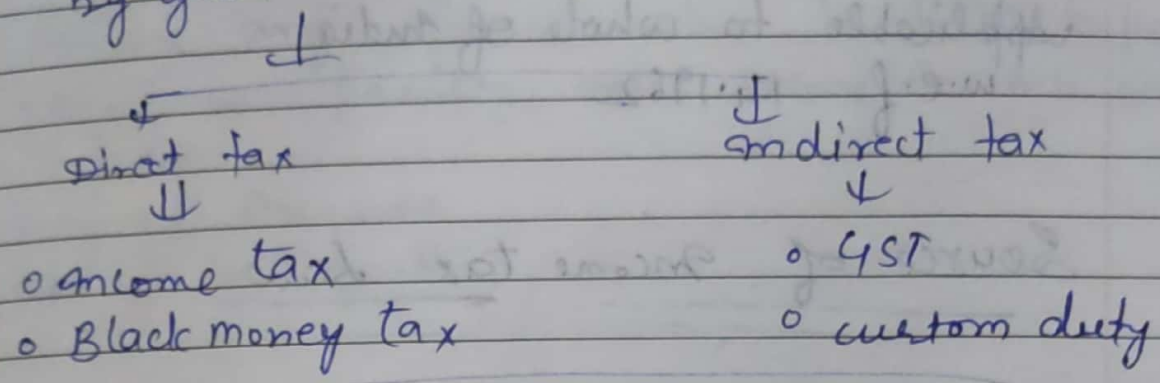
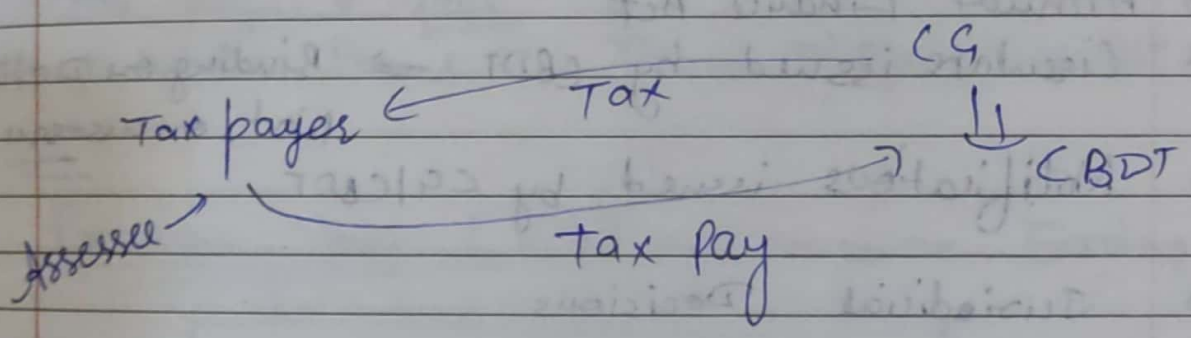


# ① Basic Concept

Tax → a compulsory charge imposed by govt

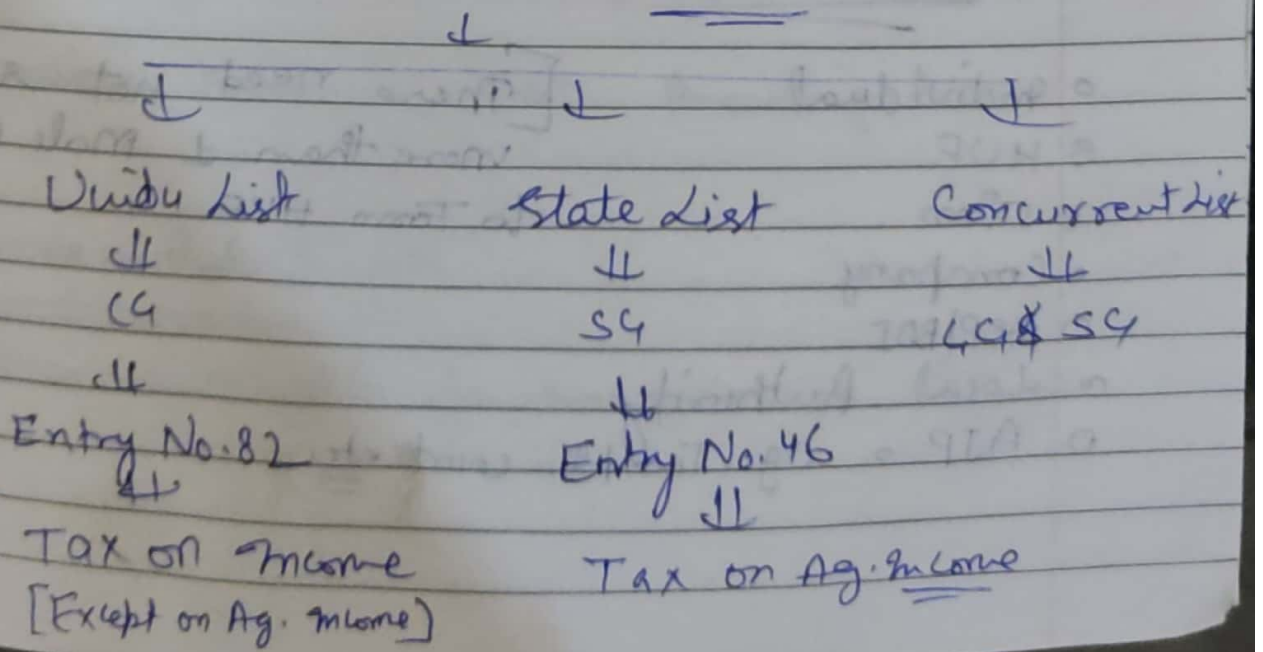


Why income tax is direct tax



## Indian constitution

VIIth schedule to ~~Article~~ Article 246



Income tax Act, 1961  
⇓

Applicable to whole of India  
w.e.f. 1.4.1962

Source of income tax law

- o Income tax Act, 1961
- o Income tax Rules 1962
- o Annual Finance Act
- o Circulars issued by CBDT ⇒ Binding on Deptt.  
Not on assessee
- o Notifications issued by Cg/CBDT
- o Jurisdictional Decisions

Imp. Definitions :- →

Person includes: →

- o Individual
- o HUF
- o Firm
- o Company
- o AOP/BOI
- o Local Authority
- o AJP → e.g. Temple, court etc.

[There need not required more than 1 Male member to Form HUF

## Assessee :->

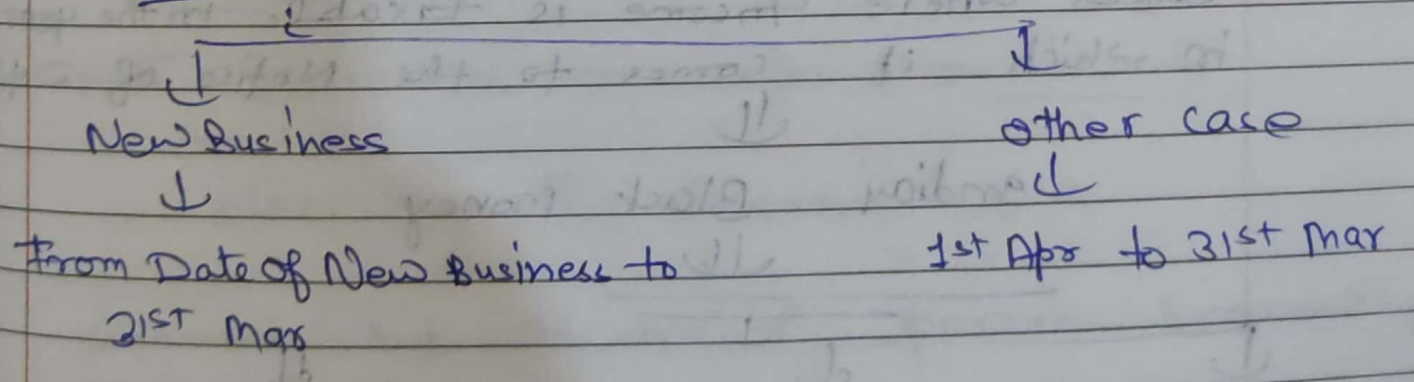
Means any person who is liable to pay tax, interest or penalty under income tax Act and includes

- Deemed Assessee
- Assessee in Default

## Assessment Year (A.Y.)

- Tax Payment year
- 12 Months Period -> From 1st April to 31st March

Previous Year (P.Y.) -> Income Earning Year



◦ Previous Year is Just Preceding A.Y.

## General Rule :->

Income of PY is taxable in AY

## Exception to General Rule →

• Cases where income of PY is taxable in PY itself →

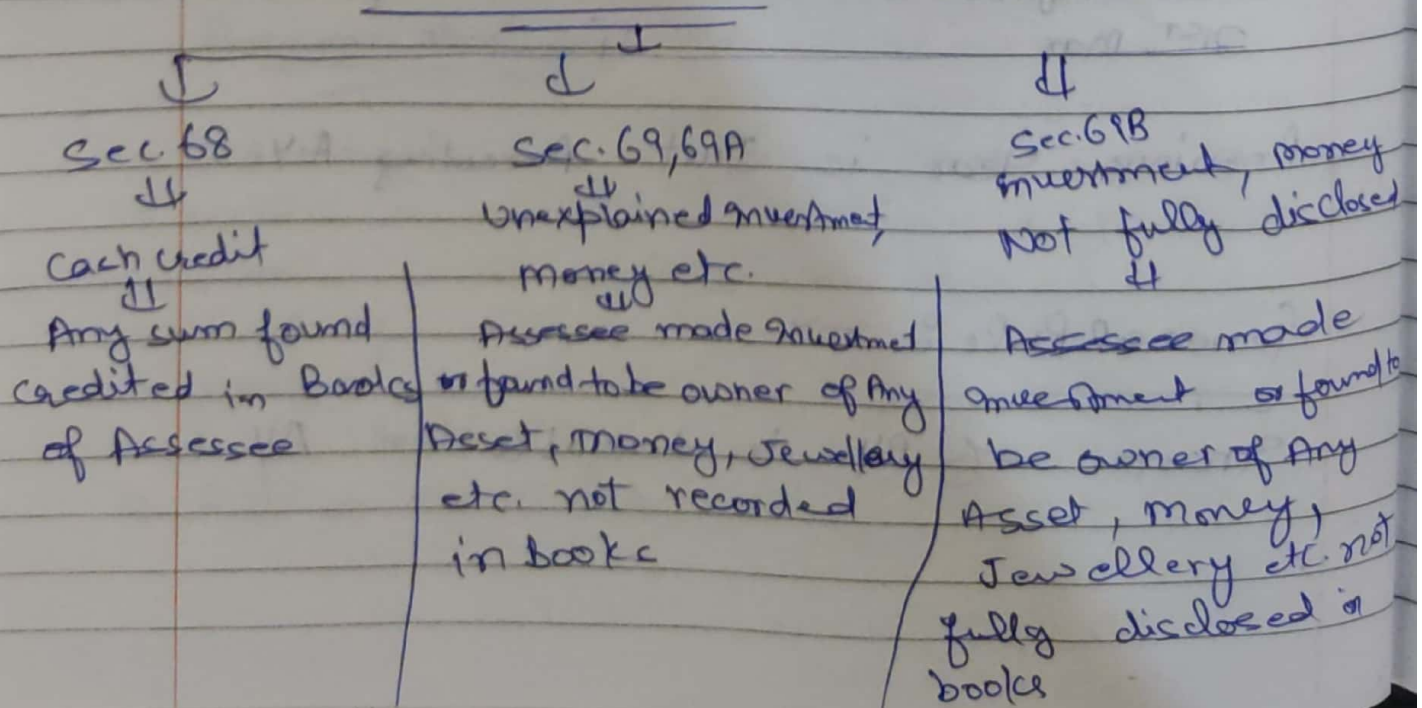
- Income of Non-resident Shipping Business
- Income of person leaves India permanently or for long duration
- Income of discontinued Business
- Income of person trying to transfer his assets for avoiding tax
- AOP/BOI/AJP formed for particular purpose.

• Cases where income is taxable in the year in which it comes to the Notice of Deptt

⇓

and/or Black money

⇓



I  
Sec. 69C → Noded. Under Any Head

↳ Unexplained expenditure ⇒ Assessee incurred any expenditure

And Assessee has no Explanation of Source or Explanation offered by Assessee is Unsatisfactory as per AO

Sec. 69D

amt. borrowed or repaid on Hundi other than A/c Payee cheque

↓  
deemed to be income of person borrowing or repaying

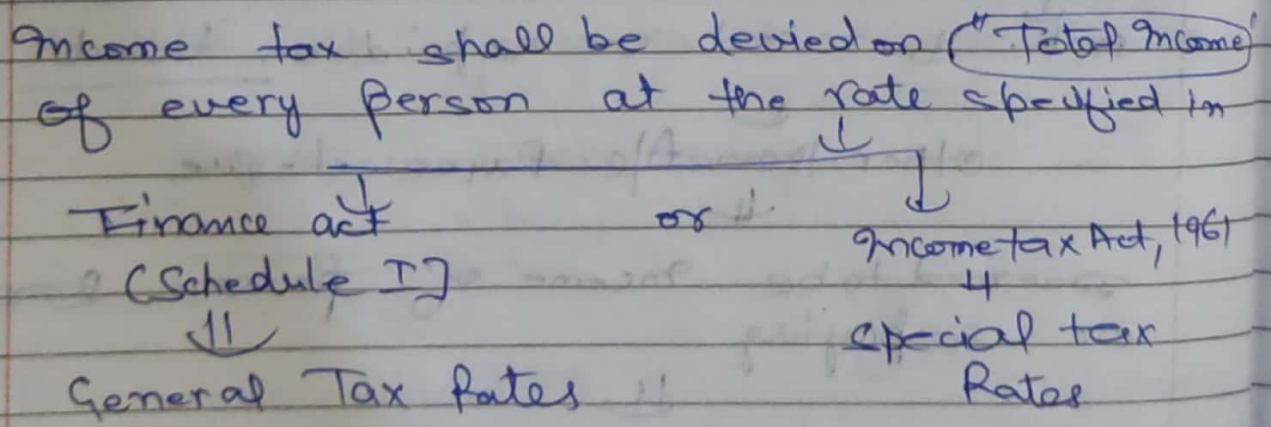
↓  
However if borrowed and deemed to be income earlier

↓  
Same cannot be treated as income at the time of Repayment.

## Other Points →

- Income U/s 68, 69, 69A, 69B, 69C, 69D is taxable at Special Rate i.e. 78% [60% tax, 25% Surcharge, 4% cess] U/s 115B AE
- No ded. of any expenditure (Taxable on gross basis)
- No Setoff of any loss
- No Basic Exemption Limit

## Sec. 4 charging Section :-



Steps for calculation of Total Income :-

- o Determine Residential Status
- o Determine Income under each Heads

Income from Salary	XXX
— — H/P	XXX
— — B/P	XXX
— — Capital Gains	XXX
— — Other sources	XXX

clubbing of income	XXX
setoff & carry forward of losses GTI	XXX
	XXX
- Ded. under chapter VI-A	(XXX)
Total income / Taxable income	XXX

⇓

→ General Rate Income * General Rate tax	XXX
→ Special Rate income * special tax rates	XXX
	XXX
(Sc) - total tax	XXX
+ Surcharge (if any)	XXX
(if total income exceed limit)	XXX
	XXX
+ cess compulsory (4% of tax & SC)	XXX
Total tax payable	XXX
- TDS/TCS / Advance tax	(XXX)
Net tax payable (refund)	XX

## General Tax Rates :->

o Individual | HUF | AOP | BOI | AJP



### Slab Rate

of Total Income	Tax Rate
upto ₹ 250000	Nil
Above ₹ 250000 but upto ₹ 500000	5%
Above ₹ 500000 but upto ₹ 1000000	20%
Above ₹ 1000000	30%

→ Basic Exemption limit

⇒ Resident Individual + Age of 60 years or more but less than 80 years in FY or ~~last~~ 1st date of AY



### Resident Senior Citizen

of total income	Tax Rate
upto ₹ 300000	Nil
₹ 300000 - ₹ 500000	5%
₹ 500001 - ₹ 1000000	20%
Above ₹ 1000000	30%



⇒ Resident individual + 80 year or above

⇓  
Resident super senior citizen

IF Total Income	Tax Rate
upto ₹ 500000	Nil
₹ 500000 - ₹ 1000000	20%
Above ₹ 1000000	30%

Note 8 ⇒ Sec. 87A ⇒ Rebate to Resident individual

if total income does not exceed ₹ 500000

⇓  
 Rebate ⇒ ₹ 12500 or Tax Payable } whichever is less

⇒ Above Rebate is not Available From CGUIS  
112A

o Firm / Local Authority

⇓  
 Rate Rate = 30%



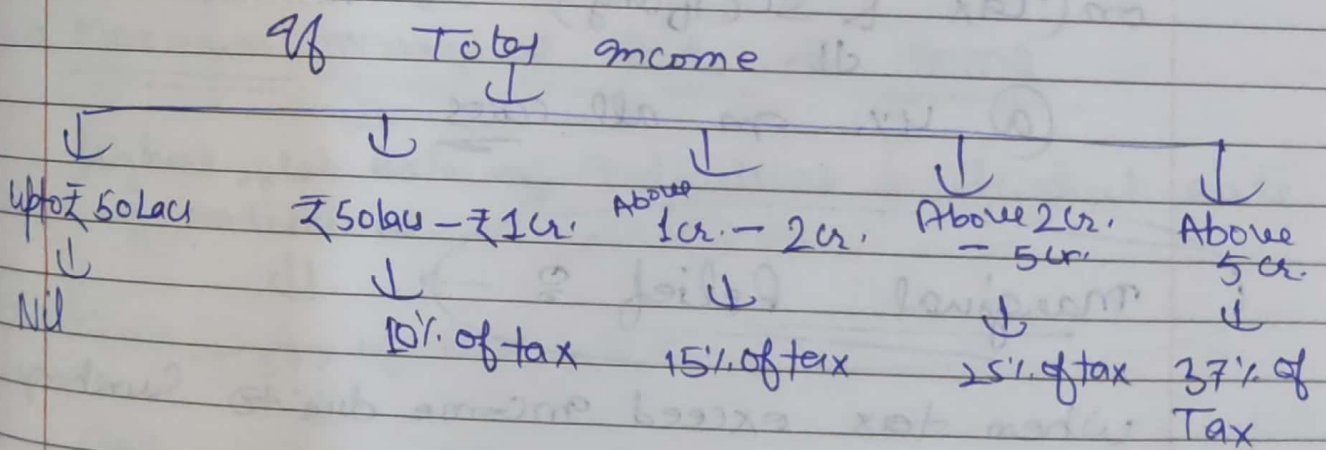
o Co-operative Society :-

Slab Rate

% of Total Income	Tax Rate
upto Rs. 10000	10%
₹ 10000 - 20000	20%
Above ₹ 20000	30%

o Surcharge :- Tax on Tax

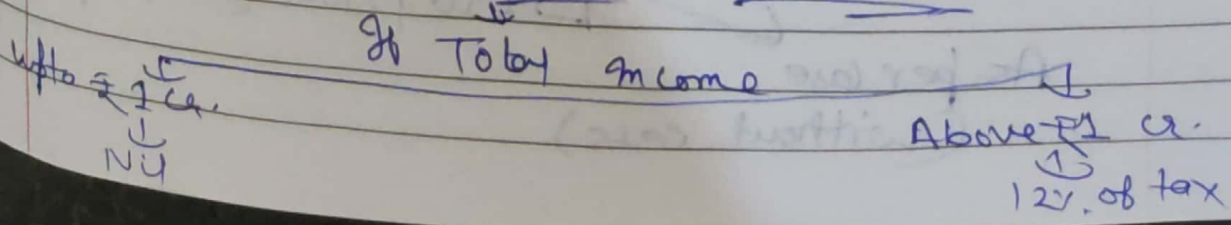
o Individual | HUF | AOP | BoI | ASP



Note :- Surcharge Rate of 25% & 37% is not applicable on

- o STCG U/s 111A
- o LTCG U/s 112A

o Firm | Local Authority | Co-operative Society



o Company →  
↓

Domestic Company

Foreign Company

% of total income	SC Rate	% of total income	SC Rate
upto ₹ 1cr.	Nil	upto ₹ 1cr.	Nil
1cr. - ₹ 10cr.	7% of tax	₹ 1cr. - ₹ 10cr.	2% of tax
Above ₹ 10cr.	12% of tax	₹ 10cr. Above	5% of tax

Health & Education Cess

on (tax & SC (if any)) → in End

(a) 4% in all cases

Marginal Relief

When tax exceed income due to surcharge

Steps for calculation

① → Calculate tax on original Total income (without cess)

② → Calculate tax on

- ₹ 50000 | 1cr. | 2cr. | 5cr. (individual)
- ₹ 1cr. (Firm etc.)
- ₹ 1cr. | ₹ 10cr. (Company)

As per case (without cess)

③ → Tax to be paid = step 2 + Extra income

④ Marginal Relief =  $\frac{\text{step 1} - \text{step 3}}{\text{original Tax} - \text{Tax to be paid}}$

① Avg. Rate of Tax →

$$\frac{\text{Total Tax (including scd cess)}}{\text{Total Income}} \times 100$$

② Maximum Marginal Rate ⇒ MMR

highest slab rate of individual + highest rate of individual + cess @ 4%

$$30\% + 37\% \text{ of tax} + 4\%$$

$$30\% + 11.1\% + 1.644\%$$

$$\boxed{42.744\%} \Rightarrow \text{MMR}$$

Special Tax rates →

Compulsory

o Sec. 111A  
↓  
STCG → 15%

o Sec. 112A  
↓  
LTCG → ₹ 1 lac Exempt  
above ₹ 1 lac @ 10%

o Sec. 112  
↓  
Other LTCG → 20%

o Sec. 115BB  
↓  
Lottery  
winnings etc → 30%

o Sec. 115BBE  
↓  
Indian Black → 78%  
Money

Optional

Sec. 115BAA → Income of Domestic Company

Sec. 115BAB → Income of New Infra Domestic Company

Sec. 115BAC → Income of Individuals HUF

Sec. 115BAD → Income of Resident co-operative Society

Society

==

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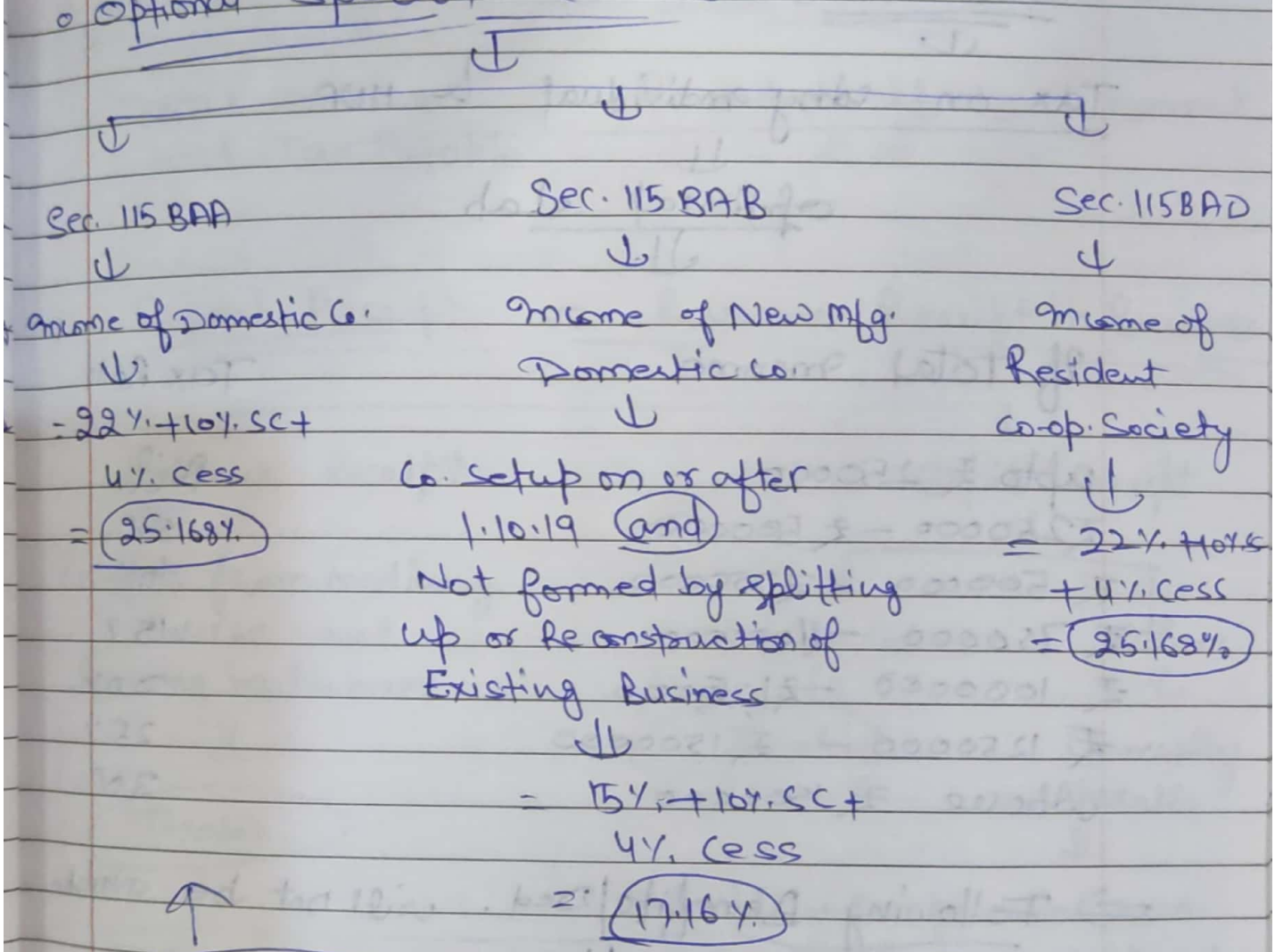
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Optional special later →

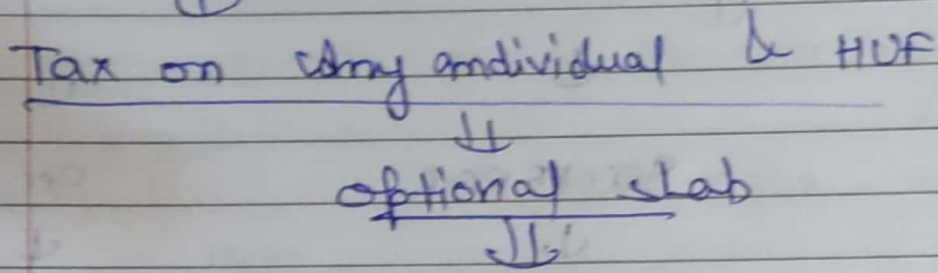


Following Benefits / Ded. will not be available

- Sec. 10AA → SEZ
- Add. Depreciation
- Sec. 33AB & Sec. 33ABA
- Sec. 35 → Scientific Research
- Sec. 35AD → Specified Business
- Sec. 35CCC → Agricultural Project
- Sec. 35CCD → Skill Development Project
- Chapter VI-A [Heading c] ded. [Except 8A/JAA]

⇒ Option once exercised cannot be withdrawn

o Sec 115 BAC :-



Sl. Total Income	Tax Rate
upto ₹ 250000	Nil
₹ 250000 - ₹ 500000	5%
₹ 500000 - ₹ 750000	10%
₹ 750000 - ₹ 1000000	15%
₹ 1000000 - ₹ 1250000	20%
₹ 1250000 - ₹ 1500000	25%
Above ₹ 1500000	30%

⇒ Following Benefits/Ded. will not be available

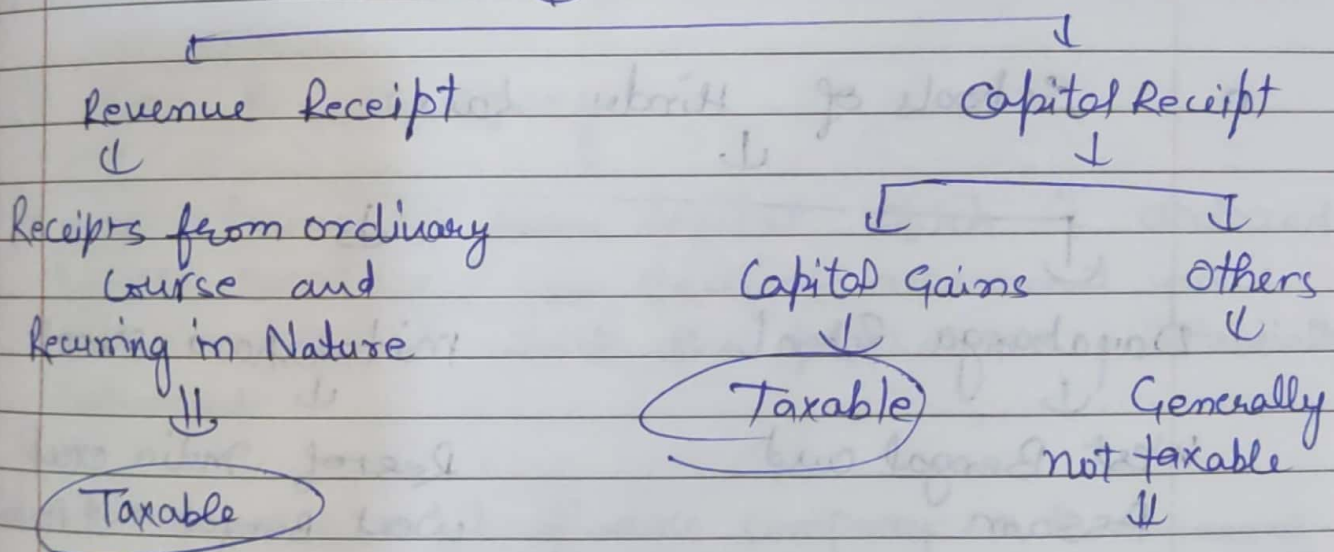
- o Sec. 10AA ⇒ SEZ
- o Salary Allowance Exemption
- o salary Ded. U/S 16 ⇒ std. ded.
  - ↳ Professional Tax
  - ↳ Entertainment Allowance
- o mlt. Ded. on Self occupied H/P
- o Add. Dep.
- o Sec. 33AB & 33ABA.
- o Sec. 35 - Scientific Research
- o Sec. 35 AB - Specified Business
- o Sec. 35 cec - Ag. Project
- o Ded. Under Chapter VI-A (Exempt 80 cec)



o Rounding off → Sec. 288A & 288B

Total Income and Tax Payable → Rounded off to Nearest ₹ 10

o Capital Receipt vs. Revenue Receipt in Business



Example:- Compensation recd. from Supplier for failure to supply machine within stipulated time

⇒ Application of income vs. diversion of income:-

o Application of income:-

Income transferred by Assessee on own will without any obligation

Taxable in hands of Assessee →

o diversion of income 3 —

Income transferred by Assessee under obligation  
created by deed or law



Not included in income of Assessee

o Schools of Hindu Law



Dayabanga School



West Bengal and  
Assam



No right until head is  
living in property



Mitakshara school



Rest of India except  
West Bengal and Assam



Right by birth  
in property

o parceners → who acquire an interest in  
joint family property by Birth

## Substantial Interest → > 20%

o Company in which public are substantially interested :-

(a) Company owned by govt. or RBI or in which not less than 40% of the shares are held by Govt. or RBI or corporation owned by that Bank.

(b) Sec. 8 Company.

(c) a co. having no share capital which is declared by the Board for the specified assessment years to be a co. in which the public are substantially interested.

(d) Mutual Benefit finance company → Business of accepting deposits from its members and which is declared by CI-Nidhi or a Mutual Benefit society.

(e) A co. whose equity shares (not being shares entitled to a Fixed Rate of Dividend) carrying at least 50% of voting power has been allotted unconditionally or acquired by and were beneficially held throughout the relevant PY by one or more co-operative Societies.

(f) A co. not a private co. and following condition any one fulfill :-

- shares listed on a stock exchange
- recognised
- (a) above

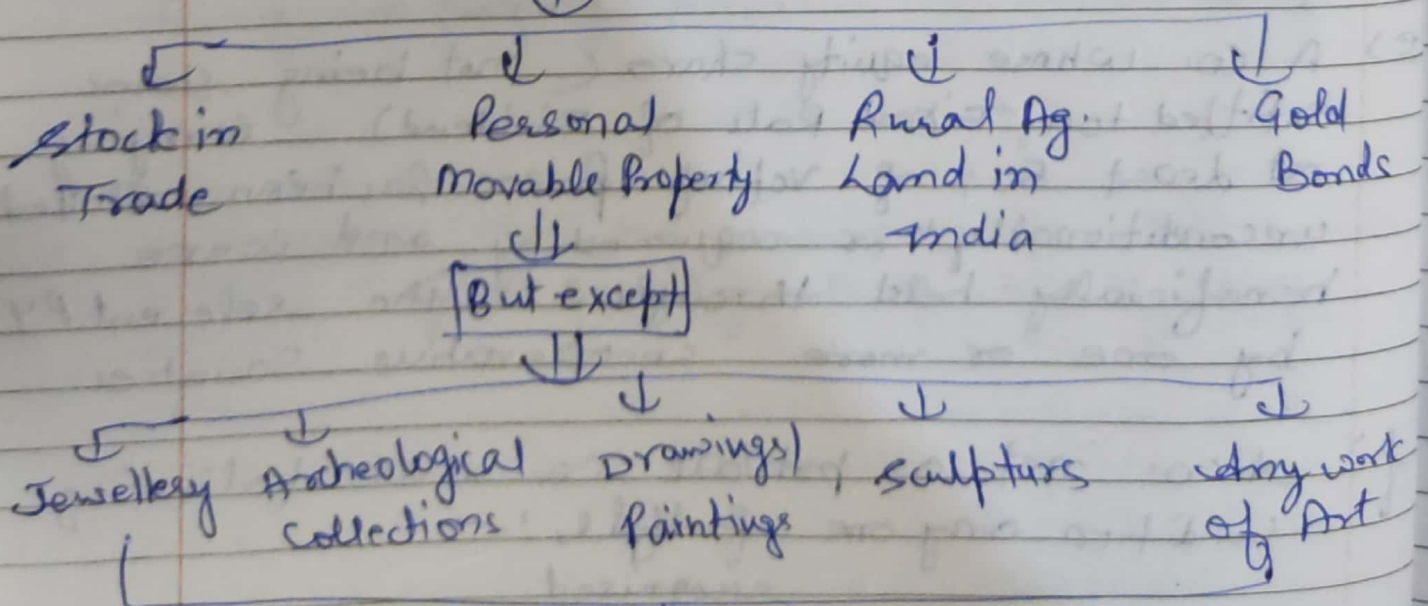
## ② Capital Gains

- Section 45 - charging section  
if there is a Capital Asset and  
Transfer of such Capital Asset during PY  
Then, Any gain arising from such  
transfer is taxable under head 'Capital Gain'

- Capital Asset :-  
movable / Immovable / Tangible / Intangible

Property of any kind held by assessee  
whether  
Business or Profession Property  
Personal Property

But excludes



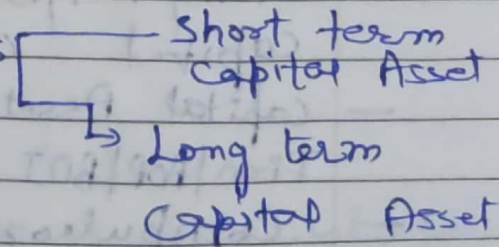
These are Capital Assets

Note: - Any securities held by Foreign institutional investor (FII) is always a Capital Asset.

Rural Ag. Land in India :-

- Ag. Land situated in Area having population of less than 10,000
- Ag. Land situated more than 2km outside from area having population above 10,000 but upto 1,00,000
- Ag. Land situated more than 6km outside from area having population above 1,00,000 but upto 1,000,000
- Ag. Land situated more than 8km outside from area having population above 1,000,000

Types of Capital Assets



Capital Asset

Short term  
(Period of holding)

If held for upto 1 year

Long term  
(Period of holding)

If held for more than 1 year

- o Listed shares & Sec.
- o Zero Coupon Bond
- o Unit of Equity oriented Fund

## Capital Asset

o Unlisted shares o Land & Building	if held for upto 2 years	if held for more than 2 years
--	-----------------------------	-------------------------------------

o Other capital Assets	if held for upto 3 years	if held for more than 3 years
---------------------------	-----------------------------	-------------------------------------

### o Transfer —

- Sale/ Exchange of Capital Asset
- Possession of immovable property in part performance of contract
- Capital Asset destroyed and Amount/ other Asset received from Insurance Co.
- Capital Asset converted into Stock in Trade
- Capital Asset introduced / Transfer to Firm/ AOP/ BOI by Partner/ member as Capital contribution
- Capital Asset Distributed on Dissolution of Firm/ AOP/ BOI to Partner/ Member
- Compulsory Acquisition of Capital Asset
- Distribution on liquidation of Company
- Buy Back of Shares & Securities
- Slump Sale

o Sec. 47 → Transaction not regarded as Transfer

- Transfer under Gift/will [Except ESOP]
- Distribution on total / partial partition of HUF
- Transfer under Amalgamation / Demerger of Co.'s :-

o Transfer of Capital Asset by Amalgamating Co. to Amalgamated Indian Co.

o Transfer of Capital Asset by Demerged Co. to Resulting Indian Co.

o Issue of shares by Resulting Co. to Shareholders of Demerged Co.

o Issue of shares of Amalgamated Co. to Shareholders of Amalgamating Co.

- Transfer of Capital Asset between wholly owned subsidiary co. & Holding co.

↓

Conditions :-

o Transferee Co. must be Indian

o Holding Co. must hold 100% share capital for at least 8 years from date of transfer

- Conversion of Bonds/Deb. into Shares

- Conversion of Pref. shares into Equity shares

- Transfer of Capital Asset under Reverse Mortgage

## ← Transfer of Capital Asset on Succession of Sole Proprietorship Firm by a Co.

### ↓ Conditions :-

- All assets/ liabilities of Proprietorship Firm becomes Asset/ Liab. of Co.
- Prop. / Partner hold not less than 50% voting power in the Co. for at least 5 years
- Prop. / Partners does not receive any ~~comp~~ consideration except allotment of shares in the company.

## ← Transfer of Capital Asset on Conversion of Pvt. Co. or Unlisted Public Co. into LLP

### ↓ Conditions :-

- All Assets/ Liab. of Co. becomes Asset/ Liab. of LLP
- Shareholders of Co. shall become Partners in LLP in same proportion of their shareholding
- Shareholder of Co. shall receive at least 50% profit of LLP for 5 years



- o No amount is paid to any partner from accumulated profits of the co. for 3 years
- o Total turnover/Gross Receipts of co. does not exceed Rs. 60 Lacs in 3 preceding PY.
- o Total Book value of Assets of the co. does not exceed Rs. 5 crores in 3 preceding PY

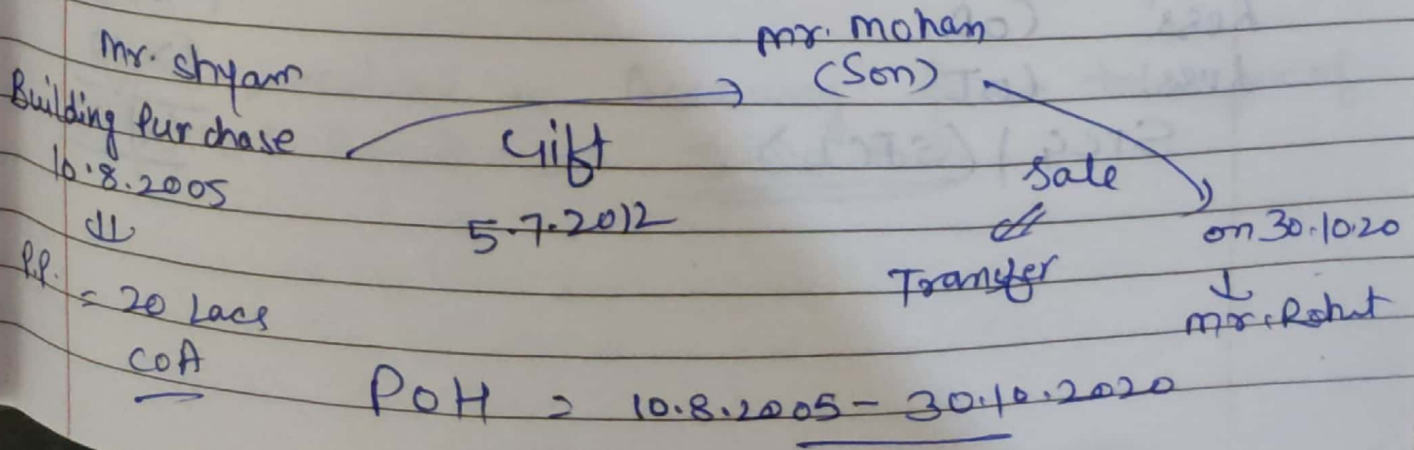
Period of Holding (POH)

o Normal case :- Date of purchase to Date of Sale/Transfer

o Special case :-

① When Capital Asset becomes property by way of transactions not regarded as transfer  
 include period of previous owner/previous Asset

Example



- ② Asset Destroyed Case  
↓  
upto date of destruction
- ③ Conversion of Capital Asset into Stock in Trade  
↓  
upto date of conversion
- ④ Compulsory Acquisition of Capital Asset  
↓  
upto date of compulsory Acquired
- ⑤ Shares in a Co. in liquidation  
↓  
upto date of liquidation

\* Calculation of Capital Gains % →

① Short term capital gain  
↓

Full value of consideration	XX
sale consideration	
- Transfer Exps.	(XX)
Net sale consideration	<u>XX</u>
Less: COA	(XX)
Less: COI	(XX)
STCG / (STCL)	<u>XX / (XX)</u>

② Long term Capital Gain :-

Full value of Consideration /

Sale consideration XX  
 - Transfer Exps, (XX)  
 Net Sale consideration XX

Less: Indexed COA (XX)

Less: Indexed COI (XX)

LTCG / (LTC L) XX (XX)

Note :-

Indexation Benefit is not available in following cases :-

- Bonds or Deb. [ Except Capital Index Bonds & Sovereign Bonds ]
- Stamp sales
- Depreciable Asset [ Always short term ]

○ Full value of Consideration / Sale Consideration :-

(11)

Amt. received or Accruing from transfer of Capital Asset  $\Rightarrow$  Sale Price

o Full value of Consideration of Land & Building  $\rightarrow$  Sec. 50C Sale consideration  
↓  
Stamp duty value  
or  
Sale price  $\rightarrow$  Higher

Note :-

If Stamp duty value is upto 110% of Sale price, then Sale consideration = Sale price

If date of Agreement & date of registration is not same  
↓

↓ If part/whole Amt. of consideration is received by A/c Payee cheque, DD, ECS & any other electronic mode on or before Date of Agreement ↓ Take Stamp Duty value on date of Agreement	Other Case ↓ Take Stamp duty value on date of registration
---	--

Reference to valuation officer

If Assessee not agree with Stamp duty value (SDV) and not disputed that SDV in court

↓  
Assessee can Request AO to refer case to departmental valuation officer

↓  
AO may refer that case to valuation officer

↓  
If valuation Amt. > SDV → SDV

If valuation Amt. < SDV → Valuation Amt. or Sale price  
Whichever is higher

• Sale consideration of Unlisted shares (Sec. 50CA)

↓  
FMV or Sale Price } Higher

• Sale consideration when sale price is not ascertainable or cannot be determined [Sec. 50D]

↓  
FMV on date of transfer

Transfer Exps. :-

↓  
Exps. incurred by assessee at the time of transfer of Capital Asset

Note :- No deduction of STT

o Cost of Acquisition (COA) : →  
↓

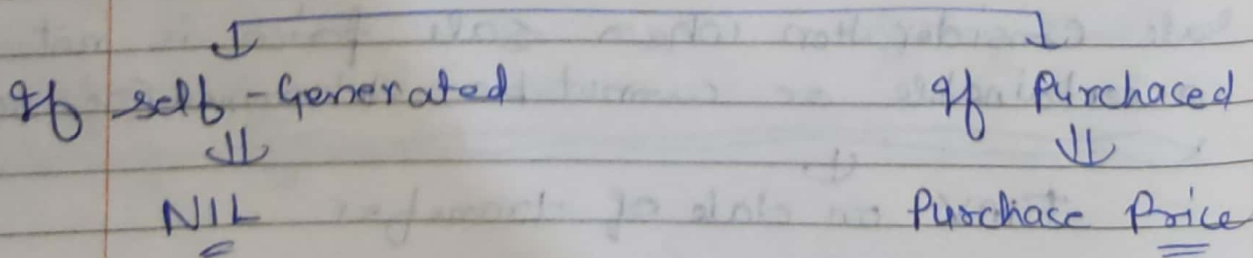
- Normal Case ⇒ Purchase Price (including all exps. related to purchase except STT)

Note :- Amt. paid for obtaining clear title on property shall be included in Cost of Acquisition

- Special Case :-

① when Asset becomes property of Assessee by way of Transactions not regarded as Transfer  
↓  
Purchase Price of Previous owner / Previous Asset

② Goodwill, Brand Name, Trademark, Right to manufacture any article or thing, stage permit, doom House  
↓



Note :- No capital gain on Self-generated Goodwill of Profession



⑧ Shares issued by Resulting Company to shareholders of Demerged Co. in Demerger

$$\text{COA of shares held in Demerged Co.} \times \frac{\text{Net BV of Asset transferred to Resulting Co.}}{\text{Net Worth of Demerged Co.}}$$

○ Indexed Cost of Acquisition

$$\frac{\text{COA}}{\text{Index for year in which Asset is first held by Assessee}} \times \frac{\text{Index for Asset transfer year}}$$

Note :- As per Bombay High Court Judgement in case of 'Manjula J. Shah'

We can take index for year in which Asset purchased by previous owner

○ Cost Inflation Index

PY 2001-02 = 100

PY 2020-21 = 301

If Asset purchased before 1.4.2001

Index for purchase year / first held year is of 2001-

100



Cost of Improvement :-

All expenditure of Capital Nature incurred on improvement of Capital Asset by Assessee / Previous Owner

↓ on or after 1.4.2001

[If incurred before 1.4.2001 - Ignore]

In case of goodwill / Right to mfg any articles or thing

↓  
 Cost of Improvement → NIL

Index COI

↓

$$\frac{\text{COI}}{\text{Index for Improvement year}} \times \text{Index for Transfer Year}$$

Capital Gains in Special Cases :-

① Capital Asset destroyed and amt. / other asset received from insurance Co.

↓

- Sale consideration → Amt. recd. / FMV of Asset recd.
- Capital gain taxable in year in which claim is received
- Index for Transfer year → year of destruction
- If no claim is recd. → No. capital gain and loss is dead loss

② Capital asset converted into Stock in Trade  
↓

→ Sale consideration → FMV of Capital Asset on date of conversion

→ Capital gain taxable in the year in which converted stock is sold

→ Index for transfer year → year of conversion

→ Business Income → Sale Amt. of Stock - FMV of Asset on date of conversion

→ If proportionate stock is sold, - then proportionate Capital gain is taxable

③ Capital Asset Introduced to Firm/AOP/BOI by Partner/Member as capital contribution  
↓

→ Taxable in the hands of Partner/Member

→ Sale consideration → Amount credited in Partner/Member Capital A/c

④ Capital Asset distributed on dissolution of Firm/AOP/BOI  
↓

(includes distribution on Retirement)

→ Taxable in the hands of Firm/AOP/BOI

→ Sale consideration → FMV of Capital Asset on date of transfer.

### ⑤ Compulsory Acquisition of Capital Asset

#### Normal Compensation :-

- Sale consideration → Compensation Amt.
- Taxable in year in which compensation is received ↓

Full compensation is taxable even if Part Amt. is received

→ Index for transfer year → year in which Asset is Compulsory Acquired.

#### Enhanced Compensation :-

- Sale consideration = Enhanced Compensation Amt.
- CoA → NIL
- Taxable in year in which it is received

amt. on compensation / Enhanced Compensation  
↓  
Taxable under other source

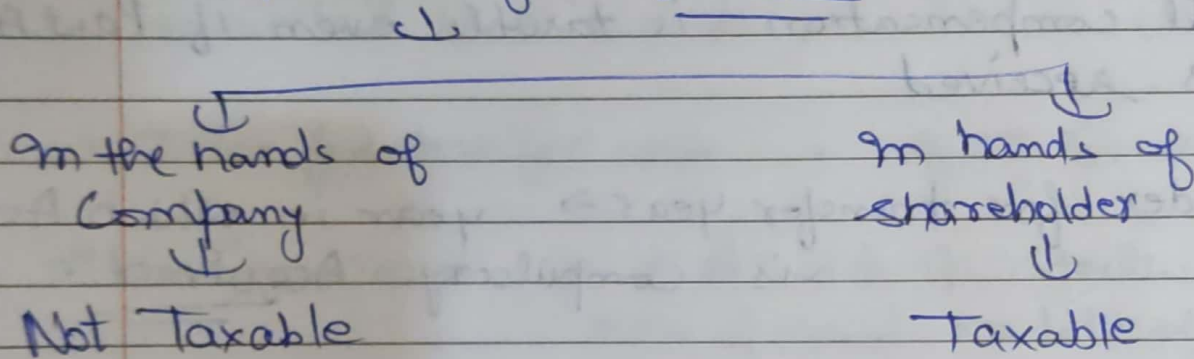
#### ◦ Exemption on Compulsory Acquisition of Urban Ag. Land [Sec 10(37)] :-

To individual / HUF  
↓

Eg Capital Gain on compulsory Acquisition of Urban Ag. Land = Fully Exempt  
↓

If such Land is used for Agricultural purposes preceding 2 years from transfer by individual or his parents | HUF

⑥ Capital ~~gain~~ Asset distributed on liquidation of Company [Sec. 46]

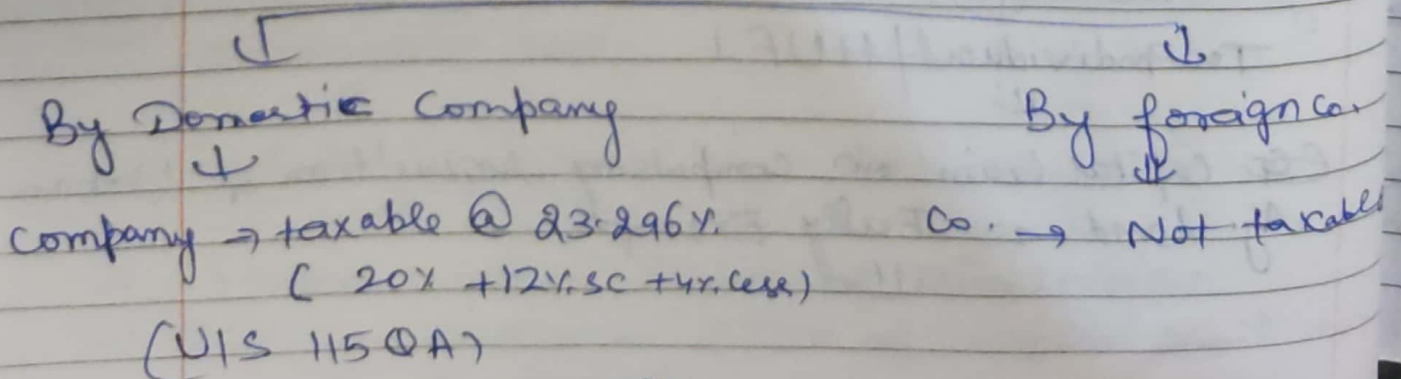


Sale consideration

FMV of Asset recd. + Amt. Recd.	XX
- Shareholder interest in Accumulated Profits of Company	(XX)
<u>Sale consideration</u>	<u>XX</u>

Cost of Acquisition = Purchase price of Shares

⑦ Buyback of Shares (Sec. 46A)





o Value of total Asset of the Unit :-

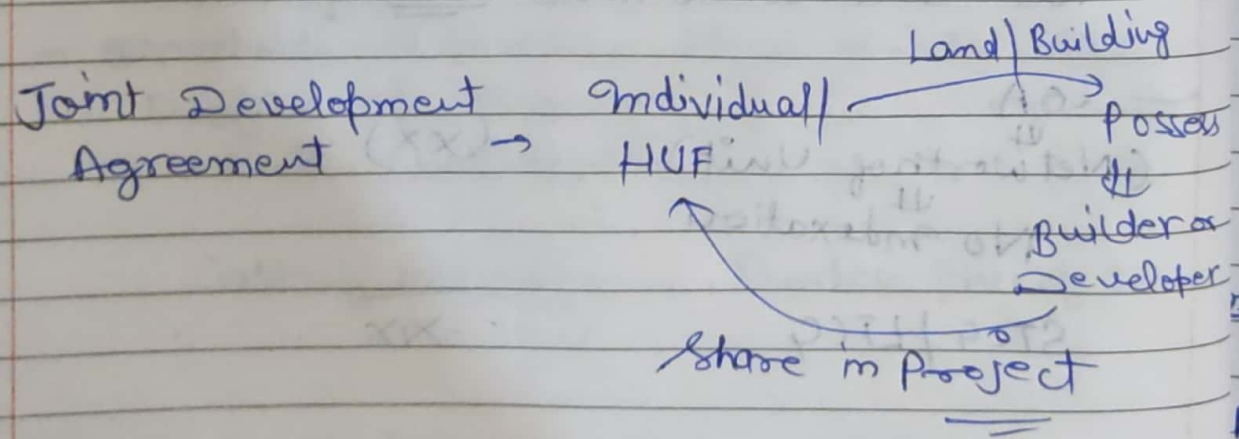
Depreciable Asset  $\rightarrow$  <sup>Sec.</sup> WDV as per 436 of I Tax Act

Sec. 35 AD Assets = Nil  
Other Assets  $\rightarrow$  Book Value

Note :-

- o Ignore/Remove Revaluation of Fixed Asset
- o Remove Overvaluation/Undervaluation of Current Asset

⑨ Capital Gains in case of Joint Development Agreement :-



$\rightarrow$  Sale Consideration  $\rightarrow$  Stamp duty value of Share in Project on date of Issue of Completion Certificate + Amt received

Capital gain taxable in the year in which completion Certificate is Issued

→ Index for transfer year → years in which possession is transferred

○ Advance Money Forfeited Sec 51

↓  
 If forfeited before 1.4.14  
 ↓

Deduct from cost of Acquisition  
 (when such asset is sold)

↓  
 If forfeited on or after 1.4.2014  
 ↓

Taxable under other source

Note :- If forfeited by previous owner ⇒ Ignore

○ Exemption From Capital Gain :-

Particulars	Sec. 54	Sec. 54B	Sec. 54D
Eligible assessee	Individual / HUF	Individual / HUF	Any person
Asset transferred	Residential H/P (LTCA)	Urban Ag. Land (STCA/LTCA)	Compulsory Acq. of 1/8 of Industrial Unit [STCA/LTCA]
Asset in which Capital gain is arising	one residential House in India [If capital gain is upto 2 cr. then 2 Houses allowed]	Ag. Land	1/8 for Industrial Unit -

<p>Time limit of investment</p>	<p>Purchase within 1 year before or 2 year after date of transfer  <u>or</u>          Construct within 3 years from date of Transfer</p>	<p>within 2 years from date of transfer</p>	<p>within 3 years from date of transfer</p>
<p>Exemption limit</p>	<p>Capital gain or amount invested which is lower</p>	<p>← Same</p>	<p>← Same</p>
<p>Withdrawal of Exemption</p>	<p>If new asset transfer within 3 years ↓          Amt. exempt earlier will be deducted from COA of New asset</p>	<p>← Same</p>	<p>← Same</p>
<p>Other points</p>	<ul style="list-style-type: none"> <li>Payment for investment is sufficient for Exemption</li> <li>Residential House              self occupied      let out</li> </ul>	<ul style="list-style-type: none"> <li>Asset transferred be used for Ag. for 2 years</li> <li>Payment for investment is sufficient for exemption</li> </ul>	<ul style="list-style-type: none"> <li>Asset transferred shall be used for industrial unit for 2 years</li> <li>Payment for investment is sufficient for exemption</li> </ul>



# L/B → Land or Building

<ul style="list-style-type: none"> <li>○ Investment in two adjacent Assets are treated as 1 Residential House</li> <li>○ Construction includes Both L/B</li> <li>○ Investment in name of any other person also eligible for exemption</li> </ul>	<ul style="list-style-type: none"> <li>○ Investment in name of any other person also eligible for exemption</li> </ul>
--	--

Particulars	Sec. 54EC	Sec. 54EE	Sec. 54F
Eligible assessee	Any person	Any person	HUF / individual
Asset transferred	Land or Building (LTCC)	Any capital Asset (LTCC)	Any capital Asset other than Residential House (LTCC)
Asset in which capital gain is invested	Bonds of NHAI / RECI redeemable after 5 years	Units of Specified Funds of CG	1 Residential H/P in India
Time limit of investment	Within 6 months from date of transfer	Within 6 months from date of transfer	Purchase within 1 year before or after 2 year date of transfer or Construct within 3 years from date of transfer

Exemption  
Limit

Capital gain (CG)  
Amt. invested (AI)  
₹ 50 lacs  
which is lower

Capital gain (CG)  
Amt. invested (AI)  
₹ 50 lacs  
which is lower

Amt. invested + LTCG  
Net sale  
consideration

Withdrawal of  
Exemption

If new Asset transfer  
within 5 years  
↓  
Amt. Exempt earlier  
will be taxable as  
LTCG

If new Asset  
transfer within  
3 years →  
Amt. exempt earlier  
will be taxable  
as LTCG

Same

Other points

Payment for  
investment is  
sufficient for  
Exemption

Payment for  
investment is  
sufficient for  
Exemption

Payment for  
investment is  
sufficient for  
exemption

◦ In case of  
conversion of  
H&B into stock-  
in-trade,  
investment time  
limit of 6 months  
will be considered  
from sale of  
stock-in-trade

◦ investment in  
name of any other  
person also  
eligible for  
exemption

◦ Assessee does not  
own more than  
1 Residential  
H/P at the  
time of transfer

