditure is available under section 35AD for A.Y. 2021-22 in respect of specified business of setting up and operating a warehousing facility for storage of food grains and sugar.
- (ii) Since setting up and operating a warehousing facility for storage of edible oil is not a specified business, Mr. Prem is not eligible for deduction under section 35AD in respect of capital expenditure incurred for such business. **Mr. Prem can, however, claim depreciation@10% under section 32 in respect of the capital expenditure incurred on buildings. It is presumed that the buildings were put to use for more than 180 days during the P.Y. 2020-21.**

4. M/s. Omega & Co., a partnership firm in India, is engaged in development of software and providing IT enabled services through two units, one of which is located in a notified Special Economic Zone (SEZ) in Noida (commenced operations from 01.04.2010). The particulars relating to previous year 2020-21 furnished by the assessee are as follows:

Total Turnover: SEZ unit ₹ 180 lakhs and the other unit ₹ 120 lakhs

Export Turnover: SEZ unit ₹ 120 lakhs and the other unit ₹ 80 lakhs

Profit: SEZ unit ₹ 60 lakhs and the other unit ₹ 30 lakhs.

Amount debited to Statement of Profit and Loss and credited to Special Economic Zone Re-Investment Reserve Account ₹ 16 lakhs.

Considering that the firm has no other income during the year, compute the tax payable by the firm for the A.Y. 2021-22 by integrating, analysing and applying the relevant provisions of income-tax law.

Solution

Computation of total income and tax liability of M/s. Omega & Co., a partnership firm, as per the normal provisions of the Act for A.Y. 2021-22

Particulars		₹ (in lakhs)
Business income (before deduction under section 10AA) (₹ 60 lakhs + ₹ 30 lakhs)		90.00
Add: Amount debited to SEZ Re-investment Reserve		16.00
PGBP/GTI		106.00
Less: Deduction u/s 10AA (₹ 60 lakhs + ₹ 16 lakhs) × ₹ 120 lakhs/₹ 180 lakhs = 50.67 × 50% (being the 11th year)	25.33	
Amount credited to SEZ Re-investment Reserve Account	16.00	
- whichever is less is deductible		16.00
Total Income		90.00
Tax on total income @30%		27.00
Add: H & Education cess @4%		1.04
Tax liability (as per normal provisions)		28.04

Computation of Adjusted total income and Alternate Minimum tax of M/s. Omega & Co., a partnership firm, as per the provisions of section 115JC for A.Y. 2021-22

Particulars	₹ (in lakh)
Total income as per the normal provisions	90.00
Add: Deduction under section 10AA	16.00
Adjusted total income	106.00
Tax @18.5% of Adjusted Total Income	19.61
Add: Surcharge @12% as the adjusted total income is > ₹ 1 crore	2.35
	21.96
Add: H & Education cess @ 4%	0.88
Alternate Minimum Tax as per section 115JC	22.84

Since the tax payable as per the normal provisions of the Act is more than the alternate minimum tax payable, the total income as per normal provisions shall be liable to tax and the tax payable for A.Y. 2021-22 shall be ₹ 28.04 lakhs.

5. Mr. Anish, carrying on the business of operating a warehousing facility for storage of food grains, has a total income of ₹ 95 lakh for the P.Y. 2020-21. He commenced operations of the business in April, 2020. In computing the total income for the P.Y. 2020-21, he had claimed deduction under section 35AD in respect of investment of ₹ 82 lakh in building (on 1.5.2020) for operating the warehousing facility for storage of food grains.

Compute his tax liability for A.Y. 2021-22. Assumption – Section 115BAC is not opted.

Solution:**Computation of tax liability of Mr. Anish for A.Y. 2021-22**

Particulars	₹
Tax liability on total income of ₹ 95 lakhs under the normal provisions of the Income-tax Act, 1961 [₹ 1,12,500 lakhs (tax on income upto ₹ 10 lakhs) + 30% of ₹ 85 lakhs (₹ 95 lakhs – ₹ 10 lakhs)]	26,62,500
Add: Health & Education cess@4%	1,06,500
Total tax liability	27,69,000
Adjusted Total Income	
Total Income	95,00,000
Add: Deduction under section 35AD [100% of ₹ 82 lakhs]	82,00,000
Less: Depreciation under section 32 [10% of ₹ 82 lakhs]	8,20,000
Adjusted Total Income	1,68,80,000
Alternate Minimum Tax (AMT)@18.5%	31,22,800
Add: Surcharge@15% (since adjusted total income > ₹ 100 lakh)	4,68,420
Add: Health & Education cess@4%	35,91,220
	1,43,649
Tax liability under section 115JC (Rounding off)	37,34,870
Since the regular income-tax payable is less than the AMT payable, the adjusted total income of ₹ 168,80,000 shall be deemed to be the total income of Mr. Anish and tax is payable@18.5% thereof plus surcharge@15% and cess@4%.	
Therefore, the tax liability is ₹ 37,34,870 lakhs.	
AMT Credit to be carried forward under section 115JD	
Tax liability under section 115JC	37,34,870
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	27,69,000
AMT Credit	9,65,870

Notes:

- (1) Investment-linked tax deduction claimed under section 35AD is within the scope of AMT. Accordingly, section 115JC is provided that total income shall be increased by the deduction claimed under section 35AD, as reduced by the depreciation allowable under section 32, as if no deduction under section 35AD was allowed in respect of the asset for which such deduction is claimed.
- (2) The specified business of operating a warehousing facility for storage of food grains is eligible for deduction@100% of capital expenditure under section 35AD.
- (3) AMT Credit can be carried forward for a maximum period of 15 assessment years immediately succeeding the assessment year for which the tax credit becomes allowable. Such credit is allowed to be set-off against the tax payable on total income in an assessment year in which the tax is computed in accordance with the regular provisions of the Income-tax Act, 1961, to the extent of excess of such tax payable over the AMT of that year.

6. PQR LLP, a limited liability partnership set up a unit in Special Economic Zone (SEZ) in the financial year 2016-17 for production of washing machines. The unit fulfills all the conditions of section 10AA of the Income-tax Act, 1961.

During the financial year 2019-20, it has also set up a warehousing facility in a district of Tamil Nadu for storage of agricultural produce. It fulfills all the conditions of section 35AD. Capital expenditure in respect of warehouse amounted to ₹ 75 lakhs (including cost of land ₹ 10 lakhs). The warehouse became operational with effect from 1st April, 2020 and the expenditure of ₹ 75 lakhs was capitalized in the books on that date.

Relevant details for the financial year 2020-21 are as follows:

Particulars	₹
Profit of unit located in SEZ	40,00,000
Export sales of above unit	80,00,000
Domestic sales of above unit	20,00,000
Profit from operation of warehousing facility (before considering deduction under Section 35AD).	1,05,00,000

Compute income tax (including AMT under Section 115JC) payable by PQR LLP for Assessment Year 2021-22.

Solution:

Computation of total income and tax liability of PQR LLP for A.Y. 2021-22
(under the regular provisions of the Income-tax Act, 1961)

Particulars	₹	₹
Profits and gains of business or profession		
Business income of SEZ unit		40,00,000
Profit from operation of warehousing facility	1,05,00,000	
Less: Deduction under section 35AD [See Note (2) below]	<u>65,00,000</u>	
Business income of warehousing facility chargeable to tax		<u>40,00,000</u>
Gross Total Income		<u>80,00,000</u>
Less: Deduction under section 10AA – SE Units [See Note (1) below]		<u>32,00,000</u>
TOTAL INCOME		<u>48,00,000</u>
Computation of tax liability (under the normal/regular provisions)		
Tax@30% on ₹ 48,00,000		14,40,000
Add: Health & Education cess@4%		<u>57,600</u>
Total tax liability		<u>14,97,600</u>

Computation of adjusted total income of PQR LLP for levy of Alternate Minimum Tax

Particulars	₹	₹
Total Income (as computed above)		48,00,000
Add: Deduction under section 10AA		<u>32,00,000</u>
		80,00,000
Add: Deduction under section 35AD	65,00,000	
Less: Depreciation under section 32		
On building @10% of ₹ 65 lakhs	<u>6,50,000</u>	<u>58,50,000</u>
Adjusted Total Income		1,38,50,000
Alternate Minimum Tax@18.5%		25,62,250
Add: Surcharge@15% (since adjusted total income > ₹ 1 crore)		<u>3,84,338</u>

Tax after surcharge	29,46,588
Add: Health & Education cess@4%	<u>1,17,864</u>
Total Tax	30,64,452
Tax liability under section 115JC (rounded off)	<u>30,64,450</u>

Since the regular income-tax payable is less than the alternate minimum tax payable, the adjusted total income shall be deemed to be the total income and tax is leviable @ 18.5% thereof plus surcharge@15% and cess@4%. Therefore, the tax liability is ₹ 30,64,450

AMT Credit to be carried forward under section 115JEE

	₹
Tax liability under section 115JC	30,64,450
Less: Tax liability under the regular provisions of the Income-tax Act, 1961	<u>14,97,600</u>
	15,66,850

Notes:

1	<p>Deduction under section 10AA in respect of Unit in SEZ =</p> $\text{Export turnover of the Unit in SEZ} \times \frac{\text{SEZ Profits of the Unit in SEZ}}{\text{Total turnover of the Unit in SEZ}}$ $= ₹ 40,00,000 \times \frac{₹ 80,00,000}{₹ 1,00,00,000}$ $= ₹ 32,00,000$
2	<p>Deduction@100% of the capital expenditure is available under section 35AD for A.Y. 2021-22 in respect of specified business of setting up and operating a warehousing facility for storage of agricultural produce</p>
3	<p>Further, the expenditure incurred, wholly and exclusively, for the purposes of such specified business, shall be allowed as deduction during the previous year in which he commences operations of his specified business if the expenditure is incurred prior to the commencement of its operations and the amount is capitalized in the books of account of the assessee on the date of commencement of its operations.</p> <p>Deduction under section 35AD would, however, not be available on expenditure incurred on acquisition of land.</p> <p>In this case, since the capital expenditure of ₹ 65 lakhs (i.e., ₹ 75 lakhs – ₹ 10 lakhs, being expenditure on acquisition of land) has been incurred in the F.Y. 2019-20 and capitalized in the books of account on 1.4.2020, being the date when the warehouse became operational, ₹ 65 lakhs would qualify for deduction under section 35AD.</p>

CO-OPERATIVE SOCIETIES

CMA INTER DT - JUNE & DEC 2021 EXAM

Assessment Year 2021-22 (From 18th Edition Book)

(Refer Page 446 to 450 of ICAI NEW DIRECT TAX MODULE – JAN 2021 Edition)

Co-operative society means a co-operative society registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. **[Section 2(19)].**

Deduction u/s 80P in respect of co-operative societies

The deduction provided to various co-operative societies under section 80P **are as under:**

(A) Where 100% deduction is allowed

In the case of the following co-operative societies, full deduction is allowable in respect of following incomes:

(I) **Profits attributable to certain specified activities [Section 80P(2)(a)]:** 100% of the profits, included in Gross Total Income, attributable to any **one or more of the following activities** are deductible:

(i) **carrying on the business of banking or providing credit facilities to its members; or**

(1) Deduction shall not be available to co-operative banks **other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank**. However, deduction shall still be available to a cooperative society which is engaged in the business of providing credit facilities to its members.

(2) **Regional Rural Banks are not eligible** to take deduction under section 80P.

"Primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.

(ii) **a cottage industry; or**

(iii) **the marketing of the agricultural produce grown by its members; or**

The activity of marketing of agricultural produce of its members, referred to in Section 80P, **must be confined to the direct produce from agriculture and not to anything manufactured or processed out of it.**

For instance, paddy is an agricultural produce. If a co-operative society undertakes the sale of paddy grown by its members, the profits derived there from will gain exemption under this section. **But if the society undertakes the sale of rice processed out of such paddy, the exemption is not attracted**

(iv) **the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members; or**

(v) **the processing, without the aid of power, of the agricultural produce of its members; or**

(vi) **the collective disposal of the labour of its members; or**

(vii) **fishing or allied activities**, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members.

(II) Profits of certain primary co-operative societies [Section 80P(2)(b)]:

100% of the profits, included in Gross Total Income are deductible in the case of a co-operative society, being a primary society engaged **in supplying** milk, oilseeds, fruits or vegetables **raised or grown by its members** to

- (i) a federal co-operative society, being a society engaged **in the business of supplying** milk, oilseeds, fruits, or vegetables, as the case may be; or
- (ii) the Government or a local authority; or
- (iii) a Government company as defined in section 2(45) of the Companies Act, 2013 or a statutory corporation (being a company or corporation engaged **in supplying** milk, oilseeds, fruits or vegetables, as the case may be, to the public).

Where district societies like the assessee collected milk from primary societies at village or taluk level and **thereafter processed the milk and supplied it** to the affiliated federal societies, it was held that the assessee was **one step above the primary** co-operative societies. **The assessee was a federal cooperative society not only collecting and supplying milk but also processing the milk.**

The processing activities carried on by the assessee **did not match** the expression “being a primary society engaged in **supplying** the milk” used under section 80P(2)(b) of the Act.

Therefore, the assessee was **not entitled** to deduction under section 80P of the Act [Asstt. CIT vs. Salem District Co-op. Milk Producers Union Ltd (2009) 313 ITR (AT) 43 (Chennai)].

(III) Income from investment with other co-operative societies [Section 80P(2)(d)]:

100% of the profits, included in Gross Total Income are deductible in respect of any income by way of **interest or dividends derived by the co-operative society** from its investments with any other co-operative society.

(IV) Income from letting of ‘godowns or warehouse’ [Section 80P(2)(e)]:

100% of the profits, included in Gross Total Income are deductible in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.

(B) Where deduction is allowed to a limited extent

In the following cases, the co-operative societies are entitled to deduction to a limited extent:

(1) Co-operative society engaged in other activities [Section 80P(2)(c)]:

In the case of a co-operative society engaged in activities, other than those specified above, either independently of, or in addition to, all or any of the activities so specified, the profits and gains attributable to such other activities **up to the limits indicated below are deductible.**

- (i) where such co-operative society is a **consumers’ cooperative society** - ₹ 1,00,000;
- (ii) **in any other case** - ₹ 50,000.

(2) Entire income by way of interest on securities or income from house property if gross total income of a co-operative society (other than specified co-operative society) does not exceed ₹ 20,000 [Section 80P(2)(f)]:

100% of the income from interest on securities or income from house property shall be allowed as deduction in case of a co-operative society not being-

- (i) a housing society or
- (ii) an urban consumer society, or
- (iii) a society carrying on transport business, or
- (iv) a society engaged in the performance of any manufacturing operation with the aid of power provided its gross total income does not exceed ₹ 20,000.

Tax point:

1. The deduction u/s 80P shall be allowed only if such deduction is claimed in the return of income. Further, return of income should be submitted within due date.
2. In case, where the assessee is also entitled to deduction u/s 80-IA, the deduction u/s 80P shall be allowed after allowing deduction under aforesaid section.

Steps in Computing Tax Liability of Cooperative Societies**Steps**

- Step-I :** Compute GTI
- Step-II :** Deduct permissible deductions u/s **80G, 80GGA, 80GGC, 80JJA, 80JJAA, 80P** etc. as applicable.
- Step-III:** Apply the tax rates for the relevant Assessment Year to arrive at the tax incidence.

Tax Rates:

Income Range	Rates of tax
1. Where the total income does not exceed ₹ 10,000	10% of the total income
2. Where the total income exceeds ₹ 10,000 but which the does not exceed ₹ 20,000	₹ 1,000 plus 20% of the amount by total income exceeds ₹ 10,000
3. Where the total income exceeds ₹ 20,000	₹ 3,000 plus 30%, of the amount by which the total income exceeds ₹ 20,000

Surcharge:

However, the tax payable by every cooperative society shall be increased by surcharge @ 12% if total income exceeds ₹ 1 crore and health & education cess @4%.

Marginal Relief:

The total amount payable as income tax and surcharge on total income exceeding ₹ 1 crore shall not exceed the total amount payable as income tax on a total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

AMT:

However, from the Assessment Year 2013-14, tax payable **cannot be less than 18.5%** of "Adjusted Total Income" in some specified cases.

Section 115BAD – Alternative Tax Regime:

From the Assessment Year 2021-22, Resident co-operative society has an option to pay tax under Section 115BAD.

SECTION 115BAD - Tax on income of certain RESIDENT co-operative societies**ALTERNATIVE TAX REGIME FOR RESIDENT CO-OPERATIVE SOCIETIES****NEW SECTION 115BAD INSERTED BY FINANCE ACT 2020****Applicable FROM Assessment Year 2021-22 (EXAM IN YEAR 2021)****“THIS SECTION IS BENEFICIAL TO THOSE SOCIETIES INCLUDING COOPERATIVE BANKS WHICH ARE NOT ELIGIBLE FOR DEDUCTION UNDER SECTION 80P”**

1. Notwithstanding anything contained in this Act but **subject to the provisions of this Chapter i.e. Chapter XII**, the income-tax payable in respect of the total income of a person, being a **co-operative society resident in India**, for any previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, shall, **at the option of such person**, be computed at the rate of 22%, if the conditions contained in sub-section (2) are satisfied:

Provided that where the person fails to satisfy the conditions contained in sub-section (2) in computing its income in any previous year, the option shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

NOTE:

Income tax so computed shall be increased by **surcharge @10%** of income tax (irrespective of quantum of income) & H&EC@4%. **[Effective Tax Rate – 25.168%]**

2. For the purposes of sub-section (1), the **total income of the co-operative society shall be computed,—**
- i. **without any deduction** under the provisions of
 - a) Section 10AA or
 - b) clause (iia) of sub-section (1) of section 32 or
 - c) Section 32AD or
 - d) Section 33AB or
 - e) Section 33ABA or
 - f) sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) of section 35 or
 - g) Section 35AD or
 - h) Section 35CCC or
 - i) under any of the provisions of Chapter VI-A **other than the provisions of section 80JJAA; (SATC Note – Not eligible for Deduction u/s 80P)**
 - ii. **without set off of any loss** carried forward or depreciation from any earlier assessment year, if such loss or depreciation is attributable **to any of the deductions referred to in clause (i); and**
 - iii. by claiming the depreciation, if any, under section 32, other than clause (iia) of sub-section (1) of the said section, **determined in such manner as may be prescribed.**
[Depreciation in respect of any block of assets entitled to more than 40%, would be restricted to 40% on the written down value of such block of assets.]

3. The loss and depreciation referred to in clause (ii) of sub-section (2) shall be deemed to have been given full effect to **and no further deduction for such loss or depreciation shall be allowed for any subsequent year:**

Provided that where there is a depreciation allowance in respect of a block of asset which has not been given full effect to prior to the assessment year beginning on the 1st day of April, 2021, corresponding adjustment **shall be made to the written down value of such block of assets** as on the 1st day of April, 2020 in such manner as may be prescribed, **i.e., the WDV as on 1.4.2020 will be increased by the unabsorbed additional depreciation not allowed to be set-off**, if the option under sub-section (5) is exercised **for a previous year relevant to the assessment year beginning on the 1st day of April, 2021.**

4. In case of a person, having a **Unit in the International Financial Services Centre**, as referred to in sub-section (1A) of section 80LA, which has exercised option under sub-section (5), the conditions contained in sub-section (2) shall be modified to the extent that the deduction under the said section **shall be available to such Unit subject to fulfilment of the conditions contained in that section. [SATC Note – Eligible for Deduction u/s 80LA]**
5. Nothing contained in this section shall apply **unless option is exercised** by the person in such manner as may be prescribed on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for any previous year relevant to the assessment year commencing on or after the 1st day of April, 2021 **and such option once exercised shall apply to subsequent assessment years.**

Provided that once the option has been exercised for any previous year, it **cannot be subsequently withdrawn for the same or any other previous year.**

Consequential amendments – EFFECTIVE FROM AY 2021-22

Section 115JC (AMT) - Special provisions for payment of tax by certain persons other than a company

The provisions of this section **shall not apply** to a person who has exercised the option referred to in Section 115BAC or Section 115BAD.

[SATC Note – AMT is not applicable to Societies opting for Section 115BAD]

Section 115JD - Tax credit for Alternate Minimum Tax

The provisions of this section shall not apply to a person who has exercised the option referred to in Section 115BAC or Section 115BAD.

QUESTIONs *for* Practice - SET A

1. X Consumer Co-operative Society furnishes the following particulars of its income in respect of financial year ended on 31-3-2021, find tax liability of the co-operative society –

Income from business	₹ 2,50,000
Interest received on company deposits	₹ 50,000
Interest on deposit with banks	₹ 10,000
Income from letting of godown for storage of commodities (computed)	₹ 20,000

Solution:

Computation of taxable income of X Consumer Co-operative Society for the A.Y. 2021-22

Particulars	Amount	Amount
Income from house property		
Income from letting of godown for storage of commodities		20,000
Profit and gains from business or profession		2,50,000
Income from other sources		
Interest received on company deposits	50,000	
Interest on deposit with banks	10,000	60,000
Gross total income		3,30,000
Less: <u>Deduction u/s 80P</u>		
Income from letting of godown for storage of commodities	20,000	
Income from activity other than specified activity (consumer co-operative society)	1,00,000	1,20,000
Total income		2,10,000
Tax liability (including education cess)		62,400

2. P Co-operative Society furnishes following details of income, compute taxable income for the purpose of A.Y. 2021-22:

Income from collective disposal of labour	₹ 25,000
Income from marketing of the agricultural produce grown by its member	₹ 30,000
Income from marketing of the agricultural produce grown by outsider	₹ 3,000
Dividend from another co-operative society	₹ 15,000
Dividend from X Ltd.	₹ 3,000
Income from processing of agricultural produce of its member with aid of power	₹ 50,000

Solution:

Computation of total income of P Co-operative Society for the A.Y. 2021-22

Particulars	Amount	Amount
Income from collective disposal of labour		25,000
Income from marketing of the agricultural produce grown by its member		30,000
Income from marketing of the agricultural produce grown by outsider		3,000
Dividend from another co-operative society		15,000
Dividend from X Ltd. [Now taxable]		3,000
Income from processing of agricultural produce of its member with aid of power		50,000
Gross Total Income		1,26,000
Less: <u>Deduction u/s 80P</u>		
Income from collective disposal of labour	25,000	
Income from marketing of the agricultural produce grown by its member	30,000	
Dividend from another co-operative society	15,000	
Income from activity other than specified activity (co-operative society)	50,000	1,20,000
Total income		6,000

3. Heritage Co-operative Society, which is engaged in processing agricultural produce of its members, without the aid of power and its marketing, furnishes the following particulars, determine its net income for the assessment year 2021-22:

Income from processing of agricultural produce: ₹ 19,000; income from marketing agricultural produce: ₹ 2,000; dividends from another co-operative society: ₹ 50,000; income from letting of godowns: ₹ 20,000; and income from agency business: ₹ 95,000.

Solution:

Statement showing calculation of Net Income of Heritage Co-operative Society for the Assessment Year 2021-22

	₹	₹
Income from letting of godowns		20,000
Business income:		
from processing	19,000	
from marketing	2,000	
from agency	95,000	1,16,000
IOS: Dividend income		50,000
Gross Total Income		1,86,000
Less: Deductions u/s 80P in respect of income from		
a. processing of agricultural produce	19,000	
b. marketing of agricultural produce	2,000	
c. agency business [Sec. 80P(2)(c)] [maximum of ₹ 50,000]	50,000	
d. dividend	50,000	
e. letting of Godowns	20,000	1,41,000
Net Income		45,000

4. A co-operative society, engaged in the business of banking, seeks your opinion by the matter of eligibility of deduction under Section 80P on the following items of income earned by it during the year ended 31-3-2021.
- (i) Interest on investment in Government securities made out of statutory reserves
- (ii) Hire charges of safe deposit lockers.

Solution:

No deduction is allowed under Sec. 80P to any cooperative bank. **However, a primary agricultural credit society or primary co-operative agricultural & rural development bank is eligible for deduction.**

5. PQR Co-operative Bank, a co-operative society, having its area of operation confined to Gubbi Taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities, has received the following amounts during the year ending 31.3.2021:
- (i) Interest amounting to ₹ 1,00,000 from its members on loans advanced to them.
- (ii) Interest amounting to ₹ 1,50,000 on deposits with other co-operative societies.
- (iii) Rent amounting to ₹ 2,00,000 from letting out its godowns for storage of commodities.
- PQR Co-operative Bank seeks your advice in the matter of taxability of the above amounts and the eligibility for deduction, if any, in respect thereof for the AY 2021-22.

Solution:

Sub-clause (vii) to section 2(24) includes within the scope of definition of income, **the profits and gains of any business of banking (including providing credit facilities) carried on by a cooperative society with its members.** Hence, the interest of ₹ 1,00,000 received by PQR Cooperative Bank on loans advanced to its members constitutes its income.

Further, interest received amounting to ₹ 1,50,000 on deposits with other co-operative societies and rent amounting to ₹ 2,00,000 received from letting out its godowns for storage of commodities also constitute the income of the co-operative bank.

Sub-section (4) of section 80P provides that section 80P shall **not apply to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.**

For the Section 80P, **a primary co-operative agricultural and rural development bank to mean a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.**

PQR Co-operative Bank is a primary co-operative agricultural and rural development bank as defined above since it is a co-operative society having its area of operation confined to Gubbi Taluk and its principal object is to provide long-term credit for agricultural and rural development activities. **Therefore, it is eligible for deduction under section 80P.**

Interest of ₹ 1,00,000 received from members; Interest of ₹ 1,50,000 received from deposits with other co-operative and Rent of ₹ 2,00,000 received by the bank from letting out its godowns for storage of commodities are eligible for deduction in full under section 80P.

Limited Liability Partnership (LLP)

CMA INTER DT - JUNE & DEC 2021 EXAM

Assessment Year 2021-22 (From 18th Edition Book)

(Refer Page 246 & 271 of ICAI NEW DIRECT TAX MODULE – JAN 2021 Edition)

A Limited Liability Partnership (LLP) is a body corporate formed or incorporated under the Limited Liability Partnership Act, 2008. It is a legally separate entity from its partners. It has perpetual succession i.e. any change in its partners will not have any impact on its existence, rights and liabilities. It is a corporate business form which gives benefits of limited liability of a company and the flexibility of a partnership. It contains elements of both a company as well as a partnership firm and thus it is called a hybrid between a partnership and a company.

The Income-tax Act provides for the same taxation regime for a Limited Liability Partnership as is applicable to a partnership firm. It also provides tax neutrality (subject to fulfillment of certain conditions) to conversion of a Private Limited Company or an Unlisted Public Company into an LLP.

Further, Presumptive Tax Scheme u/s 44AD is not applicable to LLP. Provisions of AMT is applicable to LLP. **There is no alternative tax regime like Section 115BAC, 115BAD etc for LLP including Firm.**

Transfer of a capital asset or intangible asset by a private limited company or a non listed company to LLP OR any transfer of share or shares held in such company by a shareholder on conversion of the above company to a LLP [Section 47(xiiib)]

Any transfer of

- A. a capital asset or intangible asset by a private company or unlisted public company (hereafter referred as the company) to a LLP OR**
- B. a share or shares held in such company by a shareholder on conversion of a company into a LLP in accordance with section 56 and section 57 of the Limited Liability Partnership Act, 2008,**

shall not be regarded as a transfer for the purposes of levy of capital gains tax under section 45, subject to fulfillment of below conditions.

- (1) all assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP (Note: not necessary at book value)**
- (2) all the shareholders of the company immediately before the conversion become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion;**
- (3) the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the LLP;**
- (4) the aggregate of the profits sharing ratio of the shareholders of the company in the LLP shall not be less than 50% at any time during the period of 5 years from the date of conversion;**
- (5) the total sales, turnover or gross receipts in business of the company should not exceed ₹ 60 lakh in any of the three preceding previous years; and**
- (6) no amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company standing on the date of conversion for a period of 3 years from the date of conversion.**
- (7) Total Value of assets as appearing in the books of account of the company in any of the 3 previous years preceding the previous year in which the conversion takes place should not exceeds 5 Crore.**

Consequential amendments due to conversion of a private limited company or a non-listed company into LLP: Sections: 32(1), 35DDA, 43(1), 43(6), 47A(4), 49(1), 49(2AAA) and 72A**(1) Depreciation to be allowed proportionately in the year of conversion – Section 32(1)**

The aggregate depreciation allowable to the predecessor company and successor LLP shall not exceed, in any previous year, the depreciation calculated at the prescribed rates as if the conversion had not taken place. ***Such depreciation shall be apportioned between the predecessor company and the successor LLP in the ratio of the number of days for which the assets were used by them.***

(2) Successor LLP will be allowed deduction of payment under Voluntary Retirement Scheme for the unexpired period – Section 35DDA(4A)

If a company eligible for deduction under section 35DDA in respect of expenditure incurred under Voluntary Retirement Scheme (one-fifth of such expenditure allowable over a period of five years) is converted into a LLP ***and such conversion satisfies the conditions laid down in section 47(xiiib)***, then, the expenses incurred by the company shall be amortized in the hands of LLP as if such conversion has not taken place.

(3) Cost of acquisition of the asset in case the predecessor company has claimed deduction under section 35AD

If the capital asset became the property of the LLP as a result of conversion of a company into an LLP, and deduction has been allowed or is allowable in respect of such asset under section 35AD, the ***actual cost would be taken as NIL.***

(4) Actual cost of the block of assets in the case of the successor LLP

The actual cost of the block of assets in the case of the successor LLP shall be the WDV of the block of assets as in the case of the predecessor company **on the date of conversion.**

(5) Successor LLP and share holder of the predecessor company liable for capital gains if prescribed conditions not satisfied in any subsequent year

If subsequent to the transfer, any of the above conditions are not complied with, the capital gains not charged under section 45 would be deemed to be chargeable to tax ***in the previous year in which the conditions are not complied with, in the hands of the LLP or the shareholder of the predecessor company, as the case may be*** [Section 47A(4)].

(6) Cost of capital asset to LLP shall be the cost to be previous owner

The cost of acquisition of the capital asset for the successor LLP shall be deemed to be the cost for which the predecessor company acquired it. It would be further increased by the cost of improvement of the asset incurred by the predecessor company or the successor LLP **[Section 49(1)].**

To decide nature of Asset, Period of holding includes period of holding of previous owner [Section 2(42A). [However ICMAI Study material is excluding the same wrongly at Page 272 - Jan 2021 Edition]

(7) Cost of the right of partner on conversion of company to LLP

If a shareholder of a company receives rights in a partnership firm as consideration for transfer of shares on conversion of a company into a LLP, then the cost of acquisition of the capital asset being ***rights of a partner referred to in section 42 of the LLP Act, 2008*** shall be deemed to be the cost of acquisition to him of the shares in the predecessor company, immediately before its conversion [Section 49(2AAA)].

(8) Carry forward and set off of losses

Section 72A(6A) - The successor LLP would be allowed to carry forward and set-off the **business loss (not a speculative losses) and unabsorbed depreciation of the predecessor company**

Provisions:

Where there has been reorganisation of business, whereby, a company is succeeded by a LLP fulfilling the conditions laid down in Section 47(xiiib), the accumulated **business loss and the unabsorbed depreciation** of the predecessor company, shall be **deemed to be the loss or allowance for depreciation of the successor LLP for the previous year in which business reorganisation was effected** and other provisions of the Act relating to set-off and carry forward of loss and allowance for depreciation shall apply accordingly.

In other words, accumulated business loss shall be allowed for fresh 8 years and unabsorbed depreciation will be allowed to be carried forward indefinitely.

However, if the entity fails to fulfill any of the conditions mentioned in 47(xiiib) above, the benefit of set-off of business loss/unabsorbed depreciation availed by the LLP would be deemed to be the profits and gains of the LLP chargeable to tax **in the previous year in which the LLP fails to fulfill any of the conditions listed above**.


(9) Credit in respect of tax paid by a company under section 115JB is allowed only to such company under section 115JAA. It has been clarified that the tax credit under section 115JAA shall not be allowed to the successor LLP.

(10) Section 42 of the Limited Liability Partnership Act, 2008 provides that **Partner's transferable interest**. The rights of a partner to a share of the profits and losses of the LLP and to receive distributions in accordance with the LLP agreement are transferable either wholly or in part.

The transfer of any right by any partner does not by itself cause the disassociation of the partner or a dissolution and winding up of the LLP.

The transfer of right pursuant to this section does not, by itself, entitle the transferee or assignee to participate in the management or conduct of the activities of the LLP, or access information concerning the transactions of the LLP.