Particulars	Sec. 54G	Sec. 54GA	Sec. 54GB
Eligible assessee	Any person	Any person	Individual/HUF
Asset transferred	L&B, P&M of Industrial Unit of Urban Area [STCG/LTCG]	L&B, P&M of Industrial Unit of Urban Area (STCG/LTCG)	Residential Property House or land (LTCG)
Asset in which capital gain is invested	L&B, P&M of rural Area (Shifting from Urban to Rural Area)	L&B, P&M of SEZ (Shifting from Urban Area to SEZ)	Subscription in at least 25% equity share of eligible startup vis SOIAC before due date of ROI then <u>purchase of New P&amp;M by startup</u>
Time limit of investment	Within 1 year before or 3 years after from date of transfer	within 1 year before or 3 years after from date of transfer	Purchase within 1 year from subscription in eq. shares
Exemption limit	Capital gain or Amt. invested $\rightarrow$ lower	same	$\frac{\text{Amt. invested in New P&M}}{\text{Net sale consideration}} \times \text{LTCG}$
Withdrawal of Exemption	If new Asset H&B within 3 years, Amt Exempt earlier will be deducted from COA of New Asset	same	If new P&M or eq. shares transfer within 5 years & Amt. Exempt earlier will be taxable as LTCG

Other Points	Payment for investment is sufficient for Exemption	Payment for investment is sufficient for Exemption	New P/M does not include
			<ul style="list-style-type: none"> <li>- Second hand P/M</li> <li>- P/M installed in office or residence</li> <li>- Computer &amp; Computer software</li> <li>- Any vehicle</li> <li>- Any P/M whose 100% deduction is allowed under PGBP</li> <li>- Amt. deposited in specified Bank before due date of ROI also <u>eligible</u></li> </ul>

### Capital gain Account scheme (CGAS)

U/s 54, 54B, 54D, 54F, 54G, 54GA

↓

If investment not made before due date of ROI

↓

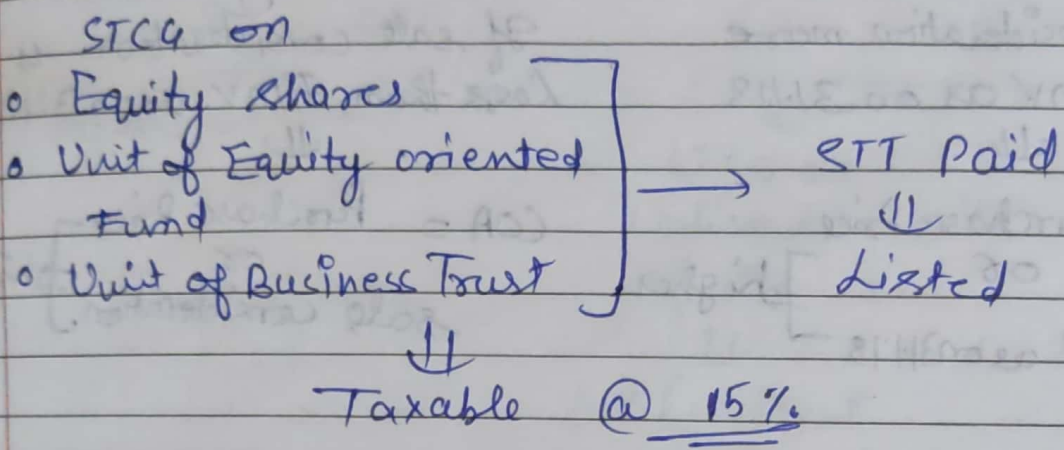
Then Amt. to be deposited under CGAS on or before Filing of ROI

↓

For claiming Exemption

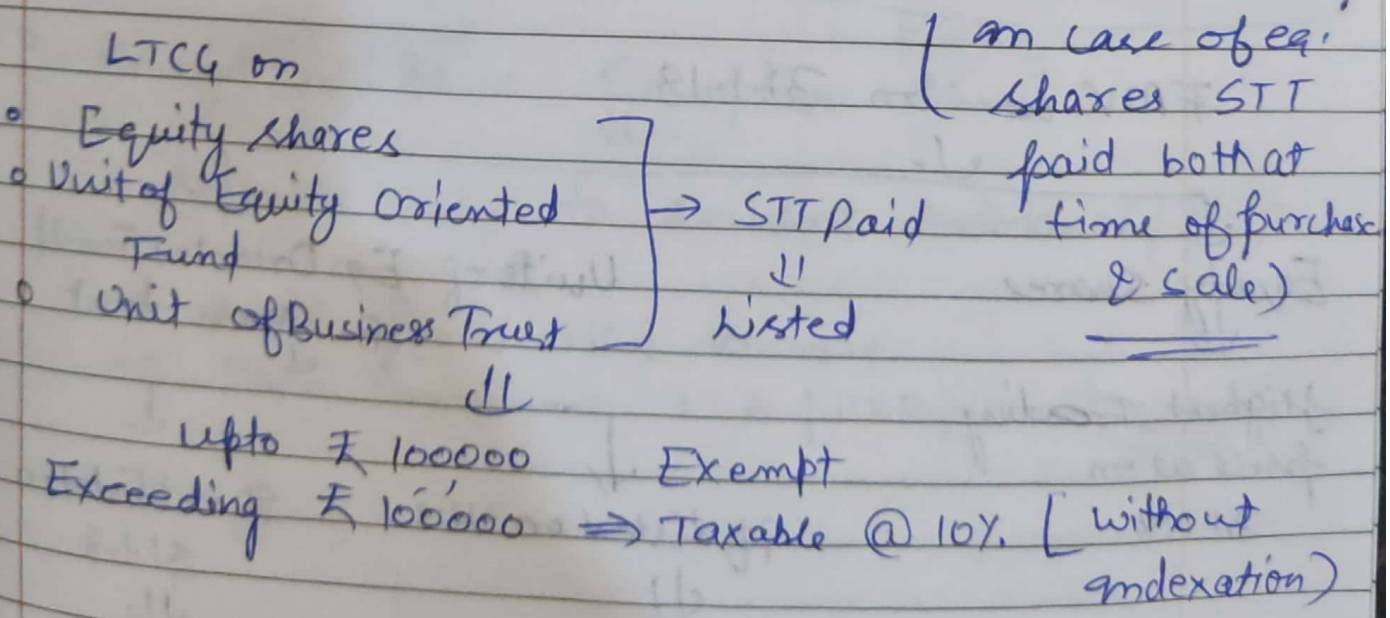
Tax rates on Capital Gain :-

STCG Rate on Certain Assets (Sec. 111A)

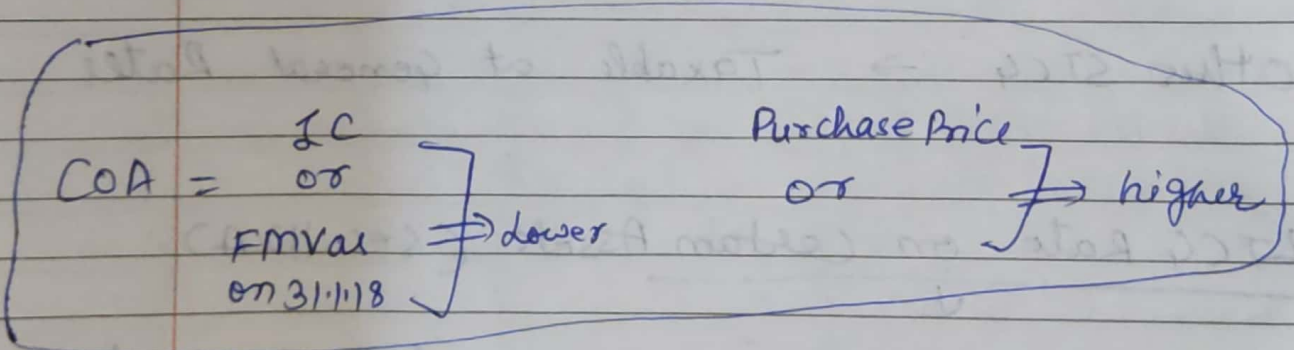
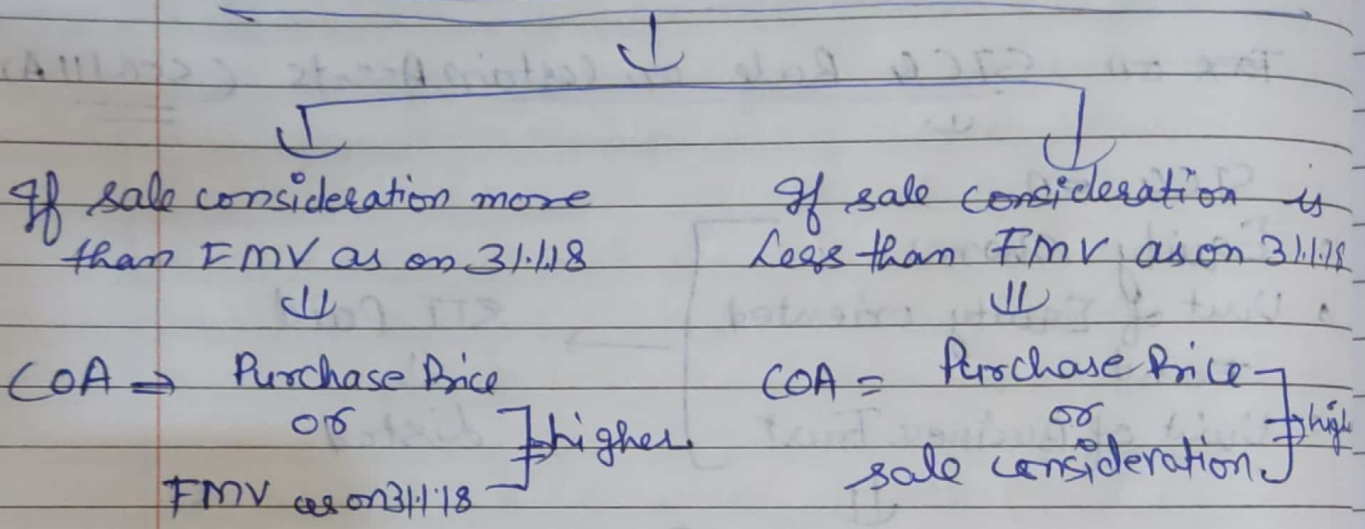


Other STCG → Taxable at General Rates

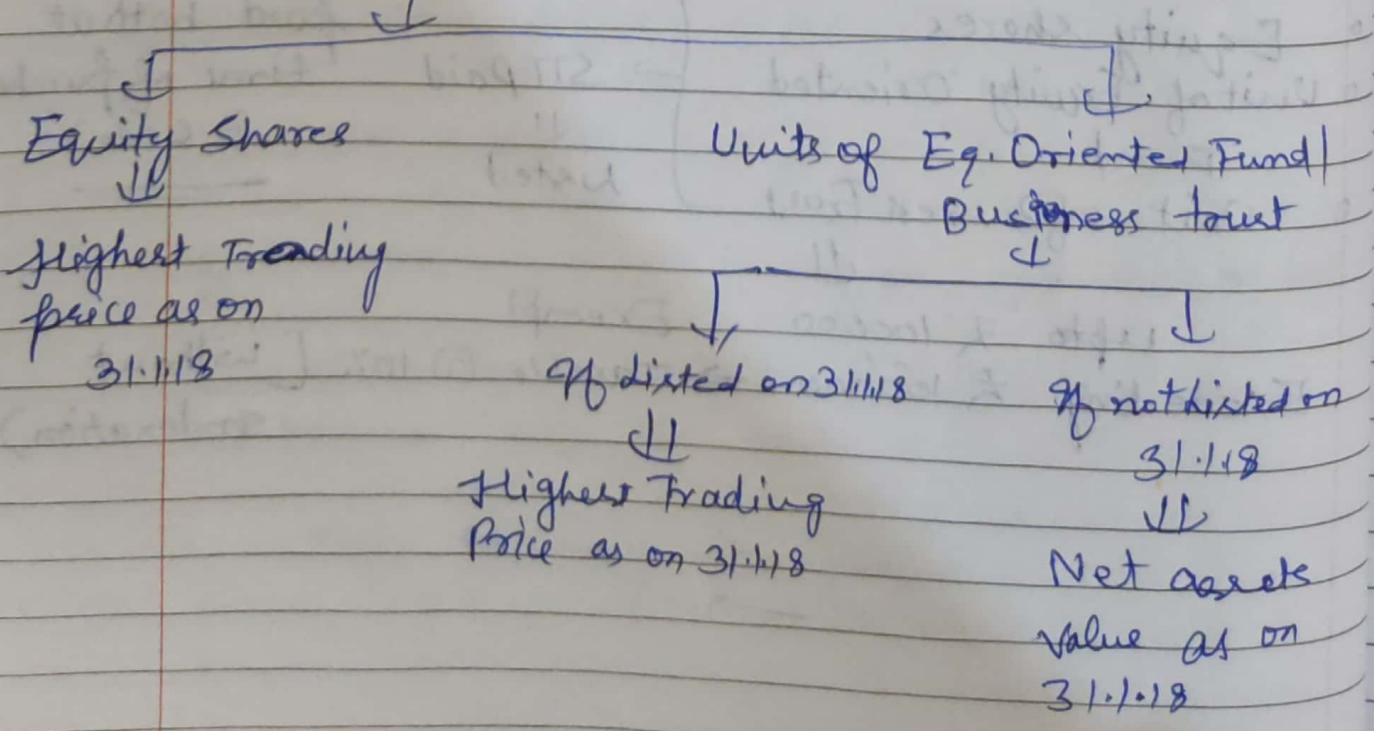
LTCG Rate on Certain Assets (Sec. 112A)



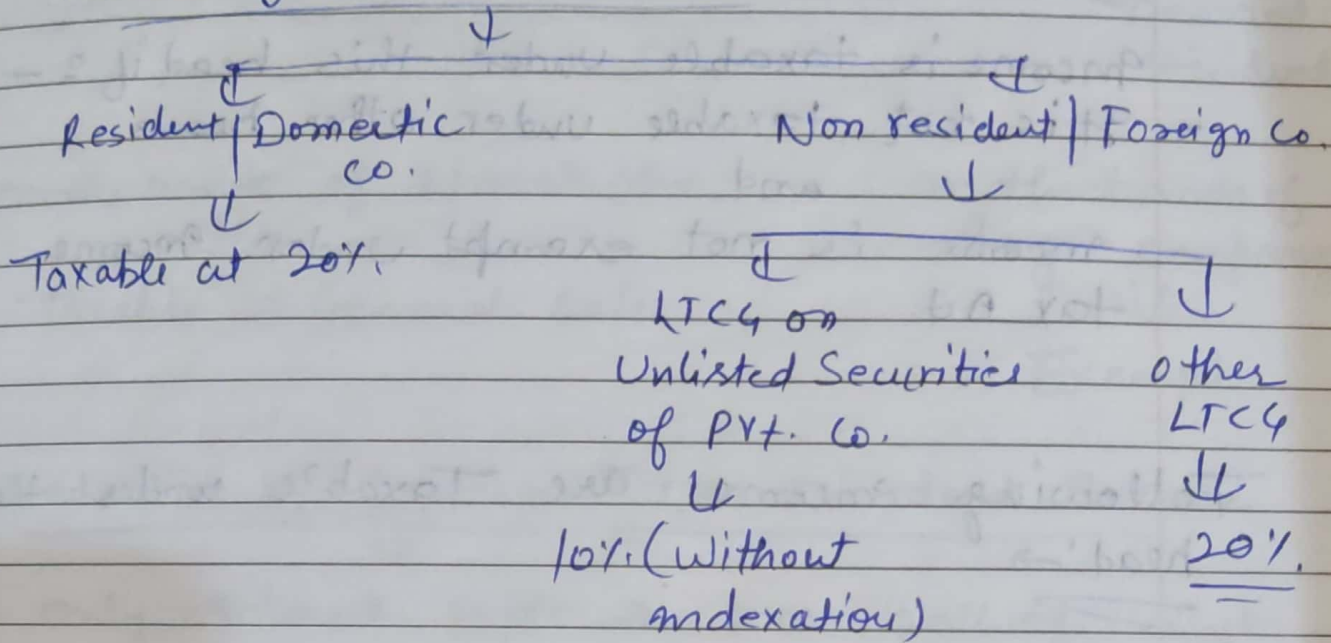
Cost of Acquisition [of purchase on or ~~after~~ <sup>before</sup> 31.1.18]



FMV as on 31.1.18



Other Long term Capital gain (sec. 112)



Other point relating to sec. 111A / 112A / 112

- No ded. Under chapter VI - A from above Section Income
- Benefit of Basic Exemption Limit
  - ↓
  - Available only to Resident Individual / HUF
  - ↓
  - First from other Income
  - Then From Sec. 111A / 112A / 112 Income

(3)

## Other source

Page: 48  
Date: / /

### o Sec. 56 - charging Sec.

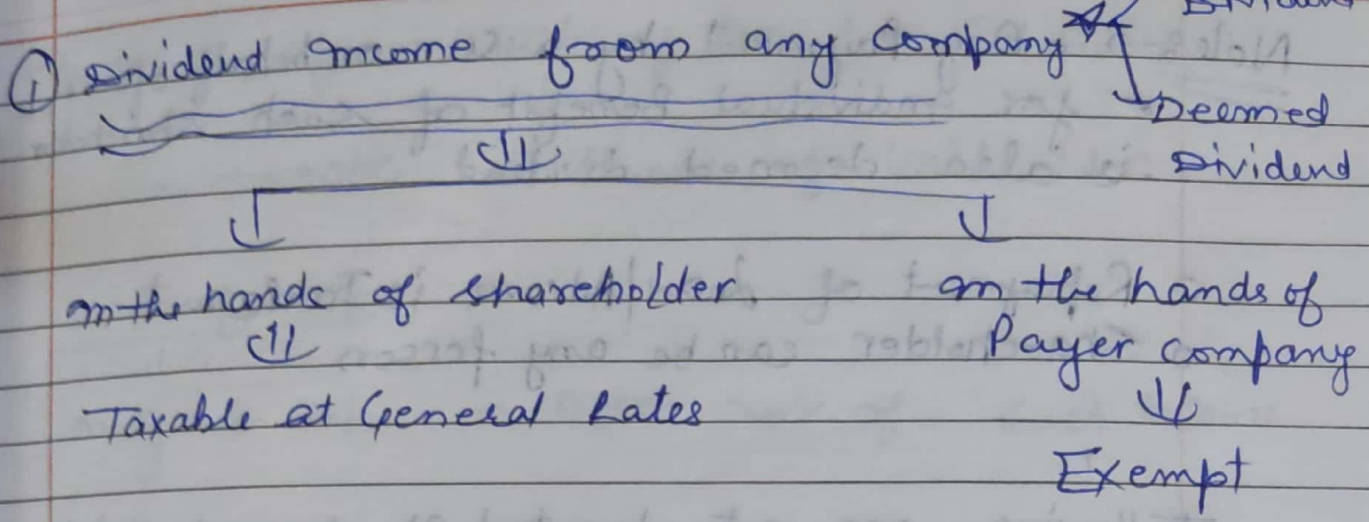
Income is taxable under this head if :-

- It is not taxable under other heads and
- income is not exempt under Income tax Act.

Following income are Taxable under this head: →

- ① Dividend Income
- ② Income from units of UTI / Mutual Fund
- ③ Casual Income
- ④ Interest Income
- ⑤ Interest received on Compensation / Enhanced compensation
- ⑥ Advance Money forfeit on or after 1.4.2014
- ⑦ Income from letting / Renting of P.M., furniture (If not taxable under PGDP)
- ⑧ Family Pension
- ⑨ Salary Income of MP / MLA
- ⑩ Amt. received in excess of FMV of shares issued by closely held company
- ⑪ Money or property received without consideration or for inadequate consideration in excess of ₹ 50,000 (Sec. 56(2)(x))
- ⑫ other income not taxable under other heads and not exempt





Deduction of Expense From Dividend Income

only interest Exp. → max. 20% of such income.

Deemed Dividend U/S 2(22)(e)      Pvt. Co. / Unlisted Public Co.

Any payment by a company in which public is not substantially interested

By way of Loan/Advance to

① Shareholder holding not less than 10% voting Power (Eq. share capital)

OR

② Any concern or Entity in which such shareholder has substantial interest (20% or more share)

To the extent of Accumulated Profits of the Co.

is deemed dividend

Note: → Any Payment by a Co. on behalf of or for individual benefit of such Shareholder is also deemed dividend

- Repayment of Loan/Advance is Irrelevant
- Shareholder can be any person

Following are not treated as deemed dividend (Non-applicability)

- If Loan/Advance is given in ordinary course of Business
- Trade Advance (Commercial Business transaction)
- If Loan/Advance is given in return to benefit provided to the company by such Shareholder.

Sec- 115 BBD → Div. recd. by Domestic Co. from specified foreign Co.

Taxable @ 15% on Gross Rate  
No deduction of any expenditure

specified foreign Co. →

If a Co. in which domestic Co. holds more than 26% or 26% eq. share Capital

② Income from Units of UTI / Mutual Fund  
↓  
Taxable in hands of Unit holder

Ded. of Exps.  
↓

only out. Exps. → Max. 20% of such income

③ Casual Income :- →

- o Winning from Lottery
- o Crossword Puzzles
- o Races including Horse Race
- o Card Games
- o Any other Games
- o Betting / Gambling

Taxable @ 30% on Gross Basis U/S 115 BB

Other points :-

- o No deduction of any expenditure
- o No deduction under VI-A chapter
- o No Benefit of Basic Exemption Limit
- o No Set off of any Loss

④ Interest Income :-

- o Interest on Securities (Not taxable under PQBP)

- o Interest on Bank deposits →
  - Interest on FD
  - Interest on Savings A/c
  - Interest on Current A/c
- o Interest on income tax Refund [income tax refund is not taxable]

Deduction of Exps. :-

Interest / Brokerage / or Any other Exps. incurred  
(Same as PGBP Provision)

\* Exempt Interest Income :-

- o Interest on PPF
- o Interest on Post office Saving Bank A/c
  - (a) Individual A/c = upto 23500 exempt
  - (b) Joint A/c → upto 27000 exempt
- o Interest on Gold Bonds

⑤ Interest on Compensation/ Enhanced Compensation  
Income of year in which it is received

Interest on Compensation/ Enhanced Compensation      XX  
- 50% deduction      (XX)

Taxable Income      XX  
No other Deduction



### ⑨ Salary income of MP/MLA

- Daily allowance / constituency allowance Exempt
- Other salary income  $\rightarrow$  taxable under this head.

### ⑩ Amount recd in excess of FMV of shares issued by closely held company \*



- shares issued to Resident shareholder
- Applicable only if shares are issued at Premium

Income of Co. = Issue Price - FMV of shares

Example  $\rightarrow$

	Face Value	Issue Price	FMV	Income of Co.
①	100	120	110	120 - 110 = 10
②	100	100	70	NA
③	100	90	70	NA
④	100	130	90	130 - 90 = 40
⑤	100	110	120	—

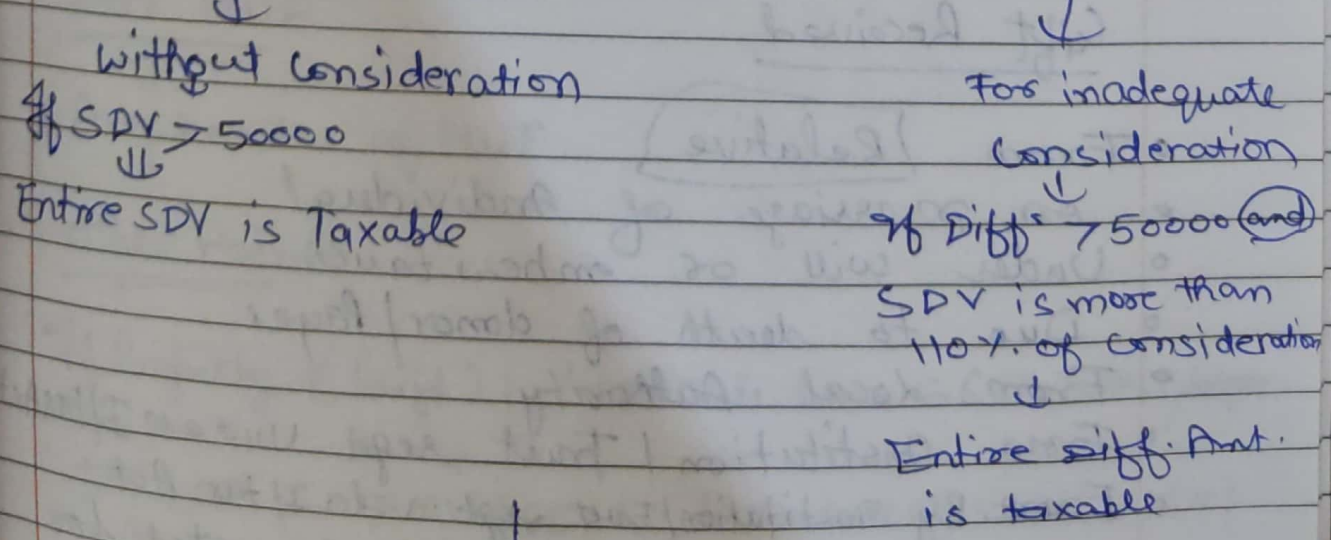
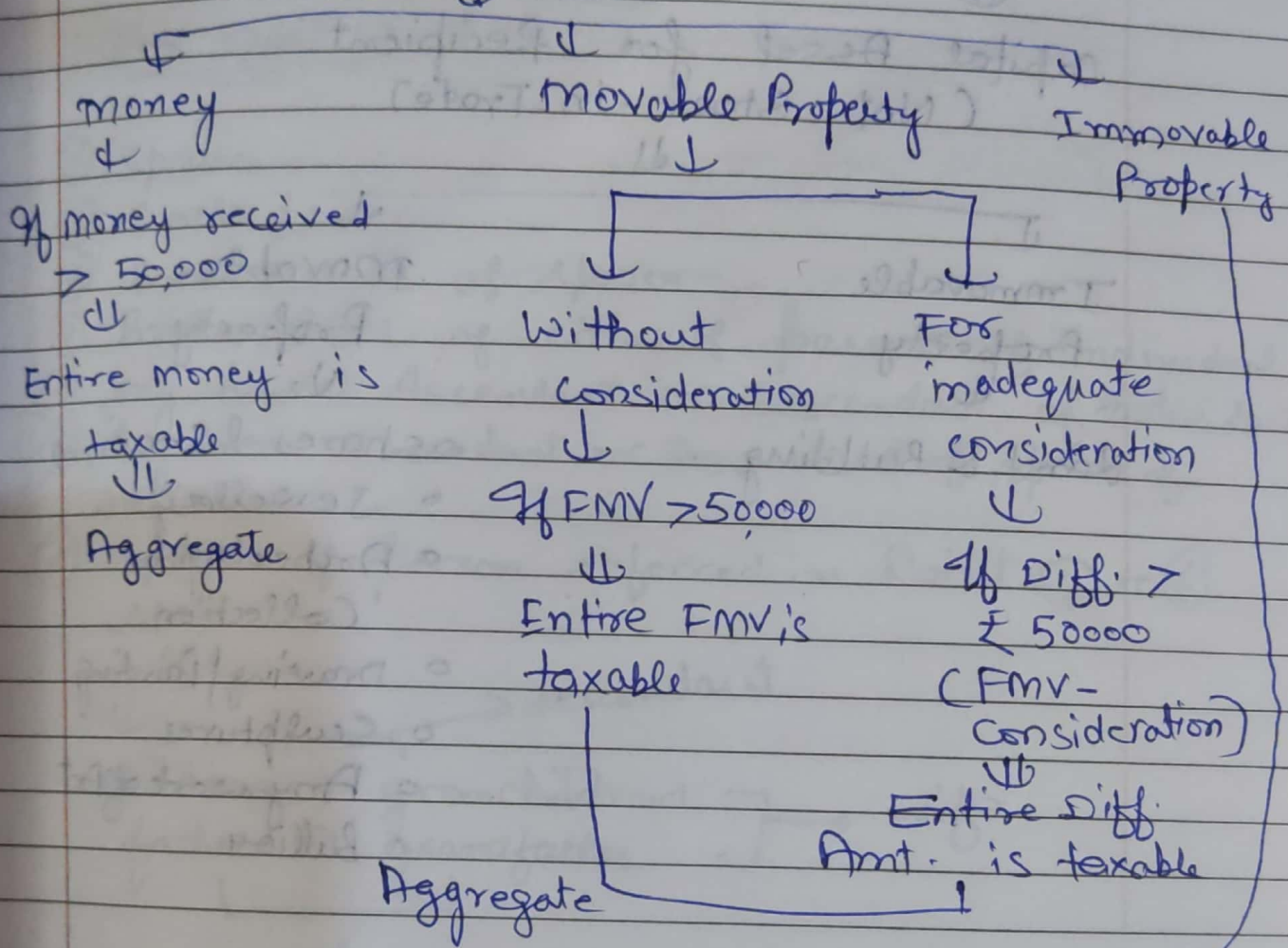
### ⑪ money or Property recd without consideration or for inadequate consideration in excess of ₹50,000 / Taxability of Gift (Sec 56(2)(i))



Applicable to all person



**Gift**



Per property

~~Aggregate~~

Not: SDV as per Sec. 50C

# Property

Capital Asset for Recipient  
(Not Stock-in-Trade)

↓  
Immovable  
Property

↓  
Land & Building

↓  
Movable  
Property

- ↓  
o shares & Securities
- o Jewellery
- o Archeological Collection
- o Drawing / Painting
- o Sculptures
- o Any work of Art
- o Bullion

Not applicability of Sec. 56(2)(x) (Exempted Gift)

## Gift Received

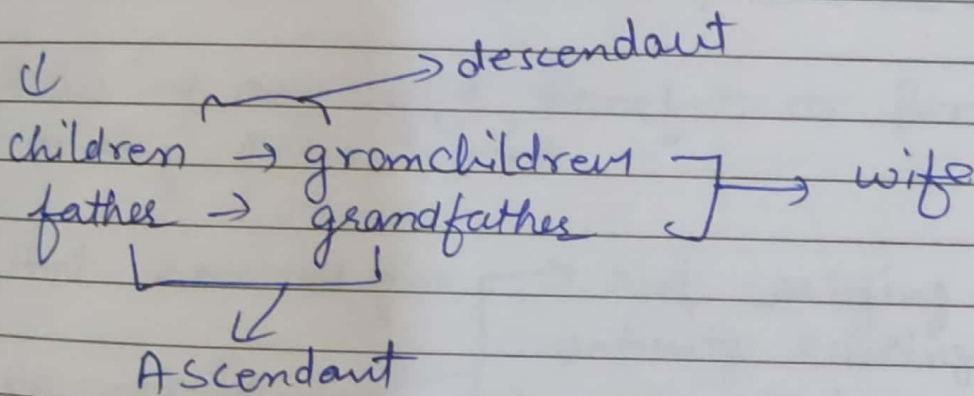
- o From Relative
- o on marriage of individual
- o Under will or inheritance
- o Due to death of donor/payer
- o From Local Authority
- o From Institution / Trust regd. under IITax Act
- o ~~From~~ By Institution / Trust regd. under IITax Act
- o From individual by a trust created for benefit of relative of the individual



Relative :->

For individual ->

- ① Spouse
- ② Brother/sister
- ③ Brother/sister of spouse
- ④ Brother/sister of either of parents of individual
- ⑤ Any lineal Ascendant or Descendant of individual
- ⑥ Any lineal Ascendant or Descendant of spouse of individual
- ⑦ spouse of person referred in Point ② to ⑥ above



For HUF

Any member of HUF

other Points

- If Property (Gift) is taxable u/s 56(2)(x), ~~then~~
- then  $TAT\ COA = AMV / SDV$  Taxed u/s 56(2)(x)  
(Ignore COA of previous owner & Period of holding of previous owner)
- Gift recd. by Employee from Employer taxable under salary

(12) Other income not taxable under other heads  
\* not Exempt

o Royalty income

o Ag. income from outside India.

Sec. 28 charging Section

II

Following income are taxable under this head

- ① Profits or losses of any Business or profession carried by Assessee during PY
- ② Assistance, Grant or subsidy received from central / state Govt. relating to B&P
- ③ Export incentives :
  - ↳ Cash assistance
  - ↳ Duty drawback
  - ↳ Import Entitlements
- ④ Value of any gift, benefit or Perquisite arising from B&P
- ⑤ Amt. received for Non compete fees
  - ↳ Not carrying out any activity relating to B&P
  - ↳ Not sharing intangible Asset
- ⑥ Amt. received under Keyman Insurance Policy
- ⑦ FMV of stock on conversion into stock-in-Trade
- ⑧ interest, salary, Bonus, Commission or Any remuneration received by Partner from Firm/LIP
  - ↓
  - upto deduction allowed to Firm U/S 40(b)

Speculative Business :- Part of business consist of purchase/sale of shares & Commodities other than by Actual delivery.

Profit/Loss of speculative Business is to be calculated separately.

Following are not Speculative Transactions

- o Hedging Contract
- o Forward Contract
- o Trading in Derivatives/ Commodity Derivatives

Sec. 29 Income from PGBP computed as per Sec. 30 to 43D

Calculation of PGBP Income

Profit/Loss as per P&L A/c	XX
<u>Add :-</u>	
o Dep. debited in P&L	XX
o Exps. debited to P&L A/c but not allowed as deduction under this head (disallowed)	XX
o Income not credited to P&L A/c but taxable under this head	XX
	<u>XX</u>

Less :-

- o Dep. as per I/tax Act (XX)
- o Exps. not debited to P&L A/c but allowed as deduction under this head (XX)
- o Income credited to P&L A/c but not taxable under this head (XX)
- (Capital gain, Div. etc)
- Income from B&P XX

Sec. 30 Rent, Rates, Repairs & Insurance for Building used in B&P

Rent	Deduction allowed
Rates (Municipal tax etc.)	allowed
Repairs	
Revenue Nature	Allowed
Capital Nature	
Added to cost of Building	
Insurance	Allowed

Sec. 31 Repairs & Insurance of P.M., Furniture

Repairs	→ Revenue Nature	Deduction Allowed
	↳ Capital Nature	
	Add to Cost	
Insurance		Allowed

# Sec. 32 → Dep. as per Income Tax Act

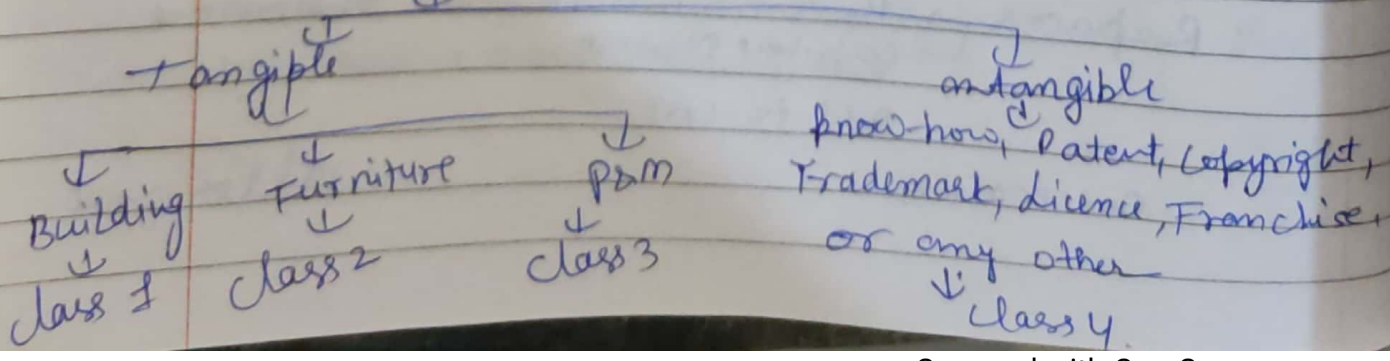
## Conditions to claim depreciation

- o Asset must be used in BOP [Active or Passive] and
- o Assessee must be owner of such asset [wholly or partly]

### Note:—

- o Dep. is allowed only when Asset is Put to use
- o However in case of
  - Stand by Equipment
  - Fire Extinguisher
  - Machinery spares
 dep. allowed if they are kept ready for use
- o Dep. is allowed to Beneficial owner.
- o In case of lease asset, lessor is entitled for Dep.
- o It is mandatory to claim Dep.
- o No. Dep. on land

### \* Depreciable Assets :-



• Depreciation Rates :->

• Building :-

- Block -> 1 -> Residential Building -> 5%
- Block -> 2 -> Commercial Building -> 10%
- Block -> 3 -> Temporary structure -> 40%

Furniture - 10%

Plant & Machinery :-

Block 1 -> Aeroplanes, Pollution Control Equipments, Medical Equipments, Windmills, Energy Saving Devices, Books & Annual Publications, Computer including computer software & Accessories } -> 40%

Block 2 -> Motor car Used in Business of Running on Hire -> 30%

Block 3 -> other motor car, oil wells, office Equipments, EPABX & mobile Phones, other PAM } -> 15%

Block 4 -> Ships -> 20%

Intangible Assets :-

Block - 1 → All Intangible Assets → 25%

Block of Asset

↓  
same class of Asset  
and  
same Rate of Dep.

Dep. shall be allowed on WDV of Block of Asset at prescribed %.

Calculation of WDV of Block and Dep.

Op. WDV of Block as on 1st day of PY XX

+ Actual cost of Asset / Actual Purchase during PY ↓  
 → Put to use for 180 days or more XX  
 → Put to use for <sup>Less than</sup> 180 days XX  
 → Purchased but not put to use during PY

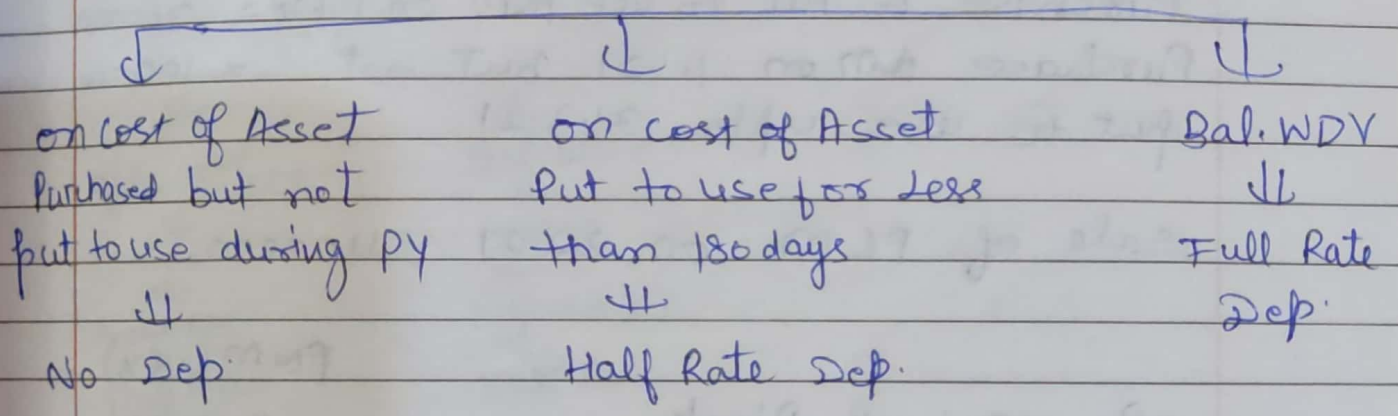
- Amount received on Asset sale / discarded / demolished / destroyed during PY (X)

WDV of Block for Dep. XX



WDV of Block for Dep. XX  
 - Dep. (XX)  
 closing WDV as on last day of PY XX

Dep. on WDV of Block →



[Half Rate Restriction applies only when Purchase & Put to use years is same]

e.g. Purchase 2019-20	↑↑ Put to use 10.12.2020 (2020-21)	Full Rate
2020-21	10.12.2020 (2020-21)	Half Rate

→

PY 2020-21

Example

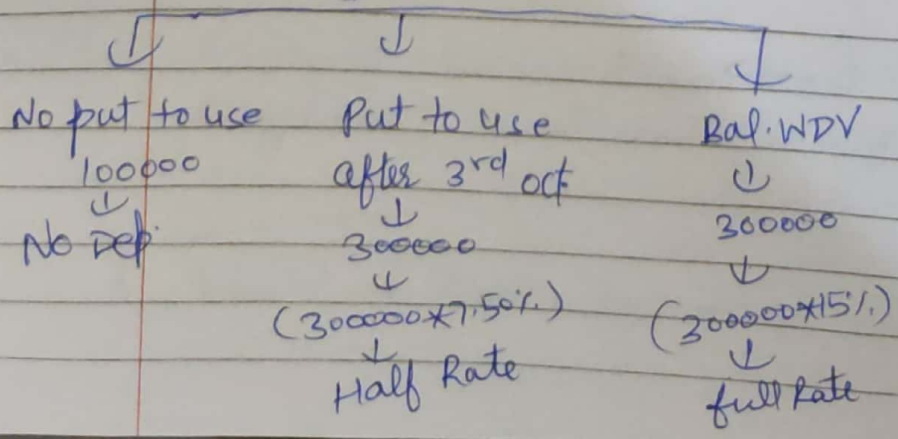
Op. WDV of PLM (15%) = 500000  
Op. WDV of Computer (40%) = 100000

Purchase & put to use as on 31.7.20 = 200000  
Purchase computer on 10.10.20 = 50000  
Purchase & put to use PLM on 1.11.20 = 300000  
Purchase PLM on 1.1.21 but not put to use upto 31.3.21 = 100000

sale of PLM on 2.2.21 = 400000

	PLM (15%)
Op. WDV of Block	500000
+ Actual cost of purchase	
- Put to use upto 3 <sup>rd</sup> Oct.	→ 200000
- after 3 <sup>rd</sup> Oct	→ 300000
→ No put to use	→ 100000
- Amt. received on sale	(400000)

WDV of Block for Dep. 700000  
- Dep. (67,500)

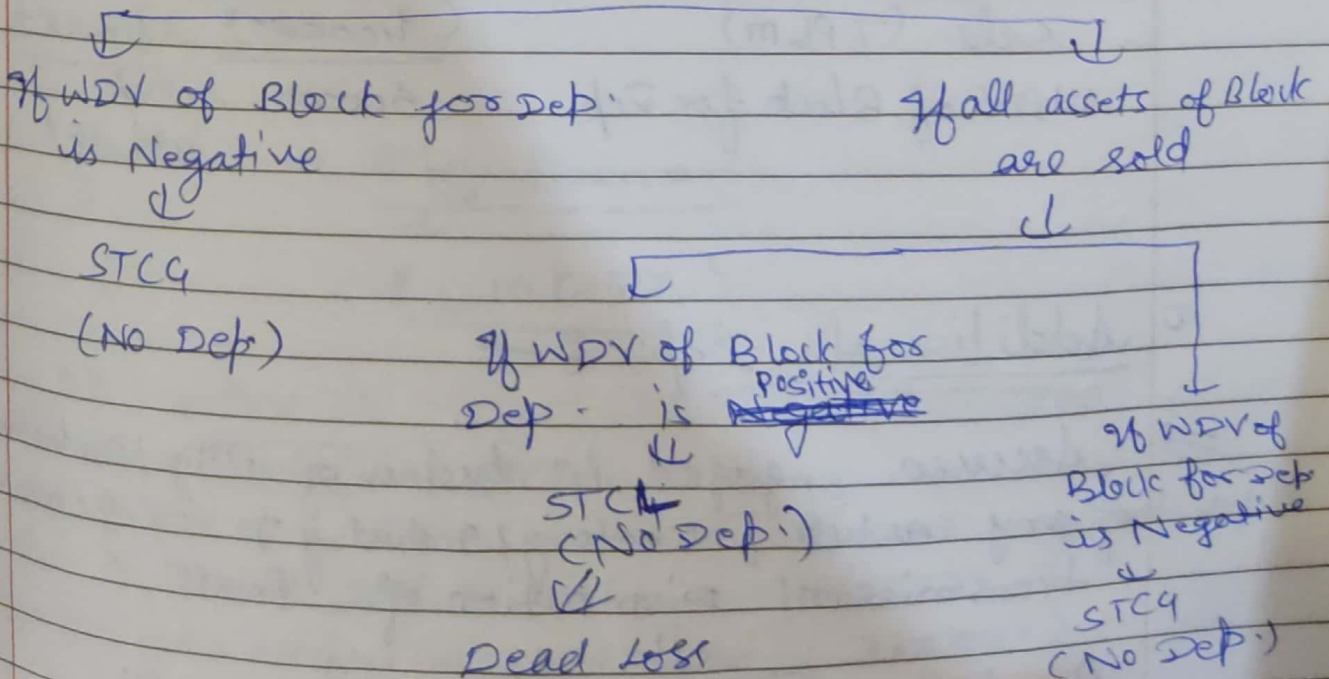


Closing WDV as on 31.3.2021

632500

Computers (40%)	
Op. WDV	100000
+ Purchase (after 3 <sup>rd</sup> Oct.)	<u>50000</u>
WDV for Dep.	150000
- Dep.	(50000)
↓	
after 3 <sup>rd</sup> Oct.	Bal. WDV
↓	↓
50000	100000
↓	↓
50000 * 20%	100000 * 40%
↓	↓
Half Rate	Full Rate
↓	
	<u>100000</u>
closing WDV	

Capital gain/Loss on Depreciable Asset →



Example

Building (10%)

OP. WDV (2 Buildings)	1000000
+ Purchase (1 Building)	200000
- Sale (1 Building)	<u>1500000</u>
STCG	(300000)
	<u>NO Dep.</u>

PLM (15%)

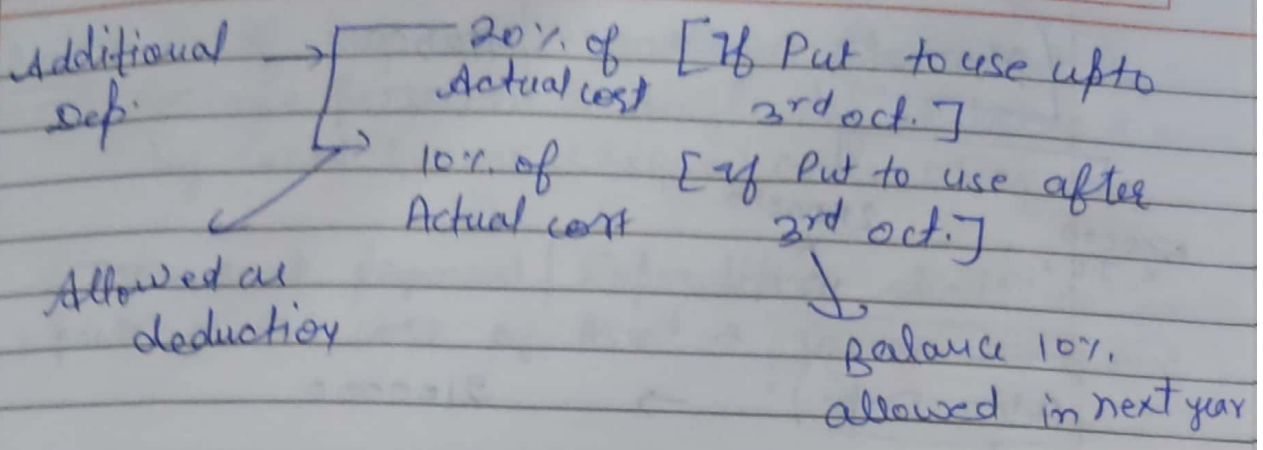
	Situation 1	Situation 2
OP. WDV (5 PLM)	600000	600000
+ Purchase (3 PLM)	300000	300000
- Sale (8 PLM) all	<u>(400000)</u>	<u>(1000000)</u>
STCG	500000	(100000)
	<u>NO Dep.</u>	<u>NO Dep.</u>

OP. W.D.V (5 PLM)	600000
+ Purchase (3 PLM)	300000
- Sale (7 PLM)	<u>(400000)</u>
WDV of Block for Dep.	500000 → Dep. allowed

o Additional Dep. :-

⇒ Assessee engaged in business of Mfg. / Production of any article [ Factory / Industry ] or generation transmission / distribution of Power

Purchase new PLM during PY



Note ⇒ Business of Printing & Stationery also treated as Manufacturing

No additional Dep. in following P&M :-

1. Second hand / Used P&M
2. P&M installed in office Premises or Residential accommodation
3. Ships, Aircrafts, Road Transport vehicles
4. P&M on which 100% deduction is allowed under P&BP

Example :-

A Ltd. → mfg. Business  
P & M (15%)

OP. WDV	
+ Purchase [new] P&M	2000000
Put to use on 1.6.20	800000
Put to use on 30.12.20	500000
- Scrap value received on sale of machine	(300000)
WDV for dep.	<u>3000000</u>



Note :- If Payment / Expenditure for asset to a single person in a single day Exceeds ₹ 10000 by cash / Bearer cheque / cross cheque



Then such payment / Expenditure shall not form part of Act cost of Asset → Ignore Such Amt.

Special Case :-

Case

Actual cost of Asset

- |   |  |
|---|--|
| ① Asset used in Scientific Research                     | Nil  |
| ② Stock converted into Capital Asset<br>↳ used in BLP   | FMV on date of conversion  |
| ③ Asset Acquired by Gift / Will                         | WDV of Previous owner  |
| ④ Reacquisition of Asset sold                           | Reacquisition price<br>or<br>WDV at the time of sale<br><br>Whichever is Lower |
| ⑤ Asset used for Personal Purpose brought into business | Building = original cost - Dep. upto date<br><br>Other Asset = original cost   |

- ⑥ Asset transferred between Holding & 100% subsidiary Co. WDV of Transferred
- ⑦ Asset transferred by Amalgamating Co. to Amalgamated Co. WDV of Amalgamating Co.
- ⑧ Asset transferred by Demerged Co. to Resulting Co. WDV of Demerged Co. of Assets transferred
- ⑨ Sec. 35AD Asset Nil

Other Points relating to Depreciation :-

- ① If Asset use for Partly Business & Partly personal purpose  
 $\downarrow$   
 Dep. allowed only for Business use

Example :-

Car (15%)  
 WDV = 100000  
 Dep. = 100000 x 15% = 15000

$\left. \begin{array}{l} \rightarrow 60\% \text{ Business} = 9000 \rightarrow \text{Allowed} \\ \rightarrow 40\% \text{ Personal} = 6000 \rightarrow \text{Not allowed} \end{array} \right\}$



WDV for Dep. = 1000000  
 - Dep. (90000)  
 closing WDV 910000

② Sec. 43A

When Asset Purchase in Foreign Currency in Credit

Profit/Loss due to Foreign Exchange Fluctuations at the time of Payment

shall be adjusted from cost of Asset

If Profit

Reduce from cost of Asset

If Loss

Added to cost of Asset

[Also includes Profit/Loss on Hedging contract entered for such Asset]

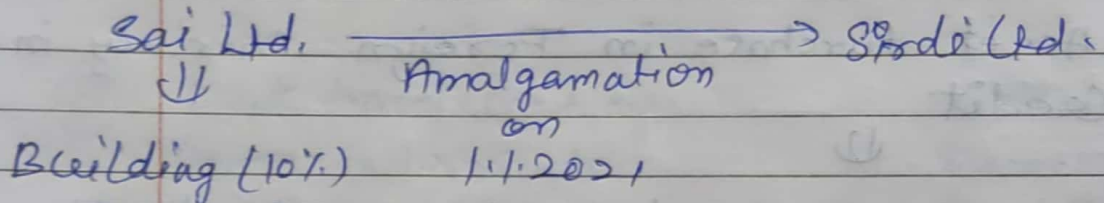
③ Dep. in case of Amalgamation / Demerger / succession

- Succession of Firm / Proprietorship by Co.
- Conversion of company into LLP
- Amalgamation / Demerger of Companies

→ Dep. is calculated normally

→ After that, Dep. shall be distributed between Predecessor & Successor in Ratio of No. of days for which Assets were used by them

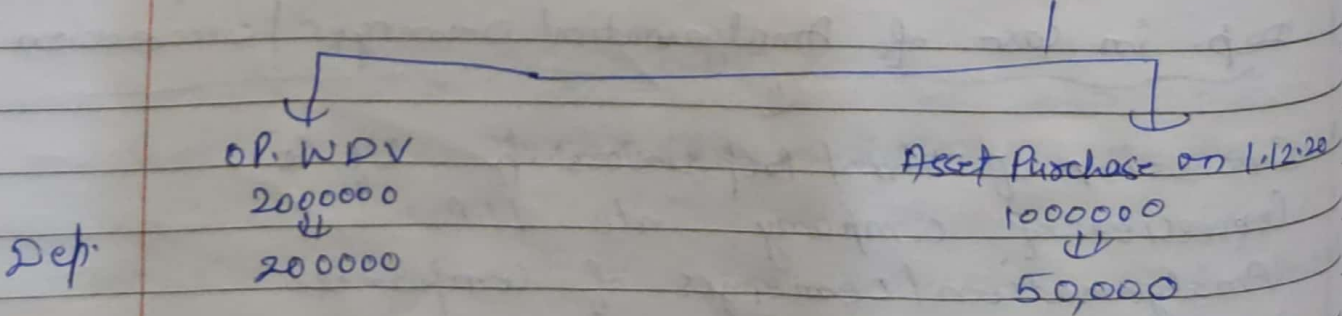
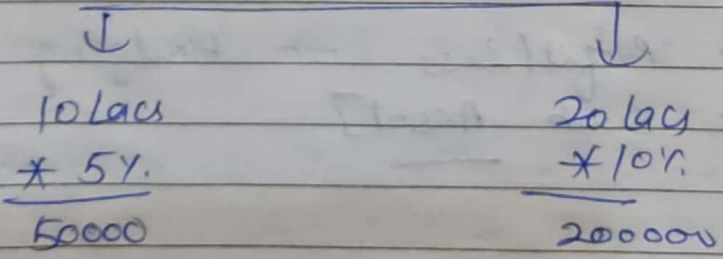
Example: —



Op. WDV 20 lac → 1.4.20 to 31.12.20 ⇒ Sai = 275 days  
 → 1.1.21 to 31.3.21 ⇒ Sirdi = 90 days  
365

Purchase Building 10 lac on 1.12.20  
 WDV for Dep. 30 lac  
 1.12.20 to 31.12.20 ⇒ Sai = 31 days  
 1.1.21 to 31.3.21 ⇒ Sirdi = 90 days  
121

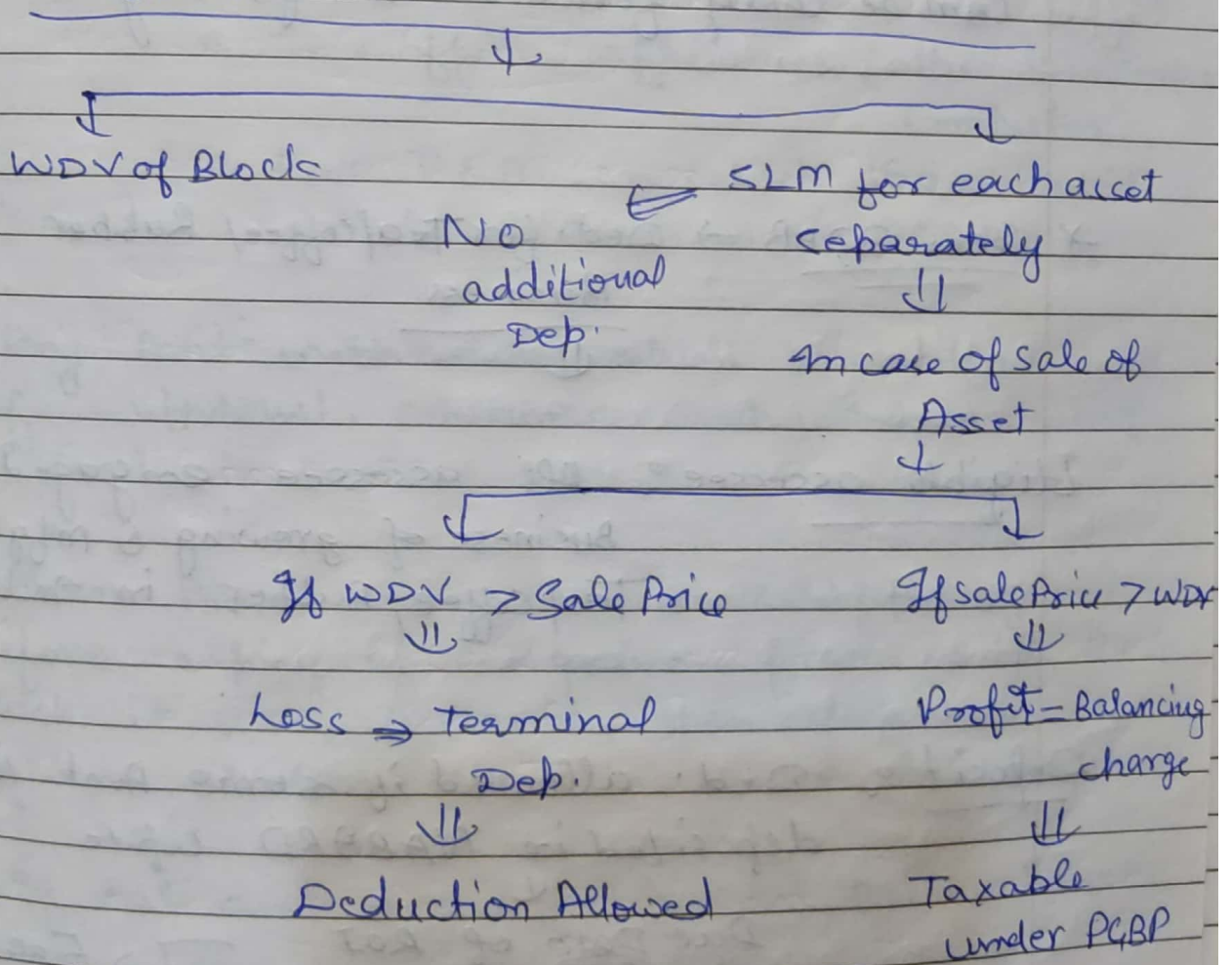
Dep. For PY 2020-21  
 ↓



$$\begin{aligned} \text{Sai Ltd.} &= 200000 \times \frac{275}{365} = 50000 \times \frac{31}{121} \\ &= 150685 = 12810 \end{aligned}$$

$$\begin{aligned} \text{Sirdi Ltd.} &= 200000 \times \frac{90}{365} = 50000 \times \frac{90}{181} \\ &= 49315 = 37190 \end{aligned}$$