Summary

1. The income of the Limited Liability Partnership (LLP) shall be taxable at the flat rate of 30%, LTCG and STCG shall be taxable **as per section 112/112A and 111A** (Surcharge & Cess as applicable).
2. The remuneration and interest paid by LLP to its partners shall be allowed as per section 40(b).
3. The share of profit by the partner of LLP shall be exempt under section 10(2A).
4. The remuneration and interest received by partner of LLP shall be taxable as per section 28.
5. **There will be no implication under the Income Tax Act, where a partnership firm is converted into a LLP as clarified in the Memorandum Explaining Finance Bill, 2009.**
As an LLP and a general partnership is being treated as equivalent (except for recovery purposes) in the Act, the conversion from a general partnership firm to an LLP will have no tax implications if the rights and obligations of the partners remain the same after conversion and if there is no transfer of any asset or liability after conversion. If there is a violation of these conditions, the provisions of section 45 shall apply.
6. **Capital gains shall be exempt when a company is converted into a LLP if conditions specified in Section 47(xiiib) is satisfied.**
7. The ROI shall be **verified by designated partner** or where designated partner is not able to **verify** due to unavoidable reasons, any partner of the LLP **or any other person as may be prescribed** **for this purpose** shall **verify** ROI. 
8. The liability of the partners of LLP shall be **joint and several** for the payment of such tax unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP.
9. **Section 44AD is not applicable to a LLP.**
10. **LLP is eligible for Deduction under Section 80-IAC.**

QUESTIONS *for* Practice - SET A

1. Explain the tax treatment of Limited Liability Partnership under the Income-tax Act, 1961.

Solution:

The taxation scheme of LLPs in the Income-tax Act, 1961 is on the same lines as applicable for general partnerships, i.e. tax liability would be attracted in the hands of the LLP and tax exemption would be available to the partners. Therefore, the same tax treatment would be applicable for both general partnerships and LLPs.

The rate of income-tax applicable to LLPs is the same as the rate applicable for firms i.e. 30% of total income. The provisions of section 40(b) requiring payment of remuneration only to working partner in accordance with the terms of the partnership deed for a period commencing on or after the date of the partnership deed, would apply to LLPs as well. Further, disallowance of interest in excess of 12% per annum and salary exceeding the prescribed percentage of book profit would also be applicable in the case of LLPs.

However, whereas a partnership firm can opt for presumptive taxation scheme under section 44AD, an LLP cannot opt for such scheme.

2. A Pvt. Ltd. has converted into a LLP on 1.4.2020. The following are the particulars of A Pvt. Ltd. as on 31.3.2020

- | | |
|--|---------------------|
| 1) Unabsorbed depreciation | ₹ 13.32 lakh |
| Business loss | ₹ 27.05 lakh |
| 2) WDV of assets | |
| Plant & Machinery (15%) | ₹ 60 lakh |
| Building (10%) | ₹ 90 lakh |
| Furniture (10%) | ₹ 10 lakh |
| 3) Cost of land (acquired in the year 2000) | ₹ 50 lakh |
| 4) VRS expenditure incurred by the company during the previous year 2018-19 is ₹ 50 lakh. The company has been allowed deduction of ₹ 10 lakh each for the P.Y. 2018-19 and P.Y. 2019-20 under section 35DDA. | |

Assuming that the conversion fulfills all the conditions specified in section 47(xiii b), explain the tax treatment of the above in the hands of the LLP.

Solution:

(1) As per section 72A(6A), the LLP would be able to carry forward and set-off the unabsorbed depreciation and business loss of A Pvt. Ltd. as on 31.3.2020. However, if in any subsequent year, say previous year 2021-22, the LLP fails to fulfill any of the conditions mentioned in section 47(xiii b), the set-off of loss or depreciation so made in the previous year 2020-21 would be deemed to be the income chargeable to tax of PY 2021-22

(2) The aggregate depreciation for the PY 2020-21 would be –

Plant & Machinery	₹ 9 lakh (15% of ₹ 60 lakh)
Building	₹ 9 lakh (10% of ₹ 90 lakh)
Furniture	₹ 1 lakh (10% of ₹ 10 lakh)

In this case, since the conversion took place on 1.4.2020, the entire depreciation is allowable in the hands of the LLP.

(3) The cost of acquisition of land in the hands of the LLP would be the cost for which A Pvt. Ltd. acquired it, i.e., ₹ 50 lakh.

(4) The LLP would be eligible for deduction of ₹ 10 lakh each for the PY 2020-21, PY 2021-22 and PY 2022-23 under section 35DDA.

3. X Co. (P) Ltd., converted into a Limited Liability Partnership (LLP) by name All Trade LLP, with effect from 01.04.2020. The following details are given to you:

Asst. year 2013-14: Business loss brought forward	₹ 2,00,000
Asst. year 2014-15: Business loss brought forward (These are related to erstwhile X Co. (P) Ltd.)	₹ 5,00,000
Total income of All Trade LLP, for the financial year 2020-21 (Before set off of brought forward business losses of erstwhile company i.e. X Co. (P) Ltd.)	₹ 6,00,000

Assume that all the conditions prescribed in section 47(xiiib) were satisfied by X Co. (P) Ltd. at the time of conversion in to LLP.

- (i) Explain whether All Trade LLP can set off and carry forward the business loss of its predecessor i.e. X Co. (P) Ltd.?
(ii) State whether any change in partners of All Trade LLP at later date would have any tax consequence.

Solution:

- (i) Section 72A(6A), provides that where a private company is succeeded by a LLP fulfilling the conditions laid down in the proviso to section 47(xiiib), then, notwithstanding anything contained in any other provision of the Income-tax Act, 1961, the accumulated loss and unabsorbed depreciation of the predecessor company shall be **deemed to be the loss or allowance for depreciation of the successor LLP for the purpose of the previous year in which the business reorganization was effected** and other provisions of the Act relating to set-off and carry forward of losses and depreciation allowance shall apply accordingly.

Therefore, All Trade LLP can carry forward and set-off the business loss of ₹ 6 lakh of erstwhile X Co (P) Ltd. against its business income for the F.Y. 2020-21. The unabsorbed business loss of ₹ 1 lakh, **relating to A.Y. 2014-15**, will be carried forward to the **next 8 A.Ys.**

- (ii) Section 47(xiiib) requires that the shareholders of the company become partners of the LLP in the same proportion as their shareholding in the company. Further, the aggregate of the profit sharing ratio of the shareholders of the company in the LLP should be not less than 50% at any time during the period of 5 years from the date of conversion. **If the entity fails to fulfill this condition, the benefit of set-off of business loss availed by the LLP would be deemed to be the profits and gains of the LLP chargeable to tax in the previous year in which the LLP fails to fulfill the condition.**

4. A, B and C are three partners (3: 3: 4) of ABC & Co., a LLP engaged in manufacturing leather goods and it has agencies of different companies. The Profit and Loss Account of the LLP for financial year ended March 31, 2021 is as follows:

Particulars	₹	Particulars	₹
Cost of goods sold	7,90,000	Sales	21,22,000
Salary to staff	7,80,000	Long-term Capital Gains	3,00,000
Depreciation	2,50,000	Short-term Capital Gain u/s 111A	55,000
Remuneration to Partners :		Other Short-term Capital Gain	65,000
A	1,92,000	Fixed deposit interest	50,000
B	96,000	Other business receipts	2,000
C	1,80,000	Interest on drawings recovered from A	16,000
Interest on capital to partners			
A	17,000		
B	30,000		
C	40,000		
Other expenses	1,65,000		
Net Profit:			
A	21,000		
B	21,000		
C	28,000		
	26,10,000		26,10,000

Other information:

- The LLP satisfies conditions of sections 184 and 40(b).
- The LLP is not eligible for deduction under section 80-IA/80-IB.
- The LLP has given donation of ₹ 70,000 to a notified public charitable trust which is not debited to the Profit and Loss Account.
- Up to March 31, 2020, there is no provision in the partnership deed to pay remuneration to partners. The deed is amended on April 1, 2020 to pay remuneration/interest to partners as under:

Particulars	Remuneration	Interest on capital
A	16,000 per month	17 per cent simple interest
B	8,000 per month	15 per cent simple interest
C	15,000 per month	20 per cent simple interest

- Depreciation as per Section 32 comes to ₹ 95,000
- Other expenses to the tune of ₹ 65,000 is not deductible under sections 30 to 43D.
- For the Assessment Years 2019-20 and 2020-21, the LLP has assessed business loss of ₹ 30,000 and Long-term Capital Loss of ₹ 15,000 (which has not been set off so far).

COMPUTE TI & tax payable**Solution:**

Particulars	₹
Computation of remuneration deductible under section 40(b)	
Net Profit as per P&L A/c (₹ 21,000 + ₹ 21,000 + ₹ 28,000)	70,000
Add:	
Depreciation debited to P&L A/c	2,50,000
Remuneration to partners (i.e., ₹ 1,92,000 + ₹ 96,000 + ₹ 1,80,000)	4,68,000
Interest to partners (to the extent not deductible) (i.e., 5/17 of ₹ 17,000 + 3/15 of ₹ 30,000 + 8/20 of ₹ 40,000)	27,000
Other expenses (to the extent not deductible)	65,000
	8,80,000
Less:	
Capital Gain (₹ 3,00,000 + ₹ 55,000 + ₹ 65,000)	4,20,000
Interest on Bank Fixed Deposit	50,000
Depreciation as per Section 32	95,000
Book Profit	3,15,000
Remuneration deductible (90% of ₹ 3,00,000 + 60% of ₹ 15,000)	2,79,000

Computation of income of the LLP

Particulars	₹	₹
Business Income		
Book Profit	3,15,000	
Less : Remuneration deductible	2,79,000	
Balance	36,000	
Less : Brought forward business loss	30,000	6,000
Long-term Capital Gain (minus brought forward Long-term Capital Loss of ₹ 15,000)	2,85,000	
Short-term Capital Gain under section 111A	55,000	
Other Short-term Capital Gain	65,000	4,05,000
Interest on Fixed Deposit		50,000
Gross total income		4,61,000
Less: Deduction under Section 80G [i.e., 50% of 10% of ₹ (4,61,000 - 2,85,000 - 55,000)]		6,050
Net Income (rounded off)		4,54,950
Computation of tax of LLP		
Long-term Capital Gain (20% of 2,85,000)		57,000

Short-term Capital Gain under section 111A (15% of ₹ 55,000)		8,250
Other Income (30% of ₹ 1,14,950)		34,485
Total		99,735
Add: Surcharge		Nil
Total		99,735
Add: Health & Education Cess		3,989
Tax liability of the LLP (rounded off)		1,03,720

Note:

1. Interest recovered from partners is fully taxable.
2. Provisions of Alternate Minimum Tax are not applicable in the above cases.

5. E (P) Ltd. has converted in an LLP on 01.04.2020 and at the time of conversion, all the conditions specified u/s 47(xiiib) have been fulfilled. The unabsorbed business loss and the depreciation of the company as on the date of conversion were ₹ 25 Lakhs and ₹ 32 Lakhs, respectively. The business profits of the LLP for the previous year 2020-21 were ₹ 90 Lakhs.

However, on 02.10.2021, 4 partners (who were erstwhile shareholder in E (P) Ltd.), holding in aggregate 55% of the profit sharing in the LLP, resigned. Discuss the tax consequences of the conversion of company into LLP and subsequent resignation of partners.

Solution:

As per Section 72A(6A), the LLP would be able to carry forward and set off the unabsorbed depreciation and business loss of ₹ 32 Lakhs and ₹ 25 Lakhs, since at the time of conversion, all the conditions specified in section 47(xiiib) has been fulfilled.

However, if in the subsequent year, the LLP fails to fulfill any conditions specified in section 47(xiiib), the business loss and unabsorbed depreciation which have been already set off by the LLP **would be deemed to be the income** chargeable to tax for the year in which it fails to fulfill such condition.

One of the conditions is that, the erstwhile shareholders of the company continue to be entitled to receive at least 50% of the profits of the LLP for a period of 5 years from the date of conversion. Since, 4 partners holding in aggregate 55% of the profit sharing in the LLP have resigned on 02.10.2021 the LLP has failed to fulfill this condition. The amount of ₹ 57,00,000 representing unabsorbed depreciation and business loss set off against profit of the LLP for the assessment year 2021-22 would be deemed to be income of the LLP for the assessment year 2022-23, being the year in which it failed to fulfill the conditions.

Taxation of AOPs & BOIs

CMA INTER DT - JUNE & DEC 2021 EXAM

Assessment Year 2021-22 (From 18th Edition Book)

(Refer Page 450 to 458 of ICAI NEW DIRECT TAX MODULE – JAN 2021 Edition)

Point	AOP	BOI
1. Creation	Created by two or more persons voluntarily.	Created by operation of law.
2. Members	Companies, firms, HUFs or individuals.	Only Individuals.
3. Features	Persons join in a common purpose or action . Mere joint receipt of income not enough. Different from partnership.	It merely receives the income jointly and is assessable in the like manner and to the same extent as the beneficiaries.
4. Assessee	Not a representative assessee	A representative assessee

Section 40(ba): No Deduction regarding Interest, Salary etc to members

Notwithstanding anything to the contrary in sections 30 to 38, In the case of an association of persons or body of individuals, any **payment of interest (either on capital or loan), salary, bonus, commission or remuneration, by whatever name called**, made by such association or body to a member of such association or body is **not allowable as deduction** in computing the income chargeable under the head "Profits and gains of business or profession".

[Note: Rent payable is deductible]

Explanation 1: [Concept of Net Interest]

Where interest is paid by an association or body to any member thereof who has also paid interest to the association or body, the amount of interest to be disallowed under this clause shall be limited to the **amount by which the payment of interest by the association or body to the member exceeds the payment of interest by the member to the association or body [i.e. Net interest so paid will be disallowed]**.

Example: X received ₹ 5,000 as interest from an AOP in which he is a member and paid ₹ 2,000 to such AOP. Then, ₹ 3,000 (being net interest) is disallowed in the hands of AOP. **Whereas, if X paid ₹ 8,000 to such AOP, then nothing shall be disallowed in the hands of AOP.**

Explanation 2: [Member in Representative Capacity]

Where an individual is a member of an association or body on behalf, or for the benefit, of any other person (such member and the other person being hereinafter referred to as "member in a representative capacity" and "person so represented", respectively),-

- i. interest paid by the association or body to such individual or by such individual to the association or body otherwise than as member in a representative capacity, **shall not be** taken into account for the purposes of this clause;
- ii. interest paid by the association or body to such individual or by such individual to the association or body as member in a representative capacity and interest paid by the association or body to the person so represented or by the person so represented to the association or body, **shall be taken into account for the purposes of this clause.**

Example: X a member of AOP on behalf of X (HUF), received ₹ 5,000 as interest on loan provided from his own source, then ₹ 5,000 **is allowed** in the hands of AOP. Whereas if he received such interest for HUF, then such interest would be disallowed.

Explanation 3: Member in Personal Capacity

Where an individual is a member of an association or body **otherwise than** as member in a representative capacity (**i.e. member in his personal capacity**), interest paid by the association or body to such individual shall not be taken into account for the purposes of this clause, **if such interest is received by him on behalf, or for the benefit, of any other person.**

Example: X, being Karta of X (HUF), received interest ₹ 5,000 from an AOP (in which he is a member) on loan given by his HUF, then ₹ 5,000 is **not disallowed** in the hands of AOP. Whereas if he received such interest on loan given by him **from his own source**, then such interest would be disallowed.

Remuneration to member: Any remuneration (salary or bonus or by whatever name called) paid to member is not allowed as deduction. **Even remuneration paid to a member on behalf of any other person is disallowed.**

Tax Rates [Section 167B]:

Computation of tax depends on –

- a. When share of members are known
- b. When share of members are unknown

	<u>Where shares of members are determinate and known</u>	<u>Where shares of members are indeterminate or unknown</u>
1. None of the members having taxable income excluding share from AOP/BOI AND none of the members is assessable at a rate higher than Maximum Marginal Rate	At the rates applicable to Individual	At the Maximum Marginal Rate
2. Where <u>any member</u> has taxable income excluding share from AOP/BOI AND none of the members is assessable at a rate higher than Maximum Marginal Rate	At the Maximum Marginal Rate	At the Maximum Marginal Rate
3. Where <u>any member</u> is charged to tax at a rate higher than the MMR.	Share of that Member At the rate at which such member is taxable Balance Income At the Maximum Marginal Rate	Tax the entire Income at such higher rate

Note: LTCG (Section 112 & 112A) @ 20% / 10%, STCG (Section 111A) @15%, Casual Income@30% etc.

Maximum Marginal Rate *means the rate of income-tax (including surcharge, if any) applicable in relation to the highest slab of income in case of individuals, AOP or BOI as specified in the Finance Act of the relevant year. [Sec. 2(29C)]*

For A.Y. 2021-22, maximum marginal rate of tax is 42.744% (30% + 37% surcharge + 4% health and education cess)

AMT: From the Assessment Year 2013-14, tax payable (i.e. tax liability) **cannot be less than 18.5 percent of “Adjusted Total Income”** in some specified cases.

Ascertainment of Member's share in AOP/BOI where shares are determinate and its taxability [Section 67A, 86 & 110]

(1) Ascertainment of share in AOP/BOI [Sec. 67A]

Total income of the AOP/BOI	Rs xxx
Less: Interest, salary, commission or other remuneration paid to any member	<u>xxx</u>
Balance apportionable to the members in proportion to their shares	xxx
Share of income allotted to a member (Head's Wise)	xxx
Add: Salary, interest, commission or other remuneration received by the member of the AOP or BOI	<u>xxx</u>
Total share	xxx
Less: Interest paid on capital borrowed for the purpose of investment in the AOP/BOI	xxx
Net assessable share income	xxx

Notes:

- Any interest paid by a member on capital borrowed by him for the purposes of investment in the association or body shall, while computing his share chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the association or body, be deducted from his share [Sec. 67A(3)]
- The share of a member in the income or loss of the association or body shall be apportioned under the various heads of income in the **same manner** in which the income or loss of the association or body has been determined under each head of income.
- Where any deduction under chapter VIA (i.e. deduction u/s 80's) is allowed to the AOP/BOI, then deduction **shall not be allowed** to the member for sharing that income or payment.

(2) Tax treatment of share income of members [Sec. 86 and Sec. 110]

In computing total income of an assessee, there shall be included **share income of a member of an AOP or BOI subject to Section 86 and 110** of the Act.

The assessment of the members of AOP or BOI depends on whether the AOP or BOI is chargeable to tax at the Maximum Marginal Rate or at Slab Rate or is not chargeable to tax at all. Tax-treatment in the 3 cases is discussed below:

- Where AOP or BOI is chargeable to tax at a Maximum Marginal Rate or any Higher Rate, the share of profit of a member is exempt from tax. Thus, it is not to be included in the total income of the member [Sec. 86(a)]
- Where AOP or BOI is **not taxed** at the Maximum Marginal Rate but it is taxed at slab rates, the share of profit of a member from AOP or BOI is to be included in the total income of the member only for rate purposes. The member is entitled to a **rebate of tax u/s 110** on the entire share of profit at the average rate of tax applicable to total income. [Sec. 86(b)].
- Where AOP or BOI is not chargeable to tax at all, the share of profit of a member from AOP or BOI is included in his total income and he will pay tax on it. He is **not entitled to any rebate** of tax on such profits [Proviso to Sec. 86(b)].

Computation of member's share where share is unknown:

Income of AOP/BOI **shall not be included** in total income of the member

ORIGINAL TEXT OF SECTION 86, 110 & 67A from INCOME TAX ACT, 1961**[ONLY FOR READING PURPOSE]****Section 86: Share of member of an association of persons or body of individuals in the income of the association or body**

Where the assessee is a member of an association of persons or body of individuals, income-tax shall not be payable by the assessee in respect of his share in the income of the association or body computed in the manner provided in section 67A

Provided that,-

- a. where the association or body is chargeable to tax on its total income at the maximum marginal rate or any higher rate under any of the provisions of this Act, **the share of a member computed as aforesaid shall not be included in his total income;**
- b. in any other case, **the share of a member computed as aforesaid shall form part of his total income :**

Provided further that where no income-tax is chargeable on the total income of the association or body, the share of a member computed as aforesaid shall be chargeable to tax as part of his total income and nothing contained in this section shall apply to the case.

Section 110: Determination of tax where total income includes income on which no tax is payable.

Where there is included in the total income of an assessee any income on which no income-tax is payable under the provisions of this Act, the **assessee shall be entitled to a deduction**, from the amount of income-tax with which he is chargeable on his total income, of an **amount equal to the income-tax calculated at the average rate of income-tax on the amount on which no income-tax is payable.**

Section 67A: Method of computing a member's share in income of association of persons or body of individuals.

1. In computing the total income of an assessee who is a member of an association of persons or a body of individuals wherein the shares of the members are determinate and known, whether the net result of the computation of the total income of such association or body is a profit or a loss, his share (whether a net profit or net loss) shall be computed as follows, namely:-
 - a) any interest, salary, bonus, commission or remuneration by whatever name called, paid to any member in respect of the previous year **shall be deducted** from the total income of the association or body and the balance ascertained and apportioned among the members in the proportions in which they are entitled to share in the income of the association or body;
 - b) where the amount apportioned to a member under clause (a) is a profit, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year **shall be added to that amount**, and the result shall be treated as the member's share in the income of the association or body;
 - c) where the amount apportioned to a member under clause (a) is a loss, any interest, salary, bonus, commission or remuneration aforesaid paid to the member by the association or body in respect of the previous year **shall be adjusted** against that amount, and the result shall be treated as the member's share in the income of the association or body.

2. *The share of a member in the income or loss of the association or body, as computed under subsection (1), shall, for the purposes of assessment, be apportioned under the various heads of income in the same manner in which the income or loss of the association or body has been determined under each head of income.*
3. *Any interest paid by a member on capital borrowed by him for the purposes of investment in the association or body shall, in computing his share chargeable under the head "Profits and gains of business or profession" in respect of his share in the income of the association or body, be deducted from his share.*

Questions on AOPs AND BOIs

1. A & B are members of AOP, sharing profit and losses in the ratio of 5 : 3 and they are allowed the following payments:

	A ₹	B ₹
(i) Salary	40,000	60,000
(ii) Interest on capital or loan	20,000	10,000

You are required to compute taxable business profits of AOP and share of each member for the Previous Year 2020-21 in the following cases:

- AOP has earned profit of ₹ 3,00,000 after making the above payments;
- AOP has earned profit of ₹ 3,00,000 before making the above payments;
- AOP has suffered loss of ₹ 3,00,000 after making the above payments; and
- AOP has suffered loss of ₹ 3,00,000 before making the above payments.

Solution:

Computation of income of AOP for the A.Y. 2021-22

Particulars	Case (a)	Case(b)	Case (c)	Case (d)
Profit/ loss	(+ 3,00,000)	(+ 3,00,000)	(-) 3,00,000	(-) 3,00,000
Add: Inadmissible payments [Sec 40 (ba)]:				
(i) Salary to members (40,000+60,000)	(+ 1,00,000)	—	(+ 1,00,000)	—
(ii) Interest on capital/loan to members: (20,000 + 10,000)	(+ 30,000)	—	(+ 30,000)	—
Profit/Loss as per Income Tax Law	(+ 4,30,000)	(+ 3,00,000)	(-) 1,70,000	(-) 3,00,000

Computation of member's share in the income/loss of the AOP

Particulars	Case (a)		Case (b)		Case (c)		Case (d)	
	A	B	A	B	A	B	A	B
Salary	40,000	60,000	40,000	60,000	40,000	60,000	40,000	60,000
Interest	20,000	10,000	20,000	10,000	20,000	10,000	20,000	10,000
Divisible profit:								
(a) 4,30,000— 1,30,000	1,87,500	1,12,500	X	X	X	X	X	X
(b) 3,00,000— 1,30,000	X	X	1,06,250	63,750	X	X	X	X
(c) (-) 1,70,000 -1,30,000 =(-) 3,00,000	X	X	X	X	(1,87,500)	(1,12,500)	X	X
(d) (-) 3,00,000 +(-) 1,30,000= (-) 4,30,000	X	X	X	X	X	X	(2,68,750)	(1,61,250)
Share of profit/loss	2,47,500	1,82,500	1,66,250	1,33,750	(1,27,500)	(42,500)	(2,08,750)	(91,250)

- Where assessed business income is a profit:** Beneficial payments (i.e. salary, bonus, commission and interest) made to partners should be deducted from assessed profit to arrive at divisible profit, which is to be apportioned among members.
- Where assessed business income is a loss:** Beneficial payments made to partners should be added to assess loss to arrive at the divisible loss which is to be apportioned among members.

2. T and Q are individuals, who constitute an Association of Persons, sharing profit and losses in the ratio of 2:1. For the accounting year ended 31st March 2021, the Profit and Loss Account of the business was as under:

Particulars	₹ in '000	Particulars	₹ in '000
Cost of goods sold	6,250.00	Sales	9,900.00
Remuneration to:		Dividend from companies	25.00
T	130.00	Long-term Capital Gains	1,640.00
Q	170.00		
Employees	256.00		
Interest to :			
T	48.30		
Q	35.70		
Other expenses	111.70		
Sales-tax penalty due	39.00		
Net Profit	4,524.30		
	11,565.00		11,565.00

Additional information furnished:

(i) **Other expenses included:**

- entertainment expenses of ₹ 35,000;
 - wristwatches costing ₹ 2,500 each were given to 12 dealers, who had exceeded the sales quota prescribed under a sales promotion scheme;
 - employer's contribution of ₹ 6,000 to the Provident Fund was paid on 14th January 2021.
 - ₹ 30,000 was paid in cash to an advertising agency for publicity.
- (ii) Outstanding sales tax penalty was paid on 15th April 2021. The penalty was imposed by the sales tax officer for non-filing of returns and statements by the due dates.
- (iii) T and Q had, for this year, income from other sources of ₹ 3,50,000 and ₹ 2,60,000, respectively.

Required to:

- Compute the total income of the AOP for the Previous Year 2020-21.
- Ascertain the tax liability of the Association for that year; and
- Ascertain the tax liability for that year of the individual members. **Ignore Section 115BAC.**

Solution:

(i) **Computation of total income of the AOP for PY 2020-21**

Particulars	₹	₹
Profit and Gains of Business (see Working Note below)		33,12,300
Long Term Capital Gain		16,40,000
Income from Other Sources (Dividend is now taxable)		25,000
Total Income		49,77,300
Working Note:		
Computation of profits and gains of business:		45,24,300
Net profit as per Profit and Loss Account		
Add: Inadmissible payments:		
Interest to members T & Q (₹ 48,300 + ₹ 35,700)		
Advertising [disallowance u/s 40A(3)]	84,000	
Remuneration to members T & Q (₹ 1,30,000 + ₹ 1,70,000)	30,000	
Sales tax penalty due (See Note 3 below)	3,00,000	
	39,000	4,53,000
Less : Income not taxable under this head		49,77,300
Dividend from companies	25,000	
Long term Capital Gain	16,40,000	16,65,000
Profits and Gains of Business		33,12,300

(ii) Computation of tax liability of the AOP for PY 2020-21

Long-term Capital Gain (₹ 16,40,000 × 20.8%)

Other Income (₹ 33,37,300 × 42.744%)

Note :

1. Since one of the members has individual income more than the basic exemption limit, the AOP will be assessed at the maximum marginal rate.
2. Since the employer's contribution to PF has been paid during the Previous Year 2020-21 itself, it is allowable as deduction.
3. Penalty imposed for delay in filing sales tax return is not deductible since it is on account of infraction of the law requiring filing of the return within the specified period.
4. Gift paid to dealers are solely for business purpose and hence, fully deductible item.

(iii) Computation of Tax Liability of members T & Q for the PY 2020-21

Particulars	₹	Particulars	₹
Tax on ₹ 3,50,000	5,000	Tax on ₹ 2,60,000	500
Less: Rebate u/s 87A	5,000	Less: Rebate u/s 87A	500
Tax after rebate	NIL	Add : Surcharge	Nil
		Add : H&EC @ 4%	Nil
Net Tax Payable	NIL	Net Tax Payable	Nil

3. JK Associates is an Association of Persons (AOP) consisting of two members, J and K. Shares of the members are: 60% (J) and 40% (K). Income of the AOP for the previous year 2020-21 is ₹ 6 lacs.

Compute tax liability of the AOP and the members (Ignore Section 115BAC) in the following situations:

- (i) J and K have their income, other than income from AOP, amounting to ₹ 1 lac and ₹ 2.7 lacs, respectively.
- (ii) J and K's income, other than income from AOP, amount to ₹ 2 lac and ₹ 2.20 lacs, respectively.

Solution:

Computation of tax of AOP is governed by section 167B of the Income-tax Act, 1961. Tax on total income of AOP is computed as follows:

- i. If individual share of a member is known, and the total income of any member, excluding his share from such AOP, exceeds the basic exemption limit, then the AOP will pay tax at the **maximum marginal rate**.
- ii. If individual share of a member is known and no member has total income (excluding his share from AOP) exceeding the basic exemption limit, **then the AOP will pay tax at the rates applicable to an individual**.

Section 86 provides for assessment of share in the hands of members of AOP as follows:

A member's share in the total income of AOP will be treated as follows:-

- i. If an AOP has paid tax at the maximum marginal rate or a higher rate, the member's share in the total income of AOP **will not be included** in his total income and will be exempt.
- ii. If the AOP has paid tax at regular rates applicable to an individual, the member's share in the income of AOP **will be included in his total income and he will be allowed rebate at the average rate of tax** in respect of such share.

Tax Liability of J K Associates, AOP

- i. As K's income, other than that from the AOP, exceeds the basic exemption limit, the AOP shall pay tax at maximum marginal rate of 42.744 % (i.e. 30% plus **37% surcharge** plus H& education cess@4%). **Thus the tax payable by AOP = ₹ 6,00,000 × 42.744% = ₹ 2,56,464.**
- ii. Since none of the members have income, other than income from the AOP, exceeding the basic exemption limit, the AOP would be taxed at the rates applicable to an individual. Therefore, the AOP's tax liability = ₹ 32,500 + ₹ 1,300 = ₹ 33,800.

Tax Liability of J and K

Particulars	J ₹	K ₹
(i) Share of profit from AOP	Exempt	Exempt
Income from other sources	1,00,000	2,70,000
Total Income	1,00,000	2,70,000
Tax liability	NIL	1,000
Less: Rebate		1,000
Total tax payable	NIL	NIL
(ii) Share of profit from AOP	3,60,000	2,40,000
Income from other sources	2,00,000	2,20,000
Tax liability (A)	5,60,000	4,60,000
Less: Rebate under section 87A	24,500	10,500
	<u>NIL</u>	<u>10,500</u>
Health & Education cess @4%	980	-
Total tax payable (B)	25,480	NIL
Average rate of tax [B/A x 100]	4.55%	-
Total tax liability	25,480	NIL
Less: Rebate under section 86 in respect of share of profit from AOP (share in AOP x Average rate of tax)	16,380	-
Tax liability of members	9,100	NIL

4. Prakash, a member in two AOPs, namely, "AOP & Co." and "Prakash & Akash", provides the following details of his income for the year ended on 31.3.2021:

(a) "AOP & Co.", assessed at normal rates of tax, had credited in his account, amount of ₹ 96,000 as interest on capital, ₹ 96,000 as salary and ₹ 20,000 as share of profit.

(b) A house property located at Jaipur was purchased on 1.7.2011 with the borrowed capital in "Prakash & Akash" jointly shared equally and occupied by both of them for self residential purposes. Total interest paid for the year 2020-21 on the borrowed capital was ₹ 1,60,000.

Compute the income and the tax liability thereon for the A.Y. 2021-22 and support your answer with brief reasons and the provisions of the Act. Ignore Section 115BAC.

Solution:

Mr. Prakash is a member in two AOPs, namely, AOP & Co. and Prakash & Akash. **Though Prakash & Akash is an AOP, the income from the house property will not be assessed as income of the AOP, but will be included in the hands of the individual members as per section 26, since the share of each member is definite and ascertainable.** Hence, Prakash's share of income from house property would be assessed in his individual hands.

Since AOP & Co., has been taxed at normal rates of tax, **Mr. Prakash's share income from the AOP (i.e. salary, interest on capital and his share of profit) would be included in his total income.** Mr. Prakash, however, would be entitled to a relief under section 86 in respect of this income which has been included in his total income but on which tax has already been paid by the AOP. **As per section 110, the relief shall be allowed at the average rate of tax calculated on the total income inclusive of such income.**

Hence, the tax liability in the hands of Mr. Prakash would be as under:-

Particulars	₹	₹
Annual Value (½ share in house property used for own residence)	Nil	
Less: Interest on loan [½ share in ₹ 1,60,000] – Since the loan is borrowed on or after 1.4.1999 and is used for acquiring property within 5 years , deduction would be available upto a maximum of ₹ 2,00,000. This limit of ₹ 2,00,000 applies for each member separately.	80,000	
Loss from house property		(-) 80,000
Share income from AOP & Co.		
- Interest on capital	96,000	
- Salary	96,000	
- Share of profit	<u>20,000</u>	2,12,000
Total Income		1,32,000
Tax on total income		NIL

5. A and Mrs. B, being members of an AOP with equal share, furnishes the following details, compute tax liability of AOP and members –

Profit and loss account for the year ended 31-3-2021

Particulars	Amount	Particulars	Amount
Bonus to employee	50,000	Gross Profit	6,96,000
Bonus to A	10,000	Interest on drawings	
Bonus to Mrs. B	5,000	A	16,000
Other Expenses	40,000	Mrs. B	8,000
<u>Salary to -</u>			
A	44,000		
Mrs. B	88,000		
<u>Interest on capital @ 15%</u>			
A	15,000		
Mrs. B	20,000		
Depreciation	30,000		
Donation to National Relief Fund	10,000		
Net profit	4,08,000		
	7,20,000		7,20,000

Additional information:

- Depreciation for the year u/s 32 ₹ 20,000.
- Other expenses include expenditure of ₹ 5,400, which is disallowed u/s 40A(2).
- Other personal income of A & Mrs. B

	A	Mrs. B
Interest exempt u/s 10(15)	₹ 5,000	₹ 20,000
Interest on loan	₹ 2,45,000	₹ 2,22,000

(Ignore Section 115BAC)

Solution:

Computation of total income of AOP for the A.Y. 2021-22

Particulars	Details	Amount
Profits and gains of business or profession		
Net profit as per profit and loss account		4,08,000
Add: <u>Expenditure disallowed but debited in P/L Account</u>		
Remuneration to member disallowed u/s 40(ba)		
Salary [₹ 44,000 + ₹ 88,000]	1,32,000	
Bonus [₹ 10,000 + ₹ 5,000]	15,000	
Interest on capital in excess of interest on drawing disallowed u/s 40(ba)		
A [Net interest is negative]	Nil	
Mrs. B [₹ 20,000 – ₹ 8,000]	12,000	
Other Expenses disallowed u/s 40A(2)	5,400	
Depreciation	30,000	
Donation to National Relief Fund	10,000	2,04,400
		6,12,400
Less: <u>Expenditure allowed but not debited in P/L Account</u>		
Depreciation		20,000
Gross Total Income		5,92,400
Less: Deduction u/s 80G (Donation to National Relief Fund)		10,000
Total Income		5,82,400
Tax on above including cess (using rates applicable on an individual)#		30,140
[Rounded off]		

Computation of total income of A & Mrs. B excluding share from AOP

Particulars	A	Mrs. B
<u>Income from other sources</u>		
Interest Income [exempted u/s 10(15)]	Nil	Nil
Interest on loan	2,45,000	2,22,000
Total income excluding share from AOP	2,45,000	2,22,000

Since total income of A & Mrs. B excluding share from AOP does not exceed maximum exempted limit, hence AOP shall be taxable at the rate applicable to an individual.