④ Dep. for undertaking engaged in generation of Power



⑤ Unabsorbed dep. (Sec. 32(2))

	↓	
Profit before deducting dep. as per Income tax Act		XX
- Dep. as per Income tax Act		<u>(XX)</u>
		<u>(XX)</u>
	<u>Unabsorbed Dep.</u>	
	↓	

Can be set off from any head of income  
(except salary)  
and  
can be carry forward indefinitely

\* Sec. 33AB → Ded. for Tea/coffee/Rubber Business

Eligible assessee: All assessee engaged in  
Business of growing & mfg.  
Tea/coffee/Rubber in India

Deposit: - Ded. allowed if some Amt. is  
deposited in NABARD upto

↓

Due Date of ROI  
01 → Earlier  
6 months from end of PY

Ded. Amt.: - Actual Amt. Deposited

↓

40% of Profit from such Business  
(as per Income tax Act) → lower



as per following Ratio :-

	Taxable Business Income	Agricultural Income
<u>Income from growing &amp; mfg. in India</u>		
Tea	40%	60%
Rubber [Latex]	35%	65%
Coffee (Grown & Cured)	25%	75%
Coffee (Grown, Cured, grounded, Roasted]	40%	60%

Calculation of taxable Business Income :-

Net Profit as Per Income tax Act before ded. u/s 33AB	XX
- Ded. u/s 33AB	(XX)
	XX
Misutilized Amt. during P.Y.	XX
Amt. withdrawn but not utilized during P.Y.	XX
Ded. allowed on Asset Sold before (u/s) 8 years during P.Y.	XX
	XX
- Ag. Income Portion	(XX)
Taxable Income from P.Y.	XX
- Brought forward Business loss (if any)	(XX)
	XX

\* Sec. 33AB → Ded. for Petroleum & Natural Gas Business

Eligible Assessee : All assessee engaged in Business of Prospecting, Extraction or Production of Petroleum or Natural Gas in India

Deposit : Ded. allowed if some amt. is deposited in SBI site Restoration A/c upto end of PY

Ded. Amt. : Actual Amt. Deposited  
(or) Lower  
20% of Profit from such business  
(As per IT Act)

Utilization of Deposit : Deposited Amt. should be utilized for purpose specified by Ministry of Petroleum & Natural Gas in India

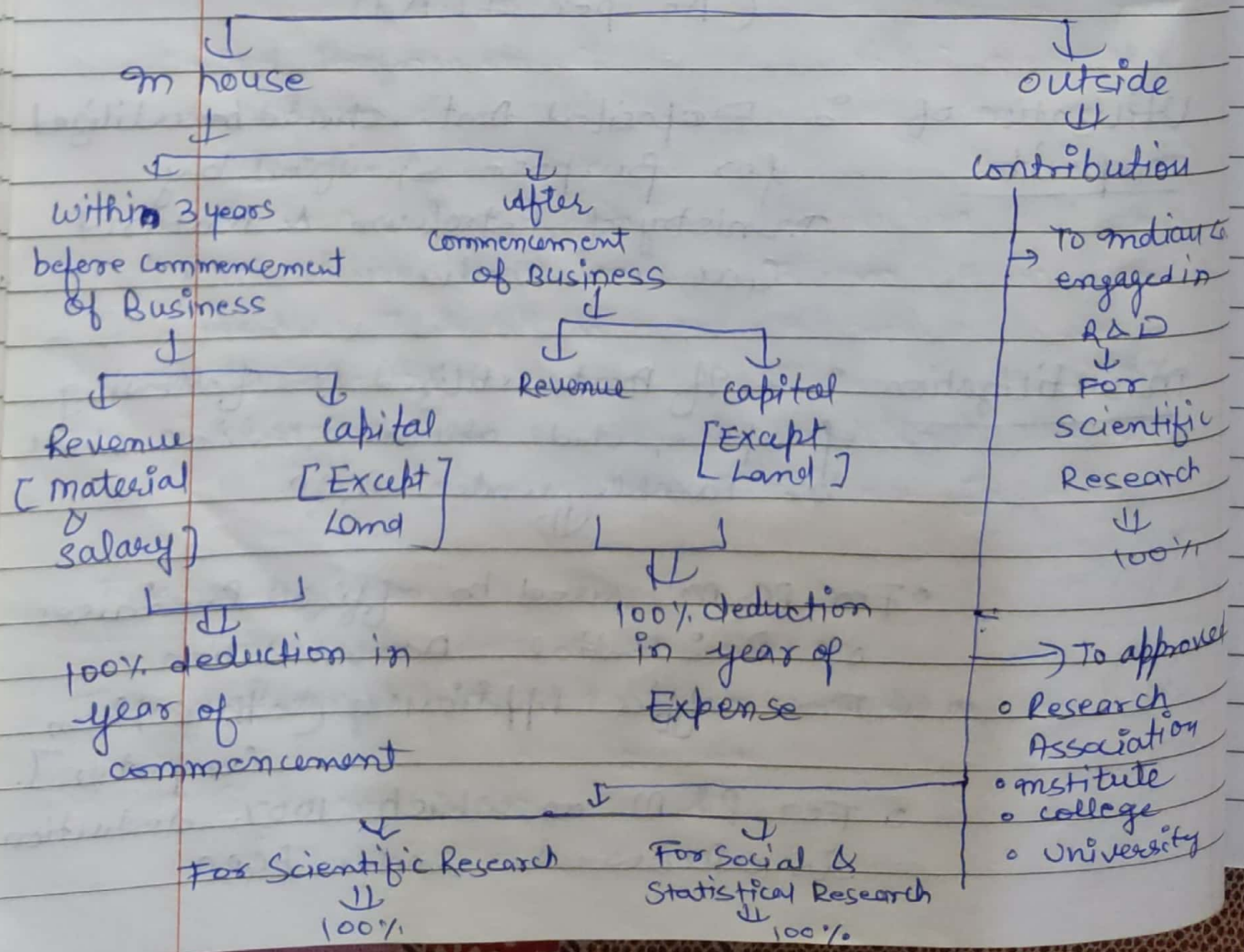
Misutilization : — If Amt. utilized for following purpose, ded. allowed earlier shall be Taxable under PGBP  
↓

- For P&M used in office Premises or Residential Accommodation
- For office Appliances (other than Computer)
- For P&M on which 100% deduction is allowed under PGBP

→ Any amt. withdrawn shall be utilised in PY of withdrawal, otherwise such amt. is taxable

→ When Asset purchased is sold/transferred before expiry of 8 years from end of PY in which it was acquired, then deduction allowed earlier shall be taxable under BKP in year of sale  
[If sale amt. Exceed deduction, Balance Taxable as STCG]

\* Sec. 35 → Scientific Research Expenditure





↳ TO IIT/IIS,  
National Laboratory  
⇓

For Scientific Research  
⇓  
100%

Other Points :-

→ Even if Approval of Institutions withdrawn after Payment ⇒ Deduction Allowed

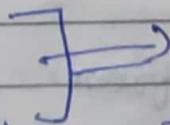
→ Unabsorbed Capital Expenditure on Scientific Research can be carry forward & set off Same as unabsorbed depreciation

→ If scientific Research Asset is sold  
⇓

Sale Amto

OR

Deduction Allowed



Lower

⇓

Taxable Under PGBP

\* Expenses for obtaining Telecom Spectrum [Sec. 35ABR] & Telecom License [Sec. 35ABR]

Any Amt. Actually paid for obtaining Telecom Spectrum/License

shall be allowed as Deduction

in Equal installments

During No. of yrs. for which Spectrum/License is in force

If Payment made before commencement of Business

If Payment made after commencement of Business

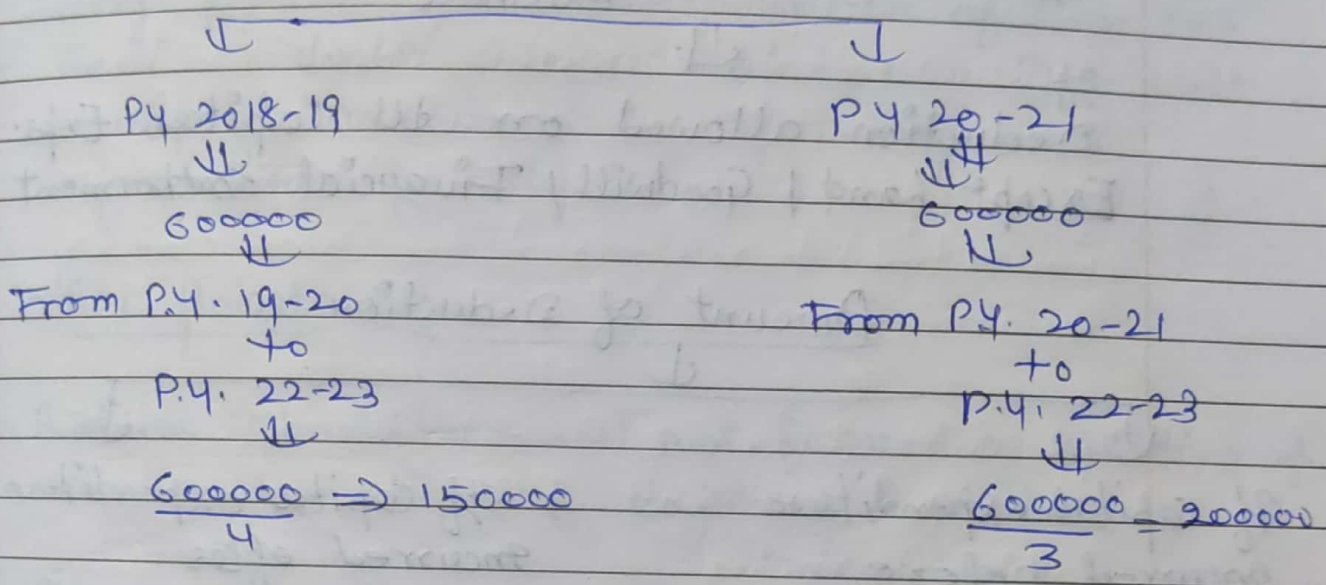
Deduction allowed from PY in which Business commences till PY in which Spectrum/License Expires

Deduction allowed from PY in which Spectrum/License Fees Paid till PY in which Spectrum/License Expires

Example

Tata telecom Ltd. → obtain license for 5 years on 14/2/18  
120,00,000  
Business Commence in PY 2019-20  
License expires on 31/3/2023  
22-23

License Fees Paid



19-20 = 150000	20-21 = 200000	⇒ 350000
20-21 = 150000	21-22 = 200000	
22-22 = 150000	22-23 = 200000	
22-23 = 150000		

Other points

- Dep. U/L 32 shall not be allowed on Telecom Spectrum/License
- In case of Amalgamation/Demerger, Remaining Dep. shall be allowed to Amalgamated/Resulting Company

\* Sec. 35AD → Expenditure on specified Business



Deduction allowed on all capital Exps. Except Land / Goodwill / Financial Instrument

Amount of Deduction



↓  
If capital expenditure incurred before commencement of Business

↓  
100% Deduction in year of commencement

↓  
If capital expenditure incurred after commencement of Business

↓  
100% Ded. in year of Exps.

o Specified Business :-

- Cold chain Facility
- Hotel of 2 star or above category
- Hospital with atleast 100 beds for patients
- Housing Projects
  - ↳ under slum development scheme
  - ↳ under affordable housing scheme
- Production of Fertilizers in India
- Inland container Depot
- Honey Production
- Warehousing facility for storage of sugar
- Warehousing facility for storage of Agricultural Produce

- cross country pipeline of Natural Gas/oil
- slurry pipeline for transportation of Iron ore
- Semi conductor wafer Fabrication Mfg. Unit
- Developing, Maintaining & operating new infrastructure facility

other points :-

- ① Business should be new [Not formed by splitting up or Reconstruction of Existing Business]
- ② P&M should be new except  $\rightarrow$  imported old P&M  
 $\hookrightarrow$  20% of total P&M can be old
- ③ If Payment/Expenditure for capital Asset to a person in a single day exceeds ₹ 10,000 by cash/Bearer cheque/cross cheque,  $\perp$   
Then No deduction allowed for such Payment/Expenditure  $\perp$   
Ignore such Amt.
- ④ If deduction u/s 35AD is claimed, the deduction u/s 80TA to 80RRB & sec. 10 AA shall not be allowed
- ⑤ Loss from specified Business i.e. setoff only from profit of any other specified Business
- ⑥ Loss from specified Business can be carry forward indefinitely

⑦ If specified Business Capital Asset is Sold  
 ↓  
 Amt. received Taxable under PGBP

⑧ If specified Business Capital Asset converted / transferred to Non-specified Business

↓

Ded. allowed (cost of Asset)	XX
- Dep. for each full PY upto transfer	(XX)
Taxable under PGBP	XX

Actual cost of Asset for non-specified Business

↓

Cost of Such Asset	XX
- Dep. for each full PY upto transfer	(XX)
	XX

\* Sec. 35 CCC : Ded. of Exps. incurred on notified Agricultural Extension Project

↓

↓

Ded. allowed to all assessee

100% of Expenditure [Except Land & Building]

\* Sec. 35 CC D :- Ded. of Exps. incurred by Co. on notified skill development Project

Ded. only to company

100% of expenditure [Except Land & Building]

\* B Sec. 35 D :- Preliminary Exps.

Deduction only to Resident Assessee

Who incurs Preliminary exps. at the time of

- Commencement of Business
- Extension of Business
- Setting up of New Unit

Maximum Limit of Deduction

Indian Company

Other Resident Assessee

5% of [ Cost of Project or Capital Employed ] → Higher

5% of Cost of Project

Cost of Project → Amt. invested in Fixed Asset of New Business / Extension / New unit

Capital Employed → Share capital [Except RES] + Deb. + Long term Borrowing for New Business / Extension / New Unit

Ded. Amt.  $\Rightarrow$  Actual Preliminary Exps.  
or  
Limit  $\left. \begin{array}{l} \nearrow \\ \searrow \end{array} \right\}$  Lower  $\downarrow$

Deduction allowed in  
5 equal installments in  
5 years

Note  $\Rightarrow$  in case of Amalgamation / Demerger,  
Remaining ded. shall be allowed to  
Amalgamated / Resulting co.

\* Sec. 35 DD  $\Rightarrow$  Exps. on Amalgamation & Demerger

$\Downarrow$   
Ded. only to Indian co. who incurred exps.

$\Downarrow$   
ded. allowed in 5 equal installments in 5 yrs.

\* Sec. 35 DDA  $\Rightarrow$  Exps. incurred under Voluntary  
Retirement Scheme [VRS]

$\Downarrow$   
Ded. allowed to all Assessee

$\Downarrow$   
Ded. allowed in 5 equal installments in  
5 years of Amount Paid

$\Downarrow$   
Ded. for PY =  $\frac{1}{5}$  of Amt. Paid for VRS

Note  $\Rightarrow$  in case of Amalgamation / Demerger /  
Succession, Remaining deduction shall be  
allowed to Amalgamated / Resulting / Successor  
company



\* Sec 36 :- Other Deductions

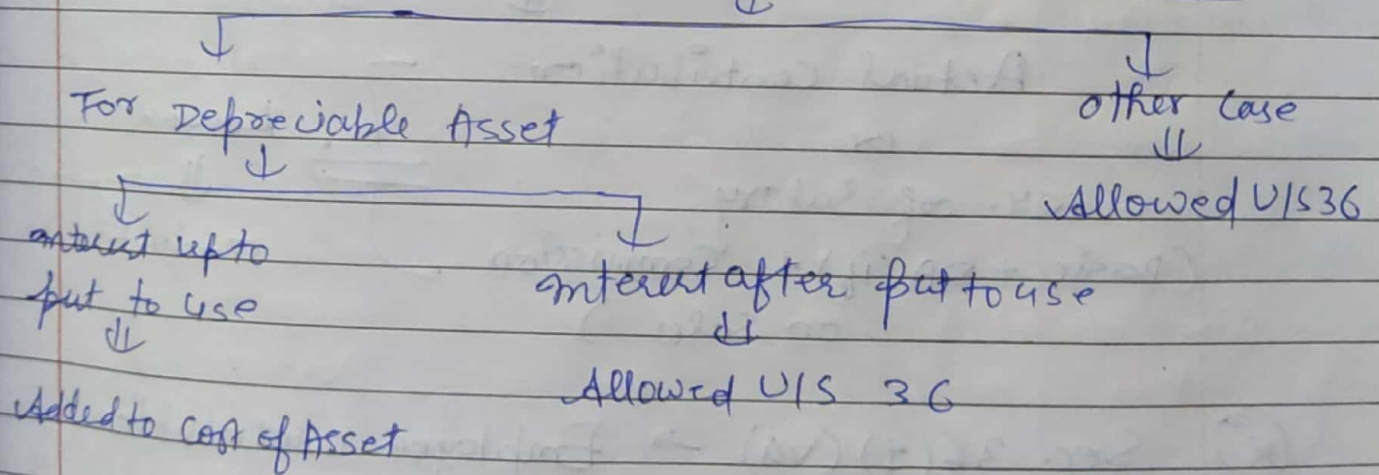
① Sec. 36(1)(i) → Insurance premium of stock

② Sec. 36(1)(b) → Health / medical insurance Premium of Employee other than cash

③ Sec. 36(1)(ii) → Bonus or Commission to Employees

↓  
Allowed (Subject to Sec. 43B)

④ Sec. 36(1)(iii) → Interest on Loan for Business Purpose



⑤ Sec. 36(1)(iii a) → Discount on Zero Coupon Bond

↓  
Amortised over life of zero Coupon Bond

⑥ Sec. 36(1)(iv) → Employer contribution for benefit of Employees

↓  
• Statutory Provident Fund  
• Recognised Provident Fund

↓  
• Unrecognised Provident Fund

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>o Approved Superannuation Fund</li> <li>o Approved Gratuity Fund</li> <li>o Any other Fund as per Law [ESI]</li> </ul> <p style="text-align: center;">↓</p> <p>Ded. allowed<br/>(Subject to Sec. 43B)</p> | <ul style="list-style-type: none"> <li>o Unapproved Superannuation Fund</li> <li>o Unapproved Gratuity Fund</li> <li>o Any other Fund</li> </ul> <p style="text-align: center;">↓</p> <p>No deduction</p> |
|--|---|

⑦ Sec. 36(1)(iva) → Employer contribution in Pension Scheme U/S 80CCP

↓

Actual contribution  
or  
10% of Salary  
(Basic + DA (if) + Commission on Sales)

} → Lower  
↓  
Deduction

⑧ Sec. 36(1)(va) → Employee contribution towards PF/ESI/Superannuation Fund

↓

Ded. allowed if Amt. deposited on or before  
due date of that Fund

↓

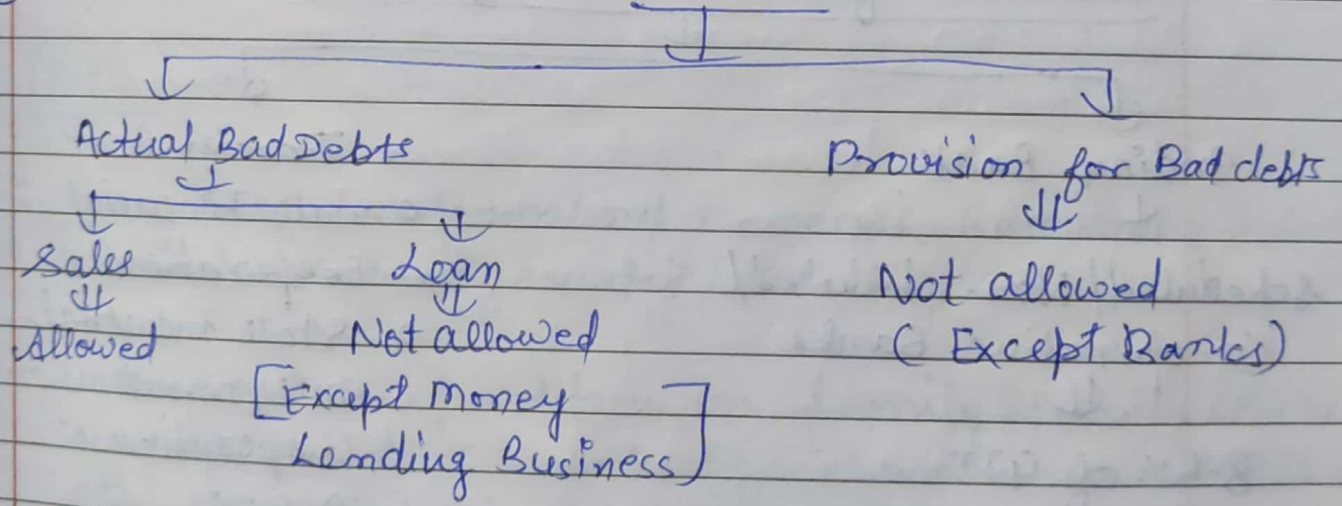
If not deposited by employer upto due date of that fund, then Amt. will be deemed to be income under PGBP.]

9) Sec. 36(1)(vi) → Animals used in Business (other than Stock-in-Trade)

↓  
Ded. allowed in year in which such Animal becomes permanently useless or died.

↓  
Deduction = Cost of Animal - Scrap value

10) Sec 36(1)(vii) → Bad Debts



Note :-

- Bad Debts should be written off in the books in the PY in which deduction is claimed.
- Debt should be taken into account for computing income for PY or earlier years.
- No need to Prove that debts have become bad.

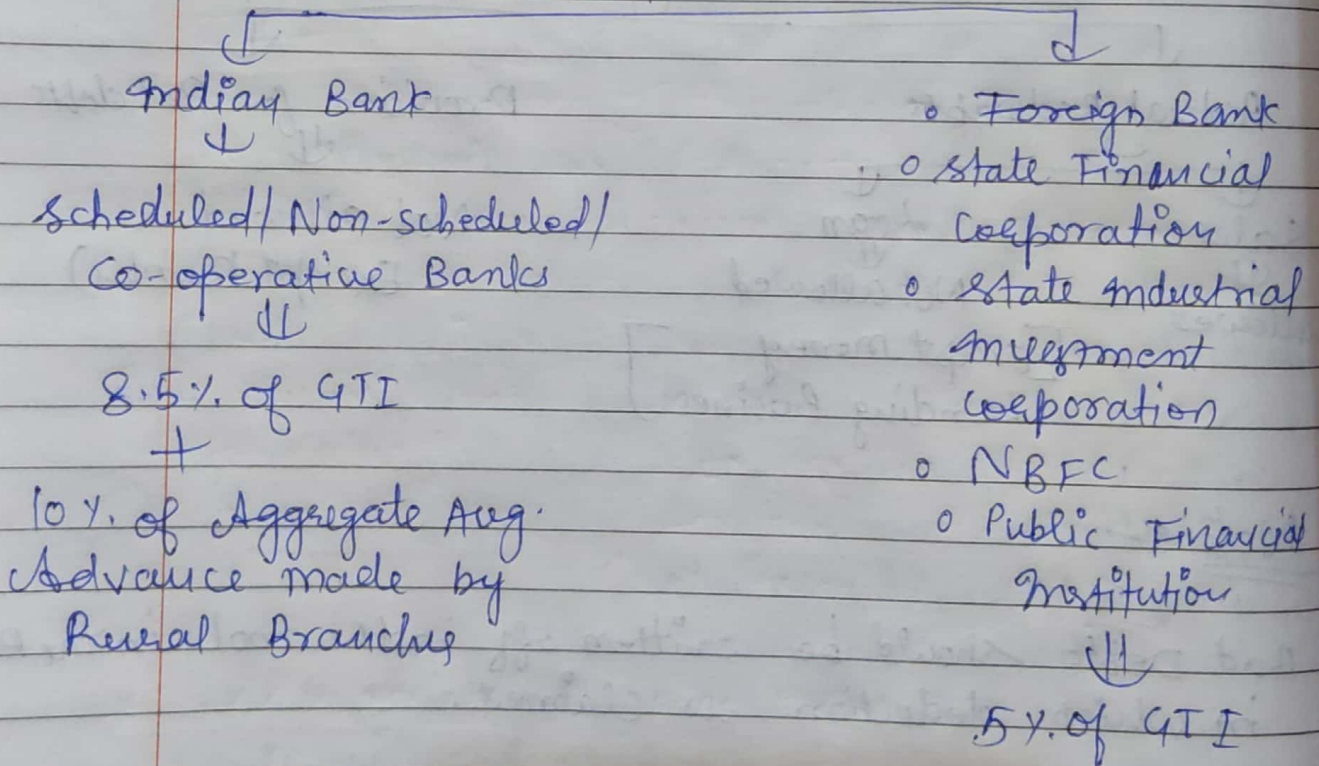
Recovery of Bad Debts :-

Taxable under PCBP in the year of Recovery

Even if BOP is not in existence in PY of Recovery

[Taxable only if assessee who claims Bad debts & assessee who recovers is same]

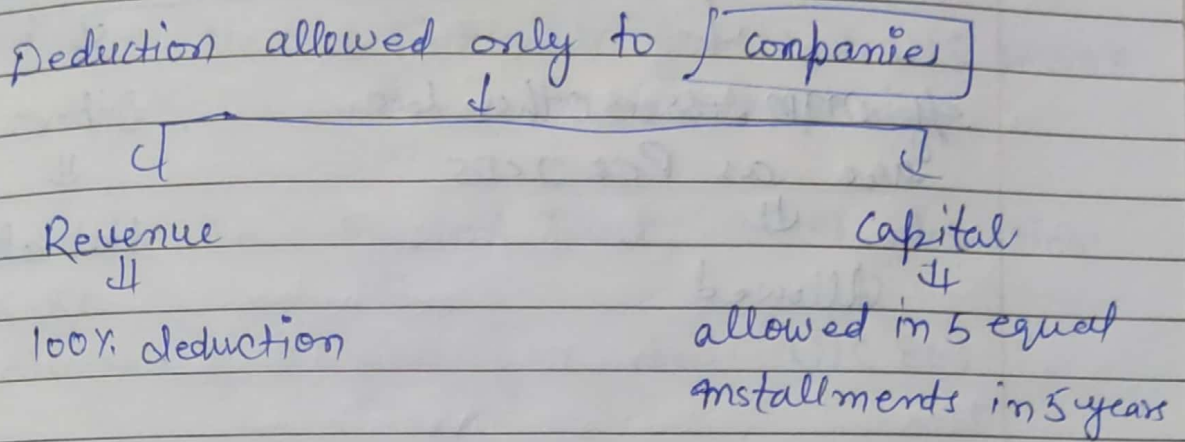
Provision for Bad Debts of Banks [Sec 36(1)(viii)]



Actual Bad Debts ded. in case of Banks (Sec 36(1)(viii))

Total Actual Bad Debts	xx
Written off	
- Provision upto yet	(xx)
	<u>xx</u>

⑪ Sec. 36(1)(ix) → Exps. on Promotion of Family Planning of Employees



Note →

- In case of Amalgamation / Demerger, Remaining deduction allowed to Amalgamated / Resulting Co.
- Unabsorbed expenditure on family planning can be carry forward & set off same as ~~additional~~ ~~dep.~~ unabsorbed dep.

⑫ Sec. 36(1)(xv) & (xvi) → STT / CTT Paid

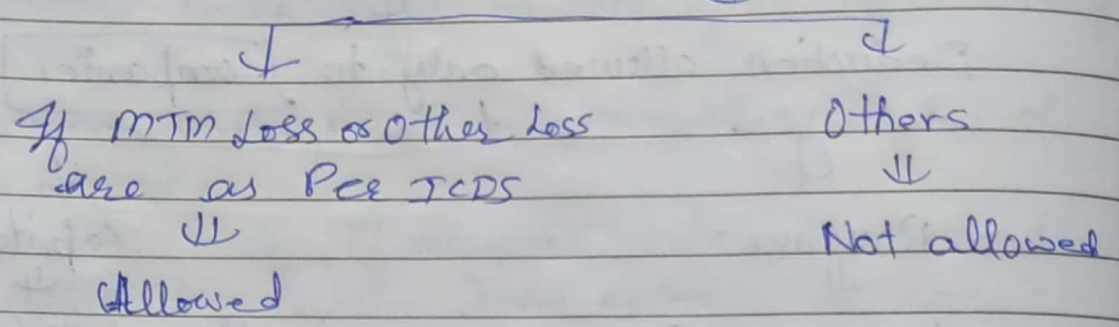
ded. allowed [of shares / units / commodities held as stock-in-trade]

⑬ Sec. 36(1)(xvii) → Purchase of Sugarcane

Exps. incurred by Co-operative Society engaged in Business of mfg. of sugar for purchase of sugarcane at a price which is equal to or less than price fixed by govt.

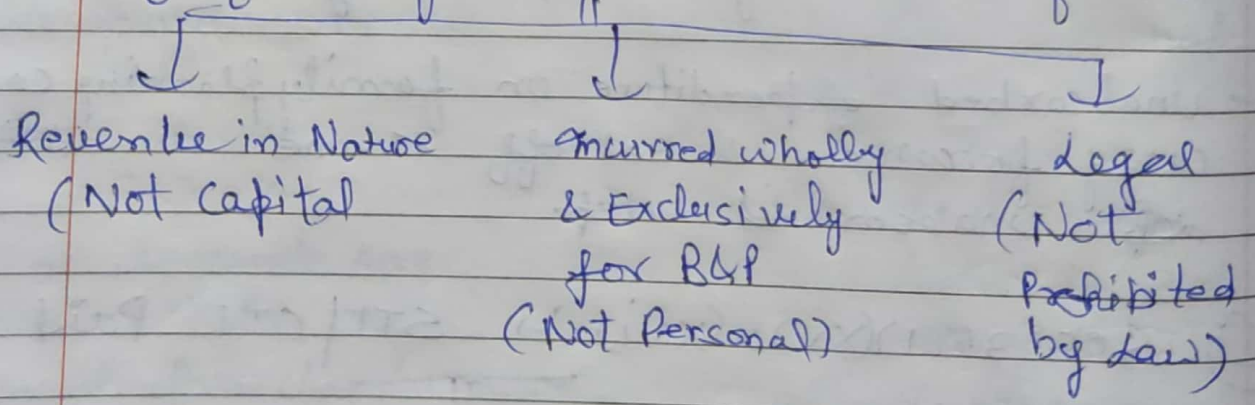
Allowed as deduction

19) Sec. 36(1) (xviii) :- marked to market loss or other expected loss



\* Sec. 37 : General Deductions :-

Any expenditure [other than covered u/s 30 to 36] is allowed as deduction, if following conditions are satisfied :-



\* Allowability of some exp. :-

- o Corporate Social Responsibility (CSR) Expenditure  
↓  
Not allowed
- o Dividend & DDT → Not allowed
- o Secret commission, Bribe, Payment to Gurdas  
↓  
Not allowed

Expenditure for advt. in Governor, Brochure, Newspaper, Pamphlet etc. published by Political Party

Not allowed [eligible for ded. U/S 80GGA to companies]

Contribution to Electoral Trust, other donations U/S 80

Not allowed (Eligible for ded. U/S 80)

Provision for loss of subsidiary, Provision for deferred tax / income tax, Provision for diminution in value of asset, Provision for Unascertained liability

Not allowed

Provision based on Fair Estimate & Reasonable certainty as per ICDS

Allowed

Provision for Gratuity [even based on Actuarial valuation U/S 40A(7)]

Not allowed

[only gratuity paid is allowed]

Share Issue exps. (other than Preliminary)

Incurred for IPO/FPO / Right Issue

Not allowed

other case [Buy Back, Bonus]

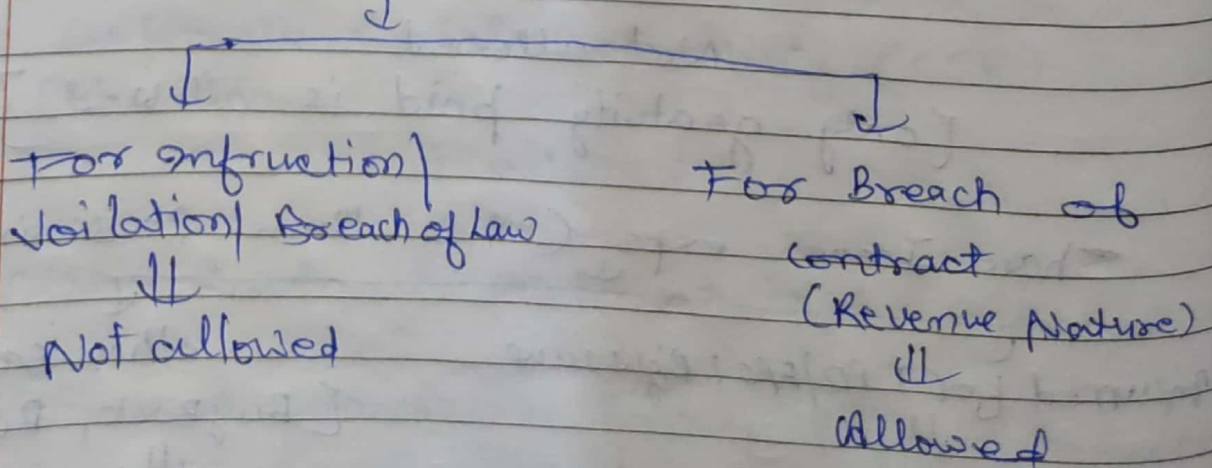
Allowed

Deb. ~~Revenue~~ Exps. (including Convertible Deb.)  
 ↓  
 Allowed

• Tax, Interest & Penalties of DT / IDT

	DT (Income tax)	IDT (GST/Customs)
Tax	Not allowed	Allowed
Interest (including TDS & Advance tax interest)	Not allowed	Allowed
Penalty (Late filing fees etc.)	Not Allowed	Not allowed
Refund	Not taxable	Taxable (Not of Amt. refunded to customers)

• Other Penalties





o Regularization/ Compounding Fees ⇒ Not allowed

o Expenditure incurred on Project not related to existing business & Project was abandoned

⇓  
Not allowed

o Expenditure incurred by company on higher studies of director son abroad

⇓  
Not allowed

o Expenditure incurred on heart surgery of individual assessee

⇓  
Not allowed

o Commission paid to doctors by a diagnostic centre for referring patients for diagnosis

⇓  
Not allowed

o Freebies [ Gift etc.] Provided by Pharmaceutical company to doctors

⇓  
Not allowed

o Tax on money perquisites of Employees Paid by employer

⇓  
Not allowed (Sec. 40(a)(v))

o Expenditure incurred (Premium paid) on keyman insurance policy

⇓  
Allowed

- o Sponsorship Fees  $\Rightarrow$  Allowed
- o Non compete Fees  $\Rightarrow$  Allowed
- o Exps. on Glow sign Board (Not treated as Capital Asset)  $\Downarrow$   
Allowed
- o Expenditure incurred on alteration of dam to ensure adequate supply of water for P.M owned by Assessee  $\Downarrow$   
Allowed

\* Sec. 40  $\circ$  — Amt. Not deductible

o Sec. 40(a)(i)  $\Downarrow$

Any Amt. paid or credited to NR or Foreign Co. on which TDS  $\Downarrow$  is deductible  $\Downarrow$

o But TDS has not deducted during PY or

o TDS deducted but not paid to Govt. upto due date of ROI  $\Downarrow$

Then such Amt  $\Rightarrow$  100% disallowed in Current PY  $\Downarrow$

Allowed in PY of deposit to Govt.  $\Downarrow$

[ TDS deducted in subsequent year  $\circ$

TDS deposit after due date of ROI ]

• Sec. 40(a)(ia)  
⇓

Any Amt. paid or credited to Resident  
⇓  
on which TDS is deductible  
⇓

• But TDS has not deducted during PY  
or

• TDS deducted but not paid to Govt. upto due date of ROI  
⇓

Then such Amt. = 30% disallowed in  
⇓ Current PY

allowed in PY of deposit to Govt.

[ If TDS deducted in subsequent year (or)  
TDS deposit after due date of ROI ]

Notes →

If any amt. paid/credited to payee without deduction of TDS & such payee  
⇓

- Furnish his ROI
  - Consider such Amt. in total income
  - Paid Tax due on such Amt.
- ⇓

Amt. disallowed will be allowed in year in which payee files his ROI

o Sec. 40(a) (b) :-

Any Amt. [Consideration for specified Service] paid or credited to NR

↓  
on which Equalisation Levy is deductible  
↓

o But has not deducted during PY  
or

o deducted but not paid to Govt. upto due date of ROI  
↓

Then Such Amt. = 100% disallowed in current PY  
↓

Allowed in PY in ~~rate~~ of deposit to Govt.  
↓

[ If deposited in subsequent year or deposit after due date of ROI ]

\* Sec. 40 A(2) → Payment to specified persons  
↓

If payment of expenditure made to specified person (relatives), then AO can disallow Excessive or unreasonable Amt.  
↓

Payment in Excess of FMV ⇒ Excess disallowed

## Specified Persons [Relatives]

Assessee

Specified Person (Relative)

- Individual      Spouse, Brother, Sister or any lineal ascendant or descendant of individual
- HUF      Member of HUF & Relatives of Member
- Firm      Partner of Firm & Relatives of Partner
- AOP/BOI      Member of AOP/BOI & Relatives of Members
- Company      Director of company & Relatives of directors

For all Assessee

↓

Any person having Substantial interest (20% or more voting power / Profit Share) in Business of Assessee / Relative of Assessee

## ○ Section 40A(3) :- Cash Payments

If Aggregate payment for expenditure to a single person in a day exceed ₹10000 by Cash / Bearer cheque / Cross cheque

Then such payment = 100% disallowed  
[Paid in cash / Bearer cheque / cross cheque]

### Note :-

If payment made to transporter -  
limit will be ₹35,000

If expenditure claimed as deduction in earlier years on due basis & if such expenditure is subsequently paid in Cash / Bearer cheque / cross cheque in excess of ₹100000, the ded. allowed earlier taxable under PGBP  
(Sec. 40A(3A))

### Non-Applicability →

- ① If Payment by A/c Payee cheque / DD / ECS / any other Electronic mode such as NEFT, RTGS, Debit card, credit card etc.
- ② Payment made to Bank / LIC / Govt.
- ③ Payment by Book entry

- ④ Payment made in a village / town, where no banking facility
- ⑤ Payment of Retirement benefits to Employees / their family upto ₹ 50000
- ⑥ Payment of Salary to an Employee who is posted to a place other than his normal place of duty for 15 days or more
- ⑦ Payment to Producers / cultivators of Agricultural Product, Forest product, Poultry / Dairy Product, Fish Product, Live stock etc.

\* Sec. 40(b) :- Payment of interest and Remuneration [Salary, Bonus, Commission, Royalty] to Partners by Firm / LLP

only for Firm and LLP

Interest paid to Partner on Capital / Loan / Current A/c

↓  
 If not authorised by deed

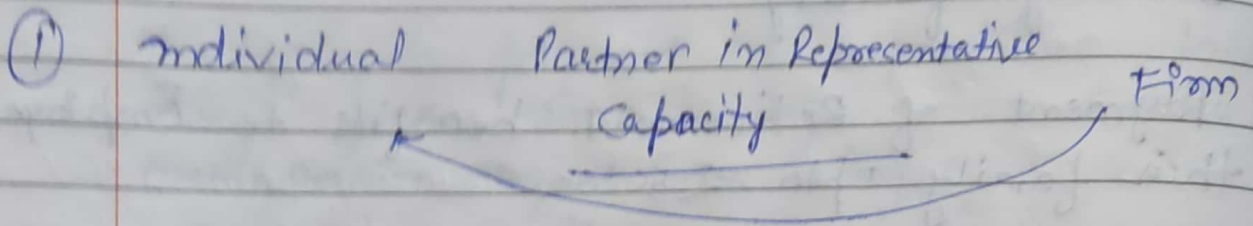
↓  
 No deduction  
 (100% disallowed)

↓  
 If authorised by deed

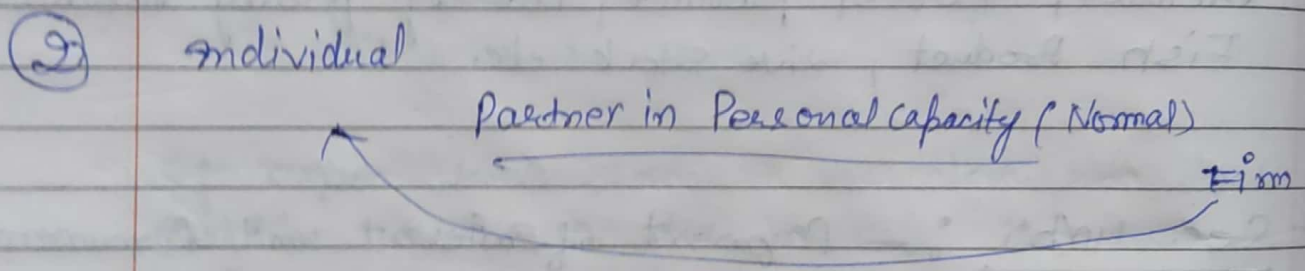
↓  
 Maximum interest upto 12% p.a. is allowed as deduction

Note :- Interest shall relate Period beginning after date of deed not for any earlier period [Not Retrospectively]

Other Points :-



Interest received in Personal Capacity  
↓  
No Limit  
(Full Interest is allowed as deduction)



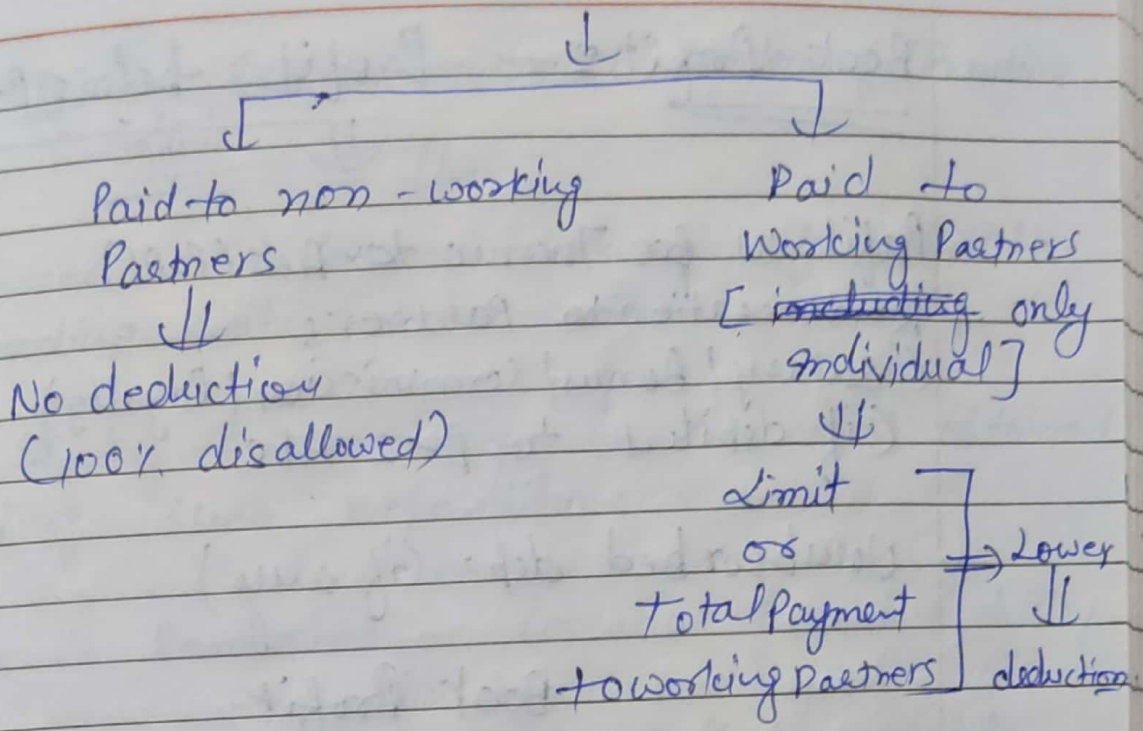
Interest received on behalf of or for benefit of other  
↓  
No limit  
(Full interest is allowed as deduction)

o Remuneration [Salary / Bonus / Commission / Royalty] paid to Partners

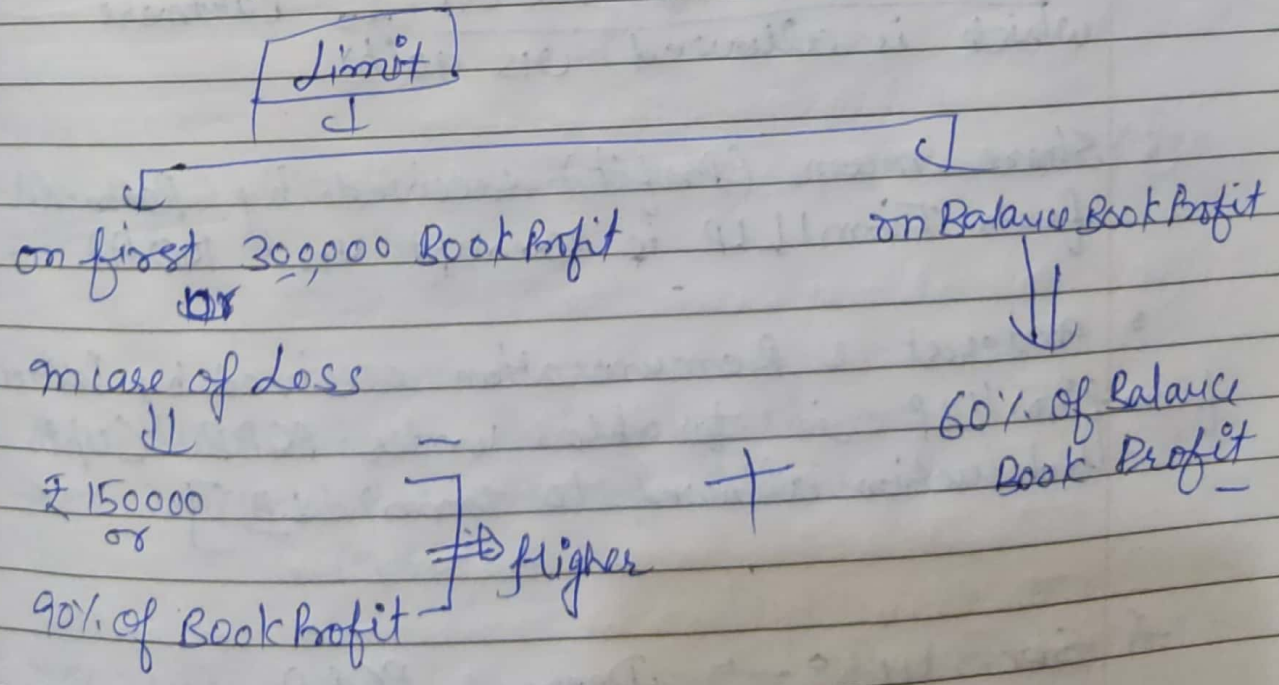
↓  
If not authorised by deed  
↓  
No deduction (100% disallowed)

↓  
If authorised by deed  
↓  
↓





Note : → Remuneration shall relate to period falling after date of deed & Not for any earlier period [Not retrospective]



Book Profit :- Profit before Remuneration

Profit as per Income tax Act (PGBP)	XX
+ Remuneration to Partners (Salary/Bonus/Commission/Royalty) (if debited to P&L A/c)	XX
- Unabsorbed dep. (if any)	(XX)
<u>Book Profit</u>	<u>XX</u>

Note :-

- o Section 40A(2) shall not attract in case Interest & Remuneration to Partners which is allowed u/s 40(b)
- o Share income (Profit) received by Partners from Firm/LLP is Exempt u/s 10(2A)
- o Interest & Remuneration received by Partner from firm/LLP is taxable under PGBP [upto deduction allowed to firm/LLP]

X Sec. 41 → Deemed PGBP

Sec. 41(1) ⇒

- Sec. 41(1) → Remission or Cessation of Trading Liab. ↓↓

If assessee was taken deduction of Expenditure or Trading Liability in earlier years and

Now during Current PY Assessee has obtained refund of such expenditure or

There is Remission or Cessation of such liability ↓↓

Then such Remission / Refund shall be taxable under PG BP ↓↓

Example = Sales tax refund, Creditors written off, Less payment to creditors

Note → Waiver of Working Capital Loan also covered

- Sec. 41(2) → Balancing charge

- Sec. 41(3) → Sale of Scientific Research Asset

- Sec. 41(4) → Recovery of Bad Debts

\* Sec. 43B → Exps. allowed on Actual payment Basis

∩

Following Exps. are allowed only if they are paid upto due date of ROT

∩

① Any tax, duty, cess (include interest on Tax)

② Employer contribution towards

- SPF
- RPP
- Approved superannuation Fund
- Approved gratuity Fund
- Any other fund as per law
- Pension scheme vis 80CCD

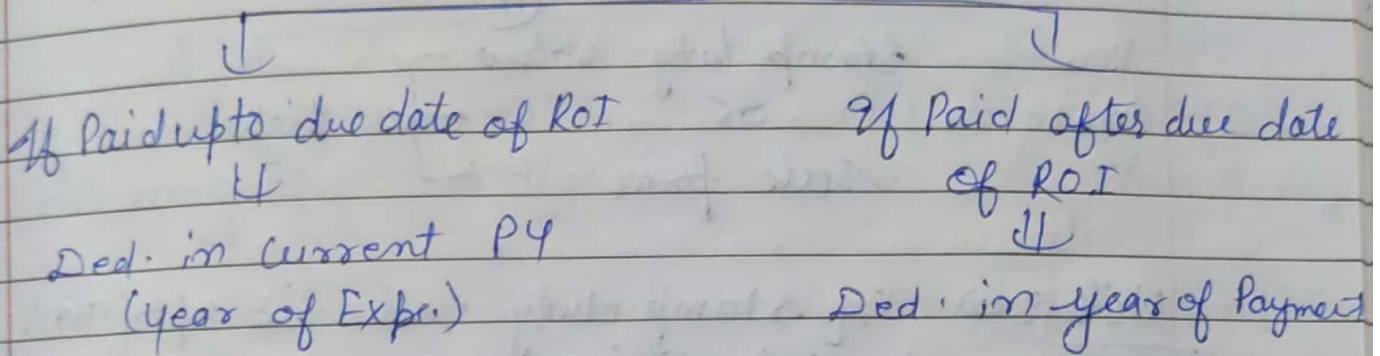
③ Bonus or Commission to Employees

④ Interest on Loan to

- Scheduled Bank
- Co-operative Bank
- Public Financial Institution
- State Financial Corporation
- State Industrial Investment Corporation
- NBFC

⑤ Leave Encashment (Leave Salary) to Employees

⑥ Amt. payable to Indian Railways for use of Railway Assets



Other Points :-

→ Furnishing of Bank Guarantee upto due date of ROI cannot treated as Actual Payment

→ Bonus is allowed even if Amt. is initially remitted to the trust created for avoiding late ~~for~~ payment of Bonus. Provided actual payment to employees is made upto due date of ROI.

→ If interest converted into loan, then such conversion cannot treated as payment. However, when installment of such converted interest is paid, deduction allowed

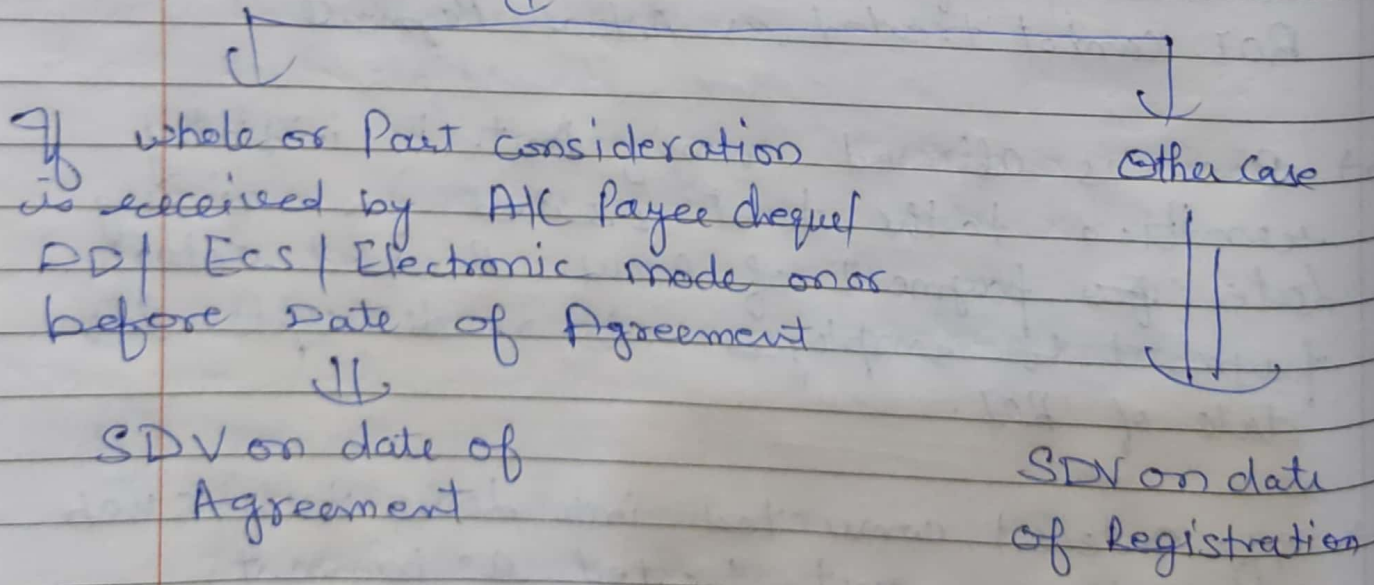
→ Interest includes pre-payment premium, so it is also allowed on paid basis.