Computation of total income of A & Mrs. B for the A.Y. 2021-22

Particulars	A		Mrs. B	
	Details	Amount	Details	Amount
Share from AOP				
Profits and gains of business or profession				
Salary from AOP	44,000		88,000	
Bonus from AOP	10,000		5,000	
Interest on capital	-		12,000	
Balance income	2,11,700 ^{\$}	2,65,700	2,11,700 ^{\$}	3,16,700
Other income				
<u>Income from other sources</u>				
Interest Income [exempted u/s 10(15)]	Nil		Nil	
Interest on loan	2,45,000	2,45,000	2,22,000	2,22,000
Total income		5,10,700		5,38,700

\$ Computation of balance income

Particulars	Amount	Amount
Total income of AOP		5,82,400
Less: Remuneration to members:		
- Salary	1,32,000	
- Bonus	15,000	
Interest on capital in excess of interest on drawing	12,000	1,59,000
Balance income of AOP		4,23,400
Share of A		2,11,700
Share of Mrs. B		2,11,700

Computation of tax liability of A & Mrs. B for the A.Y. 2021-22

Particulars	A	Mrs. B
Total income	5,10,700	5,38,700
Tax on above (slab rate)	14,640	20,240
Less: Rebate u/s 87A	-	-
	14,640	20,240
Add: Health & Education cess @ 4%	586	810
	15,226	21,050
Less: Rebate u/s 86		
[(15,226 / 5,10,700) x 2,65,700]	7,922	
[(21,050 / 5,38,700) x 3,16,700]		12,375
Tax liability (Rounded off)	7,300	8,680

6. How shall your answer differ if (in question 5) members are A Ltd (a foreign company) & Mrs. B?

Solution:

In this case, A Ltd. is taxable @ 41.60% (40% + 4% cess) which is lower than maximum marginal rate of tax. Hence, entire income of the AOP shall be taxable @ 42.744% (i.e., MMR). However, if MMR is lower than tax rate applicable to A Ltd., in that case A Ltd. share's in the income of the AOP would be taxable at the rate applicable to that company and balance income of the AOP @ MMR.

Computation of tax liability of AOP for A.Y. 2021-22

Particulars	Share of A Ltd.	Share of Mrs. B
Share in the income of AOP (as computed in question 5)	2,65,700	3,16,700
Tax rate	42.744%	42.744%
Tax	1,13,571	1,35,370
Total tax payable by the AOP (Rounded off)	2,48,940	

Computation of total income and tax liability of A Ltd. & Mrs. B for the A.Y. 2021-22

Particulars	A Ltd.		Mrs. B	
	Details	Amount	Details	Amount
Share of income from AOP (Since AOP is taxable at maximum Marginal rate of tax or higher rate)		Nil		Nil
<u>Other income</u>				
<u>Income from other sources</u>				
Interest Income [exempted u/s 10(15)]	Nil		Nil	
Interest on loan	2,45,000	2,45,000	2,22,000	2,22,000
Total income		2,45,000		2,22,000
Tax on above # (40% + Health & Education cess @ 4%)		1,01,920#		Nil

7. How shall your answer differ if (question 5) other income of members is as follow –

	A	Mrs. B
Interest on PPF	₹ 5,000	₹ 20,000
Interest on loan	₹ 2,92,000	₹ 30,000

Solution:

Since total income of A[#] excluding share from AOP exceeds maximum exempted limit, hence AOP shall be taxable at the maximum marginal rate of tax. Hence, tax liability of AOP is ₹ 2,48,940 (i.e. 42.744% of ₹5,82,400).

Computation of total income of A & Mrs. B excluding share from AOP

Particulars	A	Mrs. B
<u>Income from other sources</u>		
PPF Interest [exempted u/s 10(11)]	Nil	Nil
Interest on loan	2,92,000	30,000
Total income excluding share from AOP	2,92,000	30,000

Computation of total income and tax liability of A & Mrs. B for the A.Y. 2021-22

Particulars	A		Mrs. B	
	Details	Amount	Details	Amount
Share of income from AOP (Since AOP is taxable at maximum Marginal rate of tax)		Nil		Nil
<u>Other income</u>				
<u>Income from other sources</u>				
PPF Interest [exempted u/s 10(11)]	Nil		Nil	
Interest on loan	2,92,000	2,92,000	30,000	30,000
Total income		2,92,000		30,000
Tax on above (Slab rate) (after rebate) (Rounded off)		Nil		Nil

8. Important: X and Y, being members of an AOP with equal ratio, furnishes the following details, compute tax liability of AOP and members (Ignore Section 115BAC) :

Profit and loss account for the year ended 31-3-2021

Particulars	Amount	Particulars	Amount
Bonus to employee	5,000	Gross Profit	60,000
Other Expenses	14,000	Short term capital gain	6,000
<u>Salary to -</u>			
X	5,000		
Y	5,000		
<u>Interest on capital @ 15%</u>			
X	5,000		
Y	7,000		
Depreciation u/s 32	10,000		
Net profit	15,000		
	66,000		66,000

Additional information:

- Other expenses include expenditure of ₹ 4000, which is disallowed u/s 37.
- Other personal income of X & Y -

	X	Y
Interest Exempt under Section 10(15)	₹ 5,000	₹ 20,000
Interest on loan	₹ 25,000	₹ 2,49,000
Brought forward loss from house property	₹ 25,000	₹ 10,000

Solution:

Computation of total income of AOP for the A.Y. 2021-22

Particulars	Details	Amount	Amount
<u>Profits and gains of business or profession</u>			
Net profit as per profit and loss account		15,000	
Add: <u>Expenditure disallowed but debited in P/L Account</u>			
Salary to member disallowed u/s 40(ba) [₹ 5,000 + ₹ 5,000]	10,000		
Interest on capital disallowed u/s 40(ba) [₹ 5,000 + ₹ 7,000]	12,000		
Other expenses disallowed u/s 37	4,000	26,000	
		41,000	

Less: <u>Income credited but taxable under other head</u>			
Short term capital gain		6,000	35,000
<u>Capital Gains</u>			
Short term capital gain			6,000
Total Income			41,000
Tax on above (using rates applicable on an individual)#			Nil

Computation of total income of X & Y excluding share from AOP

Particulars	X	Y
<u>Income from other sources</u>		
Interest income [exempted u/s 10(15)]	Nil	Nil
Interest on loan	25,000	2,49,000
Total income excluding share from AOP	25,000	2,49,000

Since total income of X & Y excluding share from AOP does not exceed maximum exempted limit, **hence AOP shall be taxable at the rate applicable to an individual.**

Computation of total income of X & Y for the A.Y. 2021-22

Particulars	X		Y	
	Details	Amount	Details	Amount
<u>Profits and gains of business or profession</u>				
Salary from AOP	5,000		5,000	
Interest on capital	5,000		7,000	
Balance income other than short term capital gain in equal ratio	6,500	16,500	6,500	18,500
Capital Gains: Short term capital gain		3,000		3,000
<u>Income from other sources</u>				
Interest Income [exempted u/s 10(15)]	Nil		Nil	
Interest on loan	25,000	25,000	2,49,000	2,49,000
Total income		44,500		2,70,500
Tax on above less rebate plus cess (Slab rate) (R/off)		Nil		Nil

Since AOP is not charged to tax, hence rebate u/s 86 is not available.

9. How shall your answer differ if (in question 8) the profit sharing ratio is not known.

Solution:

When share of member is not known, AOP shall be taxable at maximum marginal rate (provided none of the member is taxable at a higher rate)

Computation of tax liability of AOP for the A.Y. 2021-22:

Total income	₹ 41,000
Tax @ 42.744% (maximum marginal rate of tax) (Rounded off)	₹ 17,530

Computation of total income of X & Y for the A.Y. 2021-22

Particulars	X		Y	
	Details	Amount	Details	Amount
Share of income from AOP (Since AOP is taxable at maximum Marginal rate of tax or higher rate)		Nil		Nil
<u>Income from other sources</u>				
Interest [exempted u/s 10(15)]	Nil		Nil	
Interest on loan	25,000	25,000	2,49,000	2,49,000
Total income		25,000		2,49,000
Tax on above		Nil		Nil

10. How shall your answer differ if (in Question No. 8) share is not known and X Ltd. (a foreign company) (other income being nil) & Y (other income being interest on loan ₹ 92,000) are the member of AOP.

Solution:

Computation of tax liability of AOP where share of income of member is not known and none of the members is charged to tax at rate higher than MMR, hence AOP will be taxable at MMR rate i.e. 42.744% –

Total income	₹ 41,000
Tax @ 42.744% (Rounded off)	₹ 17,530

Computation of total income of X Ltd. & Y for the A.Y. 2021-22

Particulars	X Ltd.	Y
Share of income from AOP (Since AOP is taxable at maximum marginal rate of tax or higher rate)	Nil	Nil
<u>Income from other sources</u>		
Interest on loan	Nil	92,000
Total income	Nil	92,000
Tax on above	Nil	Nil

TAX EXEMPTION TO POLITICAL PARTIES [SEC 13A]

CMA INTER DT - JUNE & DEC 2021 EXAM

Assessment Year 2021-22 (From 18th Edition Book)

(Refer Page 444 to 446 of ICAI NEW DIRECT TAX MODULE – JAN 2021 Edition)

Can a political party claim exemption of its income under section 13A of the Income-tax Act, 1961?

Answer:

Under Section 13A, a political party registered under section 29A of the Representation of the People Act, 1951, can claim exemption under the following heads:

- (a) Income from house property,
- (b) Capital gains,
- (c) Income from other sources &
- (d) Income by way of voluntary contributions received by such political party.

These exemptions are subject to the following conditions:-

- (i) The political party must keep and maintain such books of account and other documents as would enable the Assessing Officer to properly deduce its income therefrom.
- (ii) The political party should keep and maintain a record of each such voluntary contribution (**other than contribution by way of Electoral Bond**) in excess of ₹ 20,000 and the names and addresses of such contributors, the date of receipt and such other details as may be relevant or appropriate.
- (iii) **No donation exceeding ₹ 2,000 is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee draft or use of electronic clearing system through a bank account or through such other prescribed electronic mode or through electoral bond.**

The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay.

[CBDT Notification No. 8/2020 dated 29.01.2020].

- (iv) The accounts of the political party must be audited by a chartered accountant.
- (v) A report under section 29C(3) of the Representation of People Act, 1951 has to be submitted by the treasurer of such political party or any other person authorised by the political party in this behalf for every financial year.
- (vi) **Return of Income must be filed u/s 139(4B) within time allowed u/s 139(1). In case of belated return, exemption will not be available u/s 13A.**

Example:

The books of account maintained by a National Political Party registered with Election Commission for the year ending 31-3-2021 disclose the following receipts:

Rent of property let out to a departmental store at Chennai	Rs 6,00,000
Interest on deposits other than banks	Rs 5,00,000
Contribution from 100 person (The political party submitted a report to the Election Commission) of Rs 21,000 each (received through an account payee cheque)	Rs 21,00,000
Net profit of cafeteria run in the premises at Delhi	Rs 3,00,000

Compute total income of the political party for the previous year 2020-21.

Solution:**Computation of total income of National Political party for the Assessment year 2021-22**

Particulars	Working	Amount
<u>Income from house property</u>		
Rent of property let out to a departmental store at Chennai	Exempted u/s 13A	Nil
<u>Profits and gains of business or profession</u>		
Net profit of cafeteria run in the premises at Delhi		3,00,000
<u>Income from other sources</u>		
Interest on deposits other than banks	Exempted u/s 13A	Nil
Contribution exceeding Rs 20,000	Exempted u/s 13A	Nil
Total income		3,00,000

EXEMPTION FOR VOLUNTARY CONTRIBUTIONS RECEIVED BY ELECTORAL TRUSTS [SECTION 13B]

DISTRIBUTION OF 95% OF DONATIONS TO ANY REGISTERED POLITICAL PARTY:

- Distribution of any **voluntary contribution received by an electoral trust** shall be treated as its income under section 2(24),
- but shall be exempt under Section 13B, if the trust distributes **to any registered political party** during the year,
- **95% of the aggregate donations** received by it during the year along with the surplus if any, brought forward from any earlier previous year.

ASSESSMENT PROCEDURE

CMA INTER DT - JUNE & DEC 2021 EXAM

Assessment Year 2021-22 (From 18th Edition Book)

(Refer Page 517 to 532 of ICAI NEW DIRECT TAX MODULE – JAN 2021 Edition)

Inquiry before Assessment [Section 142]

Section 142(1): Inquiry

1. The Assessing Officer [JC/AC/DC/ITO] has **power to make inquiry** from any person
 - a. who has made a return under section 139 **or**
 - b. in whose case the time allowed under section 139(1) for furnishing the return has expired.

A notice can be issued:

- I. **where such person has not made a return** within the time allowed under section 139(1), to furnish a return of his income **[142(1)(i)] or**
- II. to **produce such accounts or documents** as the Assessing Officer may require **[142(1)(ii)]**, **or**
- III. to furnish in writing and verified in the prescribed manner information in such form and on such points or matters including a **statement of all assets and liabilities** of the assessee, whether included in the accounts or not, as the Assessing Officer may require **[142(1)(iii)]**.

Provided:

- a. **Previous approval of Joint Commissioner** is required before requiring the assessee to furnish a **statement of all assets and liabilities** not included in the accounts.
- b. The AO shall not require the production of any accounts relating to a period **more than 3 years prior** to the previous year.

Note:

1. Notice u/s 142(1)(i) is **not mandatory** in case of Best Judgement Assessment u/s 144.
2. Notice u/s 142(1)(ii) is issued for the purpose of assessment. Normally, notice u/s 142(1)(ii) is issued **after** giving the notices u/s 143(2), 144, 148 or 153A.
3. Notice u/s 142(1)(i) can **also be issued after the end of relevant AY**
4. Notice u/s 142(1)(ii) can be issued whether the assessee **has filed return of income or not**.

Section 142(2): For the purpose of obtaining full information in respect of the income or loss of any person, the Assessing Officer may make such inquiry as he considers necessary.

Penalty u/s 272A is applicable in case notice is not complied.

Section 142(2A): Special Audit

1. ***If at any stage of proceedings (assessment or re-assessment) before the Assessing Officer, having regard to the***
 - a. *nature and complexity of the accounts,*
 - b. *volume of the accounts,*
 - c. *doubts about the correctness of the accounts,*
 - d. *multiplicity of transactions in the accounts or*
 - e. *specialised nature of business activity of the assessee and*
 - f. *the interests of the revenue,****opines that it is necessary so to do,*** he may, with the ***previous approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,*** ***direct the assessee,*** to get the accounts audited by an accountant, as defined in the Explanation below Section 288(2) and to furnish an audit report, within such period as may be specified, in the prescribed form.