\* Sec 43CA :- Sale consideration of Land & Buildings  
(If held as stock-in-trade)

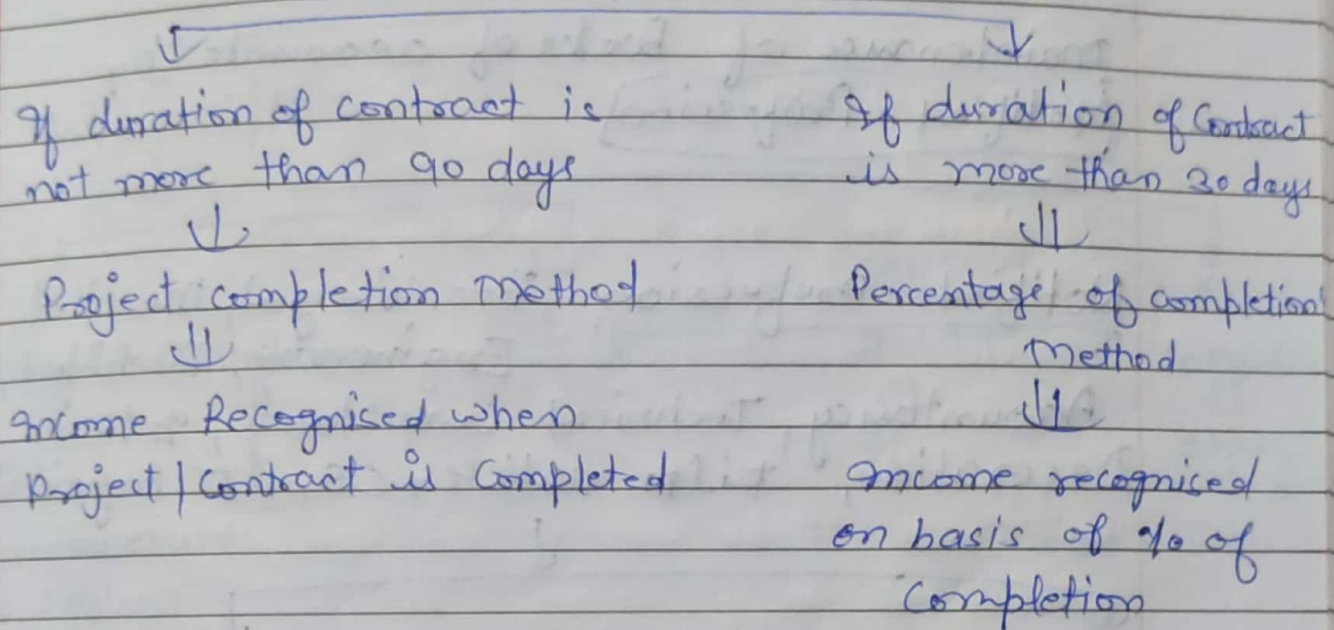
Stamp duty value  
or  
Sale price } higher

Note :- If stamp duty value is upto 110%  
of Sale price, then  
Sale consideration = Sale price

If date of agreement & Date of Registration  
is not same



\* Sec. 42CB :- Income from Construction & Service Contracts



Note → Income also includes Retention money

\* Sec. 114 :- Special Provisions for Trade, Professional or Similar Associations

If expenditure of such association exceeds subscription income received from Members

→ The Deficiency shall be first set off against PQBP income of Association

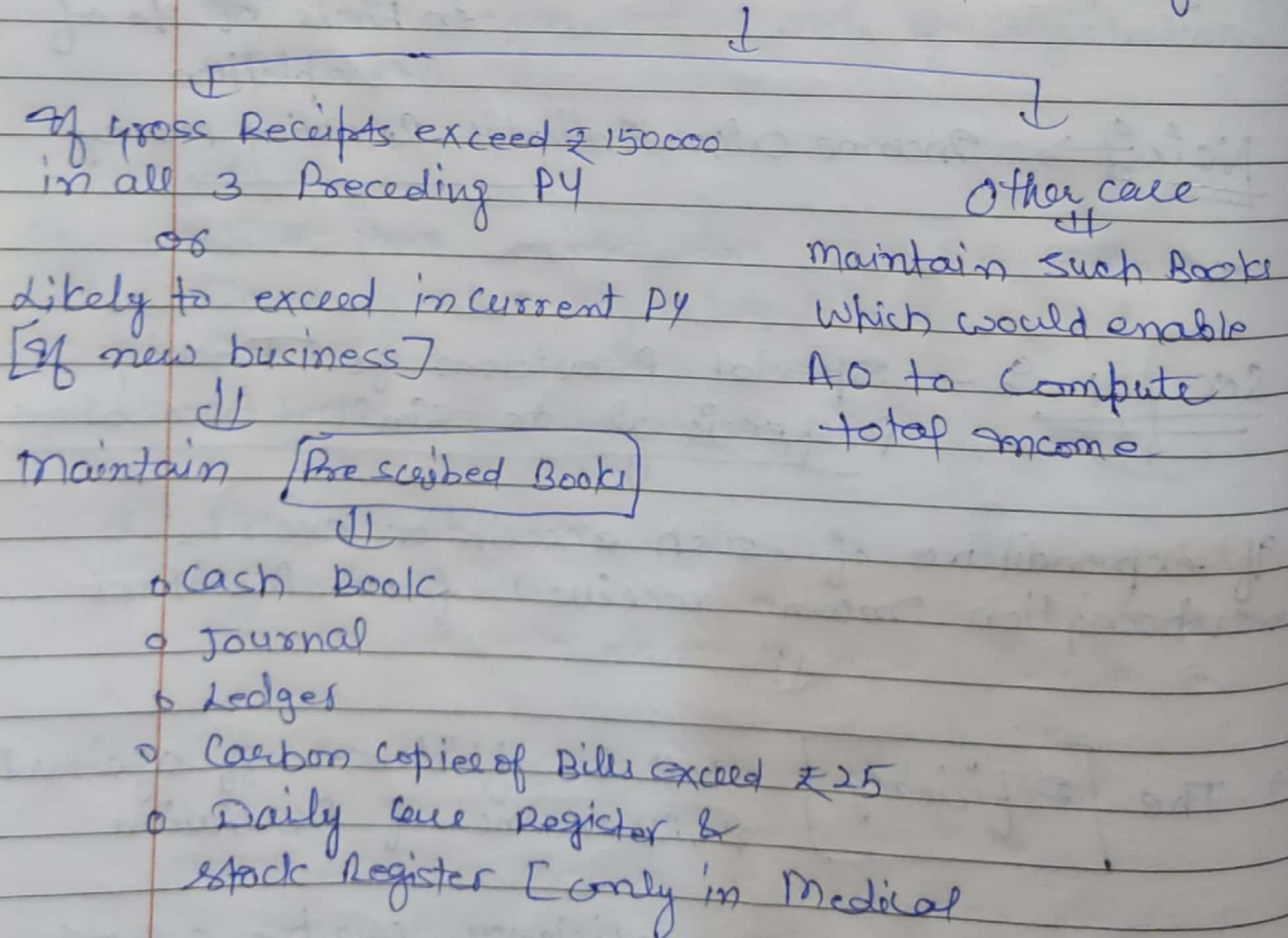
→ If no PQBP income, deficiency can be set off against any other income

Maximum deficiency that can be set off is 50% of total income of Association

## A Sec. 44AA :- Compulsory Maintenance of Book of Accounts

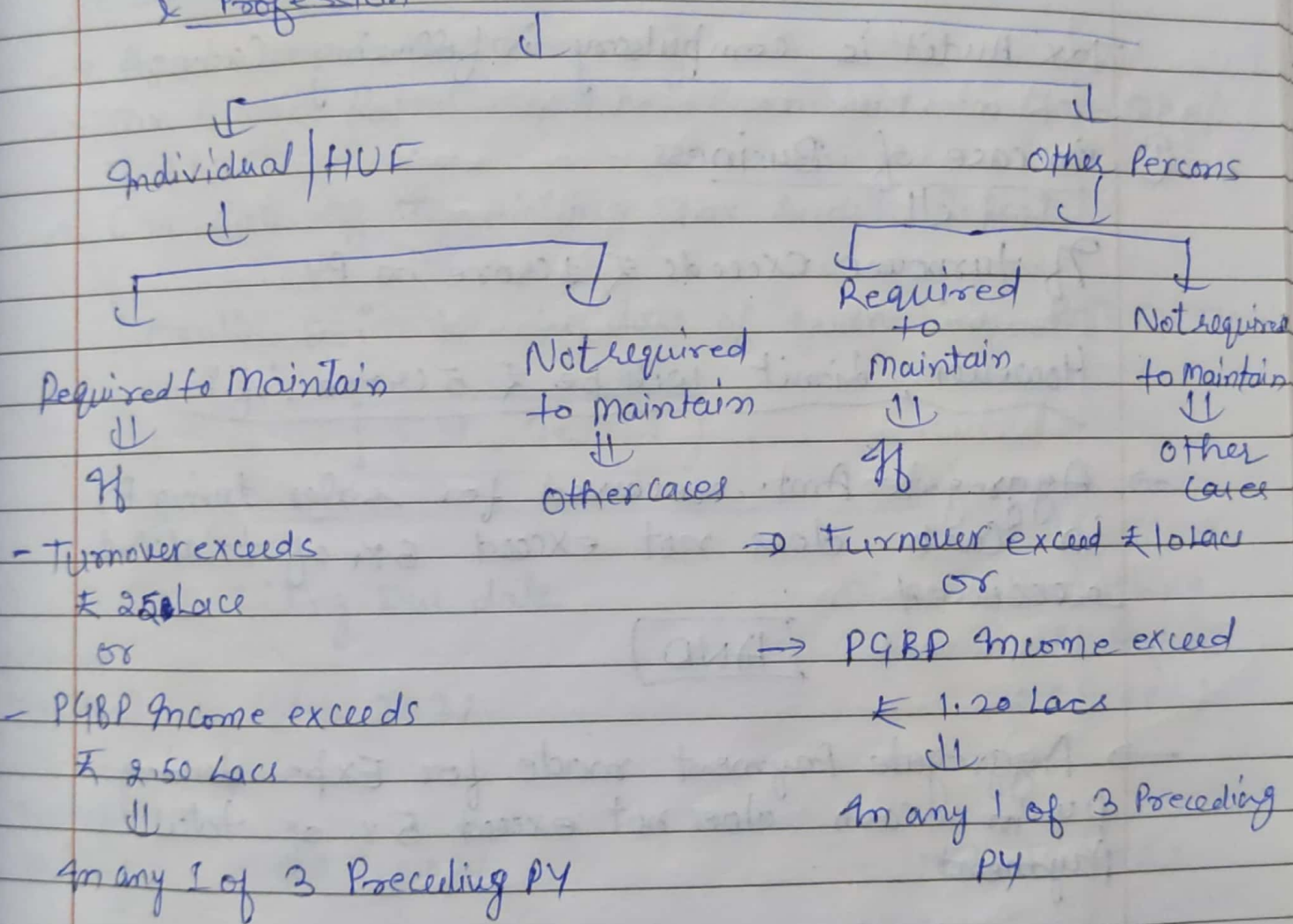
### Maintenance of Books of accounts by Notified Profession

Notified Profession :- Legal, Medical, Engineering, Architect, Accountancy, Technical Consultancy, Interior Decoration, Film artists, CS, IT Professionals





# Maintenance of Books of accounts by other Business & Profession



Period for which Books of accounts are required to be kept & maintained  
 ↓  
 Minimum 6 years From end of AY

\* Sec. 44AB  $\rightarrow$  Tax Audit of Books of Accounts

Tax Audit is compulsory in following Cases:-

① In case of Business

⇓

If turnover exceeds ₹ 1 crore in PY

However, limit will be ₹ 5 crore, if:

$\rightarrow$  Aggregate Amt. received for sales during PY in cash does not exceed 5% of total Amt. received

[AND]

$\rightarrow$  Aggregate Payment made for Exps. during PY in cash does not exceed 5% of total Payment

② In case of Profession

⇓

If Gross receipts exceeds ₹ 50 lakh during PY

③ If Assessee covered by sec. 44AD or 44ADA & Assessee claimed income less than 8% / 6% or 50% of turnover / Gross Receipts and his total is more than Basic Exemption limit

④ If Assessee covered by Sec. 44BB, 44BBB, 44AE & Assessee claimed income less than profit deemed under these sections

Other Points :-

- Audit must be done by CA
- Tax Audit Report shall be furnished in form 3CA/3CB/3CD
- Due date of Furnishing Tax Audit Report

1 month prior to due date of furnishing RoI U/s 139(1)

PY 20-21

↓		↓
<p style="text-align: center;">RoI Filing Due date</p> <p>Normal Tax Audit      31.10.2021</p> <p>Transfer Pricing      30.11.2021</p> <p>Other Case              31.07.2021</p>	<p style="text-align: center;">Due of Furnishing Tax Audit Report</p> <p style="text-align: center;">30.09.2021</p> <p style="text-align: center;">31.10.2021</p> <p style="text-align: center;">—</p>	

## Presumptive Taxation :- Optional

Particulars	Sec. 44AD	Sec. 44ADA	Sec. 44AE
Eligible Assessee	Resident individual HUF, Firm (not LLP) engaged in any business other than <ul style="list-style-type: none"> <li>o Notified Profession</li> <li>o Commission Business</li> <li>o Agency Business</li> <li>o Sec. 44AE Business</li> </ul>	Resident Assessee <del>individual</del> engaged in notified Profession	Any person engaged in business of flying, hiring, leasing, Goods Carriage  [Transportation Business]
Presumptive PGBP income	→ If Turnover/GR received by A/c Payee cheque/DD/ECs/ electronic mode upto due date of ROI ↓ 6% of such turnover/GR  → otherwise 8% of such turnover/GR	50% of GR (Gross Receipts)	→ 7% Heavy goods vehicle [Gross weight exceeds 12 tonne] ↓ ₹1000 × weight in tonne × ownership of vehicle month/part of month (per vehicle) → Other case ₹7500 × ownership month/part of month (per vehicle)

Exps. Deduction	Noded. of Any exps. U/S 30 to 38 and sec. 40B	← same	No ded. of any exps U/S 30 to 38
Maintenance of Books of Accounts & Audit	→ If Assessee opts ↓ Not required  → If Assessee does not opt and his total income exceeds Basic Exemption limit ↓ Required	← same	→ If assessee opts ↓ Not Required  → If Assessee does not opt ↓ Required
Other point	<ul style="list-style-type: none"> <li>◦ Advance tax Payment only in 1 installment → 15th march of FY</li> <li>◦ ROI Filing Due date - 31st July</li> <li>◦ Assessee shall not claim ded. U/S 10 AA &amp; Sec. 80 IA to 80RRB</li> <li>◦ If Assessee declares income for any FY as per sec. 44AD he does not declare income for next 5 consecutive FY as per 44AD ↓</li> </ul>	<ul style="list-style-type: none"> <li>◦ Advance tax Payment only in 1 installment → 15th march of FY</li> <li>◦ ROI Filing Due date - 31st July</li> </ul>	<ul style="list-style-type: none"> <li>◦ Advance tax Payment only in 1 installment → 15th march of FY</li> <li>◦ ROI Filing due date - 31st July</li> </ul>

he will not be eligible  
 for 44AD for 5  
 years subsequent  
 to year in which  
 he does not declare  
 Income as per 44AD

A Sec. 44DB :- Business Reorganisation of Co-operative Banks

If Business Reorganisation (Amalgamation/ demerger) of co-operative Banks took place during PY then deduction u/s 32, 35 D, 35 DD, 35DDA of Predecessor of such PY

shall be distributed between Predecessor & Successor Co-operative Bank

From 1st day of PY upto before Business Reorganisation Date

Predecessor

From Business Reorganisation date upto 31st March of PY

Successor

\* Sec. 115 BBF :- Royalty income in respect of Patent developed & Regd. in India

||

Taxable under PCBP or OS

||

Taxable @ 10%.

Notes :-

- No ded. of any expenditure
- applicable only to Resident Assessee
- applicable only if atleast 75% of Development Exps. incurred in India.

\* Sec 115 BBG :- Income from transfer of Carbon Credits

||

Taxable under PCBP or OS

||

Taxable @ 10%.

Note :-

- No ded. of any expenditure

\* Sect. 145 A - Method of Accounting for PGBP  
OS

||

Income from PGBP & OS shall be computed as per

- Cash system (or)
- Mercantile System

Sect. 145B. A -

⇒ claim for escalation of price in a contract deemed to be income of PY in which reasonable certainty of its realisation is achieved

⇒ Subsidy / Grant from Govt. deemed to be income of PY in which it is received.

~~\* Income~~



## Income Computation & Disclosure Standards (ICDS)

Sec 145(2) :- CG Notified 10 ICDS

→ ICDS are applicable for computation of income under PGBP and OS (Mercantile System) and not for maintaining Books of Accounts

→ ICDS applies to all assessee [except individuals & HUF who are not liable for tax audit u/s 44AB]

→ In case of conflict

Preval

Income tax Act & ICDS

Income tax Act

Income tax Rules & ICDS

Income tax Rules

AS / Ind AS & ICDS

ICDS

→ ICDS also applies in case of Presumptive Taxation

→ ICDS will not apply on MAT calculation, but applies on calculation of AMT

ICDSI :- Accounting Policies

• Does not recognise Prudence & materiality concept

• Example → Expected loss on contract etc. to be recognised on Actual basis

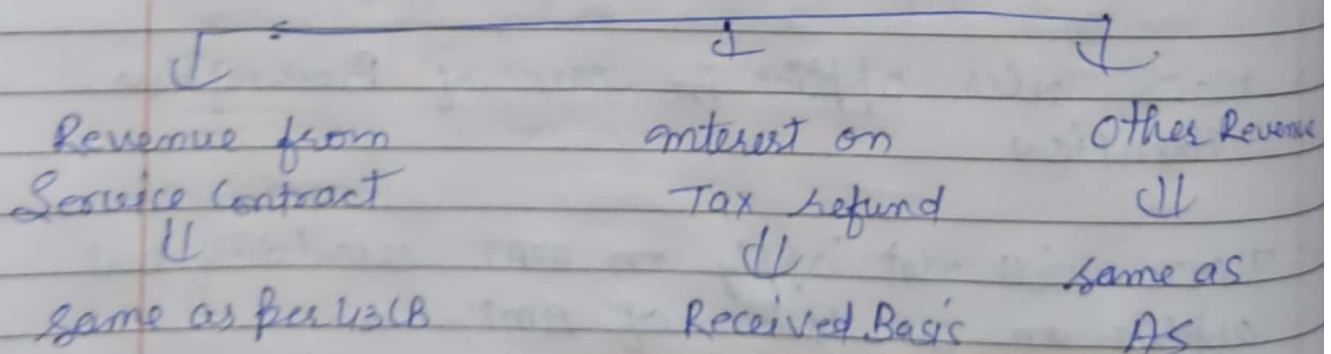
## ICDS II : Valuation of Inventories

- o Cost or NRV → Whichever is lower
- o In case of dissolution of firm, inventory shall be valued at NRV
- o Borrowing cost which does not meet the recognition criteria shall not be included in the cost of inventory

## ICDS III : Construction Contract

↓  
same as per U3CB

## ICDS IV : Revenue Recognition

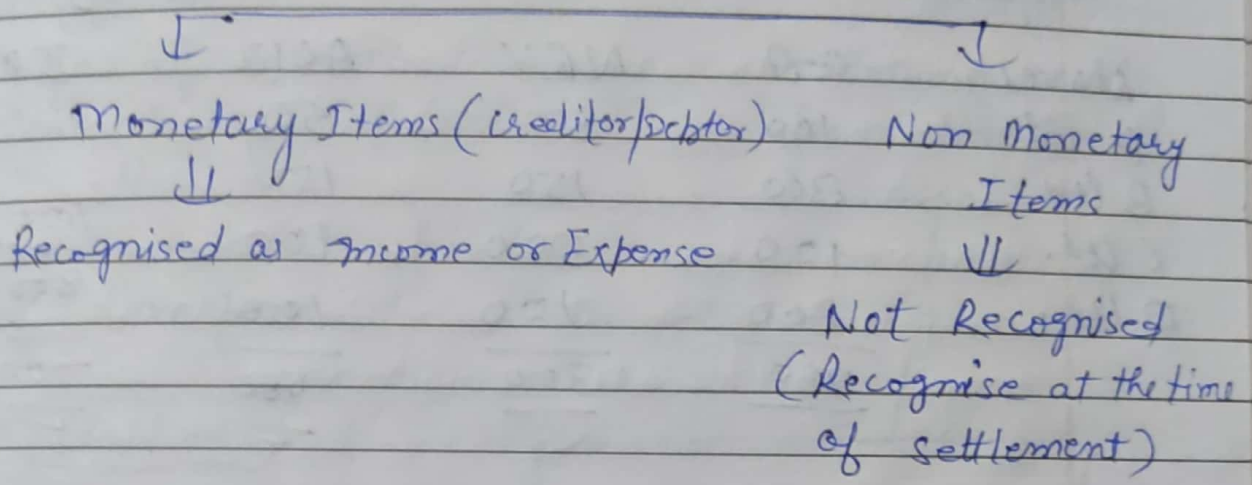


## ICDS V : Tangible Fixed Assets

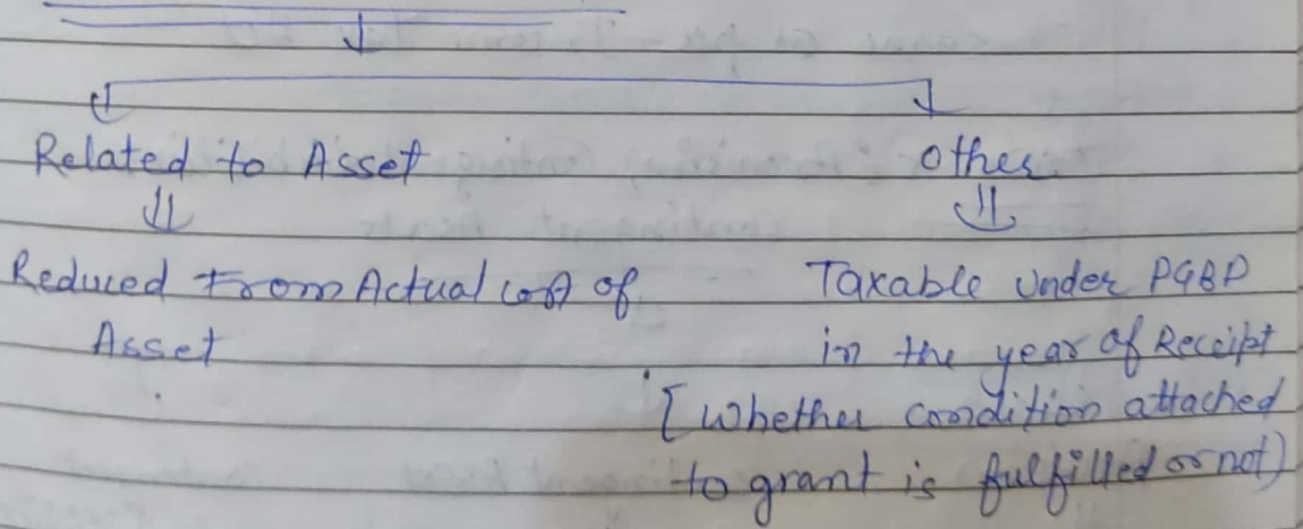
- o Dep. & Transfer → Same as per Income Tax Act
- o Revaluation of Asset is not permitted
- o In case of Exchange of Asset → Actual Cost of Asset shall be FMV of Asset Received

# ICDS VII : Effect of change in Foreign Exchange Rates

Exchange Diff. arising on Last day of PY



# ICDS VII : Govt. Grants



# ICDS : Securities

- covered only securities held as stock in Trade
- As per ICDS, valuation of securities shall be done category wise and not security wise

Cost of category  
or  
NRV of category  $\rightarrow$  Lower

[In case of AS 13, valuation is done as per security wise]

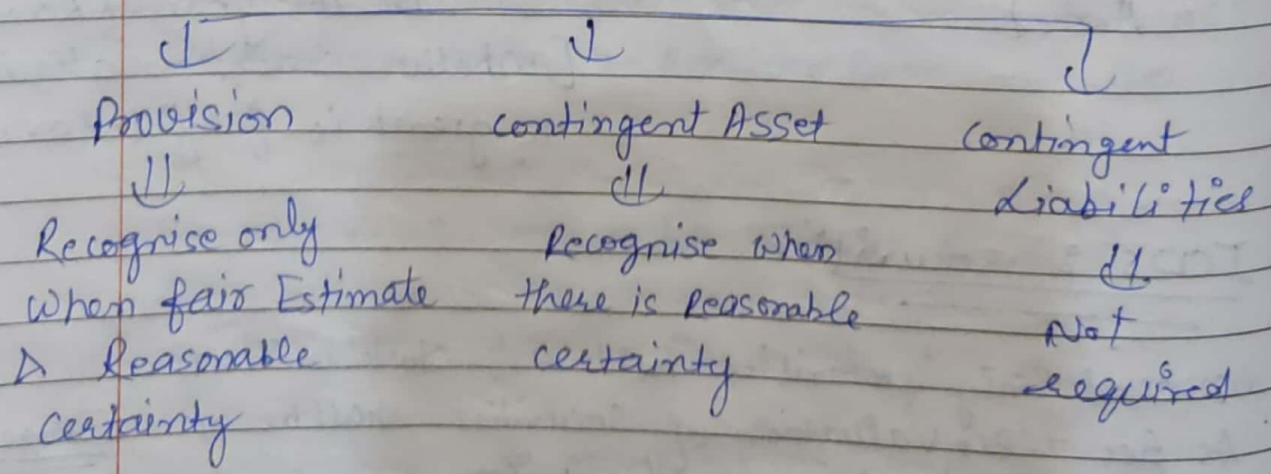
Example

Shareholder	Cost	NRV	AS 13	ICDS
A Ltd.	100	50	50	
B Ltd.	300	150	150	
C Ltd.	100	500	100	100
D Ltd.	200	100	100	800
	<u>700</u>	<u>800</u>	<u>400</u>	<u>700</u>

ICDS X & Borrowing Cost

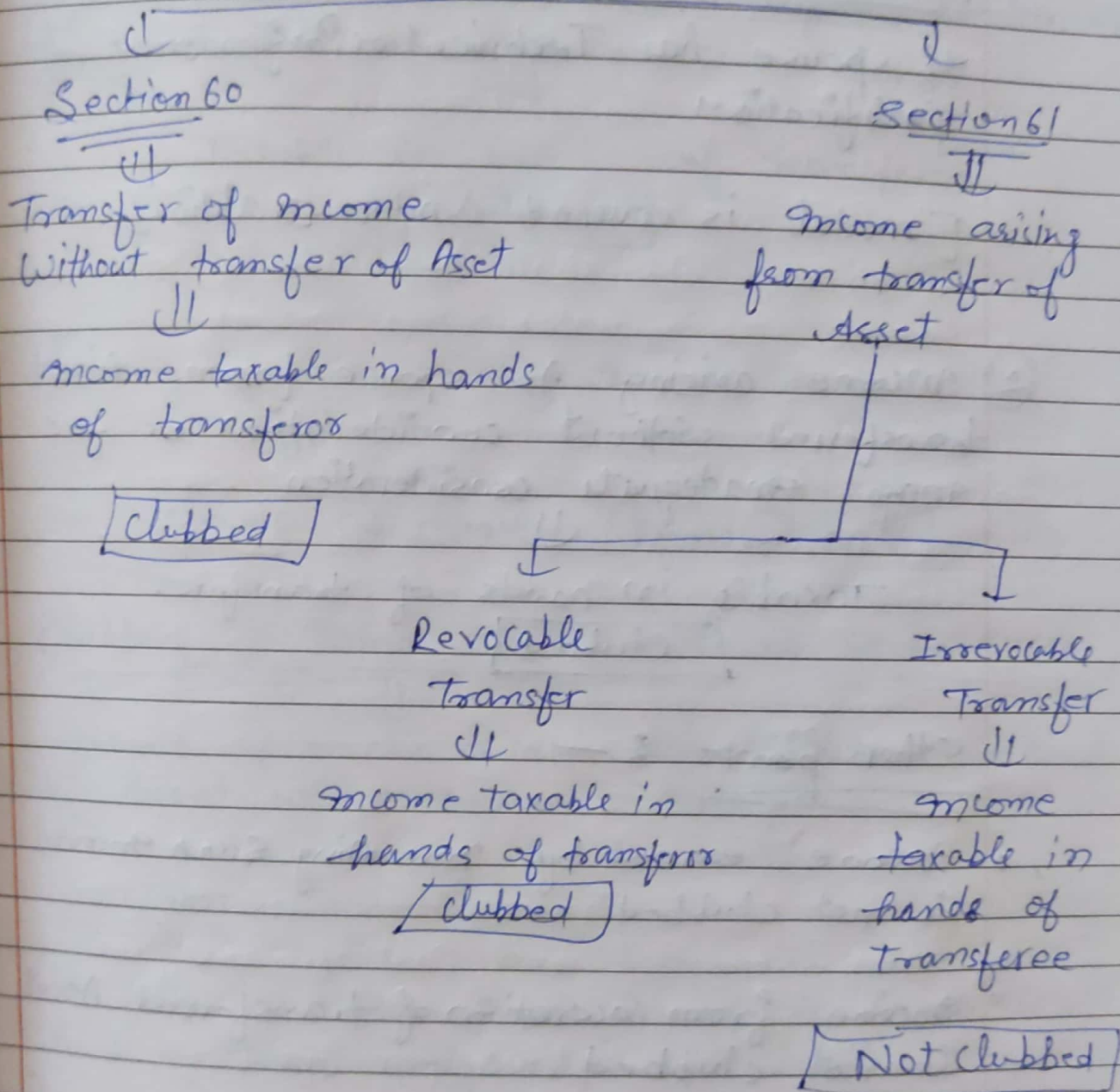
same as per Income Tax Act

ICDS X & Provision, Contingent liabilities & Contingent Assets



# Clubbing of Income

## General Provision



## Clubbing of Spouse Income [Sec. 64]

- ① Remuneration to spouse from a concern in which individual has substantial interest  
↓  
Taxable in the hands of individual  
clubbed

Exception :-

If spouse has Technical or Professional qualification

[model is covered under Exception]

② Income arising to spouse from Asset transferred without consideration or for ~~any~~ inadequate consideration



Taxable in hands of transferor  
[Clubbed]

Other points :-

- Income earned by investing such income is not clubbed
- Income from accretion of transferred Asset is not clubbed
- If Transferred Asset is invested by Spouse in Business/Firm



Then Income/Interest on capital to be clubbed



Profit of business / interest on capital x Amt of transferred Asset by spouse on 1st day of PY

total investment / capital on 1st day of PY

③ Income from Asset transferred to other Person without consideration or For inadequate consideration for benefit of spouse  
⇓

Taxable in hands of transferor  
Clubbed

Clubbing of Son's wife income

⇓

Same as above [Point ② & ③]

Clubbing of Minor child income → Section 64(1A)

⇓

Income of minor child is taxable/clubbed in hands of Parent whose income is more.

Exception

⇓

In following cases minor income is taxable in hands of minor only: -

- o Income is due to manual work
- o Income is due to skill & talent
- o minor child is suffering from disability u/s 80U

Other points :-

⇓

→ Income earned by investing income due to manual work, skill & talent is also taxable/clubbed in hands of Parent.

- If minor child income is clubbed in the hands of Parents, then Exemption u/s 10(32) of maximum ₹ 1500 p.a. per child is allowed to Parent.
- If Marriage of Parents does not subsist, income of minor child shall be clubbed in hands of Parent who maintains the minor child in relevant P.Y.
- Clubbing Provisions attracted even in respect of Minor married Daughter [Except on income from Transferred House Property]

Cross Transfer  
⇓

If there are 2 Transactions and they are inter-connected and part of same Transaction  
⇓

Considered to be device for Erosion of Tax  
⇓

Clubbing provisions shall apply

Mr. A ↔ Mr. B  
Brother

Example :-

Mr. A gifted ₹ 10 lacs to his brother's wife (Mrs. B)  
and

His Brother Mr. B gifted ₹ 12 lacs to Mrs. A (Mrs. A's wife)





## Other Points Relating to clubbing

- Losses are also clubbed
- AO can also serve notice of demand [For tax Payment] to the person to whom Asset is transferred in case of clubbing (Sec. 65)

# Set off and C/F of losses

## Set-off of losses

Inter Source Set off  
↓

Set off from same head of income

Inter Head Set off  
↓

Set off from different head of income

### Example :-

- Business loss from other Business income
- House Property loss from other h/p income

### Example :-

- Business loss from h/p income
- h/p loss from salary income

## Set-off of current year losses

AT

- First Inter Source
- Then Inter Head
- Balance Carried Forward

## Set off of Earlier years Brought forward losses

AT

- Only inter source set-off is allowed  
[ Same Head Set-off ]

\* Exceptions in Inter-source (same head) Set-off

→ Speculative Business Loss

Set off only from Speculative Business Profit

→ Long term Capital Loss

Set off only from Long term Capital Loss

→ Sec. 35 AD Business Loss

Set off only from Sec. 35 AD Business Profit

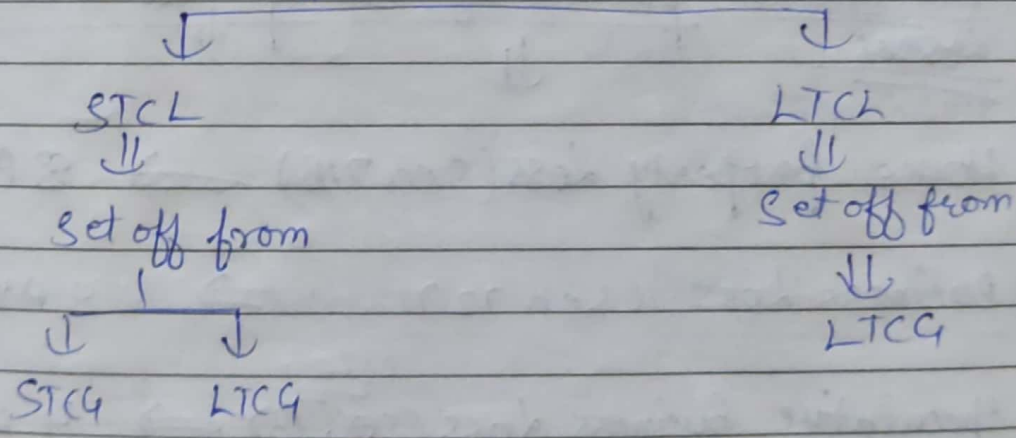
→ Loss from activity of owning & maintaining Race Horses

Set off only from Profit from Activity of owning & maintaining Race Horses

~~XXXXXXXXXX~~

\* Exceptions in inter Head (Different Head) set off

- Loss from BLP cannot be set off from salary
- speculative Business loss, Sec. 35 DD Business loss, loss from activity of owning & maintaining Race Horses cannot be set off from any other Head of income
- Short term/Long term Capital Loss cannot be set off from any other head of income

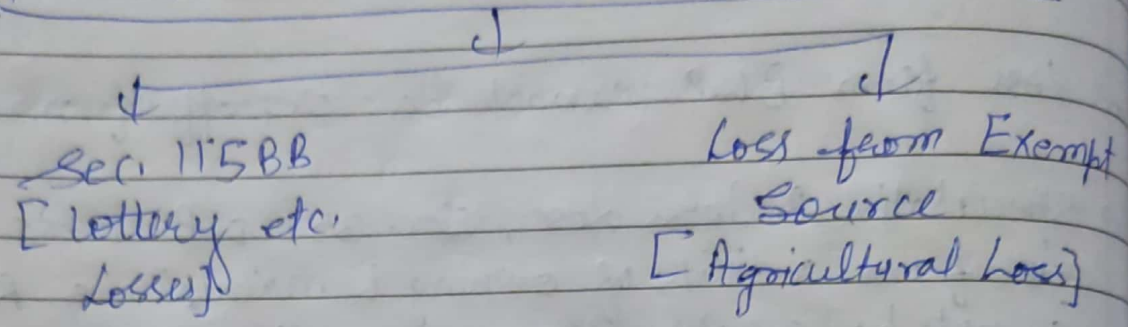


→ Loss from house property can be set off from other head of income only upto ₹ 2 lakh

Other points :-

- Any loss under any head cannot be set off from
  - ↳ casual income U/S 115BB
  - ↳ Black money income U/S 68, 69, 69A, 69B, 69C, 69D

→ Losses which cannot be set off & Carried Forward



Carry forward of Losses :-

Maximum period of carry forward of Losses

- ① House property loss (Sec. 71B) ⇒ 8 AY
- ② Business loss (Sec. 72) ⇒ 8 AY
- ③ Speculative Business loss (Sec. 73) ⇒ 4 AY
- ④ Sec. 35AD Business loss (Sec. 73A) ⇒ indefinite
- ⑤ Short/long term capital loss (Sec. 74) ⇒ 8 AY
- ⑥ loss from activity of owning & maintaining Race Horses (Sec. 74A(3)) ⇒ 4 AY

⇒ [Immediately succeeding AY in which capital loss is computed]

\* carry forward & set off of Accumulated Business Losses and unabsorbed dep. in case of Amalgamation / Demerger / conversion (Sec. 72 A)

— in case of Amalgamation —  
↓

Business loss (Except speculative Business Loss) & Unabsorbed dep. of Amalgamating Co. can be carry forward & set off by Amalgamated Co.

For Business Loss CIF  $\Rightarrow$  Fresh period of 8 years is allowed to Amalgamated Co.

— In case of conversion of Proprietorship / Firm into Company —  
↓

Business loss (Except speculative Business Loss) & Unabsorbed dep. of proprietorship / Firm can be carry forward & set off by the company

For Business Loss CIF  $\Rightarrow$  Fresh period of 8 years is allowed to the Co.

— In case of conversion of company into LLP —  
↓

Business loss (Except speculative Business Loss) & Unabsorbed dep. of Co. can be carry forward & set off by LLP.

In case of Demerger

% Business Loss (Except speculative Business Loss) & Unabsorbed dep.

Directly relatable to Unit Transferred

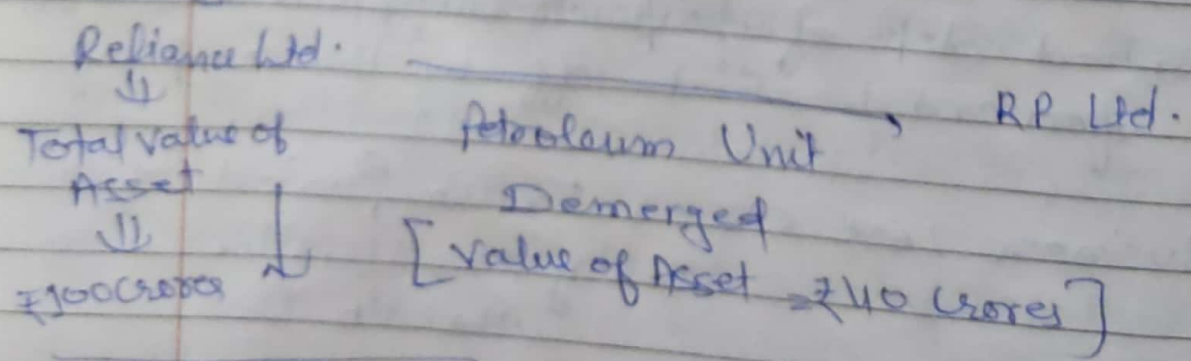
↓  
Fully CIB Setoff by Resulting Co.

Not directly relatable to Unit Transferred

↓  
Apportioned b/w Demerged Co. & Resulting Co.

↓  
on the ratio of value of Asset Retained & Transferred by Demerged Co.

Example :-



Business loss = ₹20  
Unabsorbed dep = ₹10



↓  
 Directly relatable to  
 Petroleum Unit  
 ↓↓

Business Loss = ₹ 2 Cr.  
 Unabsorbed dep. = ₹ 1 Cr.

↓  
 Fully CIF & Setoff  
 by RP Ltd.

↓  
 No directly relatable  
 to petroleum unit  
 ↓

	Reliance Ltd.	RP Ltd.
Business Loss	2 Cr. × 60%	2 Cr. × 40%
	↓	↓
	1.20 Cr.	80 Lac
Unabsorbed dep.	1 Cr. × 60%	1 Cr. × 40%
	↓	↓
	60 Lac	40 Lac

\* Carry forward & set off of Losses in case of change in Constitution of Firm or Succession

— In case of change in constitution of Firm

↓

Unabsorbed Business Loss share of Retired/Deceased Partner shall not be allowed to be carry forward by the firm

Note: —

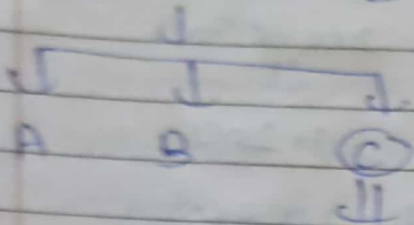
- Unabsorbed dep. can be carry forward fully
- Above provision is not applicable in case of change in PSR among existing partners

Example

ABC Co. [firm] → PY 20-21  
 ↓

3 Partners [equal share]

Business loss = 600000  
 Unabsorbed dep = 100000



Retired in PY 20-21



Business loss share of C =  $600000 \times \frac{1}{3}$   
 = 200000  
 cannot be carry forward

So, ABC Co. can CIF → Business loss = 400000  
 → Unabsorbed dep = 100000

Modes of Succession of Business :-



Succession by inheritance  
 ↓

Other  
 ↓

• Legal Heirs are entitled to carry forward & set off Business loss of Predecessor

• successor is not entitled to carry forward & set off Business loss of Predecessor

• If legal Heirs constitute themselves as P'ship Firm, Firm can CIF & set off Business loss of Predecessor

\* Special Provision for carry forward & set-off of losses in case of closely held companies (sec. 79)

Loss incurred in earlier years shall be C/F & set off in PY only if

At least 51% voting power held by same shareholders

on last day of year in which loss is incurred and on last day of PY in which loss will be set off

Example: —

X4Z Pvt. Ltd. = B/F Business Loss of PY 2018-19 = ₹40 Lacs  
 P4BP income in year 20-21 = ₹60 Lacs

Shareholding Pattern

PY 18-19  
 Mr. X = 55%  
 Others = 45%

PY 20-21  
 Mr. X transferred his Entire Shareholding to Mr. A  
 Mr. A = 55%  
 Others = 45%

PY 20-21

P4BP Income  
 - B/F Business Loss  
 (cannot be set off)

60 00 000  
 —  
 60 00 000

### Non-applicability :-

- on Unabsorbed dep.
- Where change in shareholding <sup>is</sup> due to death of shareholder or by way of gift to relative
- Where change in shareholding is due to resolution Plan approved under IBC, 2016

### Order of Set off of Losses (in case of Business)

- Current year dep.
- BIF Business loss
- Unabsorbed dep.
- Unabsorbed capital Expenditure on Scientific Research
- Unabsorbed Family Planning Expenditure

### Submission of Return for Losses (sec. 80) →

Assessee must file Loss Return U/s 139(2) upto due date of ROT given U/s 139(1) to CIF and set-off following losses :-

- Business loss
- Speculative Business loss
- Sec 35 AD Business loss
- Capital loss
- Loss from activity of owning & maintaining Race horses

Non applicability :-

- o House property loss
- o Unabsorbed dep.

# Exempt Income

Hitech  
Page: 142

Date: / /

Sec. 10 Certain income which are Exempt and will not be included for computing Total Income

## (1) Ag. Income in India (Sec. 10(1))

### Ag. Income

- Income from Sale of Ag. Produce
- Rent from Ag Land / Farm Building use for Ag. Purpose
- Income from samplings & seedlings grown in a nursery

### Following are not Ag. Income

- Breeding of livestock
- Poultry Farming
- Fisheries
- Dairy Farming

### Apportionment of income b/w Business & Ag. Income

In case of growing & mfg. of Tea / coffee / Rubber

	Business Income	Ag. Income
Tea	40%	60%
Rubber (Latex)	35%	65%
Coffee (grown & cured)	25%	75%
Coffee (grown, cured, grounded, roasted)	40%	60%

In case of growing & Mfg. of Any other product.

Business Income

Sale value of Product	xx
- Market value of Ag. Produce consumed in Mfg. the Product	(xx)
- Mfg. Exps.	(xx)
<b>Business Income</b>	<u>xx</u>

Ag. Income

Mkt. Value of Ag. Produce consumed in Mfg. the Product	xx
- Cost of cultivation	(xx)
<b>Ag. Income</b>	<u>xx</u>

Partial Integration of Ag. Income with Non Ag. Income :-

- Applicable to Individual, HUF, AOP/BOT, AJP
- Apply only if
  - ↳ Net Ag. Income exceeds ₹ 5000
  - [and]
  - ↳ Non Ag. Income exceeds Basic exemption limit

Taxable Income



→ Calculation of tax in such case

Step 1: Calculate tax on [Ag. Income + Non Ag. Income] without surcharge & Cess

Step 2: Calculate tax on [Ag. Income + Basic exemption limit] without surcharge & Cess

Step 3: Tax amount = step 1 - step 2

Step 4: Tax Payable

Tax Amount	XX
+ Surcharge [if any]	XX
+ Cess	XX
	<u>XX</u>

Example

Mr. A ⇒ Taxable Income = 6,00,000  
Net Ag. Income = 4,00,000

Tax on (6,00,000 + 4,00,000) ⇒ 11,25,000  
Tax on (2.50 lac + 4 lac) ⇒ 4,25,000  
11,25,000 - 4,25,000 ⇒ 7,00,000

Tax payable ⇒ 7,00,000  
+ Cess @ 4%      28,000  
7,28,000



- ② Amt. received by members from income of HUF (Sec. 10(2))
- ③ Share income received by partners from firm) LLP (Sec. 10(2A))
- ④ Compensation received by individual/legal heirs on account of disaster
- ⑤ Pension received by recipient of Gallantry Awards

### ⑥ Income of Sikkimese Individual

⇓

- o income from any source in the state of Sikkim
- o income by way of dividend or interest on Securities

Note - Exemption will not be available to Sikkimese Women who on or after 1.11.2008 married a non Sikkimese individual

### Restrictions on allowability of Expenditure (Sec. 11A)

→ Expenditure incurred in relation to Exempt income is NOT ALLOWED as ded. under any heads of income

→ AO can determine expenditure in relation to Exempt income if :-

- He is not satisfied with correctness of claim of Assessee

(or)

- Assessee claims that no expenditure has been incurred by him in relation to Exempt income

→ Expenditure in relation to Exempt income shall be aggregate of :-

Expenditure Amt. directly relating to Exempt income

+

$$\text{Common exp.} \times \frac{\text{Avg. value of investment in Exempt Source}}{\text{Avg. value of Total Investment Assets}}$$

+

1% of Avg. value of investment in Exempt source

Note: Sec. 14A is not applicable for deductions under chapter VI-A

Tax Holiday for Units Established in SEZ [Sec. 10AA]

→ Ded. is available to all assessee engaged in mfg. or production of any article or thing or computer software in SEZ

→ Period & Amt. of ded.

For First 5 AY → 100% of Export Profit ~~from~~ from SEZ Unit

For Next 5 AY → 50% of Export Profit from SEZ Unit

For Next 5 AY → Amt. credited to SEZ Reinvestment Reserve A/c  
 or  
 50% of Export Profit from SEZ Unit

★ Export Profit from SEZ Unit

$$\frac{\text{PGBP of Unit located in SEZ (as per income tax Act)}}{\text{Export turnover of SEZ Unit}} \times \frac{\text{Export turnover of SEZ Unit}}{\text{Total turnover of SEZ Unit}}$$

Note: [Export turnover means consideration in respect of Export brought into India within Time permitted by RBI [9 months]]

### Other Points :-

- o Amt. which became irrevocable shall be excluded from export Turnover
- o Following Amt. shall not be included in Export Turnover & Total Turnover :-

||

- ① Freight
- ② Telecommunication charges
- ③ Insurance or any other exps.
- ④ Cash Compensatory support
- ⑤ Duty Drawback
- ⑥ Profit on Sale of Export Entitlement

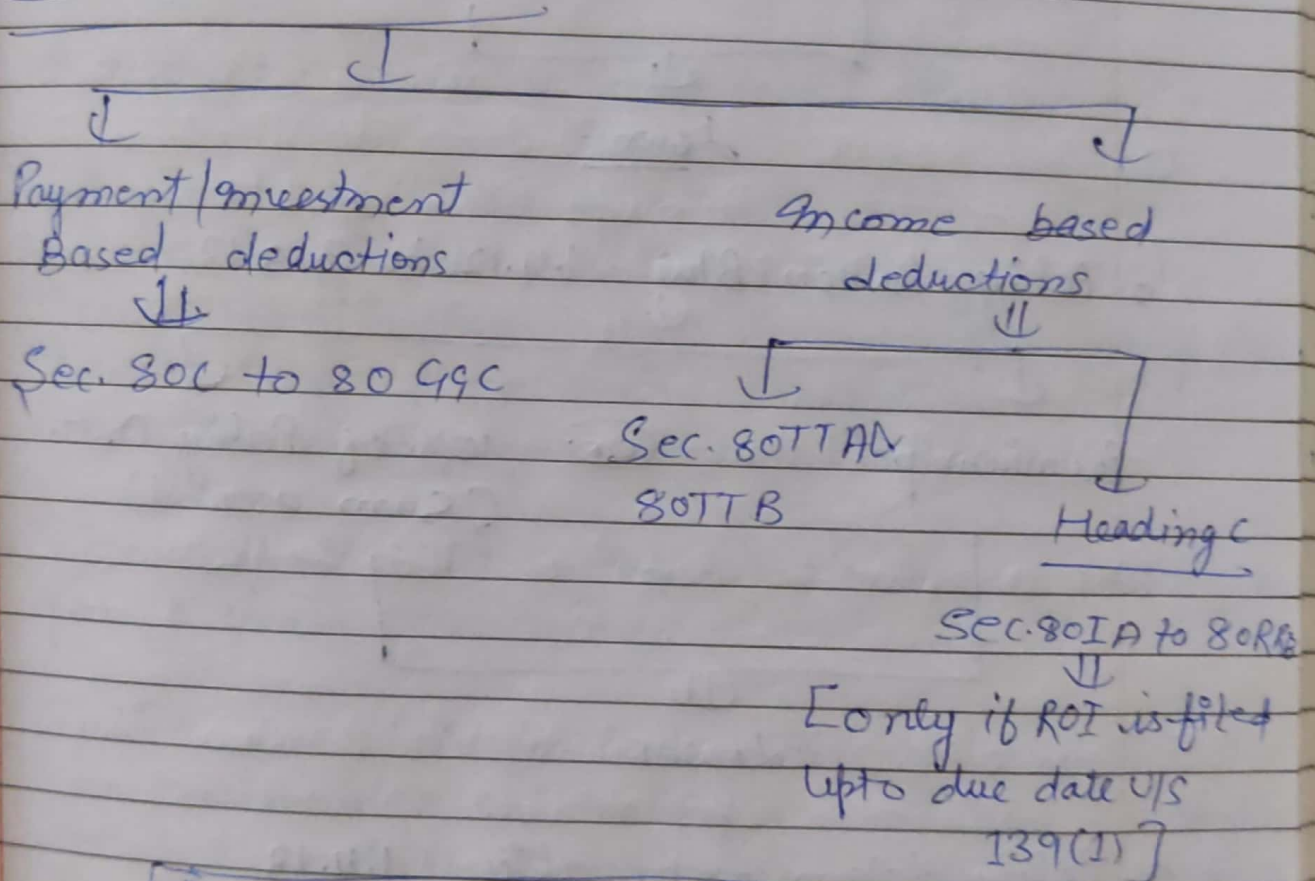
o Onsite Development of Computer Software Outside India at client place also eligible for deduction

o In case of Amalgamation/Demerger, Remaining deduction shall be available to Amalgamated/Resulting Unit [if conditions fulfilled]

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- Deductions under chapter VI-A cannot exceed GTI
- Deduction under chapter VI-A is not available from income which are Taxable at special Rates

→ Types of deductions :-



Payment / Investment Based Deductions

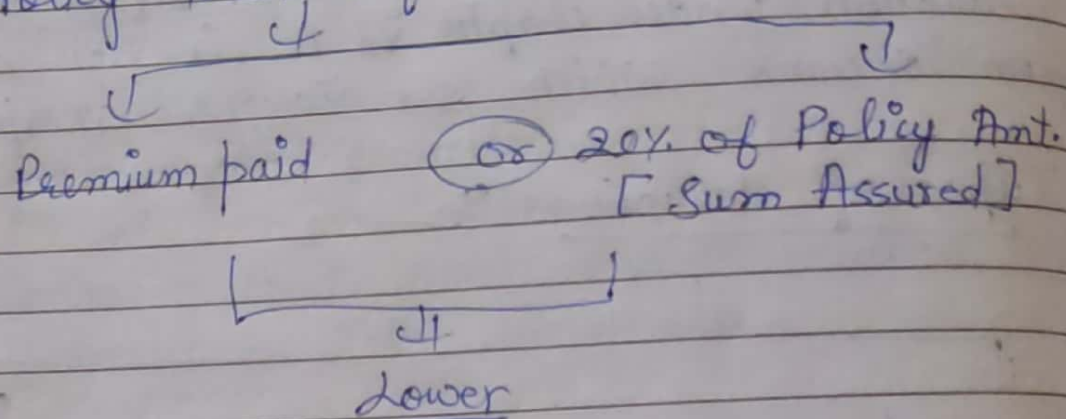
o Sec. 80C :- Specified Investment

- Eligible Assessee → Individual / HUF
- Maximum limit of Deduction → ₹ 1,50,000

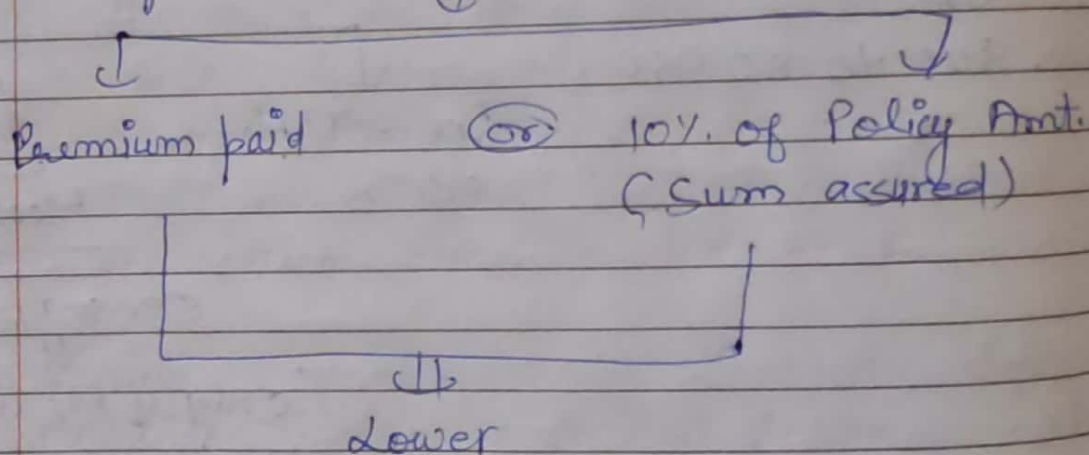
→ Eligible Investments

- ① Life Insurance Premium paid to Any Insurance Co.
  - Individual → self, spouse, children
  - HUF → Any member of HUF

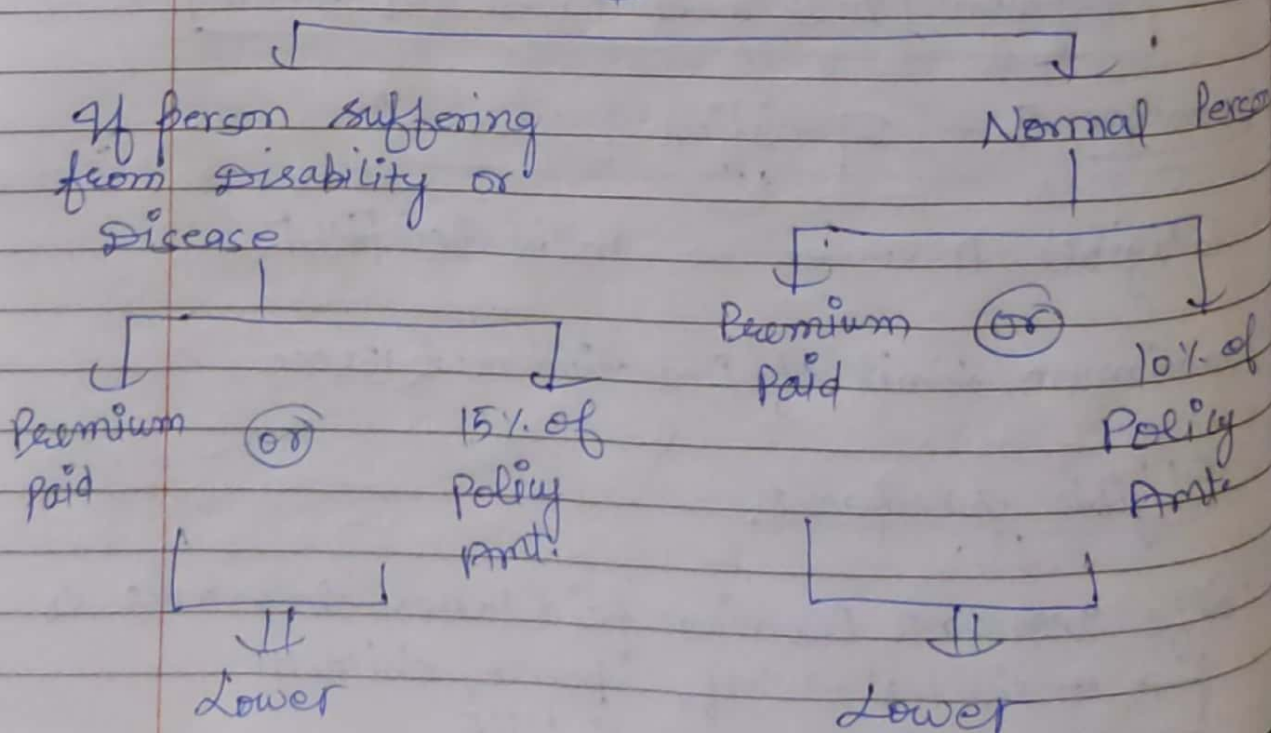
Policy taken before 1.4.2012



Policy taken B/w 1.4.12 to 31.3.13



Policy taken on or after 1.4.13



- ② Investment in Public Provident Fund (PPF)
  - ↳ Individual → Self, Spouse, children
  - ↳ HUF → Any member of HUF
- ③ Employee Contribution in SPF & RPF
- ④ Investment in NSC & interest thereon
- ⑤ Repayment of Housing loan
  - ↳ Loan for Purchase or construction of H/P
  - ↳ Construction/Purchase shall be completed during PY
  - ↳ Loan taken from Govt., Banks, Financial institutions, Employer, Company
- ⑥ Fixed Deposit (FD) in Scheduled Bank or Post office for 5 years or more
- ⑦ Tuition fees paid for education of children
  - ↳ Maximum 2 children for education in India
  - ↳ Not include Donation/Development/Coaching fees
- ⑧ Deposit in NABARD Bonds
- ⑨ Deposit in Senior Citizen Saving Scheme
- ⑩ Deposit in Sukanya Samridhi Scheme
- ⑪ Stamp duty, Registration fees for purchase of H/P
- ⑫ Investment in Units of UTI/Mutual Fund

(13) Investment in Pension Fund of UTI/Mutual Fund

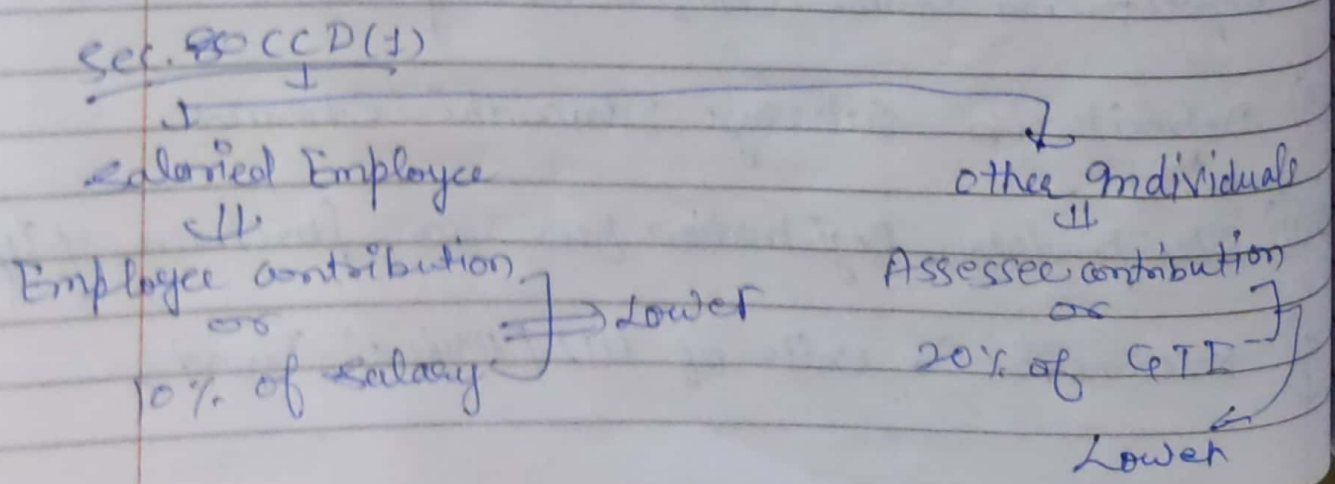
(14) Contribution by central Govt. Employee to TIE II A/c of Pension Scheme U/s 80CCD

o Sec. 80CCC is Contribution to Pension Fund/ Annuity Plan of LIC or other Insurance Company

- Eligible Assessee → individual
- maximum limit of ded. → ₹150000

o Sec. 80CCD is Contribution to Pension Scheme of central Govt. / New Pension Scheme / Atal Pension Yojna

- Amount
- Eligible Assessee → individual
- Amount of ded.