Provided that the AO shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard. [Section 142(2A)]
2. Period of audit may be extended by AO ***suomoto or on request of assessee,*** but total period ***should not exceed 180 days from date of receipt of direction.***
3. These provisions of audit shall have effect notwithstanding that the accounts of the assessee have been already audited. Audit expenses will be paid by CG.
4. ***Opportunity to Assessee [Section 142(3)]:*** The assessee shall be given an opportunity of being heard in respect of any material gathered on the basis of ***any inquiry or any audit*** and proposed to be utilised for the purposes of the assessment. ***Such opportunity need not be given where the assessment is made under section 144.***

[Notice u/s 142(2A) cannot be issued after the completion of Assessment /Re-assessment]

Estimation of value of assets by Valuation Officer [Section 142A]

1. The Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer **to estimate the value, including fair market value, of any asset, property or investment** and submit a copy of report to him.
2. The Assessing Officer may make a reference to the Valuation Officer ***whether or not he is satisfied about the correctness or completeness*** of the accounts of the assessee. **(Rejection of books is now not mandatory)**
3. The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account such evidence as the assessee may produce and any other evidence in his possession gathered, ***after giving an opportunity of being heard to the assessee***
4. The Valuation Officer may estimate the value of the asset, property or investment ***to the best of his judgment, if the assessee does not co-operate*** or comply with his directions.
5. The Valuation Officer shall **send a copy of the report** of the estimate to the Assessing Officer and the assessee, ***within a period of 6 months from the end of the month in which a reference is made*** under sub-section (1).
6. The Assessing Officer may, ***on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard***, take into account such report in making the assessment or reassessment.
7. Section 153 provides that the time period beginning with the date on which the reference is made to the VO and ending with the date on which his report is received by AO ***shall be excluded from the time limit provided for completion of assessment.***

Faceless inquiry or Valuation [Section 142B] – NEW SECTION

Section 142B has been inserted with effect from 1st November, 2020 by The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA, 2020)

1. The Central Government may make a scheme (**Faceless inquiry and valuation scheme**), by notification in the Official Gazette, for the purposes of **issuing notice** under sub-section (1) or **making inquiry** before assessment under sub-section (2), or **directing the assessee to get his accounts audited** under sub-section (2A) of section 142, or **estimating the value of any asset**, property or investment by a Valuation Officer under section 142A, so as to impart greater efficiency, transparency and accountability by-
 - a. **eliminating the interface** between the income-tax authority or Valuation Officer and the assessee or any person to the extent technologically feasible;
 - b. **optimising utilisation of the resources** through economies of scale and functional specialisation;
 - c. **introducing a team-based issuance** of notice or making of enquiries or issuance of directions or valuation with dynamic jurisdiction.
2. The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.
3. Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

ASSESSMENT [Section 143]

- ✓ Assessing Officer can complete the assessment without passing a regular assessment order. The assessment is completed on the basis of return submitted by the assessee. **Assessing Officer has adopted a two-stage procedure of assessment as part of risk management strategy.**
- ✓ **In the first stage**, all tax returns are processed to correct arithmetical mistakes, internal inconsistencies, tax calculation and verification of tax payment. **At this stage, no verification of the income is undertaken.**

In the second stage, certain percentage of the tax returns are selected for scrutiny/ audit on the basis of the probability of deducting tax evasion. **At this stage, the tax administration is concerned with the verification of the income.**

Intimation [Section 143(1)]

- ✓ Total income of the assessee shall be computed under section 143(1) after making the following adjustments to the total income in the return
 - (i) **Any Arithmetical errors** in the return; or
 - (ii) **An 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: (no adjustment shall be made in relation to a return furnished for the assessment year AY 2018-19 onwards....)~~

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 30 days of the issue of such intimation, such adjustments shall be made;

- ✓ the Tax, Interest & Fee, if any, shall be computed on the basis of the total income computed above
- ✓ the sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of the Tax, Interest & Fee, if any, computed above by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under section 89, any relief allowable under an agreement under Section 90 or any relief allowable under Section 91, any tax paid on self-assessment and any amount paid otherwise **by way of Tax, Interest & Fee;**

- ✓ an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, the assessee
- ✓ the **amount of refund** due to the assessee in pursuance of the above determination **shall be granted** to the assessee.
- ✓ An 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:
- ✓ No intimation shall be **sent after the expiry of 1 year from the end of the financial year in which the return is made.** (Sent and not served)
- ✓ The ***acknowledgement of the 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.
- ✓ ***“An incorrect claim” means*** claim on the basis of an entry, in the return
 - (i) of an item, **which is inconsistent** with another entry of the same or some other item in such return;
 - (ii) **information required to be furnished to substantiate such entry**, has not been furnished under the Act; or
 - (iii) in respect of a deduction, **where such deduction exceeds specified statutory limit** which may have been expressed as monetary amount or percentage or ratio or fraction.
- ✓ Section 143(1D) provides that processing of a return under section 143(1) shall not be necessary before the expiry of the period specified in the Section 143(1), where a scrutiny notice has been issued to the assessee under sub-section (2) of Section 143;
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.

Regular Assessment [Section 143(3)] – For verification of income✓ **NOTICE U/S 143(2)**

Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer **or the prescribed income tax authority, as the case may be**, shall, **if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve** on the assessee a notice u/s 143(2) requiring him, either to attend his office or to produce, any evidence on which the assessee may rely in support of the return. **[AO is not required to possess any reason to believe]**

However, no notice shall be served after the expiry of SIX months from the end of the financial year in which the return is furnished.

✓ **Section 143(3)**

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

✓ **However, in the case of a-**

- a) research association referred to in Section 10(21);
- b) news agency referred to in Section 10(22B);
- c) association or institution referred to in Section 10(23A);
- d) institution referred to in Section 10(23B);
- e) fund or institution or trust or university or hospital etc referred to Section 10(23C)

which is required to furnish the return of income under sub-section (4C) of section 139, **no order** making an assessment of the total income or loss of such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, **shall be made by the Assessing Officer, without giving effect to the provisions of section 10**, unless-

- i. the Assessing Officer **has intimated the Central Government** or the prescribed authority the contravention of the provisions of Section 10 by such research association, news agency, association or institution or fund or trust or university or other educational institution or any hospital or other medical institution, **where in his view such contravention has taken place; and**
- ii. the approval granted to them **has been withdrawn or notification issued in respect of such news agency or fund or trust or institution has been rescinded.**

- ✓ Where the Assessing Officer is satisfied that the
- activities of the university, college or other institution referred to in clause (ii) and clause (iii) of sub-section (1) of section 35**
- are not being carried out in accordance with all or any of the conditions subject to which such university, college or other institution was approved,
- he may, after giving a reasonable opportunity of showing cause against the proposed withdrawal**
- to the concerned university, college or other institution,
- recommend to the Central Government to withdraw the approval**
- and that Government may by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and the Assessing Officer

- ✓ **No effect shall be given by the Assessing Officer** to the provisions of clause (23C) of section 10 in the case of a trust or institution for a previous year, **if the provisions of the first proviso to clause (15) of section 2 become applicable** in the case of such person in such previous year, **whether or not the approval granted to such trust or institution or notification issued in respect of such trust or institution has been withdrawn or rescinded.**

(Hint: Trust Class: Business receipts exceeds 20% of gross receipts)

✓ **Section 143(4)**

Where a regular assessment under Section 143(3) or Section 144 is made,-


- a) any tax or interest paid by the assessee under sub-section (1) shall be deemed to have been paid towards such regular assessment;
- b) if no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, **the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.**

Distinction between notice under section 142(1) and section 143(2):

S.No.	Notice under Section 142(1)	Notice under Section 143(2)
1	It is a notice to file return of income or produce accounts or documents or furnish information as the Assessing Officer may require	It is a notice for making assessment under Section 143(3)
2	No assessment is possible by issue of this notice alone	Assessment can be made only if the notice under this section is served on the assessee.
3	No time limit is prescribed for service of this notice	Time limit of 6 months is prescribed for service of this notice.
4	Approval of Joint Commissioner necessary if statement of all assets and liabilities not included in accounts is required.	No approval required.
5	Books of account can be asked for a maximum period of 3 years prior to the previous year	There is no such provision in this case.
6	Notice can be served even if no return of income is furnished	Notice can be served only if the return of income has been furnished.

There is no sequence prescribed as to what manner notices under Section 142(1) and 143(2) are to be issued, therefore, there is nothing to say that notice under Section 142(1) should precede notice under Section 143(2).


ASSESSMENT [Section 143(3A) / Section 143(3B) / Section 143(3C)]*[Amended by Finance Act 2020]***Section 143(3A)**

The Central Government **may make a scheme**, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) **or Section 144 so as to**  **impart greater efficiency, transparency and accountability by—**

- a) *eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible;*
- b) *optimising utilisation of the resources through economies of scale and functional specialisation;*
- c) *introducing a team-based assessment with dynamic jurisdiction.*

Section 143(3B)

The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, **direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.**

However, no direction shall be issued after the 31st day of March, ~~2020~~ **2022**. 

Section 143(3C)

Every notification issued under sub-section (3A) and sub-section (3B) **shall, as soon as may be after the notification is issued, be laid before each House of Parliament.**

*[Finance Act 2018 has prescribed a new scheme (Faceless Assessment) for the purpose of making assessments so as to impart greater transparency and accountability, **by eliminating the interface between the Assessing Officer and the assessee, optimal utilization of the resources, and introduction of team-based assessment.**]*

Best Judgement Assessment [Section 144]

- ✓ **Best judgement assessment (popularly known as ex-parte assessment) can be made if the assessee fails to comply with the requirement of law as following:-**
 1. The assessee fails to file a return u/s 139 or
 2. He fails to comply with the terms of the notice issued u/s 142(1) or fails to comply with a direction issued u/s 142(2A).
 3. After filing a return he fails to comply with all the terms of the notice issued u/s 143(2).
- ✓ In such a situation the A.O. after taking into account all relevant materials which he has gathered and **after giving the assessee an opportunity of being heard** shall make an assessment of income or loss to the best of his judgement and determine the sum payable by him.
- ✓ Provided that such opportunity shall be given by the Assessing Officer **by serving a notice** calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment.
- ✓ However, where a notice u/s 142(1) has already been issued to the assessee it will not be necessary to give him such opportunity of being heard.
- ✓ **There is no provision for granting refund u/s 144.**
- ✓ AO u/s 144 cannot assess the income below the returned income & cannot assess the loss higher than the return loss
- ✓ Order u/s 144 should be a speaking order. It means AO must specify the basis of computation of Income u/s 144 & the basis must be rational & scientific.

Note: FACELESS ASSESSMENT UNDER SECTION 144B SHOULD NOT BE ASKED AT INTER LEVEL. ALTHOUGH, WE WILL COVER IT AS A SEPARATE TOPIC. 

Power of Joint Commissioner to issue directions in certain cases [Section 144A]

A Joint Commissioner may,

- ✓ on his own motion or
- ✓ on a reference being made to him by the Assessing Officer or
- ✓ on the application of an assessee,

call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do, **he may issue such directions as he thinks fit for the guidance of the Assessing Officer** to enable him to complete the assessment and **such directions shall be binding on the Assessing Officer.**

No directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

Section 153: Time limit for completion of assessment and reassessment.

Regular assessment u/s 143 or 144 must be made within 12 months of the relevant assessment year (Effective from AY 2019-20).

*Where a reference has been made to the transfer pricing officer for determination of Arm's Length Price in International transaction, **assessment order under section 143(3) is to be passed within 24 months from the end of the relevant AY. [i.e. Extended by 12 Months]***

Notice of Demand [Section 156]

1. When any tax, interest, fee, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.

Note: Where any sum is determined to be payable by the assessee or by the deductor or collector u/s 143(1) or 200A(1) or 206CB(1), **the intimation under those sections shall be deemed to be a notice of demand for the purposes of this section.**

2. Where the income of the assessee of any assessment year, beginning on or after the 1st day of April, 2021, includes income of the nature specified in clause (vi) of sub-section (2) of section 17 and such specified security or sweat equity shares referred to in the said clause are allotted or transferred directly or indirectly by the current employer, being an eligible start-up referred to in section 80-IAC, the tax or interest on such income included in the notice of demand referred to in sub-section (1) shall be payable by the assessee within 14 days-
- i. after the expiry of 48 months from the end of the relevant assessment year; or
 - ii. from the date of the sale of such specified security or sweat equity share by the assessee; or
 - iii. from the date of the assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or sweat equity share,
- whichever is the earliest.

[Inserted by Finance Act 2020]

Time limit for payment of tax:

The assessee should make the payment of amount demanded within 30 days of service of notice [Sec. 220(1)]

Where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of 30 days is allowed, then he may **with the previous approval of the Joint Commissioner** direct that the sum specified in the notice of demand shall be paid within such time as may be specified by him in the notice.

Interest on delay in payment: If the payment is **not made within 30 days** (or time allowed in the notice), interest shall be payable **@ 1% for every month** (or part thereof) of the delay [Sec. 220(2)]

An assessee in default shall be liable to a **penalty of an amount not exceeding the amount of tax in arrears.** [Sec. 221(1)]

RECTIFICATION OF MISTAKES [Section 154]

- A. ***With a view to rectifying any mistakes apparent from the record***, an ***income-tax authority referred to in Section 116*** may amend
- any order passed by it under provisions of this Act or
 - any intimation or deemed intimation under Section 143(1).
 - amend any intimation under Section 200A(1) – Processing of Statement of TDS
 - amend any intimation under Section 206CB(1) – Processing of Statement of TCS

[ITAT is not an Income Tax Authority]

- B. Where any matter has been ***considered and decided in any proceeding by way of appeal or revision*** relating to an order referred above, the authority passing such order may, notwithstanding anything contained in any law for the time being in force, ***amend the order in relation to any matter other than the matter which has been so considered and decided***. [Partial Merger]

C. **At whose instance mistakes can be rectified:**

- a) The concerned authority may make the necessary amendment **of its own motion**.
- b) The concerned authority has to make such amendment for rectifying any mistake **brought to its notice by the assessee or by the deductor/collector**.
- c) Where the concerned authority is the Commissioner (Appeals) and the mistake has been **brought to his notice by the Assessing Officer**, it has to make such amendment.

D. **Procedure:**

An amendment of the following nature can be made ***only after the concerned authority has given notice in this respect and also a reasonable opportunity of being heard to the assessee or deductor/collector***

- (a) Amendment which enhances an assessment.
- (b) Amendment which reduces a refund.
- (c) Amendment which otherwise **increases the liability** of the assessee or deductor or collector.

If any amendment enhances the assessment or reduces a refund already made, **a notice of demand is served on the assessee or deductor or collector. Such notice is deemed to be a notice u/s 156.**

- E. Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor/collector, the AO shall **make any refund** which may be due to such assessee or the deductor/collector.

F. **Time Limit for Rectification:**

No amendment under this section can be made ***after the expiry of 4 years from the end of the financial year in which the order sought to be amended was passed.***

However, if a valid application has been made by the assessee for rectification within the statutory time limit but is not disposed of by the concerned authority within the time specified, ***it may be disposed of even after the expiry of such time limit*** [Circular No. 73, dated 7th January, 1972]. **This relief is, however, not admissible in case rectification proceedings are initiated by the department itself.**

- G. Where an application is made by the assessee/deductor/collector to an Income Tax Authority, the Income Tax Authority **shall pass an order, within a period of 6 months** from the end of the month in which the application is received by it

- (a) Making the amendment or
- (b) Refusing to allow the claim

If order under section 154 is not passed within 6 months, then the rectification application of the assessee/deductor/collector shall be **deemed to be allowed in favour of the assessee**.

H. **Action against Rectification Order:**

- (i) Appeal can be made to the Commissioner (Appeals) u/s 246A. ***Appeal can also be made against an order passed under this section refusing to rectify a mistake.***
- (ii) Appeal can be made to the Appellate Tribunal u/s 253.
- (iii) Revision application can be made u/s 264.

Faceless rectification, amendments and issuance of notice or intimation- Section 157A

Section 157A has been inserted with effect from 1st November, 2020 by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to provide for faceless rectification, amendments and issuance of notice or intimation.

1. The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of rectification of any mistake apparent from record under section 154 or other amendments under section 155 or issue of notice of demand under section 156, or intimation of loss under section 157, so as to impart greater efficiency, transparency and accountability by-
 - a. **eliminating the interface** between the income-tax authority and the assessee or any other person to the extent technologically feasible;
 - b. **optimising utilisation of the resources** through economies of scale and functional specialisation;
 - c. **introducing a team-based** rectification of mistakes, amendment of orders, issuance of notice of demand or intimation of loss, with dynamic jurisdiction.
2. The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification
Provided that no direction shall be issued after the 31st day of March, 2022.
3. Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

Income Computation and Disclosure Standards

CMA INTER DT - JUNE & DEC 2021 EXAM

Assessment Year 2021-22 (From 18th Edition Book)

(Refer Page 533 to 546 of ICMAI NEW DIRECT TAX MODULE – JAN 2021 Edition)

Under section 145(1), income chargeable under the heads “Profits and gains of business or profession” or “Income from other sources” shall be computed in accordance with either the cash or mercantile system of accounting regularly employed by the assesseees

Section 145(2) empowers the Central Government to notify in the Official Gazette from time to time, income computation and disclosure standards to be followed by any class of assesseees or in respect of any class of income. **Non-compliance of ICDS will lead to Best Judgment Assessment u/s 144.**

Accordingly, the Central Government has, vide Notification dated 31.3.2015, in exercise of the powers conferred under section 145(2), **notified 10 ICDSs to be followed by all assesseees**, following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head “Profit and gains of business or profession” or “Income from other sources”.