Sec. 80CCD(1B)  
 II

Balance Contribution U/s 80CCD(1) can be claimed U/s 80CCD(1B) upto ₹ 50000

Sec. 80CCD(2)  
 II

Employer Contribution for benefit of Employee  
 II

Employer Contribution is first taxable under head Salary as in hands of Employee, then he gets deduction U/s 80CCD(2)  
 II

Employer Contribution }  
 10% of salary } ⇒ lower

[i.e. if (4 employee)]

\* Salary = Basic Salary + DA (if)

Note →  
 II

Amt. received from above scheme on closure of Account

↓  
 in case of Death  
 II  
Fully Exempt

↓  
 other case  
 II  
60% Exempt

\* Sec. 80CCF :- Aggregate Ded. U/s 80C + 80CCF + 80CCD(1)  
 ↓  
 shall be restricted to ₹ 150000

o Sec. 80D :- Ded. in respect of Medical/Health Insurance Premium, CGHS, Preventive Health checkup

→ Eligible assessee → Individual/HUF

→ For whom

→ Individual: Self, spouse, Dependent children and Parents [whether dependent or not]

→ HUF & Any Member of HUF

Amt. Paid for Self, Spouse & Dependent children	Nature of Payment	Amt. of deduction
	o Health/Medical Insurance Premium paid other than <u>Cash</u>	₹ 25000 <u>50</u> } → lower Total Payment
	o Contribution to Central govt. Health Scheme (CGHS) other than <u>Cash</u>	If any person is 60 years or more plus Resident ↓ ₹ 50000 <u>50</u> } → lower Total Payment
	o Preventive Health checkup by any mode	

Parents [whether dependent or Not]	o Health/Medical Insurance Premium paid other than <u>cash</u>	₹ 25000 (05) Total Payment	} lower
	o Preventive Health check up by any mode	If any Person is 60 years or more Plus Resident ⇓ ₹ 50000 (05) Total Payment	

Note :-

- o Aggregate payment for preventive health check up for all cannot exceed ₹ 5000
- o If person is 60 years or more plus resident, then Medical Expenditure is also eligible
- If premium is paid for more than 1 year, ded. for each year  
= Total premium paid  
No. of years for which payment is made

o Sec. 80DD :- Ded. in respect of maintenance and Medical Treatment of Disabled Dependent Relative

→ Eligible Assessee → Resident Individual/HUF

→ For whom → Individual :-

spouse, children, Brother, Sister & Parents who are dependent on individual

→ HUF → Any Dependent member of HUF

→ Assessee should incur exps. or Medical Treatment or deposit any amount for maintenance of such disabled dependent

→ Amt. of Ded. Flat ded. :-

→ Normal Disability	→ ₹ 15,000
→ <del>Severe</del> Severe Disability [80% or more]	→ 25,000

o Sec. 80DDB :- Ded. in respect of Medical Treatment of Specified Disease

→ Eligible Assessee → Resident Individual/HUF

→ For whom → Individual :- Self, Spouse, children, Brother, sister, & Parents who are dependent on Individual

→ HUF → Any dependent member of HUF



① Sec. 80EEA :- Ded. in respect of interest on loan taken for purchase of Residential HP

→ Eligible Assessee → Individual

→ Limit of Ded. = ₹ 150000

[First ded. should be claimed Under HP head upto ₹ 200000 U/S 24(b)]

→ Conditions :-

○ Loan should be taken from Bank, Financial Institution or Housing Bank co. [Not NBFC]

○ SDV of house does not exceed ₹ 45 Lacs

○ Individual does not own any Residential house on date of sanction of loan

○ Loan should be sanctioned b/w 1.4.1970 - 31.3.21

② Sec. 80EEB :- Ded. in respect of interest on loan taken for purchase of electric vehicle

→ Eligible Assessee → Individual

→ Limit of ded. ⇒ ₹ 150000

## ⇒ Conditions :-

- Loan should be taken from Bank, Financial Institution, Housing Finance Co. or NBFC
- Loan should be sanctioned B/w 1.4.19 to 31.3.23

## ◦ Sec. 80G :- → Donations

→ Eligible Assessee → All ~~Assessee~~ person

→ Eligible Donations

### Category A :-

- Jawahar Lal Nehru Memorial Fund
  - Indira Gandhi Memorial Trust
  - Rajiv Gandhi Foundation
  - PM Drought Relief Fund
- ⇒ 50% ded. without any limit

### Category B :-

- other PM Fund
  - CM Fund
  - National Fund
  - Swachh Bharat Fund
  - Clean Ganga Fund
- ⇒ 100% ded. without Any limit

Category C :-

- o Charitable trust / Institutions
- o Donation for Renovation / Repair of Temple, Gurudwara, Mosque, church etc.
- o Donation for Promoting Interest of Minority Community
- o Donation to Housing Development authority

50% ded. with Limit

Category D :-

- o Donation for Promoting Family Planning
- o Donation by Co. to Indian Olympics Association

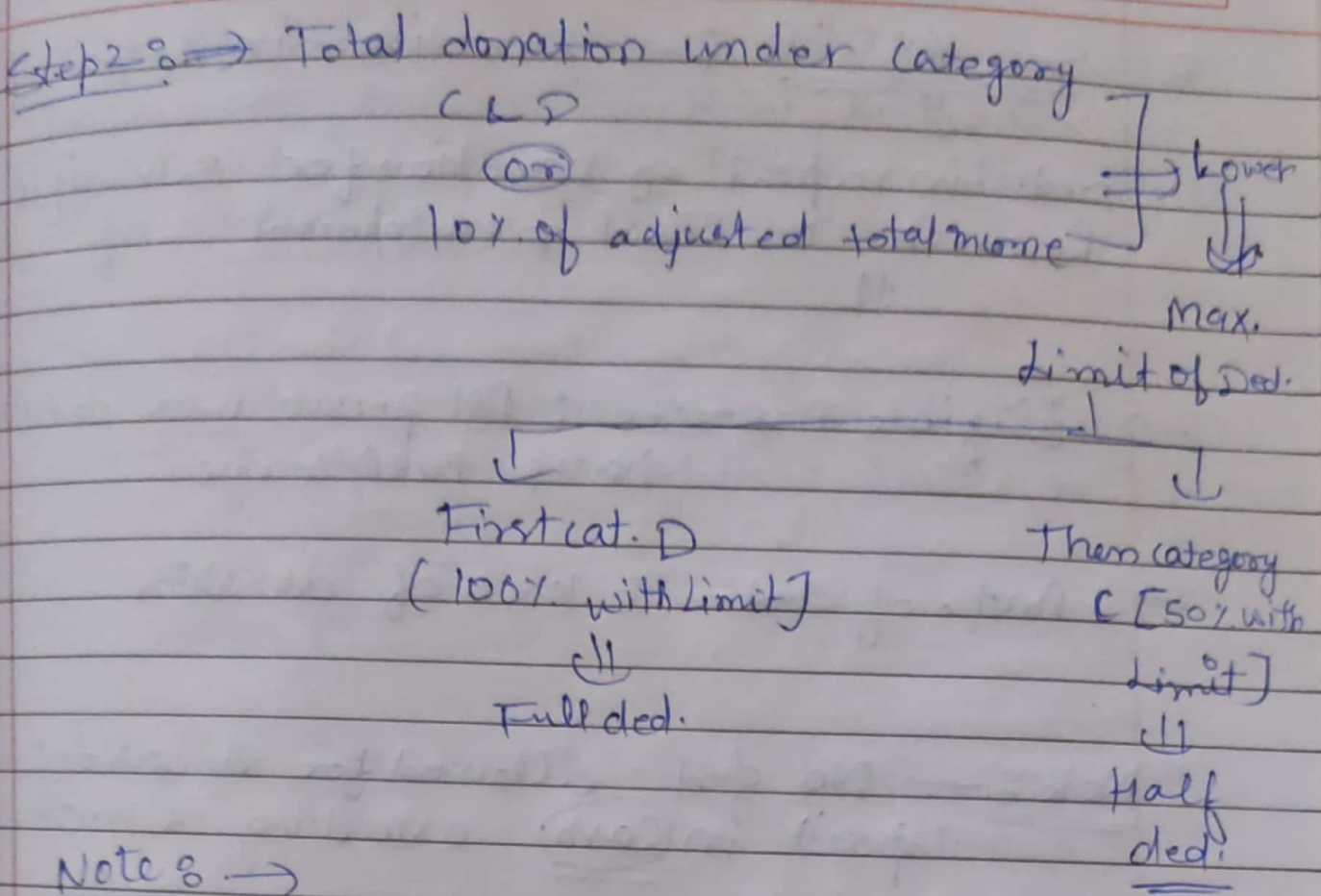
100% ded. with Limit

Calculation of Limit & donation under Category C & D :-

Step 1 :- Calculate adjusted Total Income

GTI (exclude income taxable at special rates)	XX
- Ded. Under Chapter VI-A (Except Sec. 80G)	(XX)
<u>Adjusted Total Income</u>	<u>XX</u>





Note ⇒

No ded. allowed in any category for donation paid in cash exceeding ₹ 2000

Sec. 80GG ⇒ Ded. in respect of Rent paid of HIP

→ Eligible Assessee → individual [who doesn't receive HRA]

→ Amt. of ded.

- ₹ 5000 p.m.
  - 25% of ATI
  - Rent Paid - 10% of ATI
- ↓  
 Lower

★ ATI = Adjusted total income

o Sec. 80GGA :- Donation in respect of  
IT

ded. in respect of Donation for Scientific  
Research or Rural development  
IT

→ Eligible Assessee : All person who do not  
have PARP Income

→ Amt. of ded. :- 100% of donation

Note :- No ded. allowed for donation  
paid in Cash exceeding ₹ 10000

o Sec. 69B :- IT

Donation given by Indian co. to Political  
Party or Electoral Trust  
IT

→ Eligible Assessee → Indian Co.

→ Amt. of ded. :- 100% of ded.

Note :-

o No ded allowed, if donation paid  
in cash.

o Expenditure incurred by Indian Co. for advt. in Souvenir, Brochures, Pumphlet, Newspaper etc. published by political Party also eligible for deduction

o Sec. 80G :- Donation given by any other person to Political Parties or Electoral Trust

||

→ Eligible Assessee :- Any person (other than Indian Co.)

→ Amt. of Ded. :- → 100% of Donation

Note :- No ded. allowed, if donation paid in Cash

## Income based Deductions:

||

o Sec. 80TTA →

||

Ded. in respect of Interest on deposits in Savings Account

||

→ Eligible Assessee → Individual / HUF

→ Amount of ded.

||

Total interest on Savings A/c

or

₹ 10000

} → Lower

Note → Savings A/c with Banking Company, co-op Bank or post office

o Ded. not available to Resident Senior Citizen eligible for ded. U/S 80TTB

o Sec. 80TTB →

||

Ded. in respect of interest on deposits in savings / FD Account in case of Resident Senior Citizens

||

→ Eligible Assessee → Resident Senior Citizen [60 yrs or more + Resident]

→ Amnt. of ded.  
↓

Total Interest on Savings / FD Account  
or  
₹ 50000 → lower

Note :-

• Savings / FD account with Banking Co., co-op. Banks or post office

Income Based ded. under heading C

↓  
ये तभी मिलती है जब 3114 ROI Time भर  
file कर दोगे

Sec. 80IA, 80IAB, 80IB, 80IC, 80IE

↓  
Ded. in respect of profits of certain Eligible Business

→ Business commence before 1.4.2017

→ Amnt. of ded. ⇒ 100% of profit from Eligible Business for 10 AY

→ Other Points →  
↓

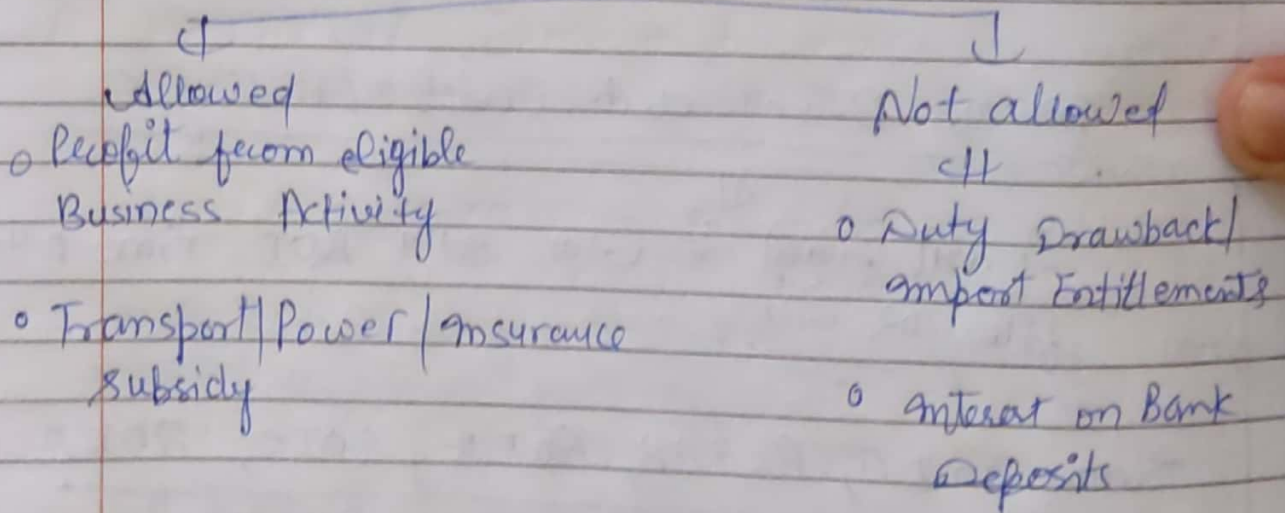
• Profit shall be computed as if the eligible business is only source of income of assessee

Loss/Unabsorbed dep. of eligible business can be set off from profit of Non-eligible business.

[However ded. to the extent of set off is not allowed in subsequent years]

If ded. is claimed U/s 10AA/35AD, no ded. is allowed here.

Ded. is allowed only for Profit derived from Eligible business activity



Increase in eligible business income due to disallowance by AO U/s 40(A), 40(A)(2), 43B etc. also eligible for ded.

In case of Transfer of Business, remaining ded. shall be allowed to transferee

Sec. 80TAC → Ded. for eligible startup

→ Eligible Startup

- Company or LLP engaged in Business which involves innovation or development of New products, processes or services driven by technology or intellectual property
- incorporated during 1.4.16 to 31.3.21
- Total turnover is upto ₹ 100 crores in PY in which ded. is claimed
- Holds a certificate of eligible business from IMBC

→ Amount of ded.

100% of Profit derived by startup for any 3 consecutive PY out of 10 years from the year in which startup is incorporated

① Sec. 80J1AA

ded. in respect of Employment of New Employees

→ Eligible Assessee → Any assessee engaged in Business & to whom Sec. 44AB applies

→ Amt. of ded.

30% of Additional Employee cost  
(ded. allowed for 3 consecutive years)

→ Additional Employee cost

Total salary paid or payable to additional employees employed during PY

⇒ Note :-

① In case of Existing Business, ded. is allowed only if :-

- o There is increase in total no. of Employees
- o Salary paid by A/c Payee Cheque/DD/ECS/Electronic mode

② Additional Employees do not include :-

- o Employee whose total salary is more than ₹ 25000 p.m.
- o Employee who does not participate in PPF
- o Employee for whom entire contribution is paid by govt. under employees pension scheme
- o Employee employed for less than 240 days in PY  
[ In case of Business of Mfg. of Apparel, Footwear or Leather Products = 150 days ]



• Sec. 80M → Ded. in respect of inter Corporate Dividend

↓

→ Eligible assessee → Domestic co.

→ Amt. of Ded. →

↓

Div. received from any other company / Business Trust

or

Dividend distributed by it upto due date of FY

whichever is lower

• Sec. 80 Q & QB → Ded. in respect of Royalty income from books of literary, artistic, scientific nature

↓

→ Eligible assessee → Resident individual

→ Amt. of Ded. :-

Net Royalty income

or

₹ 300000

} → Lower

Note →

If royalty is earned outside India, the ded. is allowed only if such Royalty

Amt. is brought to India in convertible foreign exchange within 6 months from end of PY or time allowed by RBT

o Sec. 80RRB % → Ded. in respect of Royalty income from Patents

→ Eligible Assessee → Resident Individual

⇒ Amt. of ded.

Net Royalty income }  
or } ⇒ Lower  
₹ 200000 }

Note % —

If Royalty is earned outside India, then ded. is allowed only if such Royalty Amt. is brought to India in convertible foreign exchange within 6 months from end of PY or time allowed by RBT

o Sec. 80P % → Ded. in respect of income of Co-op. Societies

→ Eligible assessee → Co-op. society

→ Eligible incomes & Amt. of Ded

Business income

income from following Business

◦ Providing credit facilities to its members [Banking Business]

◦ Cottage industry

◦ Marketing of Ag. Produce grown by members

◦ Processing of Ag. Produce without aid of Power

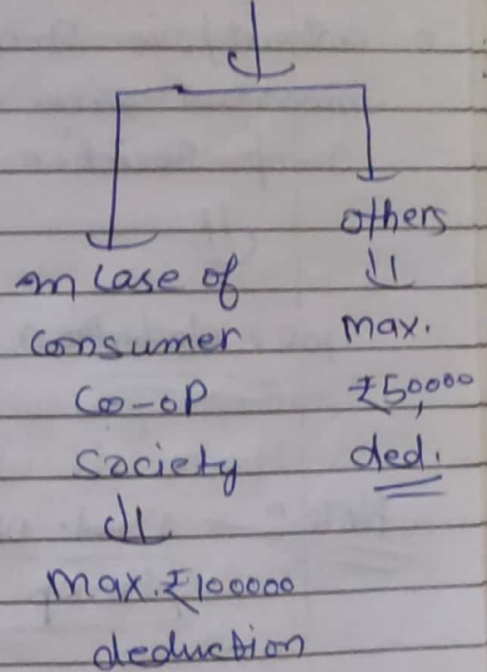
◦ Collective disposal of Labour to Members

◦ Fishing & other allied activities



100% deduction

Other Business



other income



Income from letting out of Godown/Warehouse for storage of Commodities

o interest on Securities and  
o income from h/p

o interest / Div. Income from investment with other Co-op. Societies

↓  
100% deduction  
[only if GTI does not exceed ₹ 20,000]

↓  
100% deduction

Note → Ded. U/s 80P is not available to Co-op. Banks other than :-

- o Primary Ag. Credit Societies (PACS)
- o Primary Co-op Ag. & Rural Development Banks



Co-op Banks having its area of operation confined to a Taluk & ~~district~~ Principal objective is to provide long term Credit for agricultural & rural development activities

• Sec 80PA :- Ded. in respect of income of producer companies  
||

• Eligible Assessee → Farm Producer Companies having turnover of less than ₹ 100 crores in PY

• Amt. of ded. :- → 100% of profit from Eligible business

→ Eligible Business  
||

- Marketing of Ag. produce grown by members
- Processing of Ag. produce of its members

### Taxation of Local Authorities

↓

Following Income of Local Authority is Exempt u/s 10(20):

- Income From HP
- Capital Gains
- Income From Other Source
- Business Income
  - Supply of Commodity or Service within its own Jurisdiction Area
  - Supply of Water or Electricity within or Outside its Jurisdiction Area

Following Income of Local Authority is Exempt u/s 10(20):

- Income From HP
- Capital Gains
- Income From Other Source
- Business Income
  - Supply of Commodity or Service within its own Jurisdiction Area
  - Supply of Water or Electricity within or Outside its own Jurisdiction area

### Taxable Income

↓

Supply of Commodity or Service [Except Water or Electricity] outside its own Jurisdictional Area.

# Taxation of AOP/BoI and their Members

⇓

## Total Income of AOP/BoI

⇓

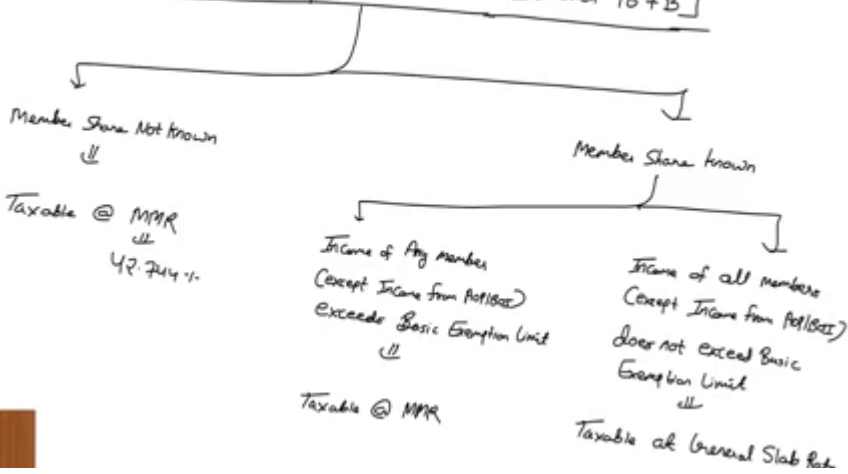
→ Calculation in Same Manner as in Case of any Other Assessee.

→ However, in PGBP [Section 40(ba)]

• Interest and Remuneration [Salary/Bonus/Commission etc.] Paid to Members is not allowed as Deduction.

• If Interest Paid by AOP/BoI to members and members also Paid Interest to AOP/BoI, then only Net Excess Interest Paid by AOP/BoI to member is disallowed.

## Tax on Total Income of AOP/BoI [Section 167B]



## Member Income From AOP/BoI

⇓

- Share in Profit/Loss of AOP/BoI
- Interest
- Remuneration

Treatment of Member Income from AOP/BoI in hands of Member [Section 86]

IF AOP/BoI Paid Tax at MMR

Member Income from AOP/BoI is Exempt in hands of Member

IF AOP/BoI Paid Tax at General Slab Rate

- Member Income from AOP/BoI will be Included in Total Income of member
  - However, Rebate is allowed to Member from Total tax
- Member Income from AOP/BoI  $\times$  Average Rate of Tax

Example

	Mr A (50%)	Mr B (50%)
Other Income	2,40,000	1,50,000
Member Income from AOP	4,00,000	6,00,000
Total Income	6,40,000	7,50,000
Total Tax	42,120	65,000

Average rate of Tax

$\frac{\text{Total Tax}}{\text{Total Income}} \times 100$

6.5%

8.67%

(-) Rebate	(26,320)	(52,020)
(Income $\times$ 6.5%)	(6,000 $\times$ 8.67%)	
Tax Payable	15,800	12,980

Alternate Minimum Tax [AMT] [Section 115 Jc]



AMT is applicable to All Assessee Except Company

Income Tax Payable by Any Assessee (Except Company)

Tax Payable as Per Normal Provisions of Income Tax Act  
OR

18.5% of Adjusted Total Income

[Plus Surcharge (if any) & Cess]

⇒ AMT

} ⇒ Higher

Calculation of Adjusted Total Income

Total Income as Per Normal Provisions of Income Tax Act

Add

Deduction u/s 10AA [SEZ]

Deduction u/s 35AD [Specified Business Capital Expenditure]

Deduction u/s 80IA to 80RAB [Except 80P]

xx  
xx

Less

Depreciation u/s 32 on Specified Business Capital Asset [35AD]

(xx)

Adjusted Total Income =

xx

**Other Points**

- If Unit of Assessee is located in International Finance Service Centre [IFSC], then AMT is applicable @ 9% instead of 18.5%
- If Assessee is liable to AMT, then also Advanced Tax Provisions, Interest u/s 234A | 234B | 234C is applicable.

→ Non Applicability of AMT

- If Assessee does not claim deduction u/s 10AA, 35AD, 80JA to 80RRB [except 80F]
- If ATI is upto ₹ 20 lacs in Case of Individual/HUF/AOP/BOI/AJP
- If Assessee has exercised the option u/s 115BAC & 115BAD

**AMT Credit [Section 115JD]**

- If AMT > Normal Income Tax, then Excess shall be Treated as AMT Credit.
- AMT Credit Can be clfd & setoff for 15 years.
- AMT Credit Can be setoff in the year in which Normal Tax is more than AMT upto the extent of difference between Normal Tax & AMT in that year.

**Example**

Year	Normal Tax	AMT	Tax Payable	AMT Credit Balance	AMT Credit Setoff	Net Tax Payable
Pg 20-21	80,000	1,00,000	1,00,000	20,000	-	1,00,000
Pg 21-22	70,000	1,10,000	1,10,000	60,000 [20,000+40,000]	-	1,10,000
Pg 22-23	1,50,000	1,20,000	1,50,000	30,000 (60,000-30,000)	30,000	1,20,000

$\downarrow$   
 Diff = 30,000

## Minimum Alternate Tax [MAT] [Section 115JB]

MAT is applicable only to Companies

Income Tax Payable by Company

Tax Payable as per Normal Provisions of Income Tax Act  
or  
15% of Book Profit  
[Plus Surcharge (if any) & Cess]  $\Rightarrow$  MAT  $\Rightarrow$  Higher

### Computation of Book Profit [Explanation to Section 115JB]

<u>Particulars</u>	(Rs.)	(Rs.)
Profit/Loss as per P&L A/c		XX
<b>Add</b>		
Following Items [if debited to P&L]		
① Income Tax Paid/Provision [Includes Interest on Income Tax, DDT, SC & Cess]	XX	
② Dividend Paid/Proposed	XX	
③ Any Amount transferred to Any Reserve A/c	XX	
④ Loss/Provision for loss of Subsidiary	XX	
⑤ Provision for Uncertain Liability/ Contingent Liability	XX	

⑥ Expenses for earning Income ~~u/s 10, 11, 12~~ <sup>10, 11, 12</sup> ~~XX~~ XX

⑦ Total Depreciation debited to P&L ~~XX~~ XX

⑧ Provision for diminution in value of Asset ~~XX~~ XX

⑨ Deferred Tax ~~XX~~ XX

⑩ Expenses relating to Share Income of AOP/BOP ~~XX~~ XX

⑪ Notional loss regarding Business Trust Unit ~~XX~~ XX

⑫ Expenses relating to Income from Royalty u/s 115BBSF ~~XX~~ XX

⑬ Expenses relating to Income of foreign Company from:  
• Capital gain on Securities  
• Interest, Royalty, FTS  
[If Tax rate on above Income is less than MAT Rate i.e. 15%.] ~~XX~~ XX

Other Addition

⑭ Balance in Revaluation Reserve on retirement or disposal of Asset [if not Credited to P&L A/c] ~~XX~~ XX

~~XX~~  

---

XX



Less

Following Items [if Credited to P&L]

① Amt. withdrawn from any reserve  
(if reserve made through P&L in  
earlier years) XX

② Income exempt u/s 10, 11, 12 XX

③ Deferred Tax XX

④ Profit of Sick Industrial Company XX

⑤ Share Income from AOP/BOI XX

⑥ Notional Gain regarding Business  
Trust Unit XX

⑦ Royalty Income from Patents u/s 1588F XX

⑧ Income of Foreign Company from:  
• Capital Gain on Securities  
• Interest, Royalty, FIS XX  
[If tax rate on above income is less  
than MAT rate i.e. 15%]

⑨ Transfer from Revaluation Reserve  
(to the extent of Depreciation on  
Revalued Assets) XX

Other Deductions

(10) Depreciation as per Books [Except Depreciation on Revaluation of Assets] ~~XX~~

(11) Brought Forward loss as per Books  
or  
Unabsorbed Depreciation as per books  $\rightarrow$  lower ~~XX~~

Business Start Nil  
Unabsorbed Dep 4 lac 2 lac  
T Nil 2 lac  
4 lac Nil

However, BFL loss & Unabsorbed Depreciation Both will be deducted if:

- Company against whom application for Corporate Insolvency Resolution Process has been admitted under IBC, 2016
- Company & its Subsidiary of which BOD has been suspended by Tribunal u/s 241 & 242 of Companies Act, 2013

$$\frac{\text{---} (XX)}{\text{---}} = \frac{XX}{\text{---}}$$

If Company is required to comply with Ind-As, then following Additional Adjustments is to be made in Book Profit

Book Profit Computed above

(Rs) (Rs)  
~~XX~~

Add

Items Credited to OCI & Not be reclassified to P&L  
except  $\left\{ \begin{array}{l} \rightarrow \text{Revaluation Surplus from Asset or Liab Inds 16438} \\ \rightarrow \text{Change in Fair Value of equity Instrument or Liab Inds 109} \end{array} \right.$   $\times \times$

Amount Debited to P&L on distribution of Non Cash Assets to Shareholder in demerger  $\times \times$

$\frac{1}{5}$ th of Transition Amt. on Convergence Date [If Credit Balance]  $\times \times$   $\times \times$

Less

Items Debited to OCI & Not be reclassified to P&L  
except  $\left\{ \begin{array}{l} \rightarrow \text{Revaluation Surplus from Asset or Liab Inds 16438} \\ \rightarrow \text{Change in Fair Value of equity Instrument or Liab Inds 109} \end{array} \right.$   $\times \times$

Amount Credited to P&L on distribution of Non Cash Assets to Shareholder in demerger  $\times \times$

$\frac{1}{5}$ th of Transition Amt. on Convergence Date [If Debit Balance]  $\times \times$   $(\times \times)$

Final Book Profit =  $\frac{\times \times}{\times \times}$

Transition Amt. on Convergence Date  
 $\downarrow$

Means aggregate amount adjusted in Other Equity but does not include following :-

- Capital Reserve & Securities Premium Reserve
  - Amt adjusted in OCI but subsequently reclassified to P&L
  - Revaluation Surplus From Asset
  - Change in Fair Value of Equity Instruments
  - Adjustments relating to
    - PPE & Intangible Assets
    - Investment in Subsidiary/Associate/Joint Venture
    - Translation Difference of Foreign Operation
- ⇒ On Convergence Date

Convergence Date means First day of first Ind-AS Reporting Period

### Other Points

- For above adjustments, Net Profit should be Computed as Per Schedule III of Companies Act, 2013.
- For Electricity/Banking/Insurance Companies, Profit should be Computed as per respective Act.
- Provision for Gratuity/Leave Salary/Warranty based on Actuarial Valuation is ascertained liability ⇒ So not be added back
- If Company is liable to MAT, then also Advance Tax Provisions, Interest u/s 234A/234B/234C applicable.
- If unit of Assessee is located in IFSC, then MAT is applicable @ 9% instead of 15%.
- Non applicability of MAT
  - Life Insurance Companies
  - Companies who have exercised option u/s 115BAA or 115BAB

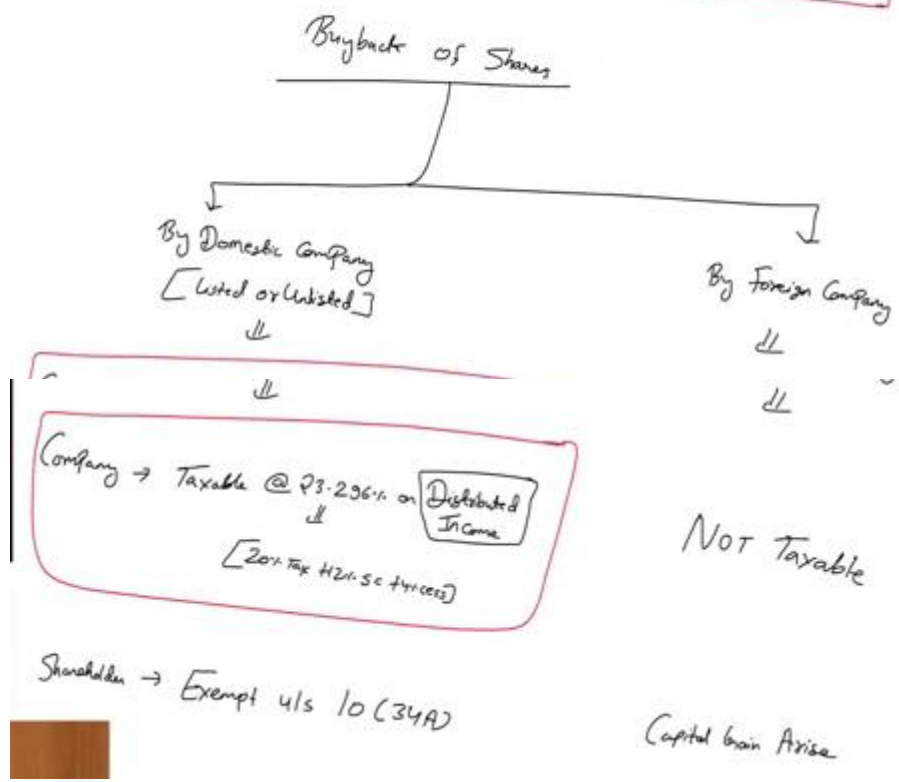
MAT Credit [Section 115JAA]

↓



- If MAT > Normal Income Tax, then excess shall be treated as MAT Credit
- MAT Credit can be clfd & setoff for 15 years
- MAT Credit can be setoff in the year in which Normal Tax is more than MAT upto the extent of difference between Normal Tax & MAT in that year.
- In case of Conversion of Company into LLP, MAT Credit of Company would not be allowed to the LLP.

**Tax on Buyback of Shares by Domestic Company [Section 115QA]**



**Distributed Income** = Buyback Price - Issue Price

**Issue Price**

Case

Issue Price

① Normal Share Issue

Amount (Including Premium) received by Company

② If Prior to Buyback, Company returned any sum out of Amt. received

Amount received reduced by sum so returned

③ Shares issued under ESOP or Sweat Equity Shares

FMV of Shares  
or  
Amt. Credited to Share Capital & Share Premium A/c } → Higher

④ Shares issued in Amalgamation by Amalgamated Co. in lieu of Shares of Amalgamating Co.

Amt. received by Amalgamating Co.

⑤ Shares issued in Demerger by Resulting Co. in lieu of Shares of Demerged Co.

Amt. received by Demerged Co  $\times$   $\frac{\text{Net Book Value of Asset Transferred in Demerger}}{\text{Net worth of Demerged Co.}}$

⑥ Bonus shares

Nil

⑦ Shares issued on Conversion of Bonds/Debentures etc

And. Record in respect of Such Bonds/Debentures

⑧ Any other case

Face Value of Shares

### Other Points

→ Tax on Buyback shall be paid to the Central Govt within 14 days from date of Payment of any Consideration of Buyback to shareholders.

→ If Tax on Buyback is not paid within 14 days, Interest is leviable @ 1% Per month or part of month on amount of such tax not paid

From Date after 14 days      Till      Date on which Tax is actually paid

→ Principal Officer and the Company will also be deemed to be an Assessee in Default (if tax not paid within 14 days)

Special Provision relating to Income of Indian Shipping Companies  
[Section 115V to 115V2C]

↓

Tonnage Taxation

Qualifying Company

↓

Indian Company [PoEM in India] engaged in Business of Operating S

AND

Qualifying Company

Indian Company [PoEM in India] engaged in Business of Operating Ships

AND

owns at least 1 Qualifying Ship [Minimum Tonnage of 15 tons or more]

PLBP Income of Qualifying Company From Shipping Business

As Per PLBP Provisions  
↓  
[Sec 28 to 43D]

Tonnage Income as Per  
Tonnage Tax Scheme  
[Optional]

Calculation of Tonnage Income  
↓

As Per PLBP Provisions  
↓  
[Sec 28 to 43D]

Tonnage Income as Per  
Tonnage Tax Scheme  
[Optional]

Calculation of Tonnage Income  
↓

Daily Tonnage Income  $\times$  No of days in which ship is Operated  
in Py

## Daily Tonnage Income

Qualifying Ship having Net Tonnage  
(in Tons)

Daily Tonnage  
Income

Qualifying Ship having Net Tonnage  
(in Tons)

Daily Tonnage  
Income

upto 1000	Rs 70 For each 100 tons
> 1000 upto 10,000	Rs 700 + Rs 53 for each 100 tons exceeding 1000 tons
> 10,000 upto 25,000	Rs 5470 + Rs 42 for each 100 tons Exceeding 10,000 tons
> 25,000	Rs 11770 + Rs 29 for each 100 tons Exceeding 25,000 tons

1000 tons  
1000 x 70 = 700  
10000 tons  
700 + 9000 x 53/100

### Note

- Tonnage shall be rounded off to the nearest multiple of 100 tons
- Deductions, Setoff of Any loss shall not be allowed against tonnage income.
- Tonnage Tax Income shall not be liable to MAT

10162 tons  $\Rightarrow$  10200 tons  
10220 tons  $\Rightarrow$  10300 tons  
25450 tons

## Conditions for applicability of Tonnage Tax Scheme

- Minimum 20% of Book Profit shall be transferred to Tonnage Tax Reserve A/c in each FY.
- Reserve Amt shall be utilised in
  - ↳ Purchase of ship before 8 years
  - ↳ Business of operating ships

### Shortfall in Reserve

$$\text{Taxable Amt.} = \text{Relevant Shipping Income} \times \frac{\text{Shortfall in Reserve}}{\text{Minimum Reserve to be Created}}$$

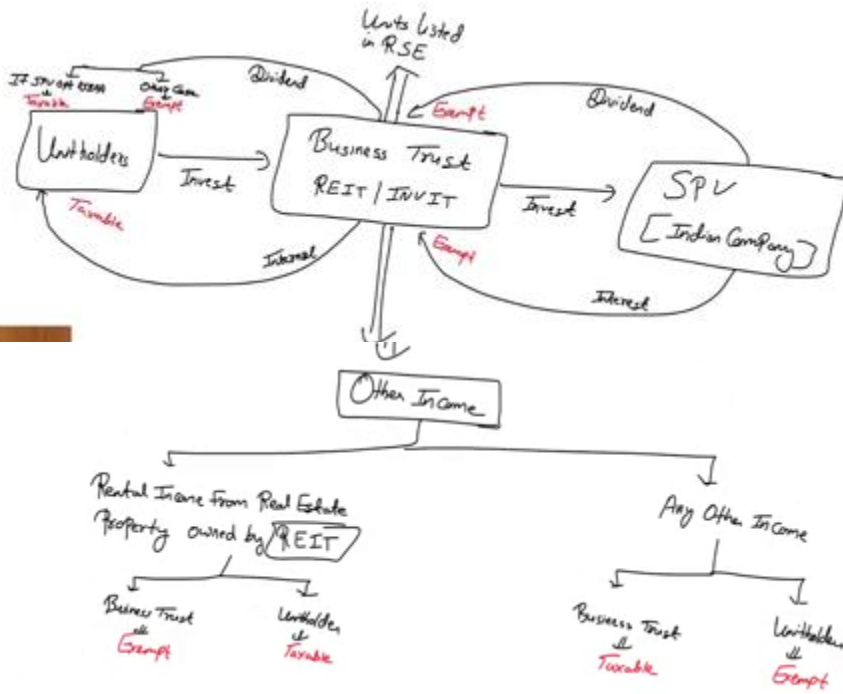
Consequences of Mis Utilisation / Non Utilisation

$$\text{Taxable Amt.} = \text{Relevant Shipping Income} \times \frac{\text{Amt. Misutilised/Unutilised}}{\text{Total Reserve Created During year}}$$

**Relevant Shipping Income**

Profit From Core Shipping Activity + Profit From Incidental Activity

**Taxation of Business Trust [Section 115 UA]**



### Business Trust

Business Trust means Real Estate Investment Trust [REIT] or Infrastructure Investment Trust (IIT) and units of which are listed in Recognised Stock Exchange.

### Unit Holders

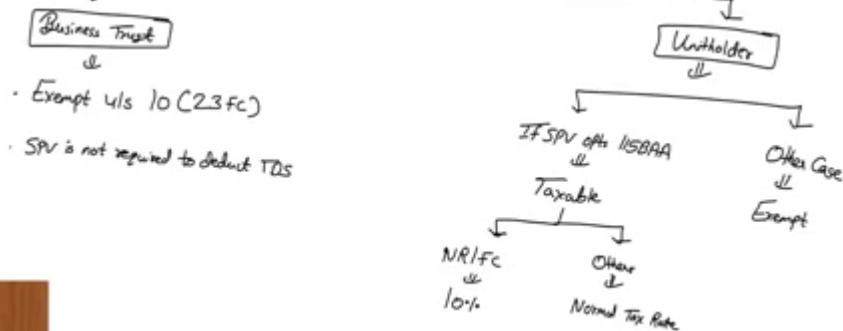
Person who invest in units of Business Trust

### SPV

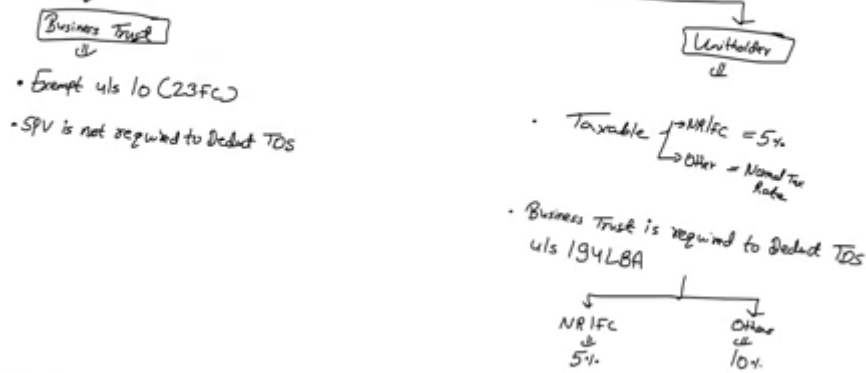
SPV means an Indian Company in which Business Trust holds 50% or more shareholding

## Taxability of Income in hands of Business Trust and Unit Holders

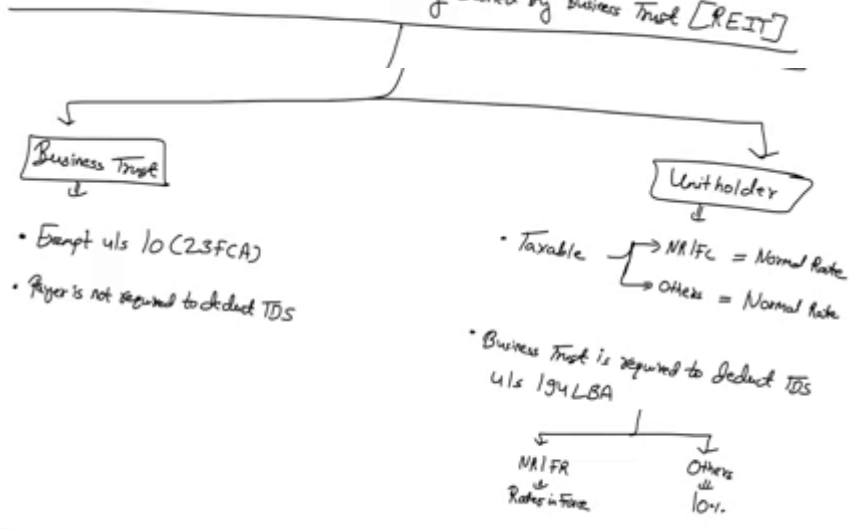
### Dividend Income From SPV



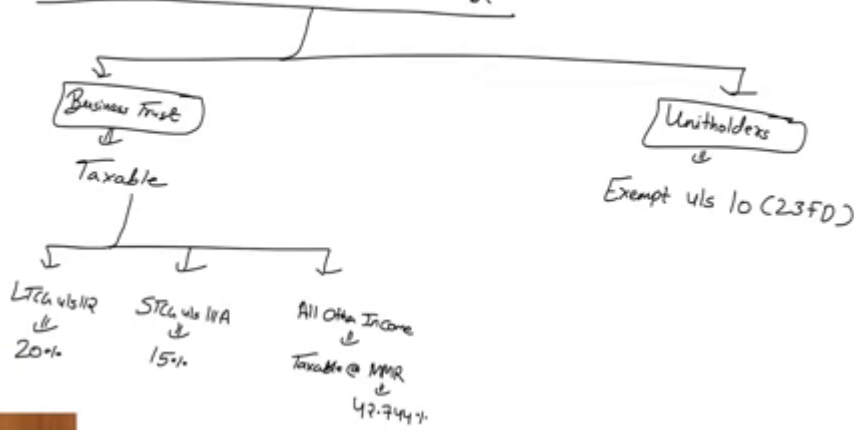
### Interest Income From SPV



## Rental Income from Real Estate Property owned by Business Trust [REIT]

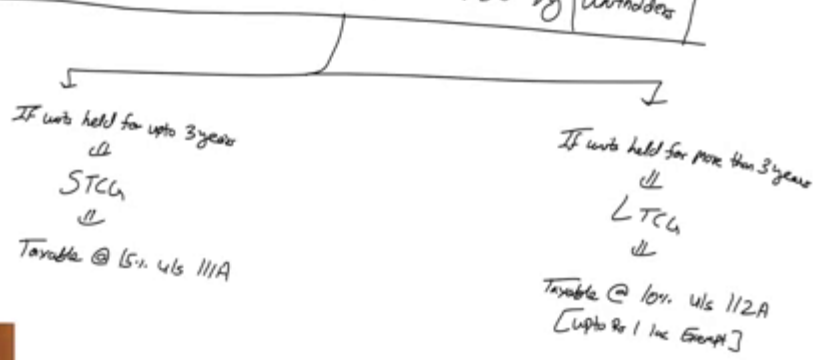


## Any Other Income of Business Trust



## Other Points

### → Taxability on Transfer of Units of Business Trust by Unit holders

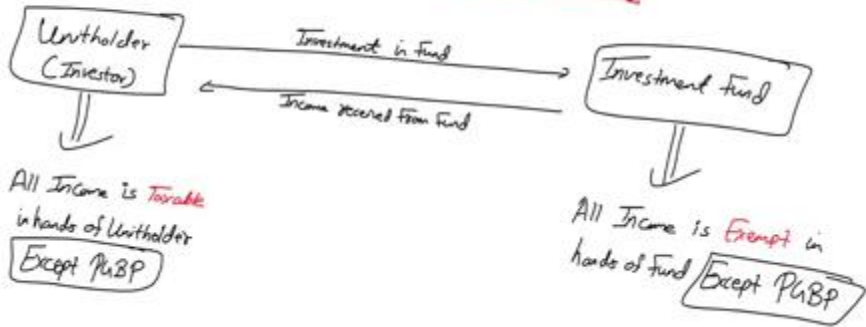




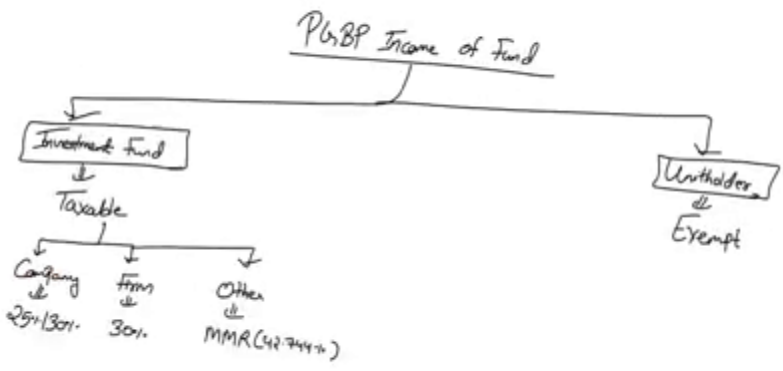
→ Income Distributed by Business Trust to its Unitholders shall be of the Same Nature & in Same Proportion in hands of Unitholders as it had been received by Business Trust.

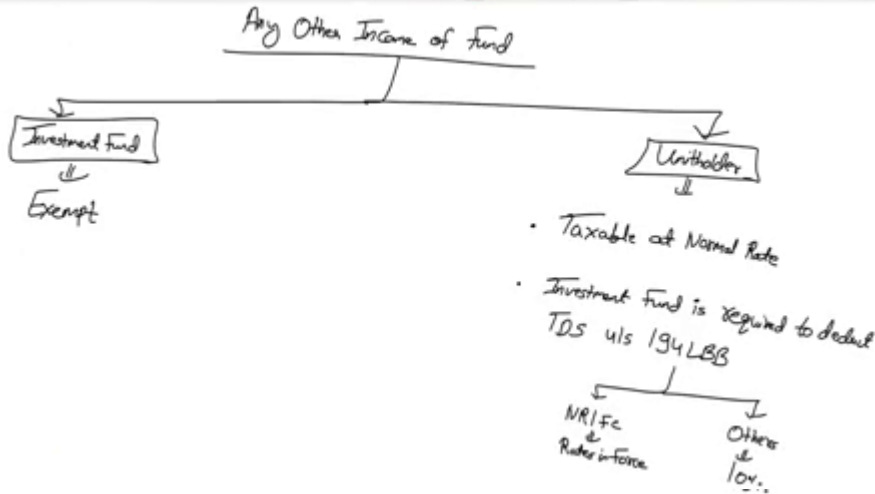
→ Business Trust is Compulsory required to file ROI u/s 139(4E)

**Taxation of Investment Fund [Section 115 4B]**



**Taxability of Income in hands of Investment Fund & Unitholder**



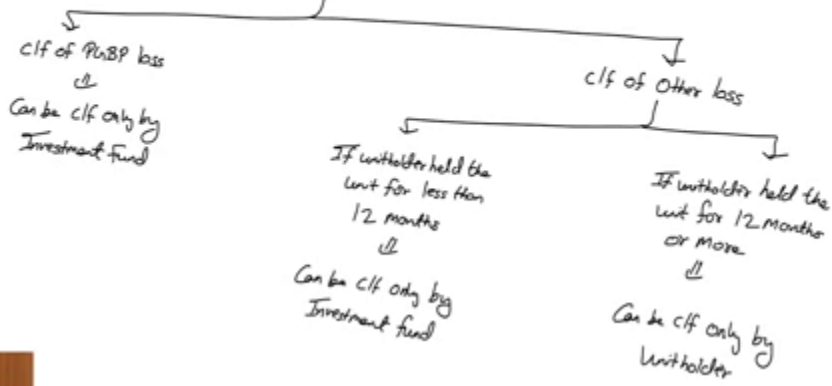


**Note**

If Other Income earned by Fund during PY has not been paid/credited to Withholder, same shall be deemed to be credited to Withholder on last day of PY and taxable in hands of Withholder

**Other Points**

→ Carry Forward of losses of Investment Fund

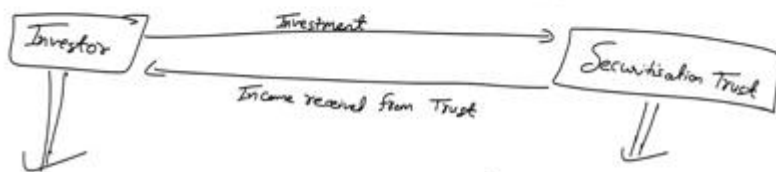


→ Income paid/Credited by Investment fund to its unit holder shall be of the Same Nature & in Same Proportion in hands of Unit holder as it had been received by Investment fund.

→ Investment fund is Compulsory required to file ROI u/s 139(4F)

Taxation of Securitisation Trust [Section 115 TCA]

Taxation of Securitisation Trust [Section 115 TCA]



• All Income is Taxable in hands of Investor  
↓  
At Normal Rate

All Income of Securitisation Trust From activity of Securitisation is Exempt in hands of Trust

• Securitisation Trust is required to deduct TDS u/s 194LBC

- Resident Individual/HUF = 25%
- Other Residents = 30%
- NR/FC = Rates in Force

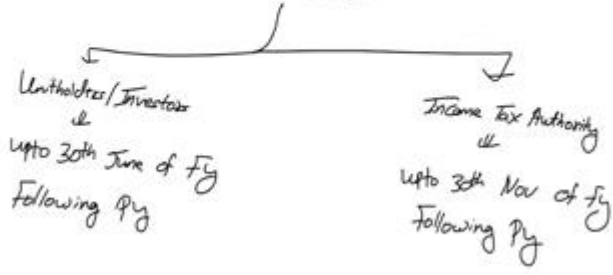
Note

If Income earned by Trust during PY has not been paid/credited to Investor, same shall be deemed to be credited to Investor on last day of PY and Taxable in hands of Investor

Common Point for Business Trust, Investment Fund & Securitization Trust



Business Trust, Investment fund and Securitization Trust shall provide Breakup regarding Nature & Proportion of its Income to



Taxation of Charitable / Religious Trust [Section 11, 12, 13]

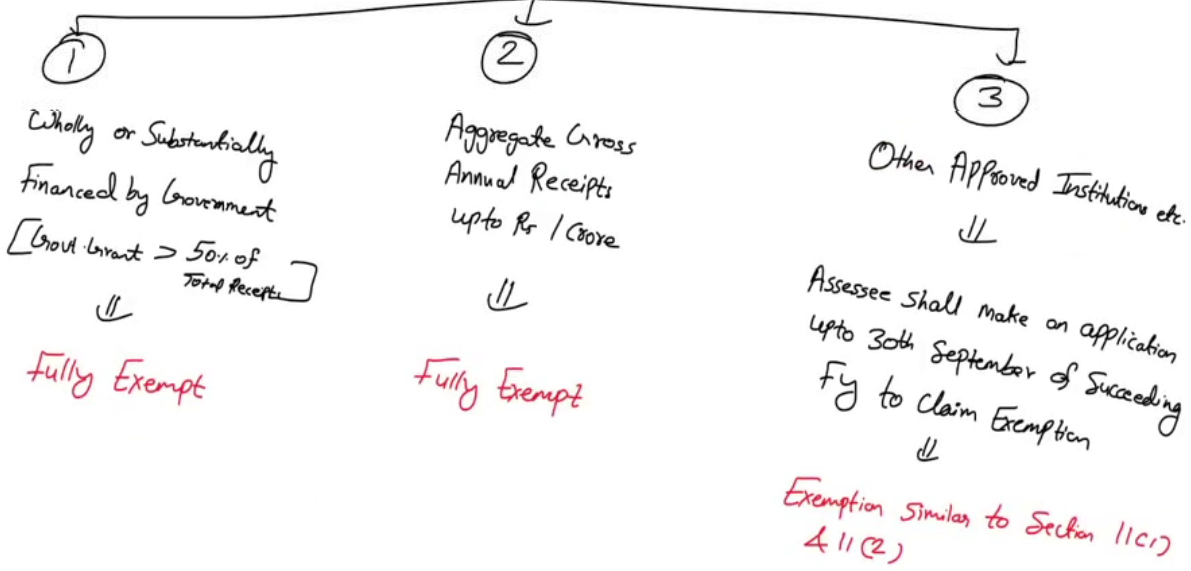
Charitable Means

- Relief of Poor
- Education
- Yoga
- Medical Relief
- Preservation of Environment [including waterheds, forest & wildlife]
- Preservation of monuments/Places/objects of Artistic or Historic Interest
- Advancement of any other Object of General Public Utility

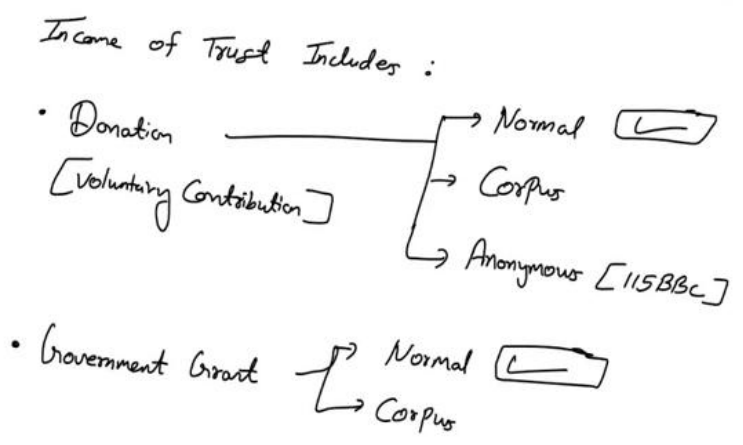
~~Advancement~~ <sup>Advancement</sup> of any other object of General Public Utility shall not be treated as Charitable if aggregate receipts from Trade or Business Activity is more than 20% of Total Receipts.

↓  
No Exemption for that year [No Need to Cancel Registration]

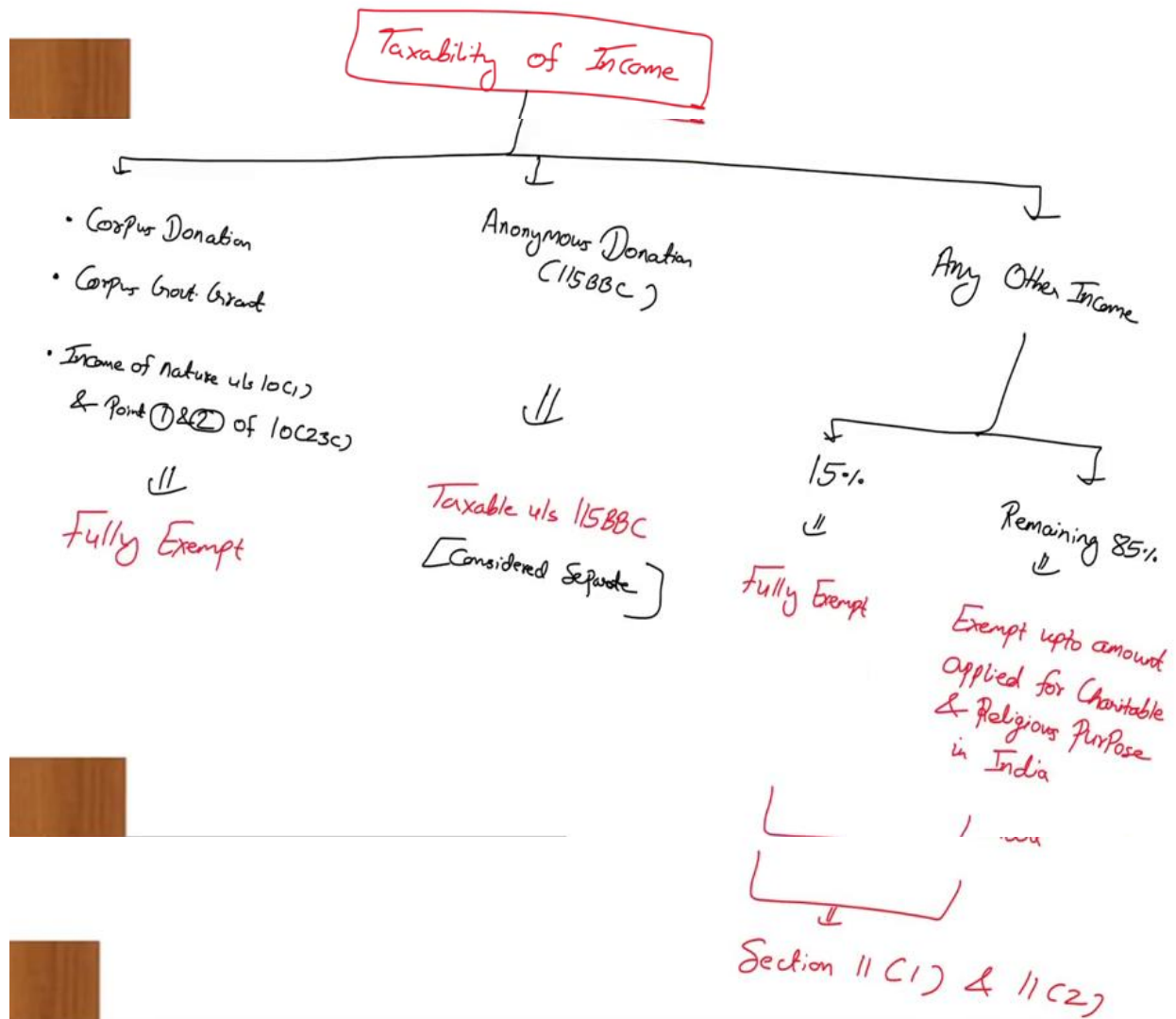
Income of Certain Universities, Educational Institution, Hospital or Medical Institution which exist solely for Educational or Medical Purpose and Not for Profit  
[Section 10(23C)]



Income of Charitable / Religious Trust [Section 11]



- Income From Property held under Trust
  - Receipts from College/school/Hospital etc.
  - Capital Gains
  - House Property
  - Other Source
- Income From Business which is incidental to attainment of Main Objective
- Income of Nature u/s 10C1) & 10C23c)



## Amount Applied for Charitable & Religious Purpose in India

- Revenue & Capital Expenses of Trust  
↓  
(Purchase/Construction of land, Building etc.)
- Donation to Other Trust/Institution registered u/s 12AA and 10(23c)
- Repayment of loan taken for Acquisition/Construction of Capital Assets

### Note

- If Cost of Asset already taken as Applied, then Depreciation on such Asset shall not be considered as Applied in any Py.
- Corpus Donation to Other Trust/Institution registered u/s 12AA & 10(23c) shall not be treated as Applied.
- Provisions of Section 40(a)(i), 40A(3), 40A(3A) also Apply in case of Revenue Expenses

→ TDS not deducted in case of Resident [Section 40(a)(i)] = 30% Such Sum shall not be treated as Applied



Applied

↳ Payment exceeding 10,000 by Cash / Bank Cheque / Cross Cheque [Section 40 AC(3)/40A(3A)] = 100% Such sum shall not be treated as Applied

• In Case of Acquisition of Land / Building, then Purchase Price shall be Considered as Applied. [Ignore SDV]

IF 85% Could not be applied due to following Reasons

Income not received in PY (Outstanding)

⇓

Deemed Applied

[Ignore, if Trust follows Cash System]

Other Reason

[Income received in last days of PY]

⇓

Deemed Applied

Condition

⇓

Declaration to AO upto due date of ROI that such Income shall be applied in year of Receipt or in Immediately next year

⇓

Otherwise Treated as Income of such year

Condition

⇓

Declaration to AO upto due date of ROI that such Income shall be applied in next year

⇓

Otherwise Treated as Income in next year

10

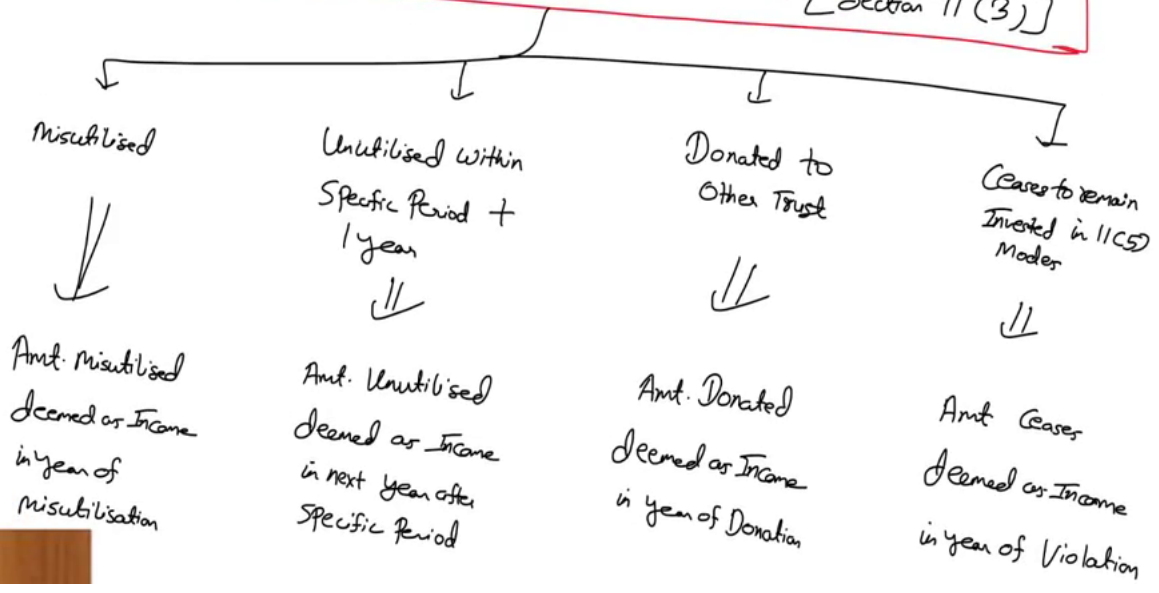
one

Exemption if Income Accumulated / Set apart for Specific Purpose [Section 11(2)]

If 85% Income not fully Applied during Py but Accumulated / Set apart for specific Purpose, then such Accumulation shall be treated as Applied, if following Conditions are Satisfied :

- Furnish Statement to AO upto due date of ROI Stating Period & Purpose for which such Income is accumulated [Maximum Period 5 years / 1 year]
- Such Amount shall be deposited in 11CS modes [Safe Investments]
- Such Amount shall not be donated to Other Trust
- ROI is to be filed upto Due date.

Deemed Income in Case of Misutilisation / Non Utilisation [Section 11(3)]



Special Provisions regarding Certain Incomes of Trust

'Business Income of Trust'

⇓

If Business is incidental to attainment of main objective and separate books of Accounts Maintained

⇓

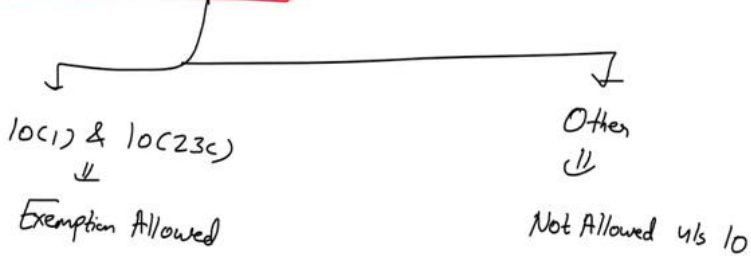
Exemption u/s 11(1) & 11(2) available

If AO finds any Concealed Income in Respect of such business

⇓

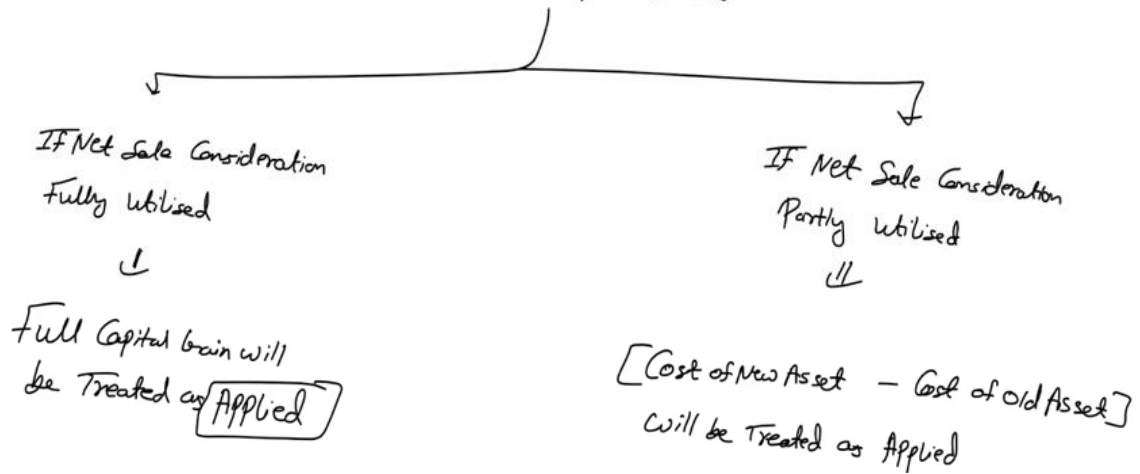
Then Such Concealed Income Fully Taxable

Exemption u/s 10



## Capital Gains

If Any Capital Asset is Transferred by Trust and Net Sale Consideration is used for Purchase of Another Capital Asset



### Note

Purchase Cost of Such New Asset will not be Treated as Applied.

However, if Purchase Cost of New Asset is more than Sale Consideration of old Asset, then Excess Amt. will be Treated as Applied [in addition to Capital Gain]

Example

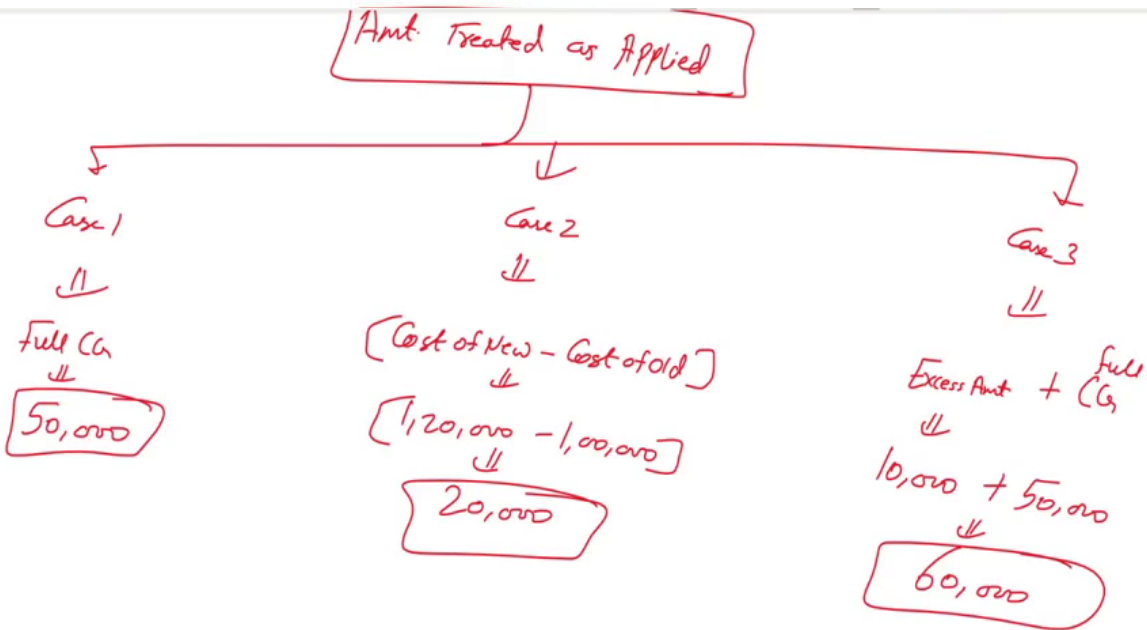
Cost of Asset Transferred = 1,00,000

Sale Consideration = 1,50,000

Capital Gain  
1,50,000  
(1,00,000)  
50,000

New Asset Purchase Cost

- Case 1 = 1,50,000
- Case 2 = 1,20,000
- Case 3 = 1,60,000



In other words, In all cases = If Old Asset is sold & New is Purchased

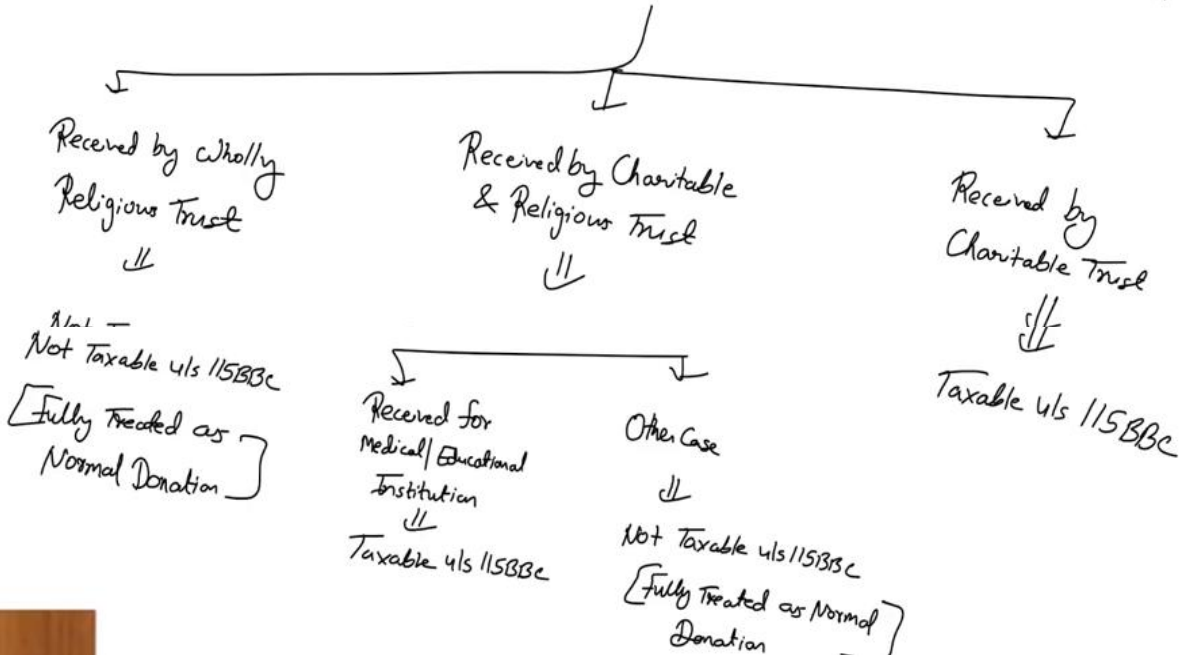
↓  
Cost of New - Cost of old  
↓  
Treated as Applied

In other words, In all cases = If Old Asset is sold & New is Purchased

↓  
**Cost of New - Cost of old**  
↓  
Treated as Applied

**Anonymous Donation**

↓  
Means any donation where person receiving such donation does not maintain record of donor

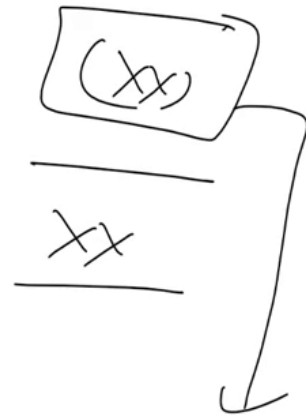


**Taxable Anonymous Donation u/s 115B3c**

Actual Amt. of Anonymous Donation Received  $5\text{ lacs}$   $xx$

(-)  
5% of Total Donation  
or  
Rs 1,00,000 }  $\rightarrow$  Higher

Anonymous Donation Taxable u/s 115BBc  
@ 30%.



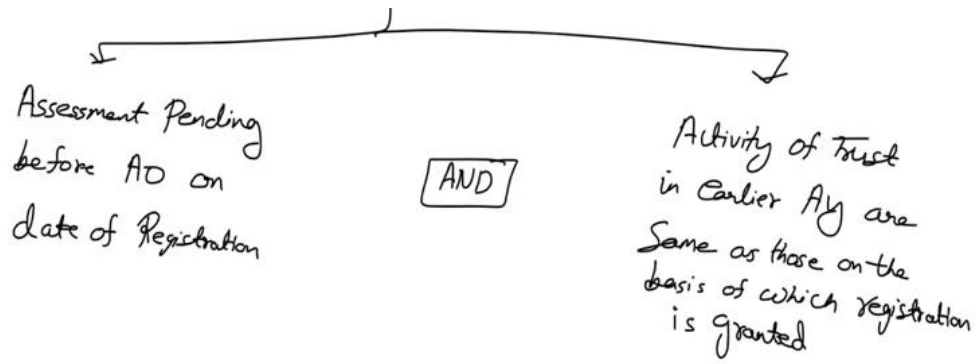
This Amt will be treated  
as Normal Donation

### Conditions for Applicability of Section 11 [Section 12A]

- $\rightarrow$  Trust shall be registered u/s 12AA
- $\rightarrow$  If Total Income [Before Exemption] exceeds Basic Exemption Limit, then Audit Report shall be furnished.

#### Note

- Exemption Available from Py in which Application for Registration is made.
- Exemption shall also be available for earlier Assessment years if :

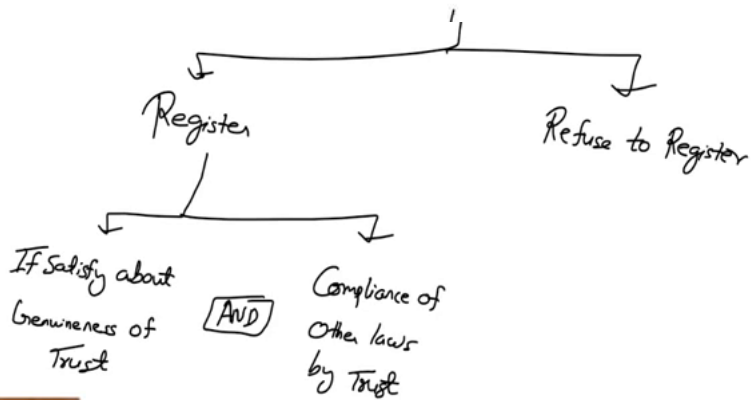


**Procedure For Registration [Section 12AA]**

Application can be made at any time after formation of Trust to Commissioner of Income Tax [CIT]

||

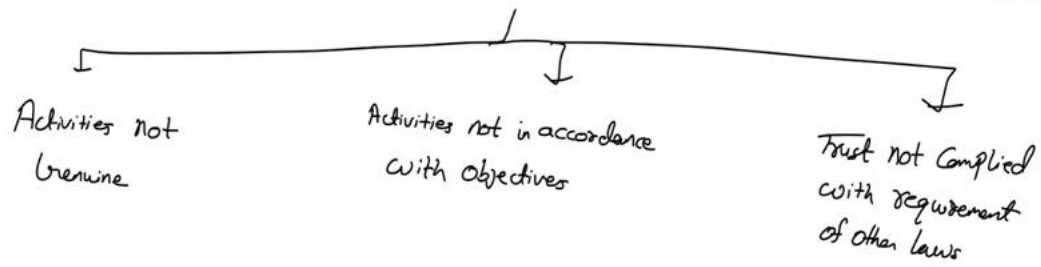
CIT shall within 6 Months from end of Month in which Application is received, Pass order





**Note** ⇒ If order not passed within 6 months, Trust shall be deemed to be Registered.

After granting Registration, CIT may Cancel the Registration, if he Satisfied that



If Registered Trust Modifies its Objects which do not Conform to the Conditions of Registration

Trust shall required to take Fresh Registration within 30 days from Date of such Modification.

## Exemption u/s 11 Shall not Apply [Section 13]

- Income from Property held under Trust for Private Religious Purpose
- Income of Trust Established for benefit of Particular Religious Caste or Community
- If Any Income Applied/Used for benefit of Specified Persons.
- Funds not Invested in 11 C57 modes [Safe Investment]

### Meaning of Specified Persons

- Author/Founder of Trust
- Person who made donation  $>$  Rs 50,000
- Trustee/Manager of Trust
- Relative of any Founder, donor, Trustee, Manager [Relative same as 56(2)(a)]
- Any Concern in which any of the above Person has Substantial Interest

**Note** [Section 13(6)]

Exemption u/s 11 cannot be denied to a trust running an Educational / Medical Institution

⇓

If they applied Income for benefit of specified persons by way of providing free Educational / Medical Facility

⇓

However Value of such Facility shall be treated as Income of the Trust and not eligible for Exemption u/s 11.

---

Format to Calculate Total Income of Trust

Particulars

(Rs.)

Corpus Donation, Corpus Grant, Income u/s 10C1) & Point ① & ② of 10C23e) Nil

Gross Receipts From College / School / Hospital etc. of Point ③ of 10C23c) XX

Capital Gains / House Property / Other Source XX

Income from Business which is incidental to attainment of main objective XX

Government Grant XX

Normal Donation XX



---

XX

(-) 15%

(XX)

---

XX



(-) Amt. Applied for Charitable & Religious Purpose in India

(XX)

(-) Deemed Applied  $\left\{ \begin{array}{l} \rightarrow \text{Income not received in FY} \\ \rightarrow \text{Income received in last days of FY} \end{array} \right.$  [Ignore if Trust follows Cash System]

(XX)

(-) Income Accumulated / set apart u/s 11(2)

(XX)

(-) Excess of Expenditure over Income in earlier years

(XX)

(+) Deemed Income u/s 11(3) & 13(6)

~~XX~~

Total Income [Normal Rate]

XX  $\rightarrow$  SLAB

(+) Anonymous Donation Taxable u/s 115B3C

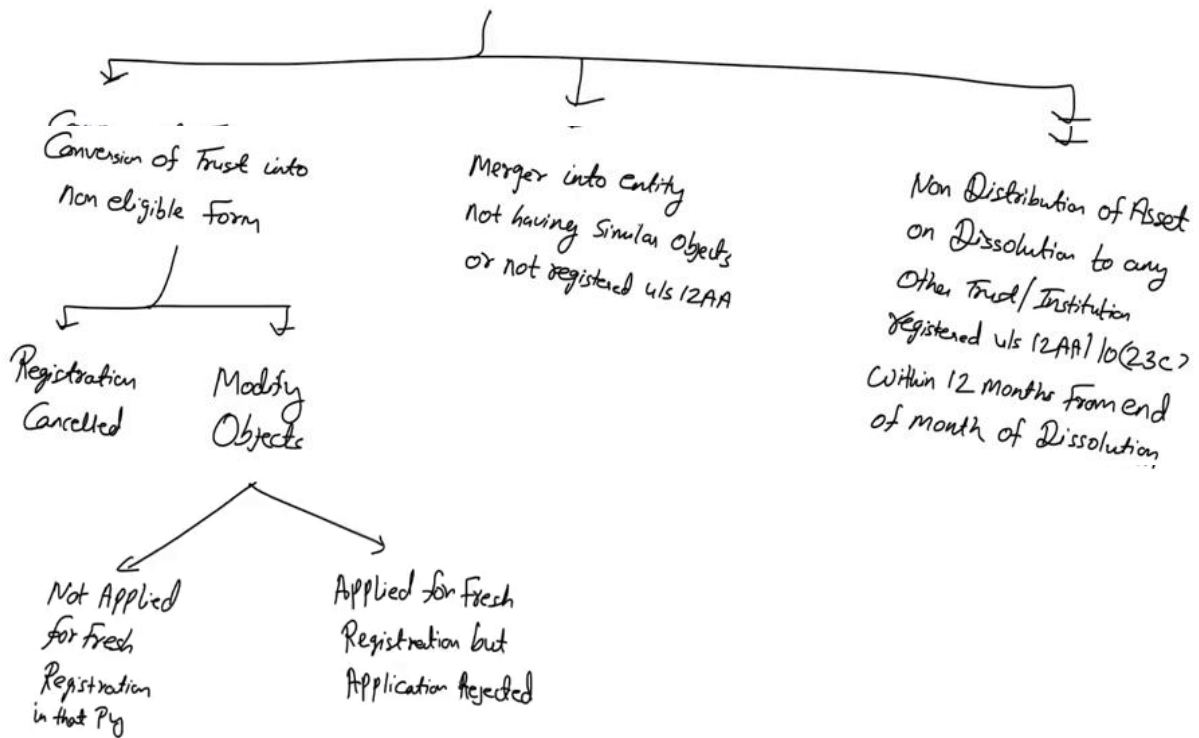
XX  $\rightarrow$  30%

Total Income

~~XX~~

Tax on Accreted Income of Certain Trust or Institution [Exit Tax]  
 [Section 115TD]

→ Accreted Income of Trust/Institution registered u/s 12AA Shall be Taxable  
 @ MMR ⇒ 34.944% [30% Tax + 12% SC + 4% cess]  
 In Following Cases :



→ Calculation of Accreted Income

Aggregate FMV of Total Assets of Trust

XX

(-) Total liabilities of Trust

(XX)

Accreted Income =

XX

$$\text{Exit Tax} = \text{Accreted Income} \times 34.944\%$$

Note

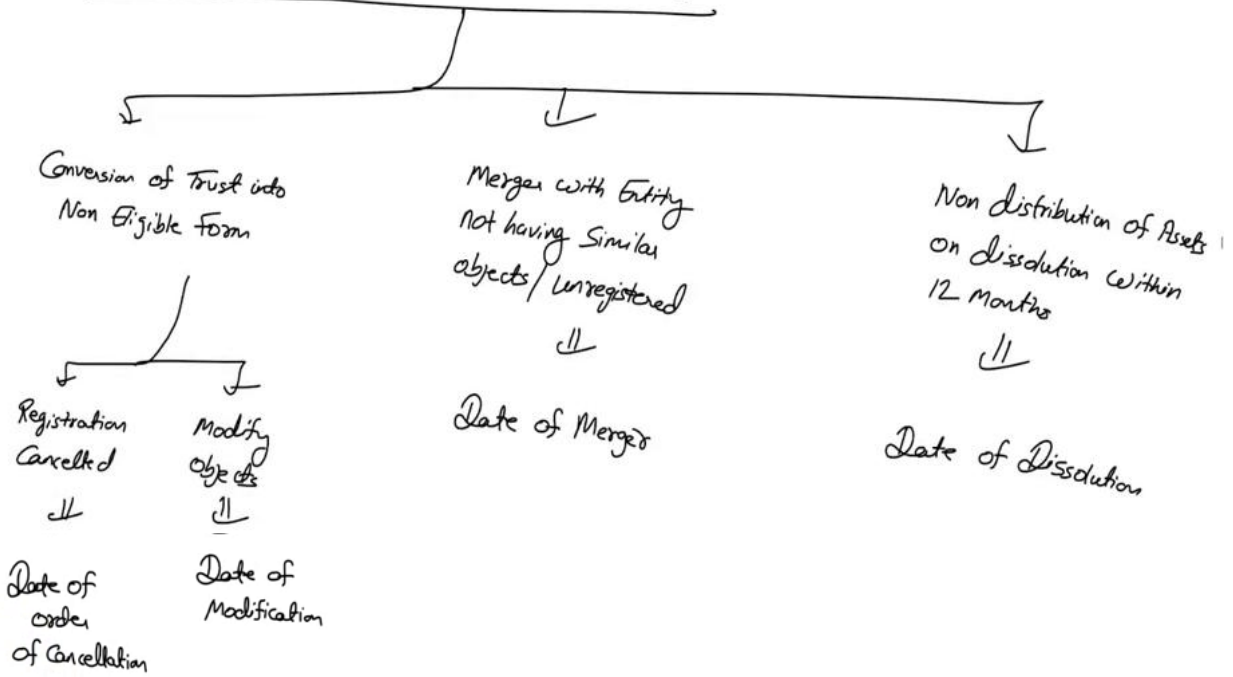
Following Assets shall not be Considered in Accreted Income

Assets Acquired out of Agricultural Income

Assets acquired from date of Creation of Trust to date on which registration becomes effective 45 12AA

Assets Distributed on dissolution to other Trust/Institution registered u/s 12AA/10(23c) within 12 months from end of month of dissolution

→ Valuation Date of Assets & Liabilities



→ Calculation of Value of Assets & Liabilities

Value of Assets



Aggregate **FMV** of all Assets in Balance Sheet on Valuation Date but not include  
↳ TDS / TCS / Advance Tax  
↳ Deferred Revenue Expenditure

**FMV of Assets**

Assets

FMV



① Quoted Shares & Securities

Avg. of lowest & highest Price on Valuation Date in Recognised Stock Exchange

[If no trading on Valuation date, then Immediately Preceding Valuation date]

② Unquoted Shares & Securities [Other than Equity Shares]

Open Market Value as Per Valuation Report of Merchant Banker or Accountant

③ Unquoted Equity Shares

$$\frac{A+B-L}{PE} \times PV$$

of Such Company

- A = Book Value of All Assets [Other than Covered in B]
- B = FMV of Shares, Securities, Immovable Property, Bullion, Jewellery, Precious Stone  
[Ignore TDS/TCS/Advance Tax/Deferred Revenue Exp.]
- L = Book Value of Liabilities but not include Following :

- Paid up Equity Share Capital
- Reserves & Surplus
- Dividend
- Provision for Tax
- Provision for Unascertained Liabilities
- Contingent Liabilities

PE = Total Paid up Equity Share Capital of Company

PV = Paid up Value of Equity Shares held by Trust

④ Immovable Property  
(Land or Building)

SDV  
or  
Open Market Value ]  $\Rightarrow$  Higher

⑤ Any Other Asset

Open Market Value

## Value of liabilities

⇓

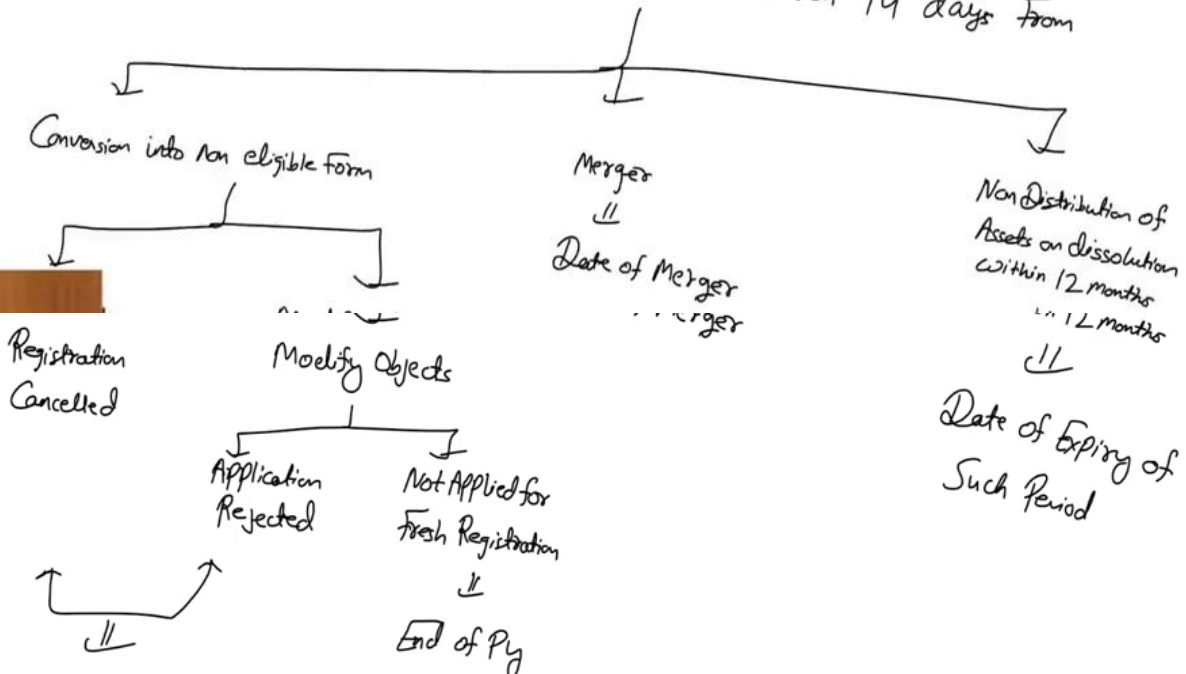
Book Value of liabilities in Balance sheet of Trust on Valuation Date but not include Following :

- Corpus / Capital / Accumulated Fund
- Reserves & Surplus
- Provision for Tax
- Provision for Unascertained Liabilities
- Contingent Liabilities

## Other Points

→ Exit Tax shall be in addition to Normal Income Tax

→ Exit Tax shall be Paid to Central Government within 14 days From



ITAT Appeal period Expires  
or  
ITAT order received

→ If Exit Tax is not Paid within 14 days, Interest is leviable @ 1% Per Month or Part of Month on Amount of Such Tax not Paid

From date  
after 14 days      Till      Date on which  
Tax is Actually Paid

→ If Exit Tax is not Paid within 14 days, Interest is leviable @ 1% Per Month or Part of Month on Amount of Such Tax not Paid

From date  
after 14 days      Till      Date on which  
Tax is Actually Paid

→ Principal officer / Trustee and the Trust will also deemed to be an Assessee in Default [If Tax not Paid within 14 days]

## Taxation of Political Parties [Section 13A]

Certain Incomes of Political Party shall be Exempt, if following Conditions are Satisfied :

- ① Must Maintain Books of Accounts & Documents
- ② Must get its Books of Accounts Audited
- ③ Must File ROI upto due date
- ④ Must keep & Maintain record of each Voluntary Contribution [Donation] Exceeds Rs 20,000 received by it [Name & Address of Donor]
- ⑤ Must receive donation exceeds Rs 2,000 only by A/c Payee Cheque/DD/ECS/ Electronic mode / Electoral Bond

- Income from HP
- Capital Gains
- Other Source
- Voluntary Contribution Received



Income from B&P



Fully Taxable

⇓  
Fully Exempt

Note

⇓  
If any Condition is not fulfilled, then All Incomes are Taxable

Taxation of Electoral Trust [Section 13B]

Voluntary Contribution [Donation] received by Electoral Trust is Exempt if

⇓

At least 95% of Aggregate Donation of Current year along with Surplus b/f from earlier year is distributed to any Political Party

## Note

- Other Income Fully Taxable for Electoral Trust
- Electoral Trust shall accept donation only by A/c Payee Cheque/DD/ECS/  
Electronic Mode.
- Electoral Trust may receive donation from
  - Indian Citizen
  - Company registered in India
  - Firm/HUF/AOP/BoI Resident in India
- Electoral Trust shall not accept donation from
  - Individual who is not citizen of India
  - Foreign Entity
  - Any other Electoral Trust
  - Government Company
  - Foreign Source

Tax Deducted at source [TDS]

TDS Basics

- TDS is deducted by the payer
- TDS is deducted if amt. is taxable in hands of Payee/Receiver
- TDS is deducted at the time of
  - ↳ Payment (or)
  - ↳ crediting the A/c of Payee⇒ Earlier

However in following cases, TDS is deducted only at the time of Payment

- ↳ Salary (192)
- ↳ EPF (192A)
- ↳ Casual Income (194B & 194BB)
- ↳ Maturity of policy (194DA)
- ↳ Compensation on Compulsory Acquisition (194LA)
- ↳ Cash withdrawal [194N]

- TDS is deducted at fixed rates as given in respective Section Except
  - ↳ Salary
  - ↳ Payment to NR/FC⇒ [Surcharge & cess] also

- TDS is deducted both from payment for commercial purpose or personal purpose [Except in Sec. 194C & 194J, where NO TDS on Payment made for Personal purpose by individual & HUF]



- If payment is made by payer without deducting TDS then payee is responsible to payment of tax directly,  
However, if TDS deducted by payer but not deposited with govt., then payee cannot be liable to pay such tax
- No TDS, if Payer is CG, SG, RBI, Statutory corporation, Mutual fund.
- If GST on Service is included separately on Bill, then NO TDS on GST component

① TDS ON Salary ( Sec. 192 )

- Nature of Payment ⇒ Salary
- Payer ⇒ Any person [Employer]
- Payee ⇒ Any ~~for~~ person [Employee] [R/NR]
- Rate ⇒ Rates in slab [slab rate]
- Exemption limit ⇒ If total income of Employee is upto Basic Exemption limit

||

## Additional Points :-

- Slab Rate means Total Tax payable by Employee (reduced by TDS already deducted ~~the~~ ~~the~~ under other sections)
- Employer shall consider (if provided by employee)
  - ↳ Other income & Deductions of employee
  - Not consider any loss except HPL loss
- Employer shall obtain evidence [Proof of following claims made by employee [If proof not provided]
  - ↓
  - ignore all

HRA → Name, Address, PAN of Landlord, if aggregate Rent exceeds ₹ 1 lac

LTC → Evidence of expenditure

HP interest → Name, address, PAN

## VI-A Deductions → Evidence of Expt/ Investment

- Employee can take credit of Tax on Non Monetary Perquisite Paid by Employer
- In case of Arrears of Salary, TDS is deducted after considering relief U/S 89
- Tip paid to waiter [Employee] → No TDS
- If Employee opts IISBAC → intimate of Employer

→ Sec. 192A → Accumulated balance of RPF  
||

Payer → Any person

Payee → Any person [Employee]

Rate → 10%

Exemption limit ⇒ If aggregate payment less than ₹50,000 for year

Additional points:-

o TDS only if Amt. taxable in hands of Employee [if employee renders less than 5 years of service]

o If PAN not furnished by Employee, TDS rate to be deducted @ MMR

→ Sec. 193 → Interest on Securities  
||

Payer → Any person

Payee → Any resident person

Rate → 10%

Additional points :-

No TDS, if interest :-

- Paid to LIC, GIC, Any other Insurer
- Payable on Govt. Securities
- Payable on DMAT Securities
- Payable on Deb. of Public co. to Individual/HUF [If Amt. not exceed ₹ 5000 p.a.]

\* Sec. 194 → Dividend

- Payer ⇒ Domestic Company
- Payee ⇒ Resident Shareholders
- Rate ⇒ 10%

Additional points :-

No TDS, if Dividend :-

- Paid to LIC, GIC, Any other Insurer
- Paid to individual other than cash [If Amt. not exceed ₹ 5000 p.a.]

Sec. 194 ⇒ Interest (other than interest on Securities)

Payee ⇒ Any person (other than individual/HUF whose turnover/GR in Business/Profession upto ₹ 1 cr. / 50 lacs in Preceding FY)

Payee → Any resident person

Rate ⇒ 10%

Exemption :- →

• Bank / co-op. Bank / Post-office

₹ 40000 p.a. (50000 p.a. if senior citizen)

• Other person

₹ 5000 p.a.

Additional points :-

• If Bank opting case Banking Solutions (CBS) then limit will not be per Branch but per Book

→ No TDS, if

• Interest on Savings Bank A/c

• Interest paid by firm to partners

• Interest on income tax

• Interest paid to Any Bank, LIC, UTI, Any Insurer

- o Interest paid by co-op. Society to its Members or to any other co-op Society
- o Interest on compensation Amt. awarded by motor accidents claim Tribunal [If Amt. not exceed £ 50000 p.a.] ⇒ on paid basis
- o Interest on FD made in name of Registrar General of Court
- o If interest is credited by Bank to Provisioning A/c on daily/monthly basis for macro monitoring only by use of CBS Software ⇒ No TDS

\* Sec. 194B → Casual Income (other than Horse Race)

Payer → Any person

Payee → Any person

Rate → 30%

Exemption limit = £10000 p.a.

Additional points :-

o If winning in kind, then organiser will release winning only after ensuring that Tax on winning paid to Govt.

\* Sec. 194AB → Horse Race

Payer → Any person

Payee → Any person

Rate ⇒ 30%

Exemption limit ⇒ ₹ 10000 p.a.

Additional points :-

TDS will be deducted without Setoff of Loss

\* 194C → Contract

Payer ⇒ Any person (other than individual/HUF whose turnover/Gross receipts in Business/Profession upto ₹ 1cr/50 lac in preceding FY)

Payee → Any resident person

Rate ⇒ If contractor

o Individual ⇒ 1%

o Other ⇒ 2%

Exemption limit ⇒ ₹ 30000 for single payment and  
Aggregate ₹ 1 lac p.a.

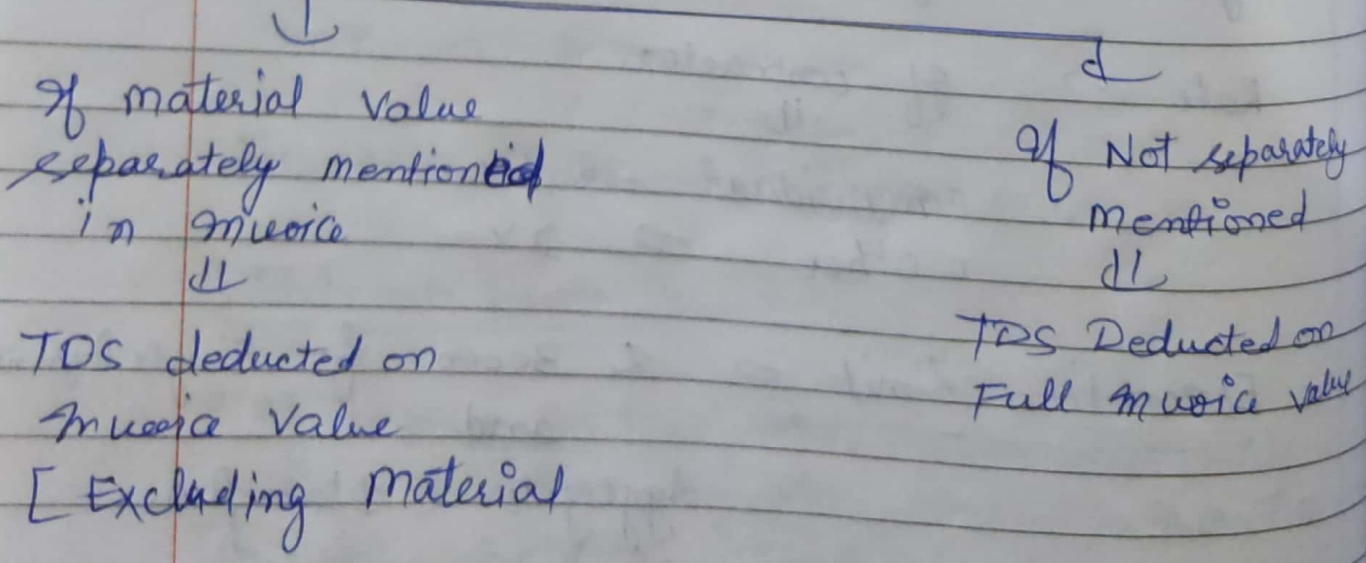
Additional points :-

- For purpose of contract, work includes :-
  - Advt., Broadcast, telecaste
  - Catering
  - Transport of Goods/Passengers [Other than Railway]
  - Mfg. supplying product as per customer's specification out of material supplied by such customer or its Associate [Relative U/s 40A(2)] [Job work]

• If payment made for personal purpose by individual/HUF → No TDS

• If payment made to Transporter & he does not own more than 10 vehicles at any time during PY & furnish declaration with PAN  
 ↓  
No TDS

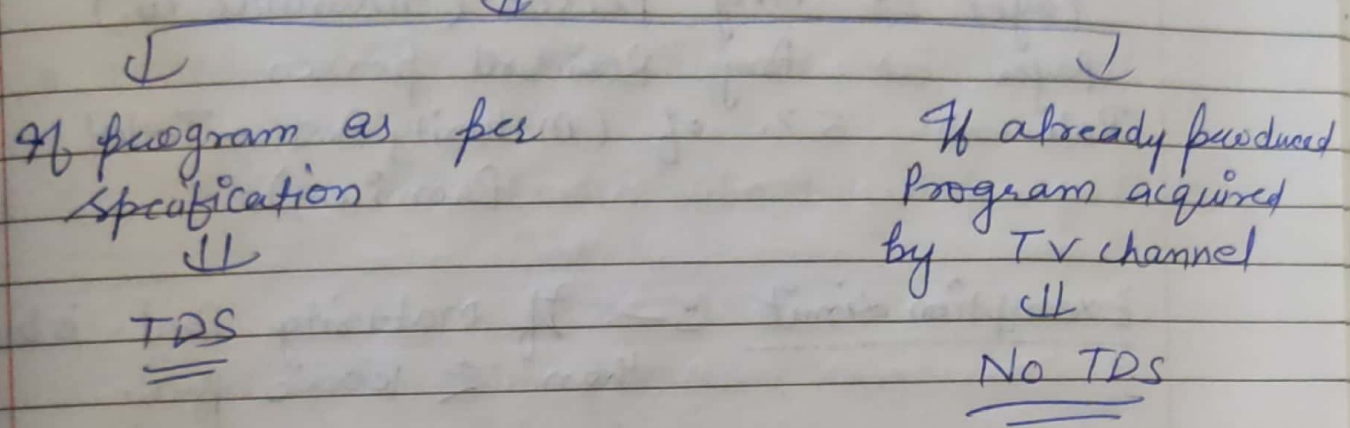
• In case of Job work



• Payment by client to Advertising Agency ⇒ TDS  
 Payment by Advt. Agency to TV/channel/ Newspaper ⇒ No TDS



o Payment by TV channel / Broadcasters to Production house for production of program



o Payment of Gas Transportation charges by purchaser of Natural Gas to seller of Gas → No TDS

o Services of Event manager [Other than sports activity] ↓  
TDS U/s 194C

o Contract also includes sub-contract

\* Sec. 194D → Insurance Commission  
↓

- Payer ⇒ Any person (Insurance Co.)
- Payee ⇒ Any resident person (Agent)
- Rate ⇒ 5%
- Exemption Limit - ₹ 15000 p.a.

Additional points →

o Commission by Reinsurance Co. to insurer  
↓  
No TDS

\* Sec. 194DA → Life Insurance Policy Amt. Recd.

Payer → Any Person (Insurance Co.)  
Payee → Any Resident Person  
Rate → 5% of (Maturity Amt. - Total Premium)

Exemption limit :- If maturity Amt. is less than ₹ 100000 p.a.

Additional points :-

↓  
TDS only if Maturity Amt. is Taxable  
[Taxable if premium paid exceeds limit given in Sec. 80C]

\* Sec. 194E :- Payment to NR sportsman / Sports Association / Entertainer

↓  
Payer → Any person  
Payee → NR sportsman / Sports association / Entertainer [Not citizen of India]  
Rate → 20%

Additional points :-

• TDS on Income Taxable U/s 115 BBA  
↳ Participation in any game in India  
↳ Adult.

- ↳ Contribution of Article in Newspaper
- ↳ Performance in India

o Umpire and Match Referee not covered

\* Sec. 194 G → Commission on Sale of Lottery Tickets

- Payer ⇒ Any person
- Payee ⇒ Any person
- Rate ⇒ 5%
- Exemption limit ⇒ ₹ 15000 p.a.

\* Sec. 194 H ⇒ Commission or Brokerage

Payer ⇒ Any person [Other than Individual/HUF whose turnover/GR in Business/Profession upto ₹ 1 Cr. / 50 Lacs in Preceding FY]

Payee ⇒ Any Resident Person

Rate ⇒ 5%

Exemption limit ⇒ ₹ 15000 p.a.

Additional Points :-

o No TDS, if :-

→ Commission/Brokerage is related to Securities [Commission to underwriters, Brokerage on Public Issue]

- Discount given to stamp vendors on purchase of stamp papers
- incentives given to distributors
  - o Payment by consigner to consignee ⇒ TDS
  - o Payment by Airlines to agent ⇒ TDS on Commission Amt. on Minimum Fixed Commercial Price [ NO TDS on Difference Amt. of Maximum Published Price & Minimum Fixed Price ]

\* Sec. 194 I → Rent

Payer ⇒ Any person (Other than Individual/HUF whose turnover/GR in Business/Profession upto ₹ 1 Cr. 150 lac in preceding FY)

Payee ⇒ Any Resident Person

Rate ⇒ P&M, Equipment ⇒ 2%  
L&B, Furniture ⇒ 10%

Exemption limit ⇒ Aggregate ₹ 24,000 p.a.

Additional Points :-

- o If property is owned by more than 1, then limit of ₹ 24000 applied to each co-owner,
- o Am →

o In following cases, TDS is deducted U/S 194C  
and not U/S 194I :-

→ ~~to~~ Landing & Parking charges Paid by Airline co.  
to Airport Authority

→ Payment for use of Mobile Towers

→ Payment to contractors for Hiring Dumpers

→ Payment of cooling charges to cold storage  
owner

o Lump sum lease premium / one time upfront lease  
charges paid for acquisition of Long Term lease



No TDS

\* Sec. 194IA → Purchase of Immoveable property  
[Other than Rural Ag. Land]

Payer → Any person (Buyer)

Payee → Any Resident Person (Seller)

Rate → 1% of Actual consideration

Exemption Limit :- If consideration per property  
is less than ₹ 50 lacs  
[Actual consideration NOT SDV]

### Additional Points :-

- Consideration includes all charges such as maintenance fees, Car Parking fees, club membership fees, Electricity/water fees etc.

### \* Sec. 194IB $\Rightarrow$ Rent of Immovable Property

Payer  $\rightarrow$  Individual & HUF (Other than covered U/s 194E)

Payee  $\rightarrow$  Any Resident person

Rate  $\rightarrow$  5%

Exemption limit  $\Rightarrow$  ₹ 50000 P.M.

### Additional Points :-

- TDS is deducted at the time of :-
  - Payment or credit of Last month Rent of PY
  - Payment or credit of last month Rent of Tenancy [If Property is vacated during PY]

- If PAN not furnished by payee, TDS Rate 20%  
 $\Downarrow$   
But maximum TDS is upto Last month Rent/  
Vacancy Month Rent

\* Sec. 194IC → Payment Joint Development Agreement

Payer → Any person

Payee → Any Resident Person

Rate = 10%.

Additional Points

- TDS on Money Consideration [Not on kind]

\* Sec. 194J ⇒ Professional fees, Technical fees, Royalty, Non compete fees, Director ~~Remuneration~~ Remuneration

Payer → Any person [other than individual/HUF whose turnover/GR in Business/Profession upto ₹ 1 cr. / 50 lac in preceding FY]

Payee → Any Resident Person

Rate ⇒ Technical Fees (TFs), Royalty for cinematographic films, Payment to call centre  
||  
2%.

• Other case ⇒ 10%.

## Exemption Limit :-

Professional Fees  $\rightarrow$  ₹ 30000 P.A.

Technical Fees  $\rightarrow$  ₹ 30000 P.A.

Royalty  $\rightarrow$  ₹ 30000 P.A.

Non compete fees  $\rightarrow$  ₹ 30000 P.A.

Director Remuneration  $\Rightarrow$  No Limit

## Additional Point :-

- If Payment made for Personal purpose by Individual/HUF  $\Rightarrow$  No TDS
- No TDS by Individual/HUF on Royalty and Non compete Fees [Even if Commercial]

## Professional Services



- $\rightarrow$  Services covered in 44AA
- $\rightarrow$  Services in relation to sports ~~and~~ activities rendered by following persons :-  
Sports person, umpires, Referee, Coach, Trainer, Team Physician, Event managers, Commentators, Anchors and sports columnists



## Fees for Technical Services

- Any consideration for rendering of Managerial, Technical, Consultancy Services
- Payment made by third Party Administrators (TPA) on behalf of Insurance Co.'s to Hospital

TDS U/s 194J

### Transaction

- ~~Transportation~~ charges paid by members to Stock Exchange for availing online trading facility → No TDS

\* Sec. 194K → Income from UTI Mutual Fund Unit

Payer → Any person (UTI Mutual Fund)

Payee → Any Resident Person

Rate = 10%

Exemption limit = ₹ 5000 p.a.

\* 194LA → Compensation on Compulsory Acq. of Immovable Property

Payer → Any person

Payee → Any resident Person

Rate = 10%

Exemption limit = ₹ 250000 p.a.

## Additional Points :-

o No TDS on compensation on Compulsory Acquisition of Any Ag. Land

\* Sec. 194LB → Interest on Infrastructure Debt Fund

Payer → ~~NR/FC~~ Infrastructure Deb-Fund

Payee → NR/FC

Rate → 5%

\* Sec. 194LC → Interest on Foreign Currency Borrowings and by Indian Co. or Business Trust

Payer → Indian Co. or Business Trust

Payee → NR/FC

Rate → 5%

## Additional Points :-

Section 206AA not applicable [even if PAN is not furnished, TDS rate will be 5%.]

\* Sec. 194LD → Interest to FII/QFI

Payer → Any person

Payee → FII/QFI

Rate → 5%

Additional points →

- Interest on
  - Govt. Securities
  - Rupee Denominated Bonds of Indian Company
  - Municipal Debt Security

• FII/QFI = Foreign Institutional Investors / Qualified Foreign Investors

\* Sec. 194M → Contract, Commission / Brokerage, Professional fees

Payer → Individual / HUF (Other than covered u/c 194C, 194H, 194J)

Payee → Any Resident Person

Rate → 5%

Exemption limit → Aggregate ₹ 5,00,000 P.a.

\* Sec. 194N → Cash withdrawal

Payer → Banks, co-op. Banks, Post office

Payee → Any person

Rate → 2%

Exemption limit :-

Cash withdrawal upto ₹ 1 cr. p.a.

Additional points :-

o TDS applicable only on excess of Amt. over 1 cr.

o If payee has not furnished ROI for preceding 3 Py

Withdrawal ~~and~~ more than 20 lacs upto 1 cr. = 2%  
withdrawal more than 1 cr. = 5%

o This section is not applicable if payee is Govt., Banks, co-op. Banks, Post-office, ATM operators or any person notified by RBI

\* Sec. 1940 → Certain payments by E-commerce operator to E-commerce Participant (w.e.f. 1.10.20)

Payer → E-commerce operator

Payee → E-commerce Participant [Resident]

Rate %  $\rightarrow$  1% of Gross Amt. of sale of Goods/ Services

Additional Points %  $\rightarrow$

o If E-commerce Participant is Individual/HUF and Gross amt. of sale of Goods/ Services does not exceed  $\text{₹ } 5 \text{ Lacs p.a.}$



No TDS

o Services includes Professional Service and Technical Service

o If PAN not furnished by Payee, TDS Rate = 5%

\* Sec. 195 % - Any Payable to NR/FC [Except covered in other sections]

Payer  $\rightarrow$  Any Person

Payee  $\rightarrow$  NR/FC

Rate  $\rightarrow$  Rates in Force

Additional Points %  $\rightarrow$

o TDS only if such ~~to~~ sum is taxable in India

o Payment made to Overseas agent for service rendered outside is not taxable in India



So, No TDS u/s 195

o Interest paid by Firm to NR Partner  
o Person responsible for paying any sum to NR/FC [whether Taxable or not] shall be required to furnish information relating to such sum

o If TDS is deducted in excess of Rates given in DTAA, NR/FC can claim refund of excess TDS

Other Points

① Due to COVID-19,

In case of Payment to RESIDENTS B/W 14.05.20 to 31.3.2021, in all sections [Except 192, 192A, 194B, 194BB, 194NT], Rate of TDS will be

3/4<sup>th</sup> of Specified Rate

② Payee can apply to AO to issue a certificate for No deduction / lower Ded. of TDS

③ If Income of Payee is less than Basic Exemption Limit, Payee can give self declaration in Form 15G / 15H [For senior citizen], for non deduction of TDS

[only for Sec. 192A, 193, 194A, 194DA, 194I, 194K]

4) Mandatory requirement of furnishing PAN (Sec 206AA) ↓

If payee does not furnish his PAN to the payer  
TDS Rate shall be ↓

Rate given in respective Section } ⇒ higher  
(05)  
20%

Exemptions shall not apply to NR/FC for  
payment in nature of interest, Royalty, FTS  
and payment on transfer of Capital Asset, if  
payee furnishes the following details ↓

- Name, E-mail id, Contact No.
- Address outside India
- Residency Certificate
- Tax Identification No. outside India

5) Due date of payment of TDS ↓

If TDS deducted ↓

During April to Feb. ⇒ By 7th of Next month  
March month ⇒ By 30th April

For Sec. 194IA, 194IB, 194M  
↓  
By 30th of Next Month

## ⑥ Due dates of TDS Return / TDS Statement

Quarters Ended  
↓

June	⇒	31 <sup>st</sup> July
September	⇒	31 <sup>st</sup> Oct.
December	⇒	31 <sup>st</sup> Jan.
March	⇒	31 <sup>st</sup> May

⑦ If Assessee fails to deduct TDS or after deduction fails to pay TDS to Govt., Assessee will be deemed to be an Assessee in default (Sec. 201)

[ If Assessee fails to deduct TDS of any Payee, he shall not be deemed to be an Assessee in default, if such payee

- Furnished his ROI
- Taken such sum in income
- Paid Tax on such sum

⑧ Interest on Late Deduction / Late Payment of TDS (Sec. 201(1A))

↓  
In case of Late Deduction  
↓

Interest @ 1% p.m. or part of month on Amt. of TDS not deducted from date on which Tax was deductible till date on which tax is actually deducted.



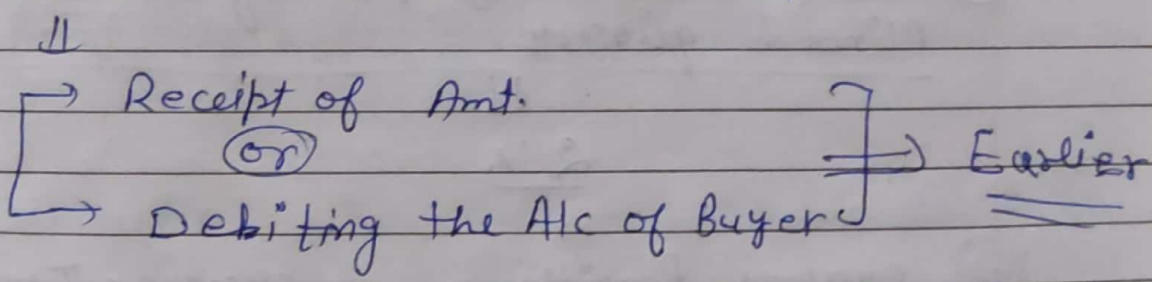
From case of Late Payment

Interest @ 1.5 p.m. or part of month on Amt. of TDS not paid from date on which tax was deducted till date on which tax is actually paid.

Tax collection at Source (TCS) (Sec. 206C)

TCS Basics :-

- TCS is collected by the Seller from the Buyer
- TCS is collected at the time of



→ No TCS, if seller is individual/HUF and whose total turnover/GR from Business/Profession in Preceding FY upto ₹ 1 Cr / 50 lac

→ No TCS, if Buyer is Govt., Embassies, Consulates, High Commissions

TCS Rates

- ① Specified goods
  - o Alcoholic liquor for Human consumption 1%
  - o Scrap (not usable or such) 1%
  - o Minerals being coal, lignite or Iron Ore 2.5%
  - o Timber and any other forest Produce 5%
  - o Tender Leaves

No Tcs on specified goods  
↓

- If goods purchased for personal consumption
- If goods used in mfg. of any article

(b) Any motor vehicle  
↓

No Tcs on motor vehicle

- If consideration for vehicle is upto ₹ 10 lacs
- Sale of motor vehicle by Manufacturer to Dealer/Distributor

(c) Lease or license of parking lot, toll plaza, mines & quarry  
↓

2%

(d) Overseas Remittance or Overseas Tour Package (w.e.f. 1.10.2020)  
↓

Overseas Remittance → 5% on remittance in excess of ₹ 7 lacs

[No Tcs, if remittance upto ₹ 7 lacs p.a.]