This notification shall come into force **with effect from 1st April, 2015**, and shall accordingly apply to the A.Y. 2016-17 and subsequent assessment years.

However CG further has notified revised ICDSs w.e.f AY 17-18 (in place of Old ICDS) vide notification dated 29.09.2016.

[2 Marks] Newly Notified ICDSs have to be followed by all assesseees (other than Individual & HUF who is not required to get his accounts of the previous year audited as per Section 44AB) following the mercantile system of accounting from AY 17-18 onwards.

All the notified ICDSs are applicable **for computation of income** chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and **not for the purpose of maintenance of books of accounts.**

In the case of conflict between the provisions of the Income tax Act, 1961 and the notified ICDSs, **the provisions of the Act shall prevail to that extent.**

10 ICDSs

ICDS No.	Name of the ICDS	ASs
ICDS – I	A - Accounting Policies	AS 1
ICDS – II	I - Valuation of Inventories	AS 2
ICDS – III	C - Construction Contracts	AS 7
ICDS – IV	R - Revenue Recognition	AS 9
ICDS – V	F - Tangible Fixed Assets	AS 10
ICDS – VI	F - The Effects of changes in Foreign Exchange Rates	AS 11
ICDS – VII	G - Government Grants	AS 12
ICDS – VIII	S - Securities	AS 13
ICDS – IX	B - Borrowing Costs	AS 16
ICDS – X	P - Provisions, Contingent Liabilities and Contingent Assets	AS 29

ICDS I: Accounting Policies

A. This **Income Computation and Disclosure Standard** deals with **significant accounting policies**.

B. **[2 Marks]** The fundamental Accounting assumptions as used in this ICDS are:

1. **Going Concern,**
2. **Consistency &**
3. **Accrual.**

Other fundamental accounting assumptions which are conspicuous by their absence are **materiality and prudence**. *[In the absence of these concepts considerable time and cost will be involved making adjustments in net profit to arrive at business income.]*

C. The standard has defined **accounting policy as the specific accounting principles** and the methods of applying those principles adopted by a person.

D. Accounting policies adopted by a person shall be such so as to represent a **true and fair view of the state of affairs and income of the business, profession or vocation**.

For this purpose:

(i) the **treatment and presentation** of transactions and events shall be governed **by their substance and not merely by the legal form**; and

(ii) **marked to market loss or an expected loss shall not be recognised unless** the recognition of such loss is in accordance with the provisions of any other Income Computation and Disclosure Standard.

E. An accounting policy shall **not be changed without reasonable cause**. *The word 'reasonable cause' is not defined in the ICDS*

F. **[3 Marks]** Disclosure of accounting policies:

i. All significant accounting policies adopted by a person shall be disclosed. Any **change in an accounting policy which has a material effect** shall be disclosed (with quantum of the effect, if ascertainable). *Where such amount is not ascertainable, the fact shall be indicated.*

ii. If the fundamental accounting assumptions of Going Concern, Consistency and Accrual are followed, **specific disclosure is not required**. **If a fundamental accounting assumption is not followed, the fact shall be disclosed.**

AS 5 vis-à-vis ICDS I - Requirement of “reasonable cause” for change in accounting policy

AS 5 which deals with changes in accounting policies, permits change in accounting policies if adoption of different accounting policies is required by –

- i. statute; or
- ii. for the purpose of compliance with an accounting standard; or
- iii. if such change results in a **more appropriate presentation of** financial statements.

ICDS I, however, states that an accounting policy *should not be changed without any “reasonable cause”.*

The term “reasonable cause” has not been defined and would involve exercise of judgment by management and tax authorities. A clarification as to the meaning and scope of “reasonable cause” would help avoid litigation.

Write a short Notes on “ICDS I” on “Accounting Policies” – VERY IMPORANT**Solution:****ICDS - I on “Accounting Policies”**

- Accounting policies adopted by a person shall be such so as to represent a true and fair view of the state of affairs and income of the business, profession or vocation.
- The treatment and presentation of transactions and events shall be governed by their substance and not merely by the legal form.
- Marked to market loss or an expected loss shall not be recognised unless the recognition of such loss is in accordance with the provisions of any other Income Computation and Disclosure Standard.

Fundamental Accounting Assumptions

The fundamental accounting assumptions i.e., Going Concern, Consistency and Accrual are assumed as followed. No specific disclosure is required, if these assumptions are followed, however, if such assumption are not followed, the fact shall be disclosed.

Change in Accounting Policies

An accounting policy shall not be changed without reasonable cause.

Disclosure of Accounting Policies

- ✓ All significant accounting policies adopted by a person shall be disclosed.
- ✓ Any change in an accounting policy which has a material effect shall be disclosed (with quantum of the effect, if ascertainable). Where such amount is not ascertainable, the fact shall be indicated.
- ✓ Disclosure of accounting policies or of changes therein cannot remedy a wrong or inappropriate treatment of the item.

ICDS II : Valuation of Inventories

- A. The standard shall be applicable to the **valuation of inventories**.
- B. **[3 Marks]** *However, the following shall be excluded from the purview of the standard:*
- (a) Work-in-progress arising under '**construction contract**' including directly related service contract which is dealt with by the ICDS on construction contracts;
 - (b) Work-in-progress which is dealt with by other ICDS;
 - (c) **Shares, debentures and other financial instruments** held as stock-in-trade which are dealt with by the ICDS on securities;
 - (d) Producers' inventories of livestock, agriculture and forest products, mineral oils, ores and gases **to the extent that they are measured at net realizable value**;
 - (e) **Machinery spares, which can be used only in connection with a tangible fixed asset and their use is expected to be irregular**, shall be dealt with in accordance with the ICDS on tangible fixed assets.
- C. In accordance with the standard, **valuation of inventories shall be valued at Cost or Net Realizable Value, whichever is lower**.
- D. **[2 Marks]** *"Inventories" has been defined to mean assets held for-*
- ✓ Sale in the ordinary course of business;
 - ✓ in the process of production for such sale;
 - ✓ in the form of materials or supplies to be consumed in the production process or in the rendering of services.
- E. "Net Realizable Value" is the **estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale**.
- F. **[5 Marks]** **Cost of inventories:**
- Cost of inventories shall comprise of all costs of purchase, costs of services, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.**
- ✓ The **costs of purchase** shall consist of purchase price **including duties and taxes, freight inwards and other expenditure directly attributable** to the acquisition. Trade discounts, rebates and other similar items shall be **deducted** in determining the costs of purchase.
 - ✓ The **costs of services** in the case of a service provider shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overheads.
 - ✓ The **costs of conversion of inventories** shall include costs directly related to the units of production **and a systematic allocation of fixed and variable production overheads** that are incurred in converting materials into finished goods.

- ✓ **Other costs** shall be included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition.
- ✓ **Interest and other borrowing costs shall not be included** in the costs of inventories, **unless** they meet the criteria for recognition of interest as a component of the cost as specified in the ICDS on borrowing costs.

G. **[3 Marks]** In determining the Cost of Inventories, the following costs shall be **excluded and recognised as expenses** of the period in which they are incurred, namely:-

- a. Abnormal amounts of wasted materials, labour, or other production costs;
- b. Storage costs, unless those costs are necessary in the production process prior to a further production stage;
- c. Administrative overheads that do not contribute to bringing the inventories to their present location and condition;
- d. Selling costs.

H. **[3 Marks]** **Cost formulas:**

The standard recognizes three formulae, e.g. (i) **Specific Identification Method**; (ii) **First-in-First-Out Method**; and (iii) **Weighted Average Cost**.

The Cost of inventories of items that are not ordinarily interchangeable; and goods or services produced and segregated for specific projects **shall be assigned by specific identification of their individual costs**.

Where there are a **large numbers of items of inventory** which are ordinarily interchangeable, specific identification of costs shall not be made. **Cost of inventories shall be assigned by using the First-in-First-out (FIFO), or weighted average cost formula.**

I. **Techniques for the Measurement of Cost:**

- a) **Techniques for the measurement of the cost of inventories, such as the standard cost method or the retail method**, may be used for convenience if the results approximate the actual cost.
- b) **Standard costs take** into account normal levels of consumption of materials and supplies, labour, efficiency and capacity utilisation. They are regularly reviewed and, if necessary, revised in the light of the current conditions.
- c) **The retail method can be used in the retail trade for measuring inventories of large number of rapidly changing items that have similar margins and for which it is impracticable to use other costing methods.** The cost of the inventory is determined by reducing from the sales value of the inventory, the appropriate percentage gross margin. The percentage used takes into consideration inventory, which has been marked down to below its original selling price. An average percentage for each retail department is to be used.

J. The method of valuation of inventories once adopted by a person in any previous year **shall not be changed without reasonable cause**.

K. [2 Marks] Valuation of Inventory in Case of Certain Dissolutions - IMP

In case of **dissolution** of a ***partnership firm or association of person or body of individuals***, notwithstanding whether business is discontinued or not, ***the inventory on the date of dissolution shall be valued at the Net Realisable Value.***

L. [2 Marks] Disclosure: The following aspects shall be disclosed:

- ✓ the accounting policies adopted in measuring inventories including the cost formulae used; **and**
- ✓ the total carrying amount of inventories and its classification appropriate to a person.

ICDS III: Construction Contracts

<p>SCOPE [4 Marks]</p>	<p>The Standard should be applied in <u>determination of income for a construction contract of a contractor.</u></p> <p>“Construction contract” is a contract specifically negotiated for the construction of an asset or a combination of assets that are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use <u>and includes:</u></p> <ul style="list-style-type: none"> (i) contract for the rendering of services which are directly related to the construction of the asset, for example, those for the services of project managers and architects; (ii) contract for destruction or restoration of assets, and the restoration of the environment following the demolition of assets. <p>Construction contracts are formulated in a number of ways which are classified as <u>fixed price contracts and cost plus contracts</u></p> <ul style="list-style-type: none"> ✓ Fixed price contract is a construction contract in which the contractor agrees to a fixed contract price, or a fixed rate per unit of output, which may be subject to cost escalation clauses. ✓ Cost plus contract is a construction contract in which the contractor is reimbursed for allowable or otherwise defined costs, plus a mark up on these costs or a fixed fee.
<p>Contract Revenue [3 Marks]</p>	<ul style="list-style-type: none"> (i) Contract revenue shall be recognised when there is <u>reasonable certainty</u> of its ultimate collection. (ii) Contract revenue shall comprise of: <ul style="list-style-type: none"> (a) the initial amount of revenue agreed in the contract, <u>including retentions</u>; and (b) variations in contract work, claims and incentive payments. <p>[“Retentions” are amounts of progress billings which are not paid until the satisfaction of conditions specified in the contract for the payment of such amounts or until defects have been rectified.]</p> (iii) Where contract revenue already recognised as income is subsequently written off in the books of accounts as uncollectible, <u>the same shall be recognised as an expense and not as an adjustment of the amount of contract revenue</u>
<p>Contract Costs: [3 Marks]</p>	<p>Contract costs shall comprise of:</p> <ul style="list-style-type: none"> i. costs that relate directly to the specific contract; ii. costs that are attributable to contract activity in general and can be allocated to the contract; iii. such other costs as are specifically chargeable to the customer under the terms of the contract; and iv. allocated borrowing costs in accordance with the ICDS on Borrowing Costs.

	<p>These costs shall be reduced by any incidental income, not being in the nature of interest, dividends or capital gains, that is not included in contract revenue.</p> <p>Costs that cannot be attributed to any contract activity or cannot be allocated to a contract shall be excluded from the costs of a construction contract.</p>
<p>Recognition of Contract Revenue and Expenses</p>	<p>Contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the <u>stage of completion of the contract</u> activity at the reporting date.</p> <p>The standard <u>recognizes percentage completion method</u>, and accordingly, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed.</p> <p>[The recognition of revenue and expenses by reference to the stage of completion of a contract is referred to as the percentage of completion method]</p>
<p>Disclosure:</p>	<p>A person shall disclose:</p> <ol style="list-style-type: none"> 1. the amount of contract revenue recognised as revenue in the period; and 2. the methods used to determine the stage of completion of contracts in progress. <p>A person shall disclose the following for contracts in progress at the reporting date:</p> <ol style="list-style-type: none"> 1. amount of costs incurred and recognised profits (less recognised losses) upto the reporting date; 2. the amount of advances received; and 3. the amount of retentions

ICDS IV: Revenue Recognition

<p>SCOPE [3 Marks]</p>	<p>The Standard deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from:</p> <ol style="list-style-type: none"> i. the sale of goods; ii. the rendering of services; iii. the use by others of the person's resources yielding interest, royalties or dividends. <p>“Revenue” is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person from the sale of goods, from the rendering of services, or from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.</p> <p>The Standard does not deal with the aspects of revenue recognition which are dealt with by other ICDS.</p>
<p>Sale of Goods</p>	<p>Revenue from sales transactions should be recognized when the following conditions are fulfilled-</p> <ol style="list-style-type: none"> a) The seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer; b) The seller retains no effective control of the goods transferred to a degree usually associated with ownership; c) There is reasonable certainty of its ultimate collection.
<p>Rendering of Services [4 Marks]</p>	<ul style="list-style-type: none"> ➤ Revenue from service transactions shall be recognised by the percentage completion method. ➤ Under this method, revenue from service transactions is matched with the service transaction costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed. ➤ However, when services are provided by an indeterminate number of acts over a specific period of time, revenue may be recognised on a straight line basis over the specific period. ➤ Revenue from service contracts with duration of not more than 90 days may be recognised when the rendering of services under that contract is completed or substantially completed.
<p>Interest</p>	<ul style="list-style-type: none"> ➤ Interest shall accrue on the time basis determined by the amount outstanding and the rate applicable. ➤ Interest on refund of any tax, duty or cess shall be deemed to be the income of the previous year in which such interest is received. ➤ Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.

Royalty	Royalties shall accrue in accordance with the terms of the relevant agreement and shall be recognised on that basis unless, having regard to the substance of the transaction, it is more appropriate to recognise revenue on some other systematic and rational basis.
Dividend	Dividends are recognised in accordance with the provisions of the Act
Disclosure [4 Marks]	Following disclosures shall be made in respect of revenue recognition: <ul style="list-style-type: none">a) in a transaction involving sale of goods, total amount not recognised as revenue during the previous year due to lack of reasonably certainty of its ultimate collection along with nature of uncertainty;b) the amount of revenue from service transactions recognised as revenue during the previous year;c) the method used to determine the stage of completion of service transactions in progress; andd) for service transactions in progress at the end of previous year:<ul style="list-style-type: none">i. amount of costs incurred and recognised profits (less recognised losses) upto end of previous year;ii. the amount of advances received; andiii. the amount of retentions.

ICDS V: Tangible Fixed Assets

- A. Tangible fixed asset:** 'Tangible fixed asset' is an asset being land, building, machinery, plant or furniture held with the intention of being used for the purpose of producing or providing goods or services **and is not held for sale in the normal course of business**

Stand-by equipment and servicing equipment are to be capitalised. Machinery spares shall be charged to the revenue as and when consumed. When such spares can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, they shall be capitalised.

- B. Cost of assets: The following shall be considered as part of the cost:**

(a) The actual cost of an acquired tangible fixed asset shall comprise its purchase price, import duties and other taxes, **excluding those subsequently recoverable**, and any directly attributable expenditure on making the asset ready for its intended use. **Any trade discounts and rebates shall be deducted** in arriving at the actual cost.

(b) Administration and other general overhead expenses are to be excluded from the cost of tangible fixed assets if they do not relate to a specific tangible fixed asset. Expenses which are specifically attributable to construction of a project or to the acquisition of a tangible fixed asset or bringing it to its working condition, **shall be included** as a part of the cost of the project or as a part of the cost of the tangible fixed asset.

(c) The expenditure incurred on start-up and commissioning of the project, including the expenditure incurred on test runs and experimental production, shall be capitalised. The expenditure incurred after the plant has begun commercial production, that is, production intended for sale or captive consumption, **shall be treated as revenue expenditure.**

- C. Self-constructed Tangible Fixed Assets:**

In arriving at the actual cost of self-constructed tangible fixed assets, the same principles shall apply. Cost of construction that relate directly to the specific tangible fixed asset and costs that are attributable to the construction activity in general and can be allocated to the specific tangible fixed asset shall be included in actual cost. **Any internal profits shall be eliminated in arriving at such costs.**

- D. Non- monetary Consideration:**

When a tangible fixed asset is acquired in exchange for another asset, **the fair value of the tangible fixed asset so acquired shall be its actual cost.**

When a tangible fixed asset is acquired in exchange for shares or other securities, the fair value of the tangible fixed asset so acquired shall be its actual cost.