Overseas Tour Package → 5%

(e) Sale of goods of value exceeding ₹ 50 lacs (w.e.f. 1.10.2020)  
↓

0.1% of sale consideration in excess of ₹ 50 lacs

No TCS on  $\begin{cases} \rightarrow \text{Export of goods} \\ \rightarrow \text{Goods covered in Point (a)} \end{cases}$

\* Applicable only if Seller's Turnover exceeds ₹ 10 crores in preceding FY)

Other points  $\rightarrow$

① Due to COVID-19, in case of Receipts B/w 14.5.20 to 31.3.21 in all cases [Except Alcoholic Liquor and Point (d)], Rate of TCS will be  $\frac{3}{4}$ th of Specified Rate.

② In point (b) & (e), TCS shall be collected at the time of receipt of Amt.

③ If collector does not furnish his PAN to the collector, TCS Rate shall be

$\begin{cases} \rightarrow \text{Double of Rate given} \\ \rightarrow 5\% \end{cases}$   $\Rightarrow$  Higher  
(or)  
 $\rightarrow 1\%$  for point (e)

④ Due date of Payment of TCS  $\rightarrow$  By 7th of Next Month

⑤ Due dates of TCS Return / TCS statement  
Quarters ended

$\Downarrow$

June	$\Rightarrow$	15th July
September	$\Rightarrow$	15th Oct.
December	$\Rightarrow$	15th Jan.
March	$\Rightarrow$	15th May

⑥ Fees for default in furnishing TDS/TCS statements [sec. 234E]

↓  
Fees is payable @ ₹200 per day After due date till actual date of furnishing  
[Note:- Total Amt. of fees shall not Exceed TCS/TDS Amt.]

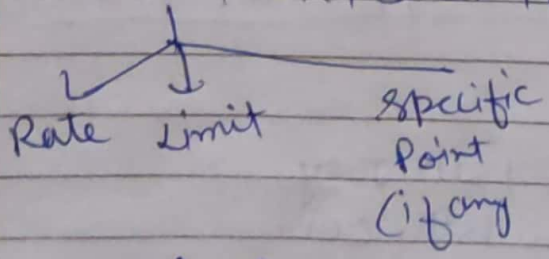
★ Above fees is not treated as penalty, & deduction is allowed under C/BP

Types of TDS/TCS Questions

↓  
Examine / Discuss  
↓

- TDS/TCS Liability
- TDS/TCS Implications
- TDS/TCS Provisions
- TDS/TCS Applicability
- TDS/TCS obligations
- TDS/TCS Attracted

→ Provision with section no.

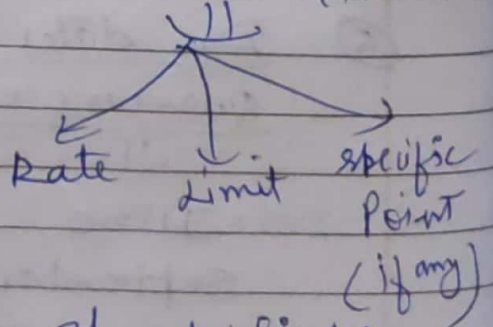


→ conclusion

calculate / compute  
Determine  
↓

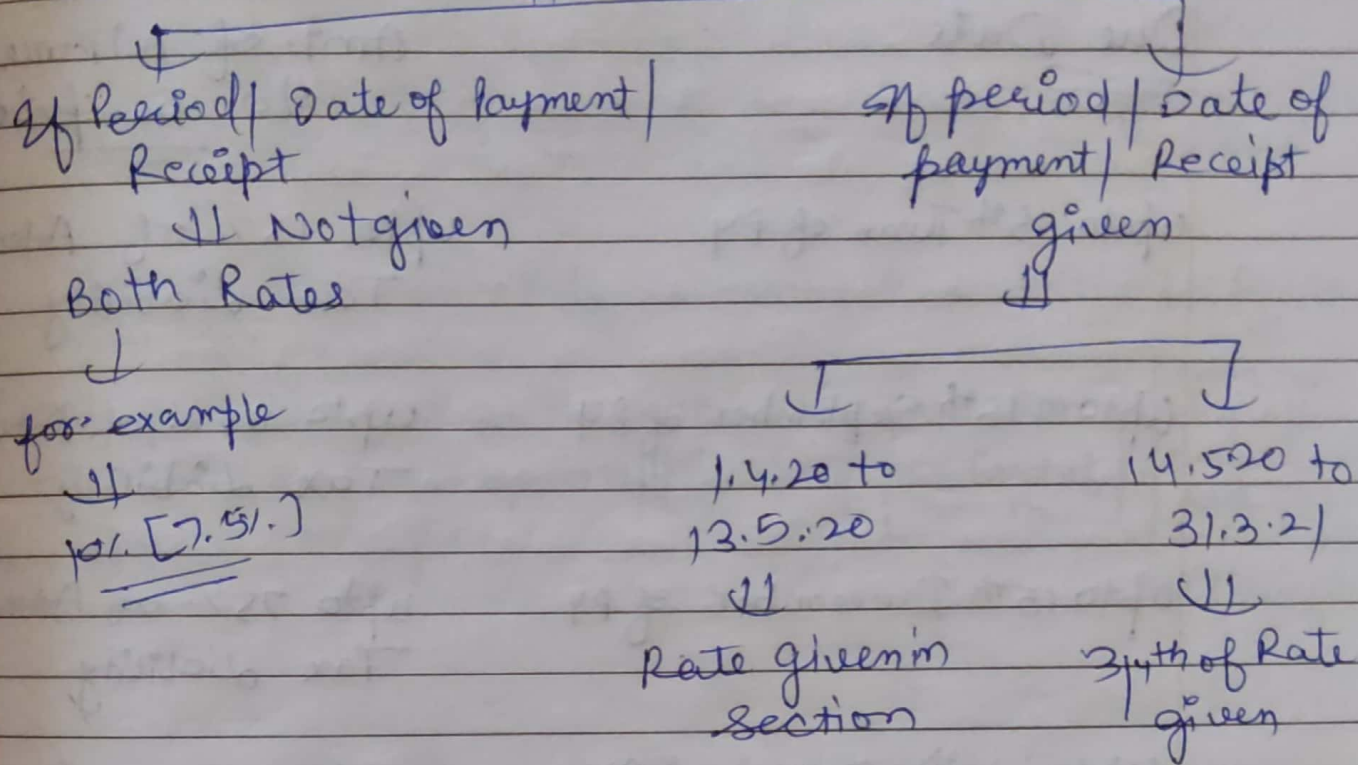
- TDS/TCS
- TDS/TCS Liability
- Amt. payable to Payee/Seller

→ Provision with sec. no.



→ if applicable, then calculate

## Rate of TDS/TCS



## Advance Tax

→ Advance Tax means Tax paid in PY on Estimated Total Income of PY

→ Calculation of Estimated Advance Tax Liability

Tax on Estimated total income	XX
- Estimated TDS/TCS/Relief/Credit	(XX)
Estimated Advance Tax Liability	<u>XX</u>

→ No Requirement to Pay Advance Tax

- o If advance Tax is less than ₹ 10,000
- o Resident Senior Citizen not having Income under PGBP

→ Due date of Payment of Advance tax

Due Date

Amt. of Advance tax  
to be paid

upto 15<sup>th</sup> June of PY

upto 15% of Advance  
Tax liability

upto 15<sup>th</sup> September of PY

upto 45% of Advance  
Tax liability

upto 15<sup>th</sup> December of PY

upto 75% of Advance  
Tax liability

upto 15<sup>th</sup> March of PY

upto 100% of  
Advance Tax liability

Note :-

• If assessee opts for section 44AD/44ADA, then Due Date of Payment of Advance Tax is 15<sup>th</sup> March of PY [± installment]

• Tax paid upto 31<sup>st</sup> March of PY is treated as advance Tax.

Interest U/S 234A / 234B / 234C

→ Sec. 234A → Interest for delay in filing of ROI

Tax payable on Self assessment	*	Rate	*	Period
↓		↓		↓
Tax payable on TI as per ROI      xx - TDS / TCS / Relief U/S 89, 90, 91 / MAT / AMT credit      (xx) - Advance Tax Paid      xx <hr style="width: 50%; margin-left: auto; margin-right: 0;"/> xx		1% p.m. or Part of month		From next day after due date of ROI till Actual date of filing of ROI

→ Sec. 234B → Interest for short Payment of Tax

Advance Tax short Paid	*	Rate	*	Period
↓		↓		↓
Actual Advance Tax Liab.      xx - Advance Tax Paid      (xx) <hr style="width: 50%; margin-left: auto; margin-right: 0;"/> xx → * Actual Advance Tax Liab. Tax Payable on TI as per ROI      xx - TDS / TCS / Relief U/S 89, 90, 91 / MAT / AMT credit      (xx) <hr style="width: 50%; margin-left: auto; margin-right: 0;"/> xx		1% p.m. or Part of Month		From 1st April of AY till Actual date of Payment

Note :-

- o Section 234B is not applicable if advance Tax paid by Assessee is 90% or more of Actual Advance Tax Liability
- o If there is change in total income due to processing of Return u/s 143(1) or Assessment then tax payable on TI as per 143(1) Assessment will be taken instead of tax payable on TI as per ROI [Applicable for 234A & 234B]

\* Sec. 234c :- interest for deferment of Advance Tax Installments

1<sup>st</sup>  $\Rightarrow$  [15% of Actual Adv. Tax Liab. - Advance Tax Paid upto 15th June]  $\times$  3%

2<sup>nd</sup>  $\Rightarrow$  [45% of Actual Adv. tax Liab - Adv. tax paid upto 15th Sep.]  $\times$  3%

3<sup>rd</sup>  $\Rightarrow$  [75% of Actual Adv. tax Liab - Adv. Tax paid upto 15th Dec.]  $\times$  3%

4<sup>th</sup>  $\Rightarrow$  [100% of Actual Adv. tax Liab. - Adv. tax paid upto 15th Mar.]  $\times$  1%



Note :-

◦ In case of I & II and IIIrd installment, No interest if Assessee paid upto 12% in 1st and 36% in IIrd installment]

◦ If assessee opts for sec 44AD/44ADA, then interest u/s 234c will be  
 ↓

[100% of Actual Adv. tax Liab. - Adv. tax Paid upto 15th Mar.] \* 1%

\* Fees for Default in filing ROI (sec 234F)  
 ↓

If any person who is required to file ROI u/s 139 fails to do so within time given u/s 139(1)  
 ↓

If ROI filed upto 31st Dec. of AY = ₹ 5000  
 Other case = ₹ 10000

Note :- →

If total income of person is upto ₹ 5 Lacs, then fees shall not exceed ₹ 1000

## Other modes of Recovery of Tax



By Assessing officer



o By way of Serving of Notice of Demand u/s 15  
Amount as specified in Notice shall be paid  
within 30 days of Notice (Sec. 220)

By Tax Recovery officer



Attachment and Sale of Assessee's Movable/  
Immovable properties

Assessee property includes any property  
transferred by Assessee to spouse, minor  
child, son's wife, son's minor child without  
consideration / inadequate consideration

If minor child, son's minor child attain  
majority after transfer, then also treated  
as assessee's property

## Refunds

→ If Actual tax paid is more than Tax Payable, then Assessee is entitled to claim Refund

### Interest on Refund

• Interest @ 0.5% p.m or part of month will be paid by the Deptt. on Amt. refunded

• Period of interest

↳ If ROI is filed upto due date

↓

From 1<sup>st</sup> April of AY till Date of Grant of Refund

↳ If ROI is filed after due date

↓

From date of filing of ROI till date of Grant of Refund

Example

PY 2020-21

A Utd.

# Tax Authorities, Return filling & Assessment Procedure

## Income Tax Authorities



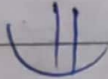
CBDT



Assessment wing



- Principal Chief Commissioner of Income Tax (PCCIT)
- Chief Commissioner of I/TAX (CCIT)



- Principal Commissioner of I/TAX (PCIT)
- Commissioner of IT (CIT)



Addition Commissioner/  
Joint Commissioner (JC)  
↓  
Assistant Commissioner/  
Deputy Commissioner (AC/DC)  
⇓  
Income Tax officer (ITO)



Tax Recovery officer (TRO)



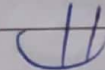
Income Tax Inspector

★ Commissioner of IT (Appeals) (ETCA) is also Income Tax Authority

Investigation wing



- Principal Director General of Income Tax (PDGIT)
- Director General of I/TAX (DGIT)



- Principal Director of IT (PDIT)
- Director of IT (DIT)



Additional Director/  
Joint Director  
↓  
Assistant Director/  
Deputy Director

Assessing officer

## \* Central Board of Direct Taxes [CBDT]

- o Statutory Body
- o Exercise control & supervision over all officers of Income Tax Deptt. by issue of orders / instructions / circulars
- o CBDT may grant relief to the Assessee for genuine reasons under certain sections [139, 201(A), 234A/B/C, 234E etc.]
- o CBDT has no power to amend legislative provisions of the Act.

## Powers of Income Tax Authorities

↳ General Powers  
↳ Special Powers

### General Powers [sec. 131]

- IT Authorities have all powers of Civil Court:
- o Discovery & Inspection
  - o Enforcing Attendance of any person & Examining on Oath
  - o Compelling production of Books & documents
  - o Issuing Commission [Summons]

### Special Powers

#### Power to call for inspection (sec. 133)

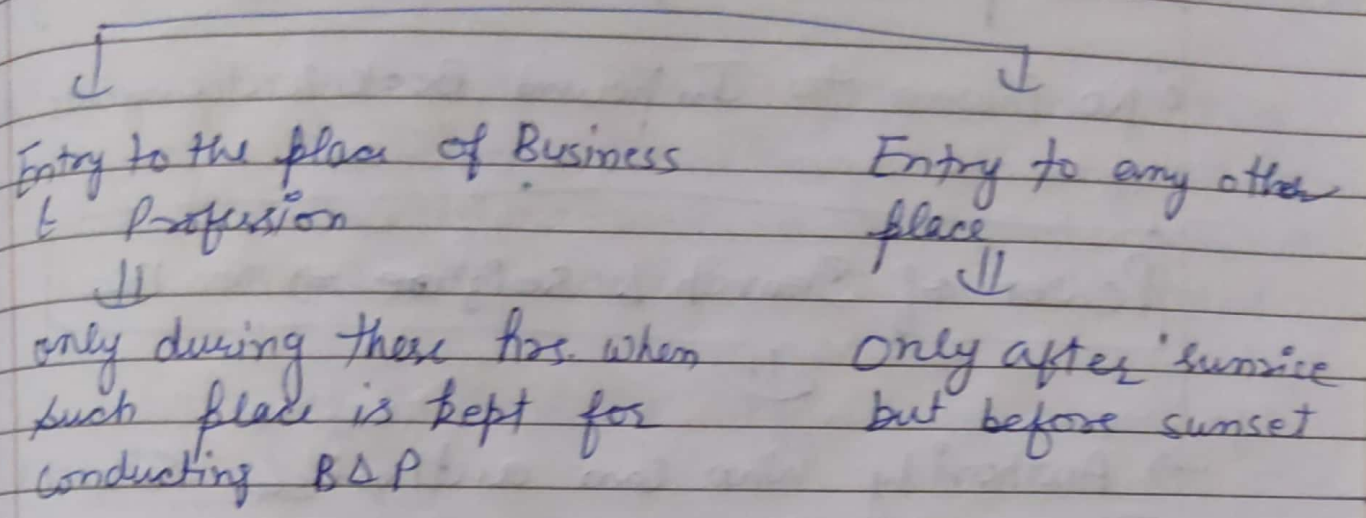
- o IT Authority can call any information from any person which will be useful or relevant to any proceedings under the Act

- If no proceeding is pending and authority is below Rank of CIT; he has to take prior approval of CIT.

### Power of Survey (Sec. 133A)

- IT Authority may enter any Building or place at which Business or Profession is carried on or activity of charitable purpose is carried on  
[from ~~1.11.20~~ 1.11.2020, Prior approval of (CIT/DGIT) is required]
- If Books or Assets relating to Business & Profession or charitable Activities are kept at some other place, then such other place can also be covered under Survey
- Upon Entering, they can
  - ↓
  - Inspect only books of A/c & Documents
  - Check or verify Cash, Stock or other valuable articles
  - Place identification marks on Books of A/c & Documents
  - Make an inventory of Cash, Stock or other valuable articles
  - Record statement of any person
  - Impound & Retain Books & Documents after recording reasons (Max. 15 Working days)

Entry Restrictions:-



[\* Restriction is only for Entry, Not for Exit]

IT Authority can also survey any function, ceremony or Event but only after conclusion of such Function, ceremony or Event and require any person to furnish information & statement

TDS / TCS survey ⇒ For verifying TDS/TCS has been deducted/collected as per provisions of Income tax Act.

However in TDS/TCS survey, IT Authority cannot

- Impound Books & Documents
- Make inventory of Cash, Stock and Valuable articles

Power to collect information ⇒ Sec. 133B

IT Authority may enter any place at which B&P is carried on and collect information from there

- o Entry shall be made only during hrs. when such place is kept open for conducting B&P
- o No Power to Impound Books & documents U/S 133B

**Power of Search & Seizure ⇒ Sec. 132**

⇓

→ Authority who can authorise Search  
Issue Search warrant

⇓

CIT/DIT & higher authorities

Additional / Joint Commissioner / Director

[If empowered by CBOT]

→ To Whom Search is Authorised  
[Authorised officer] → Assessing officer

→ When Search can be Authorised

⇓

If IT Authority has reason to believe that :-

o Any Person to whom notice U/S 142(1) or Summons U/S 131 issued to produce Books of A/c or Documents and Assessee failed to produce such Books or accounts

o Any person to whom notice U/S 142(1) or Summons U/S 131 might be issued to produce



Books of A/c or documents and Assessee will not produce such books or documents

o Any person who is in possession of Any money, Bullion, Jewellery or any other valuable articles and such Asset has not been disclosed/ would not be disclosed.

→ Power of Authorised officer in course of Search II

o Enter and Search any Building, Place, vessel, vehicle or Aircraft where he has ~~suspect~~ <sup>any</sup> that Books, Money etc. are kept

o Power to break ~~any~~ <sup>any</sup> Lock of a door, box, Locker etc. if key not available

o Search any person there

o Require to produce Password, if Books are in Electronic Form

o Seized any Books of A/c, Documents, Money, Bullion, Jewellery etc. found under search  
[Stock cannot be seized]

## → Special Seizure

Deemed / Constructive Seizure

↓

Not possible to take Physical Possession

↓

Due to volume / weight / Nature

Prohibitory order / order of Restraint

↓

Not Possible to take Physical Possession

↓

For any other Reasons

↓

Authorised officer may serve order to owner that he shall not deal with such Asset without approval

## → Presumption Under Search

If any Books of Accounts, Documents, Money Bullion, Jewellery etc. found in Possession of any person, it is presumed that:

- o They belongs to such person
- o Content of Books & Documents are True
- o Signature & other part of Books & Documents which seems to be in handwriting of any particular person are in that person's handwriting

→ If authorised officer has no jurisdiction over the person searched by him or if he found

## Books, Assets etc. of other person



Authorised officer shall handover the Books, Assets etc. to AO having jurisdiction over such other person within 60 days from date on which search was completed.

### → Requisition [Sec. 132A]



If search conducted by any authority under other law, then authorised officer shall require such authority to deliver Books, Assets etc. seized to him ASAP

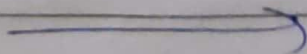
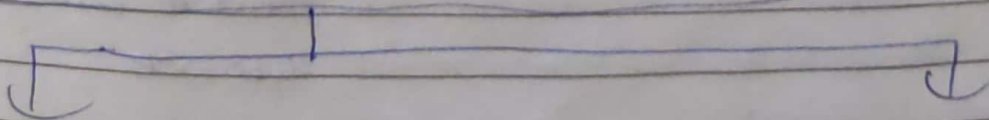
### → Application of Books and Assets Seized (Sec. 132B)

Books of Ac's & Documents



Shall be released within 30 days from date of completion of assessment U/S 153A [For retaining beyond this period, Permission of CIT is required]

Money, Bullion, Jewellery, other valuable articles



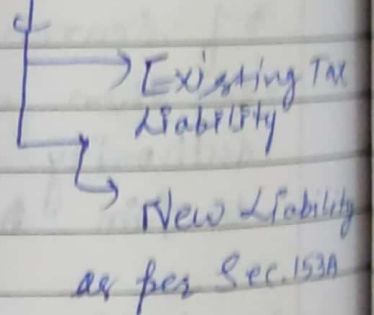
Money, Bullion, Jewellery, other valuable articles

Explained Asset

Unexplained Asset

Application made by Assessee within 30 days from end of month in which such asset was seized

Can be utilize to repay



Explaining nature & source

Asset released to the Assessee with prior approval of CIT after adjusting any existing tax liability

First utilize money against liabilities, if money falls short, Asset may be sold after discharging liabilities

Within 120 days from date of conclusion of search U/S 132

If asset remains after discharging all liabilities

Handed over to the assessee

## Return Filing

### Filing of Return of Income (ROI) (Sec. 139(D))

Following persons are compulsory required to file ROI:

- ① Company, Partnership Firm (including LLP)
- ② Other assessee → If GTI (before claiming exemption) under any section of Series 54 exceeds Basic Exemption Limit

### Resident Individual (ROI)

Beneficial owner of Any Asset (including Financial interest) located outside India

Has signing authority in any Account outside India

Beneficiary of Any Asset (including Financial interest) located outside India

[Note: —  
If Beneficial owner already includes income from such Asset in his ROI, then Beneficiary not required to file ROI]

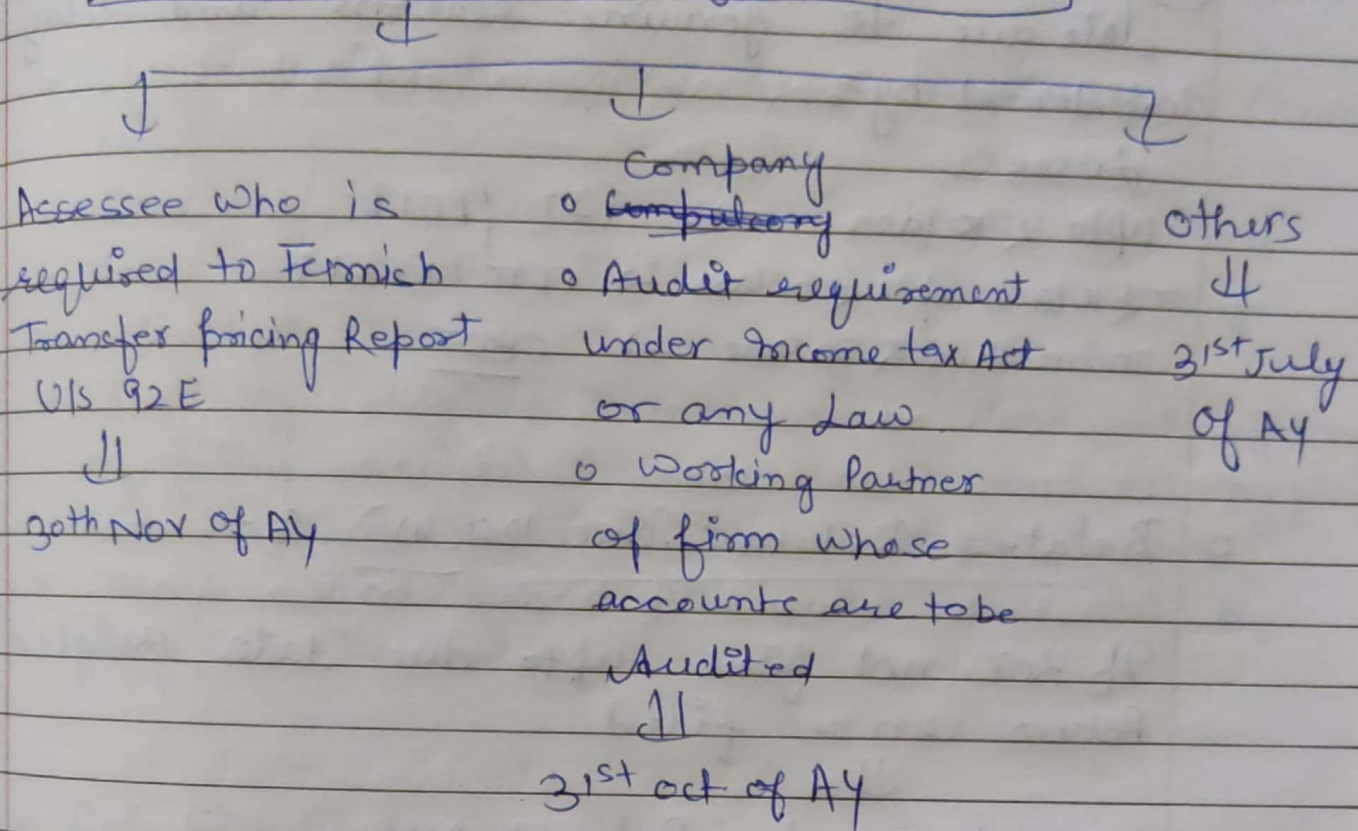
④ Person

- Deposited aggregate more than Rs. 1 Cr. in Current A/c of Bank / Co-op. Bank  
(or)
- Incurred Foreign Travel Expenditure of more than ₹ 2 Lacs for himself / any other person  
(or)
- Incurred Electricity Expenditure of more than ₹ 1,00,000.

⑤ Other Entities

- o Trust (139(4A)) :- If total income before exemption U/S 11 exceeds Basic Exemption limit
- o Political Party [139(4B)] :- If Total Income before exemption U/S 13A exceeds Basic Exemption limit
- o Trade Unions, News Agencies, Institutions etc. U/S 10 [139(4C)]  
↓  
If total Income before Exemption U/S 10 exceeds Basic Exemption limit
- o <sup>U/S 35</sup> Research Institutions (139(4D)) ⇒ mandatory
- o Business Trust [139(4E)] ⇒ mandatory
- o Investment Fund [139(4F)] ⇒ mandatory

## Due Date of filing of ROI



## Loss Return [Sec. 139(3)]

ROI is required to be filed upto due date given U/s 139(1) to CIT following losses of current year

- o Business Loss
- o Specified Business Loss
- o Speculation Business Loss
- o Capital Loss
- o Loss from activity of owning & maintaining race horses

Note -> (i) HP Loss & Unabsorbed dep. can be set off even if ROI late filed

② loss can be (IF even ROI filed after due date due to genuine reasons and delay is condoned by:

Losses

upto ₹ 10 lacs → CIT / PCIT

₹ 10 lacs upto ₹ 50 lacs → CCIT / PCCIT

more than ₹ 50 lacs → CBDT

○ Belated Return (Sec. 139(4)) :-

If ROI not filed upto due date, Belated Return can be filed

↓

→ upto end of Relevant AY

(or)

→ Before completion of Assessment

} Earlier

○ Revised Return (Sec. 139(5)) :-

If there is any omission or wrong statement in ROI filed u/s 139(1), 139(3) or 139(4), Assessee can file Revised Return

↓

○ upto end of Relevant AY

(or)

○ Before completion of Assessment

} earlier



## Note 8

- o If substitutes original Return in all aspects (except date)
- o Assessee can revise ROI any no. of times
- o ROI can be revised even after receiving intimation u/s 143(1) or refund
- o Revising original Return can be done only by way of filing Revised ROI u/s 139(5) and not by filing Plain letter or Revised Statement of income
- o Fresh claim before AO can be made only by filing a Revised ROI

## Defective Return (Sec. 139(a))

⇓

- Returns can be considered defective if
  - ↳ ROI not filed in prescribed form
  - ↳ Proof of tax payment not attached with ROI
  - ↳ Report u/s 44AB not submitted
- AO shall intimate defect to Assessee and give opportunity to rectify the defect within 15 days or extended time
- If Assessee does not rectify the defect, then ROI shall be treated as invalid [void ab initio]

## o Permanent Account Number (PAN) [Sec. 139A]

||

Following persons are required to apply for allotment of PAN :-

||

- Every person who is assessable to tax [Required to file ITR]
- Every person carrying on Business & Profession and whose total turnover / Gross Receipts exceeds / Likely to exceed ₹ 5 lacs in any PY
- Trust
- Resident Person (other than individual) who enters into Financial Transactions of Aggregate ₹ 25,000 or more and Director / Partner / Principal officer of such person

## o Quoting of PAN is mandatory

||

- in all Returns
- in all challans for Payment of Tax
- in all documents relating to specified Transactions

## o Specified Transactions :-

||

- ① Sale / Purchase of Motor Vehicle other than 2 wheeler
- ② Opening a current A/c with Bank / Co-op. Bank
- ③ Application for Issue of Credit / Debit Card

- ① Opening a Demat Account
- ② Payment to hotel or restaurant in cash exceeding ₹ 50000
- ③ Payment for foreign travel or purchase of foreign currency in cash exceeding ₹ 50000
- ④ Payment to Mutual Fund for purchase of units exceeding ₹ 50000
- ⑤ Payment to company/institution for acquiring ~~securities~~ Debentures or Bonds exceeding ₹ 50,000
- ⑥ Cash Deposit with Bank / co-op. Bank / Post-office exceeding ₹ 50000 in a day
- ⑦ Payment of Life Insurance Premium exceeding ₹ 50000 in FY
- ⑧ Sale or purchase of Any immovable Property exceeding ₹ 10 lacs
- ⑨ Sale or purchase of Any goods/ services exceeding ₹ 2 lacs free Transaction

Adhaar Number (Sec. 139AA)

Every person is required to quote Adhaar No.

- in the application form for allotment of PAN
- in Return of Income

Note:-

- o If Adhaar no. not available, then person shall quote Enrollment ID of Adhaar application Form
- o Every person shall link Adhaar no. with PAN upto 31.3.2021

Provisions of Section 139AA shall not apply to following persons:-

- ① Residing in Assam, J&K and Meghalaya
- ② Non-Resident
- ③ Age of 80 years or more at any time during PY
- ④ Not a citizen of India

### Tax Return Preparer (Sec. 139B)

Specified class of persons can file their ROI through TRP

Specified class of persons means any person other than

- ↳ Company
- ↳ Audit

requirement Under IT Act or any law

TRP means an Individual who is authorised to act as TRP by CBDT other than following:-

- ↳ chartered Accountant
- ↳ legal Practitioner
- ↳ officers of scheduled Bank
- ↳ Employee of specified class of persons

### Verification of Return (Sec. 140)

- ① In case of individual, → himself  
If individual not present in India / mentally incapacitated → Person competent to verify on his behalf

- ② In case of HUF → Karta  
 If Karta not present in India  
 mentally incapacitated → Any adult member of HUF
- ③ P'ship Firm → Managing Partner  
 If no managing partner → Any adult partner
- ④ LHP → Designated Partner  
 If Nodesignated Partner → Any Partner
- ⑤ Company → Managing Director (M.D.)  
 If No M.D. → Any other Director  
 Company under Liquidation → Liquidator  
 If corporate insolvency  
 Resolution application → Insolvency Professional  
 Admitted
- ⑥ Political Party → CEO
- ⑦ Local Authority → Principal officer
- ⑧ Any other Person → Person competent to verify

~~Self~~ Self Assessment (Sec 140A)

||

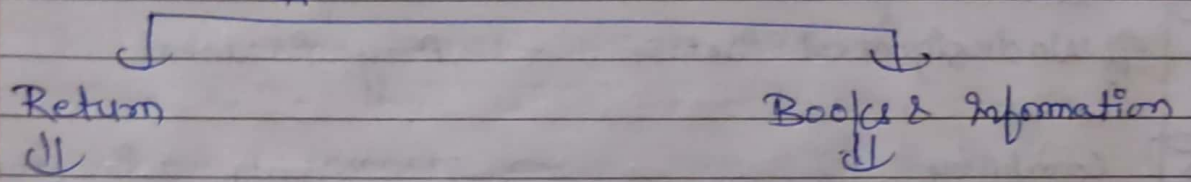
Assessee is required to pay due tax before filing of ITR along with interest and fees

If there is short payment, then amt. paid is first adjusted towards fees, then interest and balance towards tax

Assessment Procedure by Deptt.

Inquiry before Assessment (Sec. 142)

Notice U/s 142(1)



If assessee not filed ROI within time U/s 139(1)

For making Assessment, AO can issue notice

AO may issue notice requiring him to furnish ROI

To produce Books & Documents (max. 3 years prior to relevant PY)

To furnish information including details of Assets & Liab

If Assessee not comply

Best Judgement Assessment (Sec. 144)

If not comply => Search

Special Audit U/s 142(2A) [Audit by Deptt.]

- AO may at any stage of proceeding can direct special Audit having regards to
  - complexities in A/c's
  - Volume of A/c's
  - multiplicity of Transactions in the A/c's
  - Doubts about correctness of A/c's

and

If is in the interest of Revenue Depts.

- Direction can be issued with Prior approval of CIT
- opportunity of being heard must be given to assessee before directing even
- Direction can be given if Books of A/c's already audited U/s 44AB or any other law
- Books of A/c's audited by CA nominated by CIT and remuneration of Auditor shall be paid by CG
- Audit Report has to be submitted within time allowed by AO which can be extended but maximum time shall not exceed 180 days from date of direction of special Audit
- If assessee fails to get special audit done or fails to furnish special Audit report within time allowed, then AO can make best judgment Assessment U/s 144

\* Reference to Valuation officer (VO) <sup>under</sup> (sec. 142A)

AO may for purpose of Assessment make a reference to VO to ~~Estimate~~ Estimate value of any

- ↳ Asset
- ↳ Property
- ↳ Investment

VO may send copy of valuation Report to AO & Assessee within 6 months from end of month in which reference was made

o AO may consider such report after giving opportunity of being heard to the Assessee

### \* Processing of Return/Intimation/Summary Assessment (Sec. 143(1))

||

→ All returns shall be processed u/s 143(1) and following adjustments are made in returned income :-

o Arithmetical error

o Incorrect claim

- ↳ Item inconsistent with another entry
- ↳ Deduction exceed limit
- ↳ ~~Info.~~ Info. not furnished

o Disallowance of Loss claim (if ROI of that year filed after due date)

o Disallowance of expenditure indicated in Audit Report as disallowed but deduction taken in computing total income in ROI

o Disallowance of Deduction u/s 10DA & 80IA to 80IE, if ROI filed after due date.

→ After Processing, Intimation shall be sent to the assessee for Refund/ Demand [Assessee has to respond within 30 days]

→ Final intimation shall be sent to the Assessee within 1 year from end of FY in which ROI was filed



## Scrutiny Assessment

### → Notice of Scrutiny U/S 143(2)

- o For making Scrutiny Assessment, AO is required to issue Notice U/S 143(2)
- o The notice has to be issued within 6 months from end of FY in which ROI was filed

### Note

Processing of Return U/S 143(1) is necessary even notice has been issued U/S 143(2)

### → Order of Scrutiny Assessment U/S 143(3)

- o Based on material & evidences furnished by assessee in response to notice U/S 143(2) AO shall determine the income/loss of assessee along with determination of Tax Payable/Refundable

### o Time limit for completion of Assessment U/S 143(3)

Assessment shall be completed (order shall be passed) within 12 months from the end of relevant AY

### Note

in case of institutions etc. U/S 10, AO shall pass order U/S 143(3) without giving exemption U/S 10 only if he is of view that activities carried out in contravention of provisions.

[and]

- He has intimated the Cc about contravention
- Approval granted to such institutions has been withdrawn

### \* Best Judgment Assessment (Sec. 144)

||

AO shall make an assessment to the best of his judgment & knowledge in following cases:-

- ① Failure to furnish ROI u/s 139(1)/139(4)/139(5)
- ② Failure to comply with notice u/s 142(1)
- ③ Failure to comply with special audit directions u/s 142(2A) [Special Audit]
- ④ Failure to comply with notice u/s 143(2) [Scrutiny Notice]

Note :-

- o AO shall issue SCN giving an opportunity of being heard to the Assessee [Except point ②]
- o Discretionary Best Judgment Assessment

||

in following cases also, Assessment may be completed as per section 144

- AO not satisfied about completeness/correctness of Books & Documents of Assessee

- correct method of Accounting was not regularly followed by Assessee
- ICDS have not been followed by Assessee

◦ Time limit for completion of Assessment U/S 144

Assessment shall be completed [order shall be passed] within 12 months from the end of Relevant AY

(Sec. 144C)

Reference to Dispute Resolution Panel (DRP)

◦ To Facilitate expeditious resolution of dispute a panel consisting of 3 Commissioner of IT (CIT) is constituted

◦ Eligible Assessee who can file objection to DRP

↳ NR/FC

↳ Any person relating to Transfer Pricing case [if variation arise due to TPO order]

◦ AO shall forward draft order to eligible Assessee

◦ Assessee shall within 30 days of receipt of Draft order

↳ Accept

↳ File objection to DRP

◦ DRP may confirm, reduce or enhance variations of Draft order

◦ DRP shall issue directions within 9 months from end of month in which draft AO order is forwarded to the Assessee

o DRP shall issue directions after considering following

- Draft order
- Objections filed by Assessee
- Evidence furnished by Assessee
- Reports and other Evidences

o Directions issued by DRP shall be binding on AO

o Order/ Directions of DRP shall be directly appealable before ITAT [only by assessee]

\* Assessment of Income escaping assessment / Re-assessment / Reopening of case (Sec. 147)

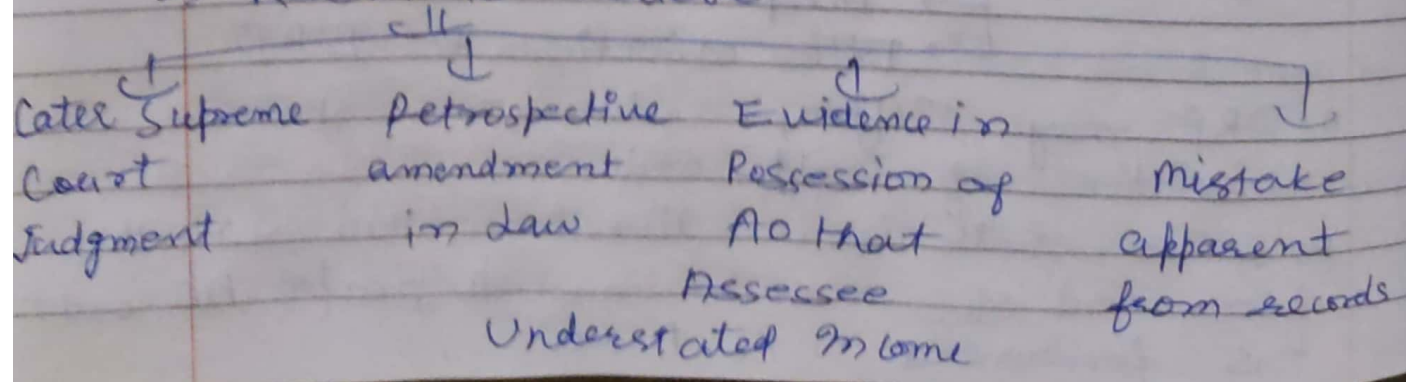


→ where AO has reason to believe that any income chargeable to tax has escaped assessment for any AY



AO may assess/ reassess such income and also any other income that comes to his notice subsequently during course of Proceeding under this section

→ Reason to believe



Following <sup>shall</sup> also treated as case of income escaped assessment [Deemed reason to believe]

- o Income more than Basic Exemption limit but ROI not filed
- o Tax paid at Lower Rates
- o Where person is found to have any asset located outside india
- o Where assessee fails to furnish Report of Transfer Price U/s 92 E
- o Assessee claimed Excessive loss, deduction, allowance or relief

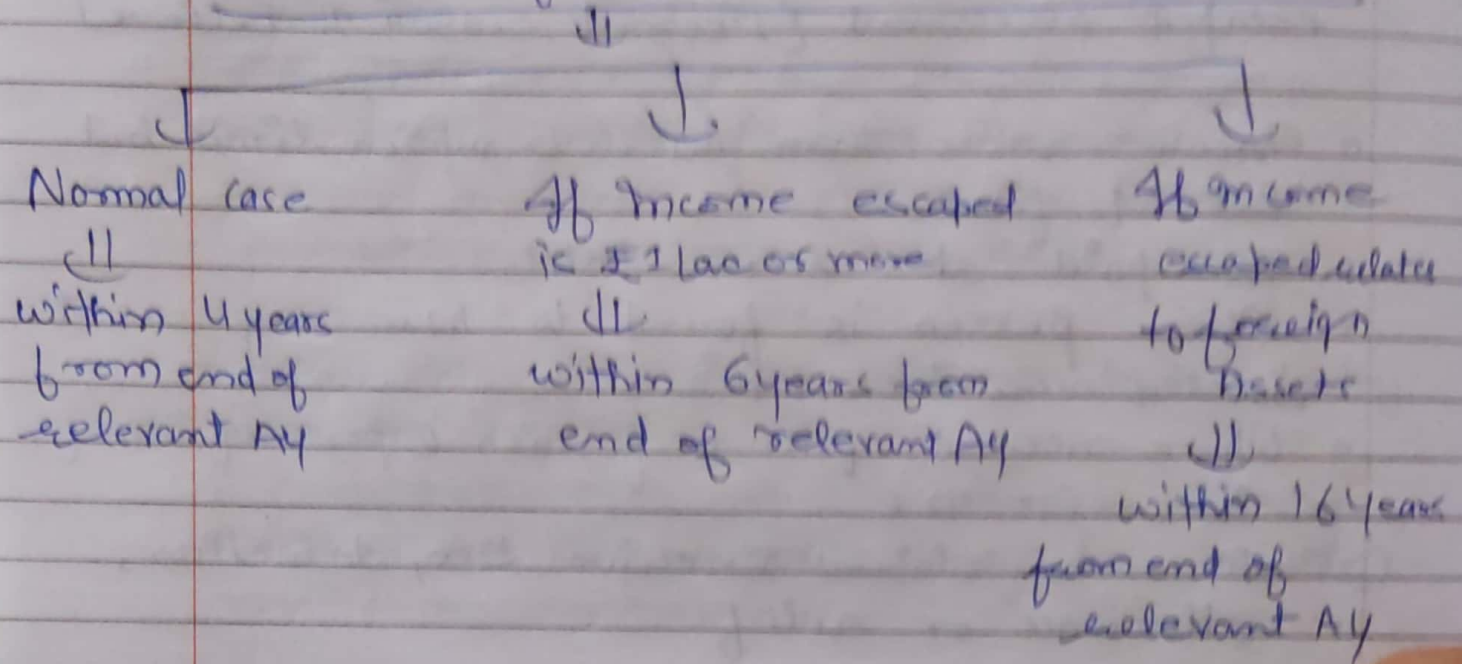
Following shall not be treated as Reason to Believe

- o Rumours, Gossips & Suspicion
- o change of opinion
  - ↳ From earlier assessment U/s 143(3), 144, 147
  - ↳ Departmental Audit Team objection
- o Increase in Turnover due to use of digital means of Payment or otherwise

→ Notice for Assessment U/s 147 (Sec. 148)

AO has to serve Notice U/s 148 to Assessee requiring him to furnish ROI within specified time in notice.

→ Time limit for issue of notice U/S 148 (Sec. 149)



Notes:-

- ° Notice to Agent of NR can be issued within 6 years from end of relevant AY
- ° If income escaped is ₹ 1 lac or more and assessment has already made U/S 143(b)/147

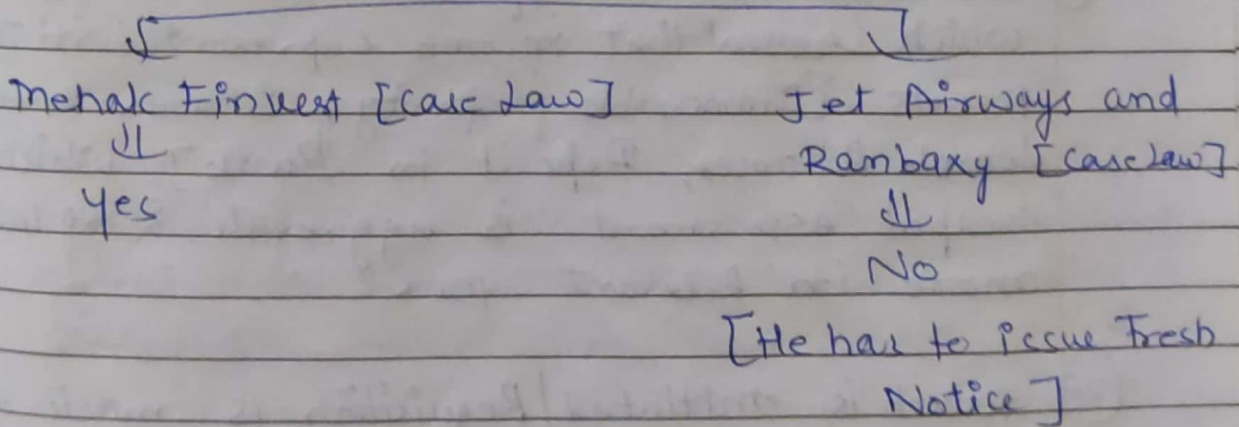
↓  
Time limit will be 4 years, if Assessee  
↳ Furnish ROI  
↳ Disclose Truly & fully all material facts

→ Time limit for completion of Assessment U/S 147

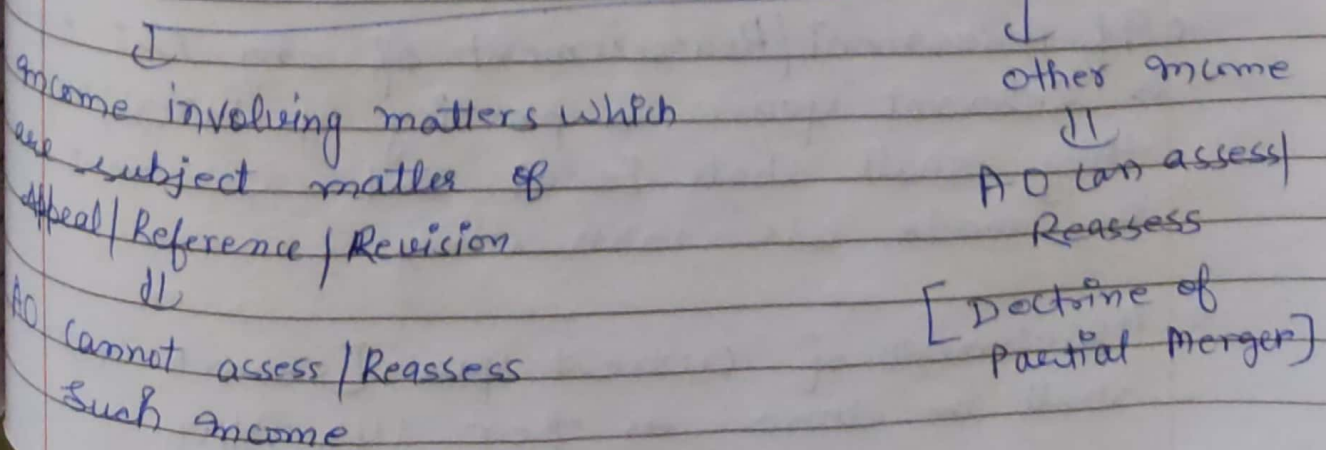
Assessment shall be completed [order shall be passed] within 12 months from end of FY in which notice U/S 148 was served

→ Other Points

- o Assessee is required to file ROI u/s 148. Assessee cannot be entitled to make any Fresh claim
- o AO is bound to supply reasons recorded by him, if demanded by Assessee after filing of ROI
- o If there is no addition on original grounds of Re opening, whether AO can make Addition on other grounds that comes to his notice subsequently



o If that year case is/has been decided in Appeal, Reference, Revision



in case

\* Assessment of search & seizure (Sec. 153A)

→ AO shall issue notice to the person on whom search is conducted, require him to file ROI for 6 years and relevant years immediately preceding year in which search was started

\* Relevant years means years prior to 6 years but not beyond to 10 years

Relevant years will also covered if following conditions are satisfied :-

- ① AO is in possession of Books/ Documents/ Evidence which reveal that income represented in Form of Assets [Immovable property, Shares & Securities, Loans & Advances, Deposit in Bank] which has escaped assessment is aggregate ₹ 50 lacs or more in relevant years
- ② search is initiated/ Requisition is made on or after 01.4.2017

Note →

- o If Assessment/ Reassessment of any last 6 years & relevant year is pending u/s 143(2)/144/147, they shall abate [end] and assessment shall be made u/s 153A only
- o Assessment of current year [search year] shall be done as per 143(2)/144



o If order u/c 153A has been annulled [void] in any appeal, then Assessment / Reassessment which has abated shall be received  
↓

With effect from date of receipt of order of Annulment by Commissioner  
[Time limit to complete the Received Assessment  
→ 12 months from end of year in which search was completed  
→ 1 year from end of month of receipt of order of Annulment by Commissioner] → Later

→ Assessment of other Person [sec. 153c)

o During search, if Books or Assets belonging to any other person are seized, then authorised officer will handover them to AO having jurisdiction over such other person

o If such AO is satisfied that Books or assets seized have bearing on determination of Total income of such other person  
↓

Such AO shall complete Assessment  
↓

Same as 153A

→ Time limit for completion of Assessment in search cases

153A ⇒ within 12 months from end of year in which search was completed

153C ⇒ within 12 months from end of year in which search was completed

(or)

within 12 months from end of year in ~~the~~ which Books/Assets handed over to AO having jurisdiction over other person

Time Limit for Completion of Assessment [Summary]

Assessment U/S

Time limit

143(3)/144

within 12 months from end of relevant AY

147

within 12 months from end of AY in which notice is served U/s 148

Search

153A

within 12 months from end of year in which search was completed

153C

within 12 months from end of years in which search was completed

or

within 12 months from end of years in which Books/Assets handed over

} Later =

Note :-

o If reference is made to TPO U/S 92CA, additional 12 months time is available in all cases

o In computing above time limits, following period shall be excluded :-

Cases

From

Till

1) Contravention by institutions etc. U/S 10 and AO informs to Govt.