- E. Improvements and Repairs:**

An expenditure **that increases the future benefits** from the existing asset beyond its previously assessed standard of performance **is added to the actual cost.**

Similarly, the cost of an addition or extension to an existing tangible fixed asset which is of a capital nature and which becomes an integral part of the existing tangible fixed asset is **to be added to its actual cost.**

Any addition or extension, which has a separate identity and is capable of being used after the existing tangible fixed asset is disposed of, shall be treated as separate asset.

- F. Depreciation:** Depreciation shall be computed in accordance with the provisions of the Income-tax Act.
- G. Transfers:** Income arising on transfer of a tangible fixed asset shall be computed in accordance with the provisions of the Act.
- H. Disclosures: The following are the requirements of disclosures:**
- (i) Description of asset or block of assets;
 - (ii) Rate of depreciation;
 - (iii) Actual cost or written down value, as the case may be;
 - (iv) Additions or deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of Central Value Added Tax credit claimed and allowed under the CENVAT Credit Rules, 2004; change in rate of exchange of currency; and subsidy or grant or reimbursement, by whatever name called;
 - (v) Depreciation Allowable; and
 - (vi) Written down value at the end of year.

ICDS VI: The Effects of changes in foreign exchange rates

A. This Income Computation and Disclosure Standard deals with:

- a) treatment of **transactions in foreign currencies;**
- b) translating the **financial statements of foreign operations;**
- c) treatment of foreign currency transactions **in the nature of forward exchange contracts.**

B. Definitions:

- (a) "Foreign operations of a person" is a branch, by whatever name called, of that person, the activities of which are based or conducted in **a country other than India.**

- (b) "**Foreign currency transaction**" is a transaction which is denominated in or requires settlement in a foreign currency, including transactions arising when a person:
 - (i) buys or sells goods or services whose price is denominated in a foreign currency; or
 - (ii) borrows or lends funds when the amounts payable or receivable are denominated in a foreign currency; or
 - (iii) becomes a party to an unperformed forward exchange contract; or
 - (iv) otherwise acquires or disposes of assets, or incurs or settles liabilities, denominated in a foreign currency.

- (c) "Forward exchange contract" means an agreement to exchange different currencies at a forward rate,

- (d) 'Forward rate' is the specified exchange rate for exchange of two Currencies at a specified future date;

- (e) "Monetary items" are money held and assets to be received or liabilities to be paid in fixed or determinable amounts of money. **Cash, receivables, and payables are examples of monetary items;**

- (f) "Non-monetary items" are assets and liabilities other than monetary items. **Fixed assets, inventories, and investments in equity shares are examples of non-monetary items;**

- (g) "Reporting currency" means Indian currency except for foreign operations where it shall mean currency of the country where the operations are carried out.

C. Initial Recognition

A foreign currency transaction shall be recorded, on initial recognition in the reporting currency, by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency **at the date of the transaction.**

An **average rate for a week or a month** that approximates the actual rate at the date of the transaction may be used for all transaction in each foreign currency occurring during that period. **If the exchange rate fluctuates significantly, the actual rate at the date of the transaction shall be used.**

D. Conversion at Last Date of Previous Year: At last day of each previous year:

- (a) Foreign Currency **Monetary Items** shall be converted into reporting currency **by applying the closing rate;**
- (b) where the closing rate does not reflect with reasonable accuracy, the amount in reporting currency that is likely to be realised from or required to disburse, a foreign currency monetary item owing to restriction on remittances or the closing rate being unrealistic and it is not possible to effect an exchange of currencies at that rate, ***then the relevant monetary item shall be reported in the reporting currency at the amount which is likely to be realised from or required to disburse such item at the last date of the previous year;*** and
- (c) non-monetary items in a foreign currency shall be converted into reporting currency by using the **exchange rate at the date of the transaction.**
- (d) ***non-monetary item being inventory which is carried at net realisable value denominated in a foreign currency shall be reported using the exchange rate that existed when such value was determined.***

E. Recognition of Exchange Differences:

In respect of monetary items, exchange differences arising on the settlement thereof or on conversion thereof **at last day of the previous** year **shall be recognised as income or as expense** in that previous year.

In respect of non-monetary items, exchange differences arising on conversion thereof **at the last day of the previous year shall not be recognised as income or as expense in that previous year.**

Notwithstanding anything contained above; **initial recognition, conversion and recognition of exchange difference shall be subject to provisions of section 43A of the Act or Rule 115 of Income-tax Rules, 1962, as the case may be**

F. Forward Exchange Contracts:

Any **premium or discount** arising at the inception of a forward exchange contract shall be amortised as expense or income **over the life of the contract.** Exchange differences on such a contract shall be recognised **as income or as expense in the previous year in which the exchange rates change.** Any profit or loss arising on cancellation or renewal shall be recognised as income or as expense for the previous year.

ICDS VII: Government Grants

- A. **Grants:** This standard deals with government grants (also called subsidies, cash incentives, duty drawbacks, waiver, concessions, reimbursements, etc.), **but it does not deal with Government assistance other than in the form of Government grants; and Government participation in the ownership of the enterprise.**
- B. “Government grants” have been defined as assistance by Government in cash or kind to a person for past or future compliance with certain conditions. **They exclude those forms of Government assistance which cannot have a value placed upon them and the transactions with Government which cannot be distinguished from the normal trading transactions of the person.**
- C. **[2 Marks] Recognition of Government Grants:** Government grants should not be recognised until there is reasonable assurance that
- ✓ the person shall comply with the conditions attached to them, and
 - ✓ the grants shall be received.

Recognition of Government grant shall not be postponed beyond the date of actual receipt.

- D. **[4 Marks] Treatment of Government Grants:**
- (i) **Where the Government grant relates to a depreciable fixed asset** or assets of a person, the grant shall be **deducted from the actual cost** of the asset or assets concerned or from the written down value of block of assets to which concerned asset or assets belonged to.
 - (ii) **Where the Government grant relates to a non-depreciable asset** or assets of a person requiring fulfilment of certain obligations, the **grant shall be recognised as income** over the same period over which the cost of meeting such obligations is charged to income.
 - (iii) **Where the Government grant is of such a nature that it cannot be directly relatable to the asset acquired**, so much of the amount which bears to the total Government grant, the same proportion as such asset bears to all the assets in respect of or with reference to which the Government grant is so received, **shall be deducted from the actual cost** of the asset or shall be **reduced from the written down value** of block of assets to which the asset or assets belonged to.
 - (iv) The Government grant that is **receivable as compensation for expenses or losses incurred in a previous financial year or for the purpose of giving immediate financial support** to the person with no further related costs, shall be recognised as income of the period in which it is receivable.
 - (v) The Government grants other than covered above shall be recognised as income over the periods necessary to match them with the related costs which they are intended to compensate.
 - (vi) The Government grants in the form of non-monetary assets, given at a concessional rate, shall be accounted for **on the basis of their acquisition cost.**

E. Refund of Government Grants

- (i) The amount refundable in respect of a Government grant referred to in paragraphs (ii), (iv) and (v) above shall be applied first against any unamortised deferred credit remaining in respect of the Government grant. To the extent that the amount refundable exceeds any such deferred credit, or where no deferred credit exists, **the amount shall be charged to profit and loss statement.**
- (ii) The amount refundable in respect of a Government grant related to a depreciable fixed asset or assets shall be recorded **by increasing the actual cost or written down value of block of assets by the amount refundable.** Where the actual cost of the asset is increased, depreciation on the revised actual cost or written down value shall be **provided prospectively** at the prescribed rate.

F. [4 Marks] Disclosures: Following disclosure shall be made in respect of Government grants:

- (a) Nature and extent of Government grants recognised during the previous year **by way of deduction** from the actual cost of the asset or assets or from the written down value of block of assets during the previous year;
- (b) Nature and extent of Government grants recognised during the previous year **as income**;
- (c) Nature and extent of Government grants **not recognised** during the previous year by way of **deduction from** the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof; and
- (d) Nature and extent of Government grants **not recognised during the previous year as income** and reasons thereof.

ICDS VIII: Securities

- A. This Income Computation and Disclosure Standard deals with **securities held as stock-in-trade**.
- B. **The Standard does not deal with:**
- the bases for recognition of interest and dividends on securities which are covered by the ICDS on revenue recognition;
 - securities held by a person engaged in the business of insurance;
 - securities held by mutual funds, venture capital funds, banks and public financial institutions.
- C. **[4 Marks] Recognition and Initial Measurement of Securities:**
- A security on acquisition shall be **recognised at actual cost**. The actual cost of a security shall comprise of its purchase price and include acquisition charges such as brokerage, fees, tax, duty or cess.
 - Where a security is acquired in exchange for other securities, **the fair value of the security so acquired shall be its actual cost**.
 - Where a security is acquired in exchange for another asset, **the fair value of the security so acquired shall be its actual cost**.
 - Where **unpaid interest** has accrued before the acquisition of an interest-bearing security and is included in the price paid for the security, the subsequent receipt of interest is allocated between pre-acquisition and post-acquisition periods; **the pre-acquisition portion of the interest is deducted from the actual cost**.
- D. **Subsequent Measurement of Securities**
- At the end of any previous year, **securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value** at the end of that previous year, **whichever is lower**.
 - [3 Marks]** For above purpose, the **comparison** of actual cost initially recognised and net realisable value **shall be done categorywise and not for each individual security**. For this purpose, securities shall be classified into the following categories, namely:-
 - shares;
 - debt securities;
 - convertible securities; and
 - any other securities not covered above.
 - The value of securities held as stock-in-trade of a business as on the beginning of the previous year shall be:
 - the cost of securities available, if any, **on the day of the commencement of the business** when the business has commenced during the previous year; **and**
 - the value of the securities of the business as on the close of the immediately preceding previous year, in any other case.

- (iv) In case, at the end of any previous year, securities **not listed on a recognised stock exchange;** or listed but **not quoted on a recognised stock exchange** with regularity from time to time, **shall be valued at actual cost initially recognised.**
- (v) **[2 Marks]** Where the actual cost initially recognised cannot be ascertained by reference to specific identification, **the cost of such security shall be determined on the basis of first-in-first-out method or weighted average cost formula.**

ICDS IX: Borrowing Costs

A. **[2 Marks]** This Income Computation and Disclosure Standard **deals with treatment of borrowing costs**. This Standard **does not deal** with the actual or imputed cost of owners' equity and preference share capital.

B. **Definitions:**

[2 Marks] "Borrowing costs" has been defined as interest and other costs incurred by a person in connection with the borrowing of funds **and include:**

- (i) commitment charges on borrowings;
- (ii) amortised amount of **discounts or premiums** relating to borrowings;
- (iii) **amortised amount of ancillary costs** incurred in connection with the arrangement of borrowings;
- (iv) **finance charges** in respect of assets acquired under finance leases or under other similar arrangements.

[2 Marks] "Qualifying asset" has been defined to mean:

- (i) land, building, machinery, plant or furniture, **being tangible assets;**
- (ii) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, **being intangible assets;**
- (iii) **Very Imp:** inventories that **require a period of twelve months or more** to bring them to a saleable condition.

C. **Recognition:**

Borrowing costs that are **directly attributable** to the acquisition, construction or production of a qualifying asset **shall be capitalised as part of the cost** of that asset. The amount of borrowing costs eligible for capitalisation shall be determined in accordance with this Income Computation and Disclosure Standard.

Other borrowing costs shall be recognised in accordance with the provisions of the Act.

D. **[4 Marks]** **Borrowing Costs Eligible for Capitalisation:**

(a) To the extent the funds are borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, **the amount of borrowing costs to be capitalised** on that asset shall be the actual borrowing costs incurred **during the period on the funds so borrowed.**

(b) In respect of borrowing other than above, if any, the amount of borrowing costs to be capitalised shall be computed in accordance with the following formula namely :—

$$A \times B/C$$

Where,

A = borrowing costs incurred during the previous year **except on borrowings referred to in (a) above;**

B = (i) the average of costs of qualifying asset **as appearing** in the balance sheet of a person on the first day and the last day of the previous year;

(ii) in case the qualifying asset **does not appear** in the balance sheet of a person on the first day, **half of the cost of qualifying asset**, or

(iii) in case the qualifying asset **does not appear** in the balance sheet of a person on the last day of the previous year, the average of the costs of qualifying asset **as appearing** in the balance sheet of a person on the first day of the previous year **and on the date of put to use or completion**, as the case may be,

excluding the extent to which the qualifying assets are directly funded out of specific borrowings;

C= the average of the **amount of total assets** as appearing in the balance sheet of a person on the first day and the last day of the previous year, **other than assets to the extent they are directly funded out of specific borrowings;**

Explanation

For the purpose of this paragraph, a qualifying asset shall be such asset that necessarily require a period of twelve months or more for its acquisition, construction or production.

E. **[2 Marks]:** The capitalisation of borrowing costs shall commence

- **In case of specific borrowing**: from the date on which funds were borrowed
- **In case of other borrowing**: from the date on which funds were utilised

F. **[2 Marks]:** Capitalisation of borrowing costs shall cease:

- a) in case of a qualifying asset, **when such asset is first put to use;**
- b) in case of inventory, when substantially all the activities necessary to prepare such inventory for its intended sale are complete.

G. **Disclosure [2 Marks]:**

The following disclosure shall be made in respect of borrowing costs:

- ✓ the accounting **policy adopted** for borrowing costs; and
- ✓ the amount of borrowing costs **capitalised** during the previous year.

ICDS X: Provisions, Contingent Liabilities and Contingent Assets

This Income Computation and Disclosure Standard deals with **provisions, contingent liabilities and contingent assets**, except those **4 Marks**:

- (i) resulting from financial instruments;
- (ii) resulting from **executory contracts**;
- (iii) arising in insurance business from contracts with policyholders; and
- (iv) covered by another Income Computation and Disclosure Standard.

This Income Computation and Disclosure Standard **does not deal** with the recognition of revenue which is dealt with by Income Computation and Disclosure Standard - Revenue Recognition.

The term "provision" is also used in the context of items such as depreciation, impairment of assets and doubtful debts **which are adjustments to the carrying amounts of assets** and are not addressed in this Income Computation and Disclosure Standard.

A. Recognition of provisions:

[3 Marks] Provisions shall not be recognized unless the following conditions are met:

- ✓ a person has a present obligation as a result of a past event;
- ✓ it is **reasonably certain** that an outflow of resources embodying economic benefits will be required to settle the obligation; **and**
- ✓ a reliable estimate can be made of the amount of the obligation.

B. Recognition of Contingent Liabilities: A person shall not recognise a contingent liability.

C. Recognition of contingent assets: A person shall not recognise a contingent asset. Contingent assets are assessed continually and **when it becomes reasonably certain** that inflow of economic benefit will arise, the **asset and related income** are recognised in the previous year in which the change occurs. **[2 Marks]**

D. Measurement: The amount recognised as a provision shall be the best estimate of the expenditure required to settle the present obligation **at the end** of the previous year. **The amount of a provision shall not be discounted to its present value.**

The amount recognised as asset and related income shall be the best estimate of the value of economic benefit arising **at the end** of the previous year. The amount and related income shall not be discounted to its present value.

E. Reimbursements: Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, **the reimbursement shall be recognised when it is reasonably certain that reimbursement will be received if the person settles the obligation.**

The amount recognised for the reimbursement shall not exceed the amount of the provision.

Where a person is not liable for payment of costs in case the third party fails to pay, no provision shall be made for those costs. **An obligation, for which a person is jointly and severally liable, is a contingent liability to the extent that it is expected that the obligation will be settled by the other parties.**

F. Disclosures: 4 Marks

Following disclosure shall be made in respect of each class of provision:

- (a) a brief description of the **nature of the obligation**;
- (b) the carrying amount at the **beginning and end** of the previous year;
- (c) additional provisions made during the previous year, including increases to existing provisions;
- (d) amounts used, that is incurred and charged against the provision, during the previous year;
- (e) unused amounts reversed during the previous year; and
- (f) the amount of any expected reimbursement, stating the amount of any asset that has been recognised for that expected reimbursement.

Following disclosure shall be made in respect of each class of contingent assets:

- a) a brief description of the nature of the asset and related income;
- b) the carrying amount of asset at the beginning and end of the previous year;
- c) additional amount of asset and related income recognised during the year,
- d) including increases to assets and related income already recognised;
- e) amount of asset and related income reversed during the previous year.