Date on <sup>which</sup> AO informs

Date on which Govt. notification issued by AO withdrawing approval

2) Direction for special Audit U/S 142(2A)

Date on which AO directs

Last date on which Assessee required to file Report

3) Reference made to VO U/S 142A

Date on which AO makes reference

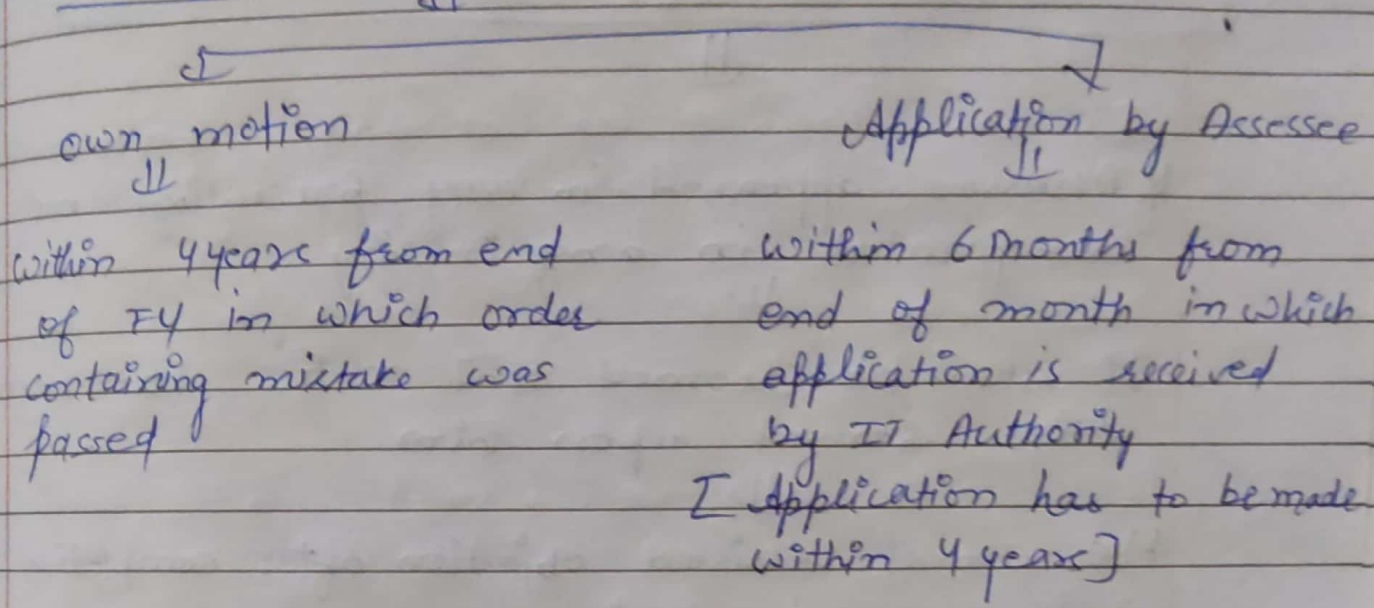
Date on which Report issued by AO

- |  |                                    |   |
|--|------------------------------------|---|
| ④ Application made to ITSC A Rejected              | Date on which application was made | Date on which order of Rejection recd. by Commissioner              |
| ⑤ Application made to AAR                          | Date on which application was made | Date on which Rejection order/ Advance Ruling recd. by Commissioner |
| ⑥ Where reference made for Exchange of Info vis 90 | Date on which reference made       | Date on which information is recd.                                  |
| ⑦ If Assessment proceeding stayed by Any Court     | Period of stay                     |   |

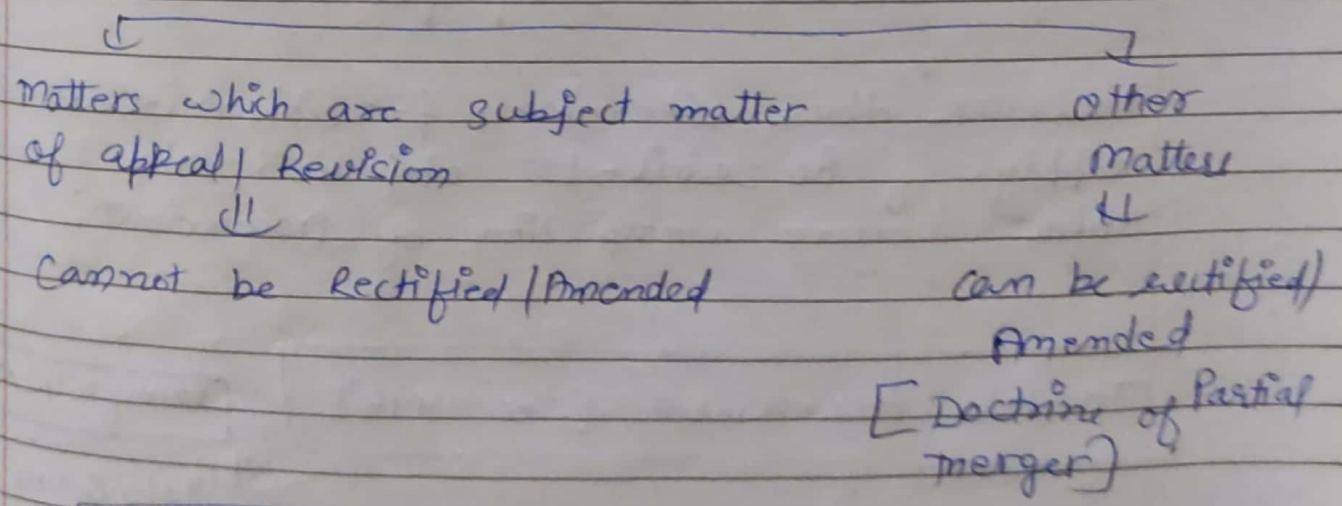
\* Rectification of Mistake (Sec. 154)

- Income tax Authority [AO/CIT/CIT(A)] can rectify a mistake which is apparent or record in
  - Any order passed by Authority
  - Intimation vis 143(1), TDS/TCS intimation
- Rectification can be done by IT Authority either on own ~~motion~~ motion or an application made by Assessee

- o No fees & No form for rectification
- o Time Limit for rectification



• If that year's order has been decided in Appeal, Reference, Revision



→ Demand Notice [sec. 156]

If any tax, interest, Penalty or any other sum is payable due, then AO shall serve demand notice specifying payment

Notice of AO deemed to be valid in certain cases [Sec. 292BB]

⇓

If Assessee appeared in any proceedings or co-operated in any inquiry

⇓

It shall be deemed that notice has been duly served upon him

⇓

He cannot raised objection after completion of Assessment that

- ↳ Notice was not served
- ↳ Not served in time
- ↳ Served in Improper manner

However, this deeming provision shall not apply if he raised objection about such defect before completion of Assessment

Faceless Assessment [Sec. 144B]

[w.e.f. 01.10.2021]

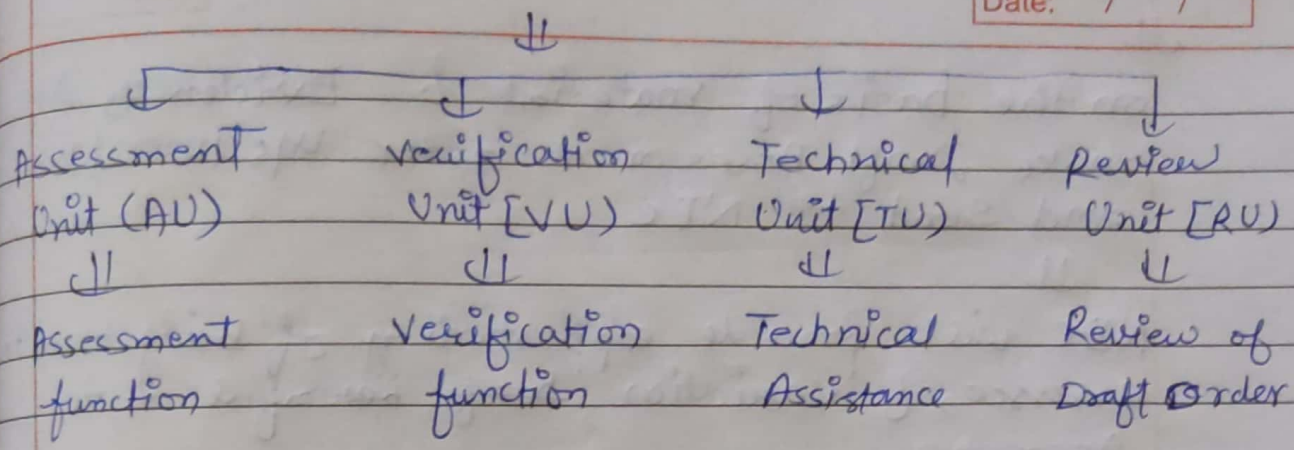
→ 143(3) & 144

Assessment Centres & Unit

National E-Assessment [NEC] → Centralised Centre Body at Delhi

Regional E-Assessment [REC] → Regional Centres

⇓



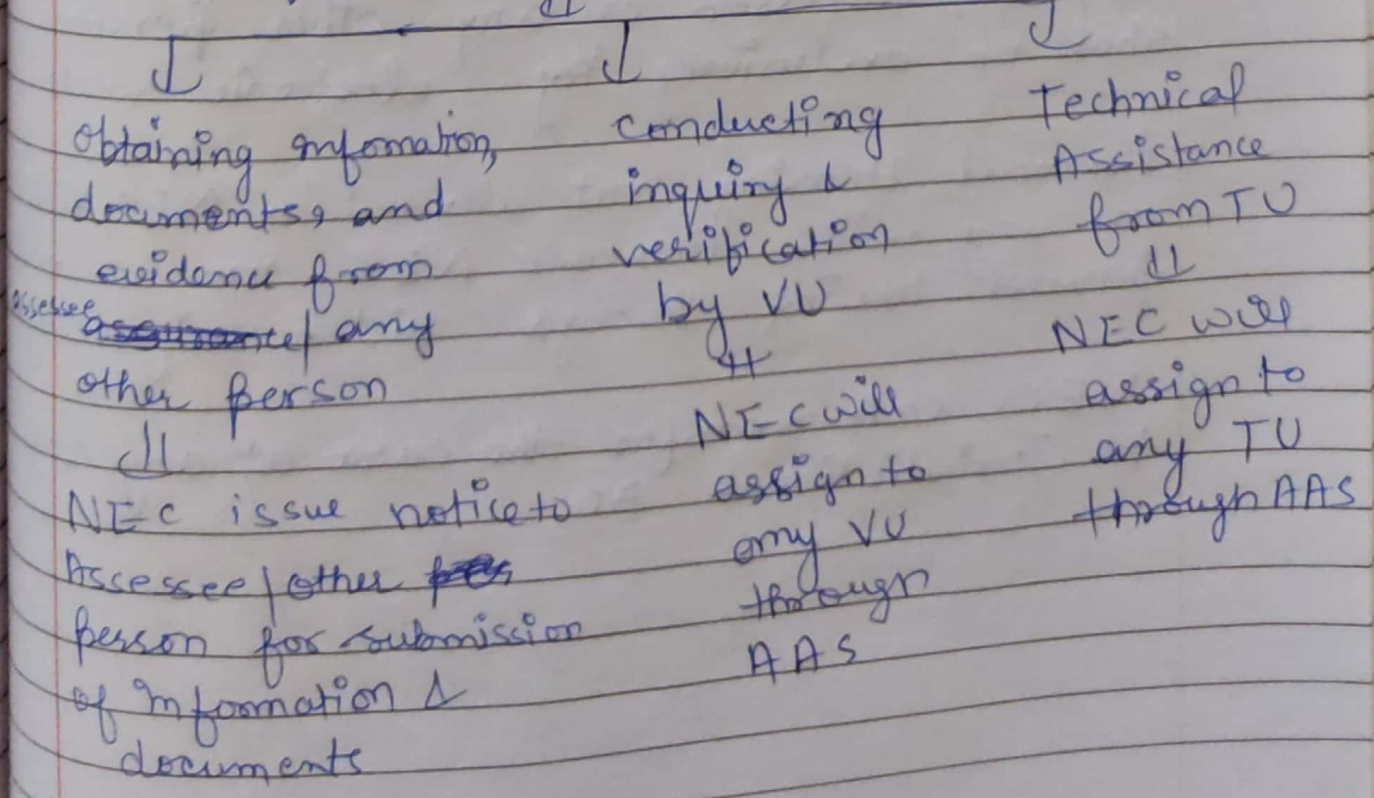
**Procedure**

NEC shall serve Notice U/S 143(2) to Assessee

NEC shall intimate the Assessee [sec-144 case]

NEC shall Assign case to any AU in any REC through Automated Allocation System [AAS]

AU may make request to NEC for



↓

on the basis of material & Evidences, AU make Draft Assessment order u/s 143(3)/144 and send to NEC

↓

NEC will provide opportunity of being heard to assessee, if variation ~~is~~ harmful to Assessee

NEC may assign draft order to any RO through AAS

↓

NEC will finalise draft order and send copy of final order to Assessee along with Demand/ Refund

Other Points :-

- o All communication b/w NEC, REC, AU, VU, TU, RO, Assessee or any other person shall be exclusively by electronic mode
- o Personal Hearing not allowed in NEC, REC or any unit. However, NEC may allow personal hearing through video conferencing
- o NEC can transfer the case at any stage to Jurisdictional AO



TopicsPN

Appeals &amp; Revision

32 - 39

Settlement Commission

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Penalties

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Advance tax  
& interest, Refund

58 - 64

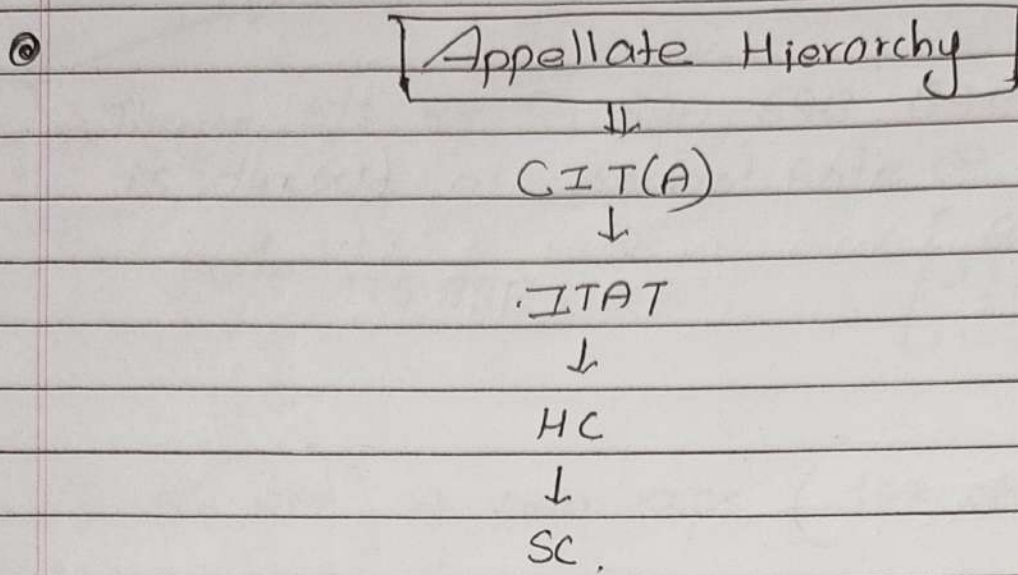
Buyback of shares

65 - 67

Tonnage taxation

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## Appeals & Revision :-



⊙ No Right of appeal against following Order :-

- Order of Interest u/s 234A/B/C
- Revision order u/s 264
- Order of settlement commission
- Order of advance Ruling Authority.

⊙ Appeal to CIT(A) [Sec. 246A to 251]

→ Following orders can be appealable before ~~(ITAT)~~

- CIT(A)
- assessment order by AO (143(3)/144/147/153A)
  - Rectification order u/s 154
  - Intimation u/s 143(i), TDS/TCS intimation
  - Any other order of A.O.

→ Appeal before CIT(A) can be filed only by Assessee.

→ Time limit:- within 30 days from service of order (delay can be condoned by CIT(A))

→ Appeal shall be filed in Form No. 35 along with

- Statement of facts
- Grounds of appeal
- Copy of order of A.O.

⇒ Memorandum of appeal.

↓  
In Duplicate

→ Stay of Demand

CIT(A) can grant stay of demand on appl<sup>n</sup> made by Assessee.

→ Power to admit additional Evidence:-

CIT(A) can admit additional evidence by record, reasons in writing in following cases:-

- AO refused to admit evidence,
- Assessee was prevented by sufficient cause to produce evidence.
- A.O. made order without giving opportunity to produce evidence.

→ CIT(A) may confirm, reduce or enhance the assessment.

→ CIT(A) can pass order within 1 year from end of year in which appeal is filed, if possible.

② Appeal to ITAT [Sec. 252 to 255]

→ In ITAT, appeal can be heard by -

- Division Bench (2 Judge → 1 Judicial & 1 Accountant member)
- Special Bench (more than 2 judges)
- Single Judge Bench (1 judge) → ~~if upto~~  
if Total Income upto ₹ 50 Lak

Decision shall be taken based on opinion of majority. If members equally divided on any point, then such point shall be referred to ITAT president. He further referred such point to other member.

→ Following order can be appealable before ITAT

- order of CIT(A)
- order u/s 144C
- Revision order u/s 263
- Ag Any other order of CIT/DIT/PCIT/DCIT

→ Time limit: within 60 days from communication of order (delay can be condoned by ITAT)

→ Appeal shall be filed in Form NO. 36 along

with → 

→ Statement of facts	} ⇒	Memorandum of appeal
→ grounds of appeal		
→ copy of order		

↓  
In triplicate

→ Stay of Demand -

• ITAT can grant Stay of Demand on application made by Assessee for maximum 180 days.

• If ITAT fails to give judgement within 180 days and delay is not due to Assessee, then ITAT can extend stay period but (original + extension) shall not exceed 365 days.

Note For stay of Demand, Assessee has to deposit at least 20% amount.

→ ITAT can also admit additional Evidence.

→ Memorandum of cross objections

- Respondent can file memorandum of cross objection within 30 days of receipt of Notice of appeal

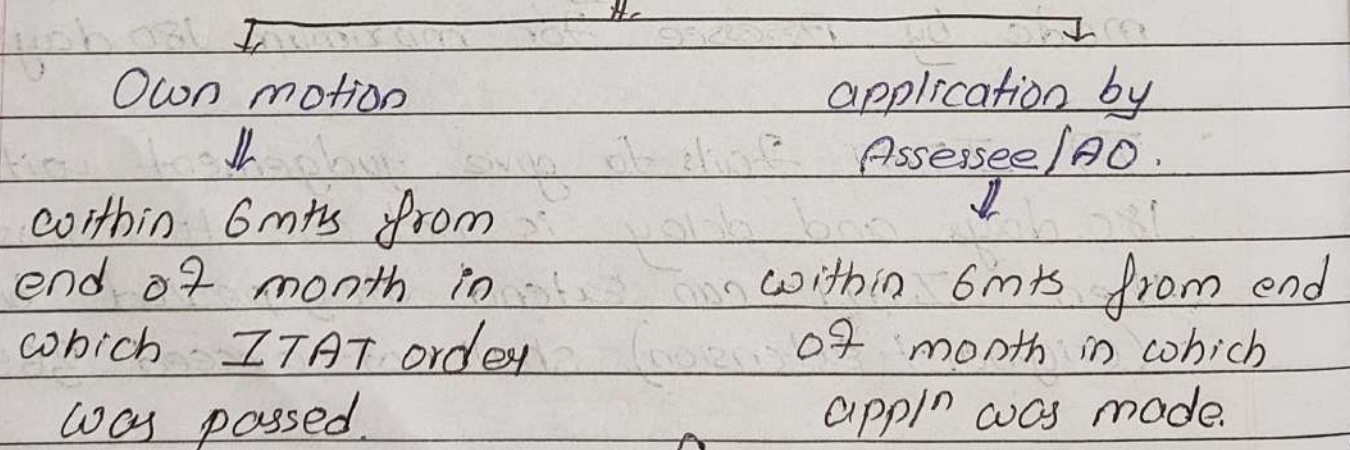
- There is no filing fees for memorandum of cross objection.

→ ITAT may confirm, reduce or set aside the assessment.

→ ITAT can pass order within 4 years from end of year in which appeal is filed, if possible.

→ Rectification of mistake by ITAT

ITAT can rectify a mistake in its order which is apparent on record.



{ has to make appl<sup>n</sup> within 6 mths from end of mth in which ITAT order was passed }

① Appeal Filing Fees in CIT(A) & ITAT:

	<u>CIT(A)</u>	<u>ITAT</u>
<u>Assessed Income</u>		
upto ₹ 1 Lakh	250	500
> 1 Lakh upto ₹ 2 Lakh	500	1500
above ₹ 2 Lakh	1000	1% of Assessed Income (upto 10000)
→ Other cases.	250	500
→ appeal filed by Department to ITAT		NO fees

## ① Appeal to High court (sec. 260 A & B)

- Appeal against ITAT order can be filed to HC only if there is question of law.
- Time limit: within 120 days from date of receipt of order.
- H.C. have power to Review its order.

## ② Appeal to supreme court (sec. 261 & 262)

- Appeal against HC order.
- Time limit → within 90 days
- S.C. have power to Review its order.

## ③ Special provision for appeal by Department (Sec. 268A)

- CBDT can fix monetary limit to regulate appeal by department in order to avoid litigation in small cases.
- Department can file appeal only if the Tax effect is more than following amounts:
  - For appeal to ITAT → more than Rs. 50 Lak
  - to HC → more than Rs. 1 cr.
  - to SC → more than Rs. 2 cr.



→ If Department has not filed appeal on a particular issue in case of a particular Assessee in a particular year due to above limit.

||

If shall not stop the department from filing appeal on the same issue.

↳ In case of some Assessee in another yr  
↳ In case of another Assessee in any year.

① Sec. 263 → Revision of orders prejudicial to the interest of Revenue  
(Notes VCs PN-409)

② Sec. 264 → Revision of other orders  
(Notes VCs 412)

## Settlement Commission

Central govt constituted a authority called ITSC for compromise & settlement.

Sec. 245A to 245C

### ① Application to ITSC

Assessee can make appl<sup>n</sup> to ITSC only if following cond<sup>ns</sup> are satisfied

- ① Assessee case shall be pending before AO.  
ie. Assessment of Assessee shall be pending u/s 143(3)/144/147/153A.

When case Treated as pending:-

143(3) :- From date on which notice u/s 143(2) issued

144 :- From date on which SCN u/s 144 issued

147 :- From date on which notice u/s 148 issued

153A :- From date on which notice u/s 153A issued

Deemed pending - If notice u/s 148 issued for any AY, then case deemed treated as pending for other AY for which notice not issued but could have been issued on that date.

② additional amt of tax on Income disclosed in application shall be more than.

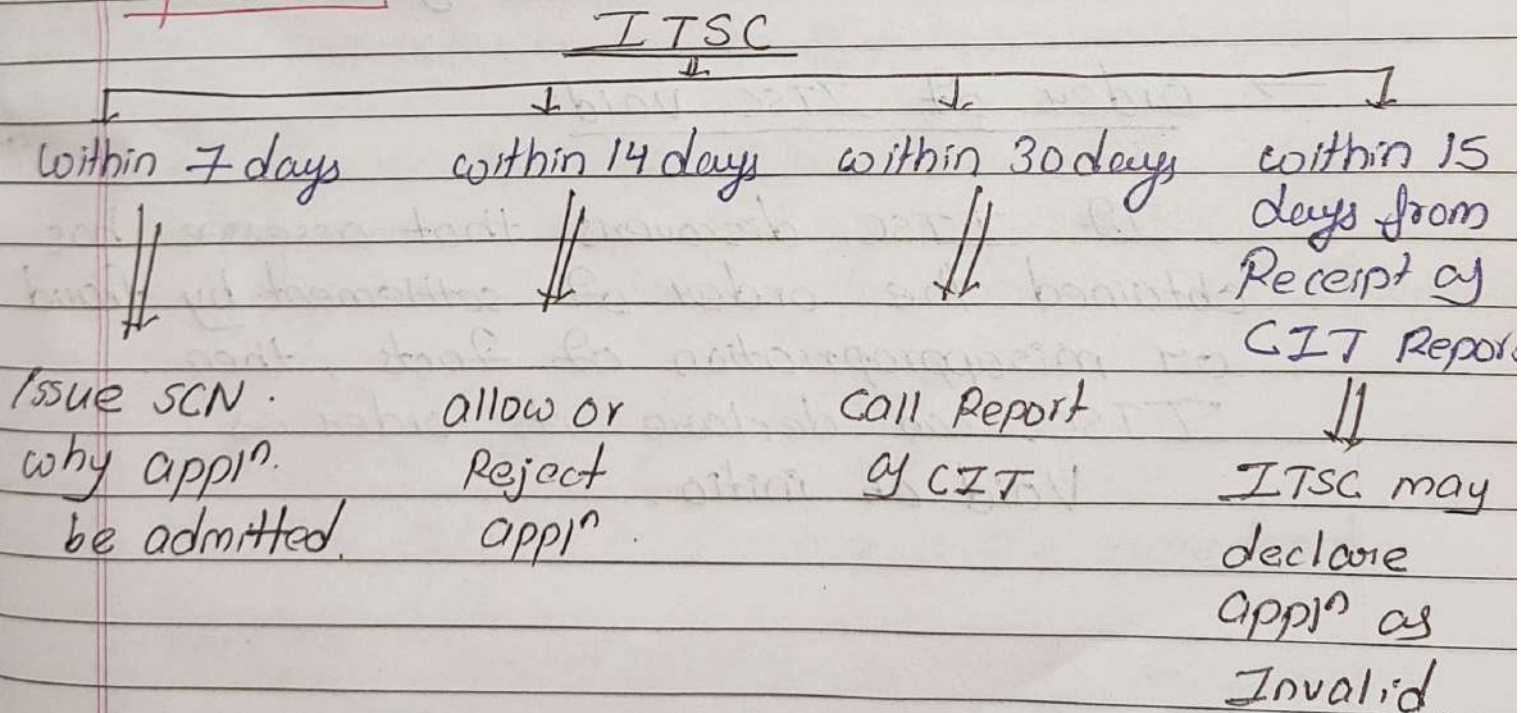
- Rs. 50 lakh in search cases (153A)
- Rs. 10 lakh in other cases (143(3)/144/147)

③ Additional tax along with interest shall be paid before making appl<sup>n</sup> to ITSC.

Notes:-

- Application once filed cannot be withdrawn by Assessee.
- after filing application, Assessee shall intimate to A.O.

④ Procedure:-



→ after examining & giving opportunity of being heard, ITSC shall pass order of settlement within 18 mths from end of mths in which appl<sup>n</sup> is made by Assessee.

→ Order of ITSC shall provide for:  
Terms of settlement:-

→ Income settled & tax thereon  
(extra tax has to be paid by Assessee within 35 days otherwise Int. @ 1.25% p.m / rate.)

→ Immunity from penalty (whole or in part) and prosecution.

→ Order of ITSC is final.

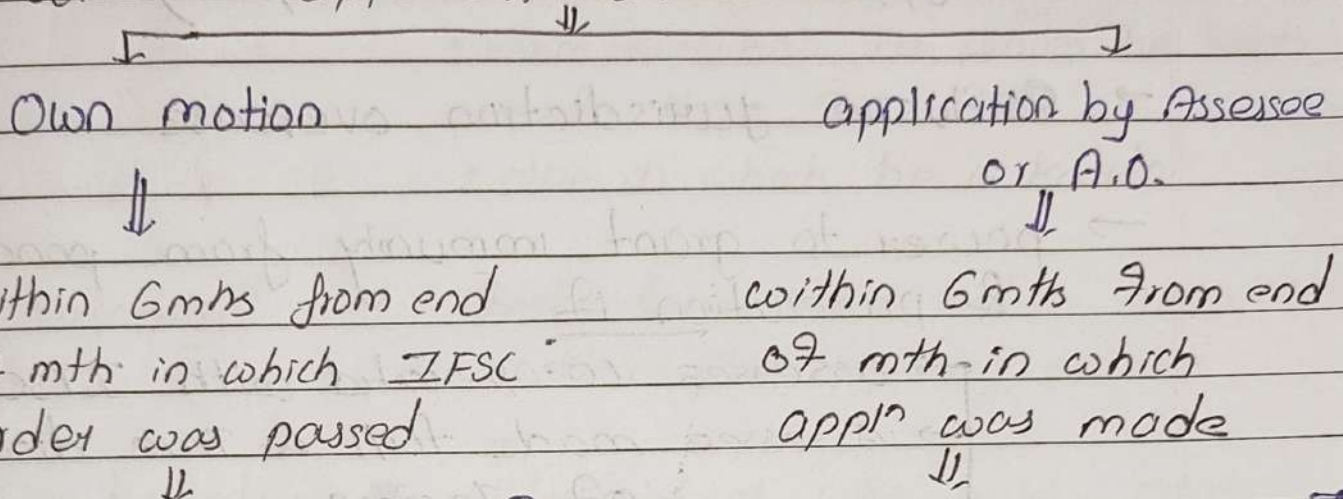
No appeal can be filed against ITSC order.

→ Order of ITSC void:-

If ITSC discovers that assessee has obtained the order of settlement by fraud or misappropriation of facts, then ITSC can declare its order as Void ab initio.

## ① Rectification of mistake

ITSC can rectify a mistake in its ~~order~~ order which is apparent on record.



Has to give notice of Intention & opportunity of being heard to Assessee & CIT

has to make appl<sup>n</sup> within 6mths from end of mth in which ITSC order was passed

## ② Allotment of proceeding

In following cases, proceeding with ITSC shall abate and AO shall complete assessment as per normal provisions of Income tax.

- appl<sup>n</sup> to ITSC is Rejected
- appl<sup>n</sup> to ITSC is declared invalid
- ITSC fails to pass order within time limit
- ITSC passed order without providing Terms of settlement.

## ① power of ITSC:

→ All powers of Income tax authorities  
(can consider other issues/matter not in application or CIT Report.)

→ Exclusive jurisdiction over case

→ power to grant immunity from penalty & prosecution if

→ assessee co-operated with ITSC

→ Assessee made full & True disclosure of Income

→ manner of deriving such Income.

## ② Restriction on making 2<sup>nd</sup> time application :-

Assessee can settle his case only once in a lifetime.

Even related person of such Assessee shall not be allowed if Assessee application is admitted

Assessee.

Related person

- Individual.
  - company in which he holds more than 50% voting power
  - firm/AOP/BOI in which he holds more than 50% PSR
  - HUF in which he is Karta.
- Company                      Individual who holds more than 50% voting power
- Firm/AOP/BOI              Individual who holds more than 50% PSR
- HUF                              Karta of HUF.

## Penalties:-

### ⑥ Penalty for under reporting of income (Sec. 270A)

→ Under Reporting :- addition/increase in Income in Assessment or Reassessment.

→ Quantum of penalty :-

Under Reporting :- 50% of tax on under reported income

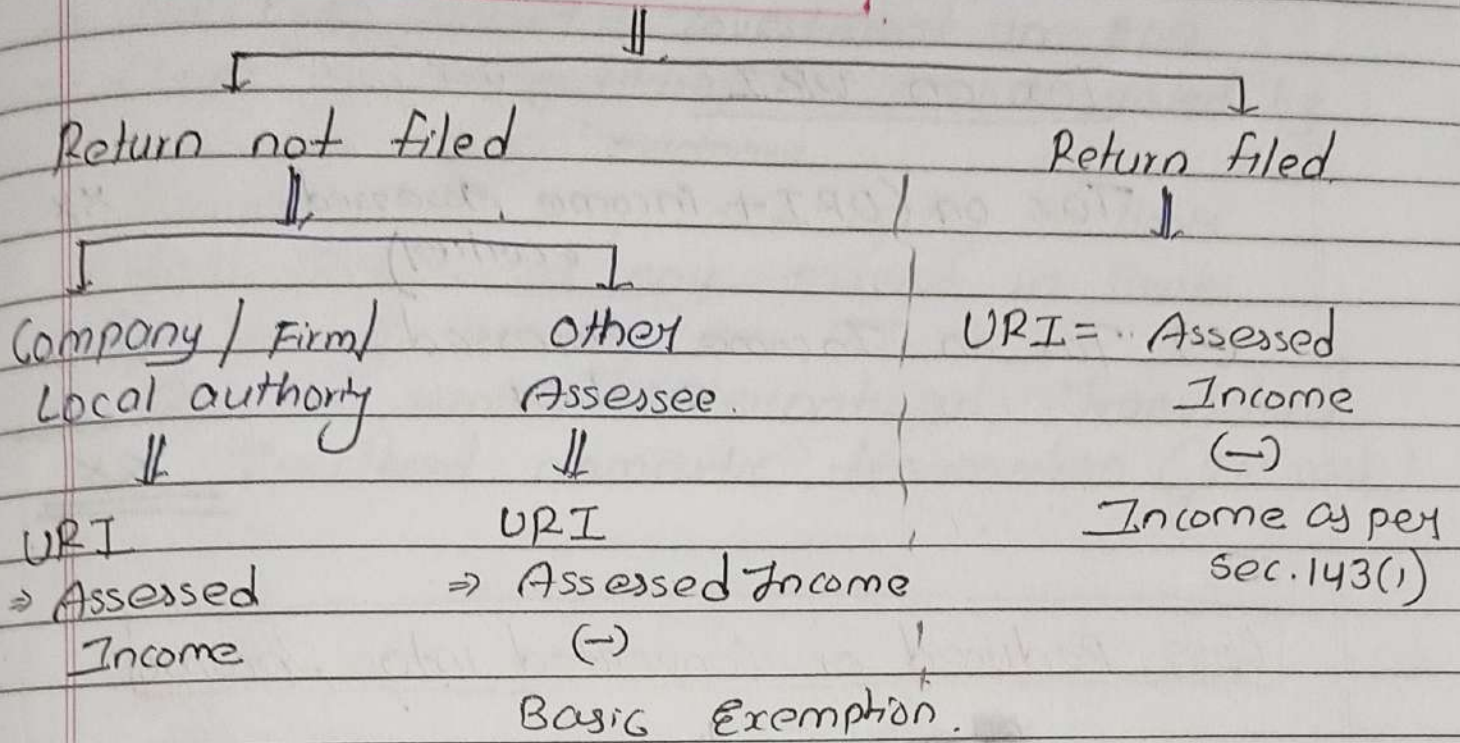
If under reporting is due to misreporting :- 200% of tax on underreported income

Note :- Tax includes surcharge (if any) & cess.



# Calculation of Under Reported Income (URI) & Tax on URI :-

## First Time Assessment



## Tax on URI

Ⓐ Tax on Assessed Income

Tax on

(URI + Income) as per 143(1) xx  
Assessed Income →

(-) Tax on Income (xx)  
as per 143(1)

xx

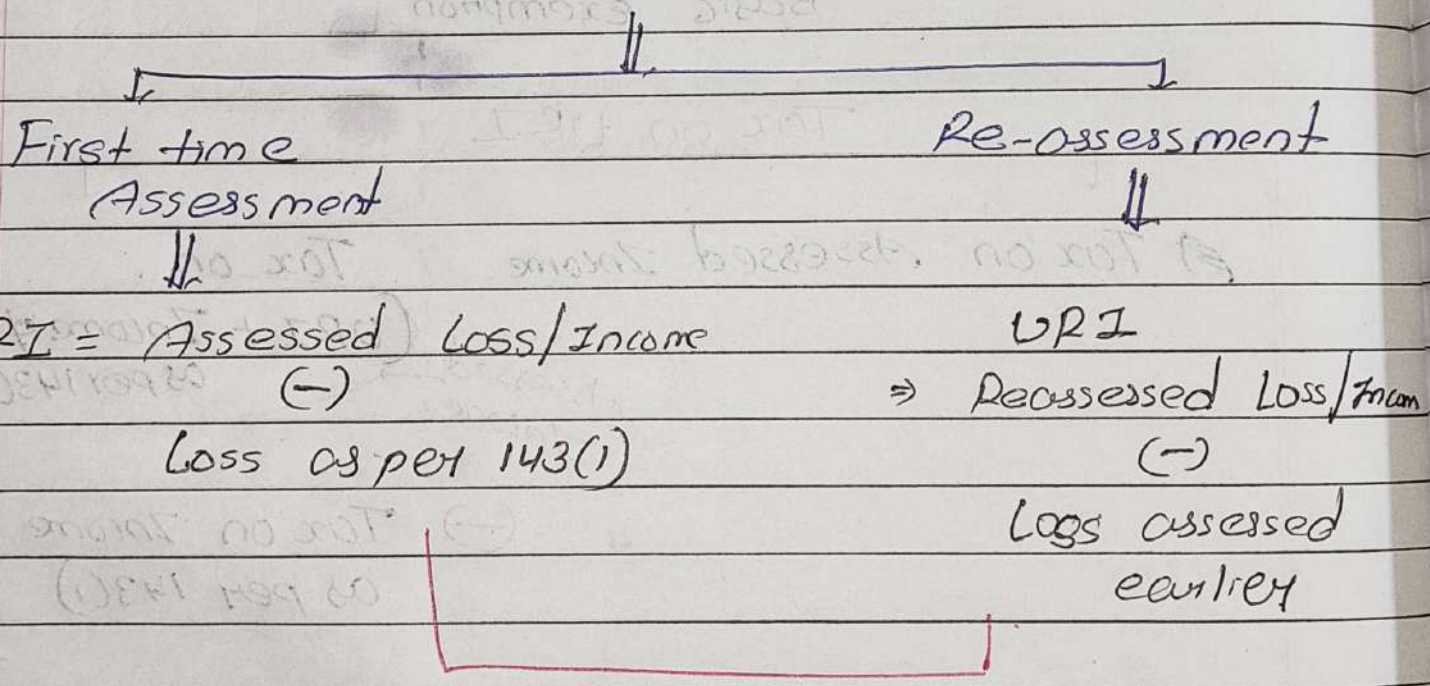
Re-assessment

$$URI = \text{Re-assessed Income} - \text{Income Assessed Earlier}$$

Tax on URI

Tax on (URI + income Assessed earlier)	XX
(-) Tax on Income Assessed earlier	(XX)
	<u>XX</u>

Loss Reduced or converted into Income



$$\text{Tax on URI} = \text{Tax on URI or if it was Total Income of Assessee.}$$

① Cases in which underreporting is Treated as Misreporting :-

- Misrepresentation or suppression of facts.
- Fails to record Investment in BOA
- Claim of Expenditure not substantiated by any evidence.
- Recording of any False entry in Books
- Fails to record any receipt in Books having bearing on I.T
- Fails to report international Transaction / Specified domestic transaction. (TP case)

## ② Other penalties:-

Section	Nature of Default	Quantum of penalty	Other points
Sec. 221.	Fails to pay tax, TDS, TCS, demand, etc. within 30 days of demand notice	max. upto amt of tax in arrears.	-
Sec. 271A	Fails to keep or maintain Books of Accounts u/s 44AA.	Rs. 25000	-
Sec. 271AAB	undisclosed Income found in search	30% / 60% of undisclosed Income	<p>30%, if following <u>cond<sup>ns</sup> are fulfilled</u>:</p> <ul style="list-style-type: none"> <li>• Assessee admits undisclosed Income in statement</li> <li>• specifies manner in which such Income was earned</li> <li>• pay tax &amp; interest on such Income</li> <li>• furnish ROI declaring such Income upto due date.</li> </ul>

NO penalty u/s 270A on undisclosed Income found in search.

Sec.  
271  
AAC

Income vs  
68, 69, 69A  
to 69D.

10% of tax  
vs 115BBE

- No penalty if such Income declared in PGT & tax paid.
- No penalty vs 270A.

Sec.  
271  
AAD

making false  
entry/ omission  
of entry in  
Books to evade  
tax liability

Equal to  
aggregate  
amt of False  
Entry or  
omitted Entry.

- penalty is levied on:
- person who makes false entry or omits entry.
  - other person who caused the person to make false entry or omits entry.

Sec.  
271B

Fails to get  
accounts  
audited or to  
Furnish Report  
upto due date  
vs 144B

0.50% of  
TIO / GR  
(max. Rs.  
1.5 lacs)

If Books are not  
maintained penalty  
vs 271A shall  
be levied & not  
vs 271B

Sec.  
271C

Fails to  
deduct TDS

Equal to amt  
of TDS not  
deducted

penalty imposable  
by JC.

Sec.  
271CA

Fails to collect  
TCS

Equal to amt  
of TCS not  
collected

penalty imposable  
by JC.

Sec. 271D	Fails to comply with provision of <del>28</del> sec. 269SS	amt of loan deposit taken	penalty imposed by IC
Sec. 271DA	Fails to comply with provision of 269ST	amount Received	penalty imposed by IC
Sec. 271E	Fails to comply with provision of 269T	amt of loan deposit Repaid	penalty imposed by IC
Sec. 271FA	Fails to furnish statement of Financial Transaction (SFT) or Reportable accounts within prescribed time (31st may of next FY)	Rs. 500 per day till period specified in notice.  Rs. 1000 per day after that period	-
Sec. 271 FAA	Furnishing inaccurate SFT or Reportable accounts.	Rs. 50000	If person informs about Inaccuracy within 10 days to tax authorities // No penalty.

Sec-  
271J

Furnishing of incorrect info. in any report or certificate by CA/ merchant Banker/ Registered valuer

Rs. 10,000 for each such Report or certificate.

Sec-  
272  
A(1)

- Fails to answer questions ~~ask~~ ask by ~~J.T.~~ J.T. authority
- Fails to sign statement in proceeding
- Non-compliance with summon u/s 131
- Fails to comply with notice u/s 142(1) & 143(2)
- Fails to comply with special audit. Directions u/s 142(2A)

Rs. 10,000 for each such. Default or failure

Sec-  
272  
A(2)

- Fails to furnish info. u/s 133
- Fails to furnish ROI u/s 139(4A)/(4C)

Rs. 100 per day till default continues





② prosecution :-

Sec.	Nature of offence	Rigorous <u>Imprisonment</u>	other points
Sec. 275B	Fails to afford necessary facility to authorised officer to inspect Books up 132	upto 2 years (+) Fine	-
Sec. 276B	Fails to deposit TDS with govt.	3 mths to 7 yrs (+) Fine.	-
Sec. 276 BB	Fails to deposit TCS with govt	3 mths to 7 yrs (+) Fine	-
Sec. 276C	willful attempt to Evade payment of tax, penalty, interest or under reports income.	<ul style="list-style-type: none"> <li>• If tax evaded exceeds Rs. 25 Lacs</li> <li>6 mths to 7 yrs.</li> <li>(+)</li> <li>Fine.</li> </ul>	-
		<ul style="list-style-type: none"> <li>• <u>other cases-</u></li> <li>3 mths to 2 yrs</li> <li>(+)</li> <li>Fine.</li> </ul>	-

Sec. 276 CC	willful fails to furnish ROI upto due date	<p>① 77 tax evaded exceeds <u>Rs. 25 lakh</u></p> <p>6 mths to 7 yrs (+) Fine</p>	<p>In case of a person (other than company)</p> <p>if tax payable liability is upto Rs. 10000</p> <p>∥ NO prosecution</p>
		<p>② Other case?</p> <p>3 mths to 2 yrs (+) Fine</p>	
Sec. 276D	willful fails to comply with requirement of Sec. 142(1) & 142(2A)	<p>upto 1 year (+) Fine</p>	

① In case of following persons, individual who is deemed to be guilty of offence:-

Company :- Every person in charge of affairs, Director, manager, secretary.

Firm :- partner.

AOP/BOI :- Member

MUF :- Karta or Member.

Note :- If individual proves that offence was committed without his knowledge or he exercised all due diligence to prevent such offence.

∥  
then, such individual is not liable to any punishment.

## Advance Tax

- Advance Tax means Tax paid in PY on Estimated total income of PY.
- Calculation of Estimated advance tax liability
  - Tax on Estimated total Income  $\times x$ .
  - (-) Estimated TDS/TCS/Relief/Credit  $(xx)$
  - Estimated advance tax liability  $\Rightarrow \underline{\underline{xx}}$

### → No requirement to pay advance tax

- If advance tax liability is less than Rs. 10,000
- Resident Senior citizen Not having Income under PGBP.

### → Due date of payment of advance tax:-

Due Date

Amount of advance tax to be paid

- upto 15<sup>th</sup> June of PY → upto 15% of advance tax liability
- upto 15<sup>th</sup> September of PY → upto 45% of advance tax liability
- upto 15<sup>th</sup> Dec. of PY → upto 75% of Adv. tax liability
- upto 15<sup>th</sup> March of PY → upto 100% of advance tax liability

Note:-

- If assessee opts for sec. 44AD/44ADA, then due date of payment of Advance tax is 15<sup>th</sup> march of PY (1<sup>st</sup> installment)
- Tax paid upto 31<sup>st</sup> march of PY is treated as advance tax.

Interest u/s 234A/234B/234C :-

Sec. 234A :- Interest for delay in filing of ROI :-

$$\left( \text{Tax payable on Self-Assessment} \right) \times \text{Rate} \times \text{period}$$

Tax payable on  
TI as per ROI      xx

(-) TDS/TCS/  
Relief u/s 89, 90, 91      (x)  
MAT, AMT, credit

(-) advance tax paid      (x)

—————  
xx  
—————

Rate  
↓  
{ 1% p.m.  
or.  
part of  
mth. }

period  
↓  
{ from next day  
after due date of  
ROI till actual  
date of filing  
of ROI }

Sec. 234B:- Interest for short payment of advance tax:-

$$\begin{array}{r}
 \text{(Advance tax short paid)} \times \text{Rate} \times \text{period} \\
 \Downarrow \qquad \qquad \qquad \Downarrow \qquad \qquad \qquad \Downarrow \\
 \begin{array}{l}
 \text{(actual advance tax liab)} \quad xx \\
 \text{(-) Advance tax paid} \quad (xx) \\
 \hline
 \text{xx}
 \end{array}
 \end{array}$$

} 1% pm or part of mth

} From 1st April of AY till actual date of payment

→ Actual advance tax liability:-

Tax payable on TI as per ROI	xx
(-) TDS / TCS / Relief u/s 89, 90, 91	(xx)
MAT, AMT Credit	(xx)
	xx

Note:-

- Sec. 234B is not applicable if advance tax paid by assessee is 90% or more of actual advance tax liability.
- If there is change in Total income due to ~~pro~~ processing of return u/s 143(i) or Assessment, then Tax payable on TI as per 143(i) / Assessment will be taken instead of tax payable on TI as per ROI (applicable for 234A & 234B)



① Fees for default in filing ROI :- Sec. 234F

If any person who is required to file ROI u/s 139 fails to do so within time given u/s 139(i)

||

If ROI filed upto 31<sup>st</sup> Dec. of AY = Rs. 5,000  
 other case = Rs. 10,000

Notes

If total income of person is upto Rs. 5 Lakh; then fees shall not exceed Rs. 1000.



## Other modes of Recovery of Tax:

### ① By Assessing officer:

- By way of serving of Notice of Demand u/s 156
- Amt as specified in notice shall be paid within 30 days of Notice. (Sec. 220)

### ② By Tax Recovery officer:

- attachment and sale of assessee's movable / Immovable properties.
- Assessee property includes any property transferred by Assessee to spouse, minor child, son's wife, son's minor child without consideration / Inadequate consideration.
- If minor child, son's minor child attain majority after transfer, then also treated as assessee's property.

## Refund :-

→ If actual Tax paid is more than tax payable, then assessee is entitled to claim refund.

### Interest on refund.

• Interest @ 0.5% per mth or part of mth will be paid by the Department on amount refunded.

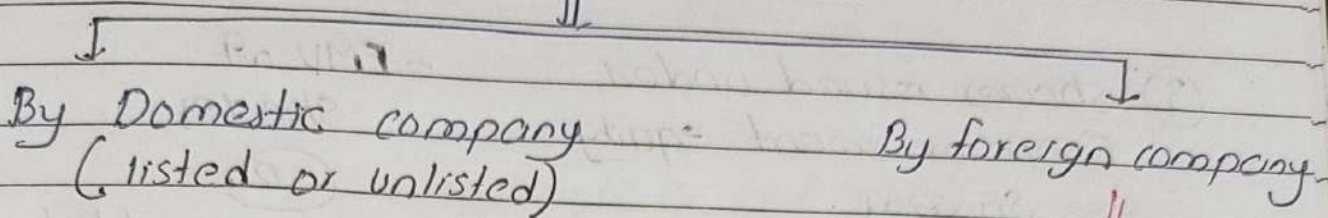
### period of interest.

→ If ROI is filed  $\Rightarrow$  From 1<sup>st</sup> April of AY upto due date - till Date of Grant of Refund.

→ If ROI is filed after due date  $\Rightarrow$  From Date of Filing of ROI till Date of Grant of Refund.

Tax on Buyback of shares by Domestic company (Sec. 115BA)

Buyback of shares



Company  $\Rightarrow$  Taxable @ 23.296% on Distributed Income.  
 (20% + 12% + 4%<sub>sc.</sub>)

NOT taxable

Shareholder  $\Rightarrow$  Exempt u/s 10(34A) - Capital gain arise

Distributed Income  $\Rightarrow$  Buybacks - Issue price

Issue price

Case

issue price

① Normal share issue

amt. (including premium) received by company.

② If prior to Buyback, company refunded any sum out of amt received  
 amt received reduced by sum so returned

③ shares issued under ESOP or sweat equity shares  
 - FMV of shares  
 - Amt credited to share capital & share premium A/c  
 Higher

④ Shares issued in amalgamation by amalgamated co. in lieu of shares of amalgamating co.  
 amt received by amalgating co.

⑤ Shares issued in Demerger by Resulting co. in lieu of shares of demerged co.  
 amt received by Demerged Co.  
 Net Book value of Asset trf in Demerger  
 Net worth of Demerged Co.

⑥ Bonus Shares. Nil

### Other points:

→ Tax on Buyback shall be paid to the central govt within 14 days from date of payment of any consideration of Buybacks to Shareholders.

→ If tax on buybacks is not paid within 14 days, interest is leviable @ 1% p.m/cent of such tax not paid

||

From Date after  
14 days

till Date on which  
tax is actually paid

→ Principal officer & the company will also be deemed to be an Assessee in Default (if tax not paid within 14 days)

↓

↓

→ Special provision relating to income of Indian shipping companies :-  
(Sec. 115V to sec. 115V2C)

⇓  
Tonnage taxation

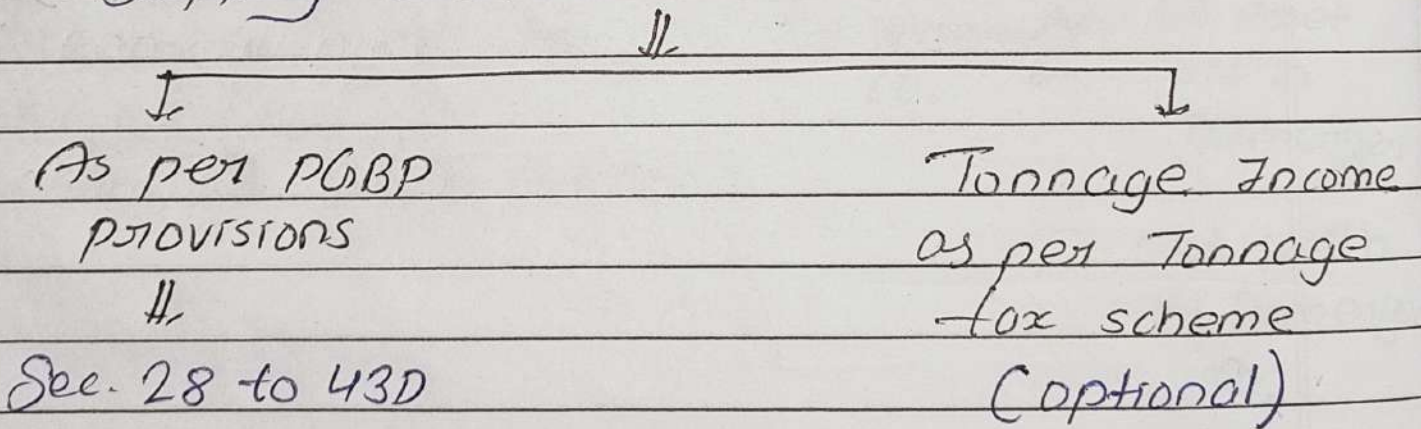
⊙ Qualifying company

⇓  
Indian company (POEM in India) engaged in business of operating ships.

and

owns at least 1 qualifying ship  
(min Tonnage of 15 tons or more)

⊙ PCBP Income of qualifying company from shipping business



## Calculation of Tonnage Income:-

$$\left( \begin{array}{c} \text{Daily Tonnage} \\ \text{Income} \end{array} \right) \times \left( \begin{array}{c} \text{No. of days in which} \\ \text{Ship is operated in PY} \end{array} \right)$$

### Daily Tonnage Income

<u>Qualifying ship having</u> <u>net Tonnage (in Tons)</u>	<u>Daily Tonnage</u> <u>Income</u>
---	---------------------------------------

Upto 1000

Rs. 70 for each 100 tons

> 1000 upto 10000

Rs. 700 + Rs. 53 for each  
100 tons exceeds 1000

> 10,000 upto 25000

₹ 5470 + Rs. 42 for  
each 100 tons > 10,000

> 25000

₹ 11770 + Rs. 29 for  
each ~~100~~ tons

> 25000 tons

### Note:

- Tonnage shall be rounded off to the nearest multiple of 100 tons
- Deductions, setoff of any loss shall not be allowed against tonnage Income.
- Tonnage Tax Income shall not be liable to MAT

## Conditions for applicability of Tonnage tax scheme

→ ~~min~~ Minimum 20% of Book profit shall be transferred to "tonnage tax Reserve A/c" in each P.Y.

→ Reserve amt shall be utilised in

- ↳ purchase of ship before 8 yrs
- ↳ Business of operating ships.

### ① Shortfall in Reserve :-

$$\text{Taxable amt} = \frac{\text{Relevant Shipping Income}}{\text{Relevant Shipping Income}} \times \frac{\text{Shortfall in Reserve}}{\text{minimum Reserve to be created}}$$

### ② Consequences of Misutilization / non-utilization

$$\text{Taxable amt} \Rightarrow \frac{\text{Relevant Shipping Income}}{\text{Relevant Shipping Income}} \times \frac{\text{amt misutilised / unutilised}}{\text{total Reserve created during year}}$$

### ③ Relevant Shipping Income :-

$$\left( \text{profit from core Shipping activity} \right) + \left( \text{profit from Incidental activity} \right)$$



# Double Taxation Relief.

①

Double Taxation:

When One Income is Twice.

Types of Double Taxation:-

Economic Double Taxation



When Same Income is taxable in the hands of 2 different persons.



NO Double Tax Relief.

Juridical Double Taxation.



When Same Income of One person is taxed in 2 countries due to Residence and Source Rule.



Relief u/s 90/91.

Types of Relief.

Bilateral



Agreement (DTAA)



Section 90.

Unilateral.



NO Agreement



Section 91.

Bilateral Relief.

Exemption Method



Particular Income is Taxable only in One Country

Tax Credit Method



Income is Taxable in Both Countries But Country of Residence gives credit of Tax charged in Source Country.



Same as Section 91.

## Double Taxation Avoidance Agreement (DTAA) [Section 90]

12

- Central Government may enter into an agreement with Government of foreign country For:
  - Avoidance of double taxation.
  - Exchange of Information.
  - Recovery of Income Tax.

- If there is DTAA, then DTAA provisions will override Income Tax Act to the extent they are more beneficial to the Assessee.

Provisions of DTAA

(Or)

Income Tax Act [Except GAAR Provisions]

} The extent which is more beneficial to Assessee.

- However, in respect of Tax Rate of foreign company, the rate shall not be treated as less favourable.

In other words, Beneficial provision will not apply for Tax rate of foreign Company.

- Non-Resident can claim relief under DTAA only after furnishing TRC (Tax Residency Certificate) along with following information:

1) Status

2) Nationality

3) Tax Identification Number (TIN)

4) Period for which Residential status is applicable.

5) Address Outside India.

## Unilateral Relief [Section 91]

Assessee would be granted relief u/s 91, only all following conditions are fulfilled.

- 1) Assessee is Resident in India during P.Y.
- 2) Income earned/arise outside India.
- 3) Income subject to Tax in foreign country.
- 4) Assessee has paid Tax on such income in foreign country
- 5) There is No Agreement of Relief u/s 90 b/w India and such foreign country.

Resident Indian earned taxable income outside India and paid tax there and no Agreement of relief u/s 90 is available with that country.

## Computation of Relief

Important sections (deductions) under Chapter VIA for Double Tax Relief Question:-

- 1) 80C
- 2) 80CCC
- 3) 80D
- 4) 80Q&B
- 5) 80TTA
- 6) 80TTB.

# Computation of Relief & Net Tax payable.

First compute Total Income.

- Indian Income
- Foreign Income.

Gross Total Income.

(-) Deductions under chapter VI A.

Total Income.

Total Tax Paid in India on above.  
(including surcharge & cess)

(-) Relief U/s 91 (WN)

Net Tax payable.

W.N:-

Relief U/s 91 :-

$$\text{Doubly Taxed Income} \times \begin{matrix} \text{Indian Rate} \\ \text{(or)} \\ \text{Foreign Rate} \end{matrix}$$

Doubly Taxed Income = Income which is taxable in both countries  
[Net of special deductions & loss of Foreign Country set off]

$$\text{Indian Rate} = \frac{\text{Total Tax in India}}{\text{Total Income}} \times 100$$

$$\text{Foreign Rate} = \frac{\text{Foreign Tax}}{\text{Foreign Income}} \times 100.$$

If Income is from more than 1 Foreign Country :-

- 1) calculate Relief Separately for each Foreign Country Income
  - calculate Foreign Rate Separately
  - Calculate Doubly Taxed Income Separately
- 2) calculate Total Relief by adding all.

# Permanent Establishment [PE]

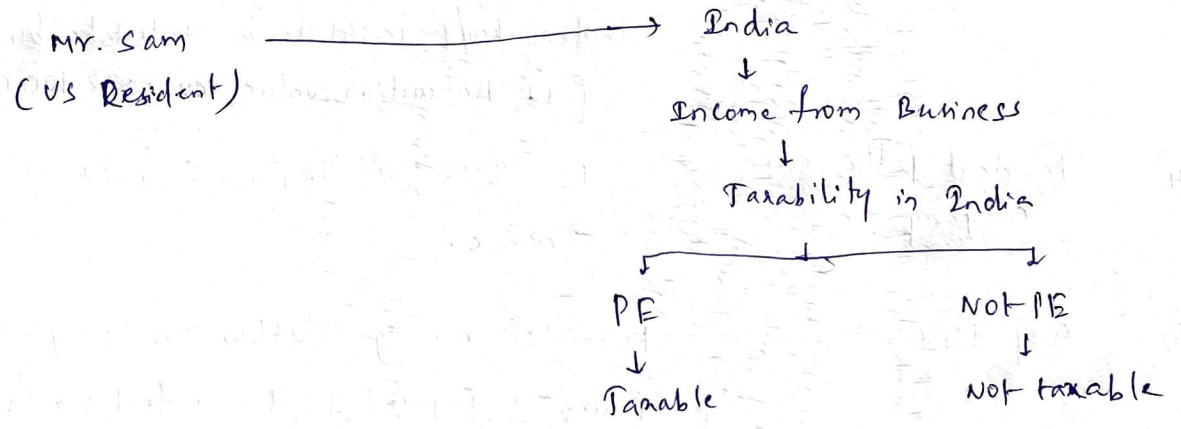
PE means a fixed place of Business through which Business of Enterprise is wholly (or) partly carried on.

PE Includes ↓

- ① Branch
- ② office
- ③ Factory
- ④ Workshop
- ⑤ sales outlet
- ⑥ place of Extraction of Natural Resources.

As per DTAA, Business Income of person will be taxable in Source country only if such person has PE in source country.

## Example :



# Advance Rulings

6

- Advance Ruling means Decision taken in Advance.
- If Application made to AAR (Advance Authority for Advance Ruling), then AAR will give its ruling (Judgement) in relation to transaction undertaken/proposed to be undertaken by Assessee.
- Such Judgment may be related to Question of Fact (or) Law.

## Application For Advance Ruling :

### Application By

(1) Non-Resident

(2) Resident

(3) Resident

(4) Resident Public Sector Company

(5) Any person

### Application For

For determination of Tax liability of transaction undertaken/proposed to be undertaken by him.

On behalf of NR for determining tax liability of such NR.

For determination of Tax liability of transaction undertaken/proposed to be undertaken by him.

[If Transaction value is ₹ 100 cr or more]

For Issue relating to computation of Total Income.

For determining whether an arrangement which is proposed to be undertaken is Impermissible Avoidance Arrangement or Not.

## OTHER POINTS :

- Application shall be made in quadruplicate [4 copy]
- An Applicant may withdraw application within 30 days of Application. However, AAR can permit withdrawal after 30 days.

### • Application Fees:

① Resident public sector company  $\rightarrow$  ₹ 10,000

### ② Any other Applicant.

If Transaction value is upto Rs. 100 crore  $\rightarrow$  ₹ 2 Lacs.

If Transaction value exceed Rs. 100 crore  $\leq$  300 cr  $\rightarrow$  ₹ 5 Lacs.

If Transaction value exceed Rs. 300 cr  $\rightarrow$  ₹ 10 Lacs.

- AAR on receipt of Application will send copy to CIT & call for relevant records.

Cases where Application shall not be allowed [Application will be rejected by AAR]

① Issue relating to determination of FMV

② Application Issue/case is pending before I.T. Authority / ITAT / Any Court.  
[Except Resident public sector Company].

③ Transaction designed for Avoidable of Tax [Except proposed Impermissible Avoidance Agreement]

## Binding Nature of Advance Ruling :-

Advance Ruling shall be binding on:

- Applicant who has taken it.
- In respect of that transaction for which it is taken.
- I.T. Authority upto the level of CIT.

Advance Ruling to be a Void :

8

If it is obtained by applicant, by fraud or misrepresentation of facts

↓

AAR may declare such ruling to be void-ab-intio.

↓

Provisions of Act shall apply as if such ruling had never been made.

Pronouncement of Advance Ruling:

• AAR shall pronounce its ruling within 6 months from receipt of Application

• Copy of Advance Ruling shall be sent to 

Applicant
CIT

Powers of AAR:

AAR shall have all power of Civil Court.

• Discovery & Inspection.

• Enforcing attendance & examining on oath.

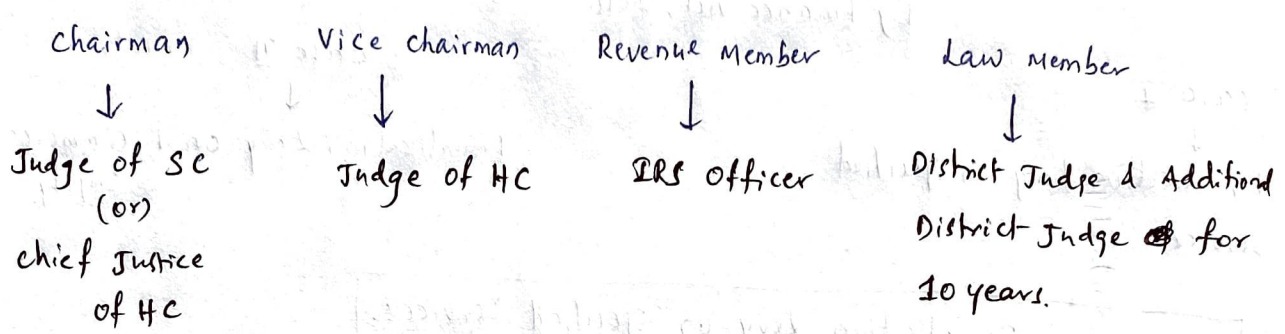
• Compelling Production of Books & documents

• Issuing Commissions [summon]



# Authority for Advance Ruling [AAR]

- Constituted by Central Government.
- Composition of AAR.



- Term of Appointment → Maximum 4 years.
- Maximum Age Criteria →
  - Chairman : 70 years
  - vice chairman & other members : 65 years.
- Composition of Bench →
  - chairman (or) vice chairman
  - +
  - 1 Revenue member
  - +
  - 1 Law member
- Vacancy (or) defects in AAR shall not invalidate proceedings of AAR.

# EQUALISATION LEVY.

By BEPS Action plant 1 → Digital Economy.

↓

By Finance Act, 2016

Case I

↓

Equalisation Levy on Specified Services

Case II

↓

Equalisation Levy on E-commerce Supply.

**Case I → Equalisation Levy on Specified Services.**

Non-Resident having  
No PE in India  
(Facebook)

→ providing Specified Services to →

Resident (Pathanjali)

NR having PE in India (VIVO)

↓

- Online Advertisement
- Any Provision for digital advertising space and similar services.

Equalisation Levy @ 6% of Amount of consideration for specified services.

Person who are paying for such services has to deduct Equalisation Levy from payment made to such NR.

↓

After deduction, deposit the amount with central govt. on (or) before 7<sup>th</sup> of Next month.

Circumstances where Equalisation Levy is not applicable:

- ① If NR providing specified services to have PE in India.
- ② If Aggregate consideration for specified service does not exceed ₹ 1,00,000 in P.Y.
- ③ where payment for specified services is not for Business & profession.  
(Personal purpose)

Interest on delayed payment of Equalisation Levy.

Interest @ 1% per month / part of month after due date till date of payment.

Penalty:

① For non-deduction = Equal to Amount of Equalisation Levy  
[In addition to Equalisation Levy]

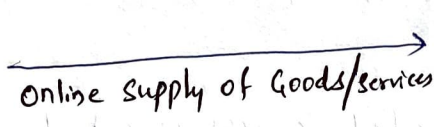
② For non payment upto due date = ₹ 1000 per day  
[Maximum upto Equalisation Levy not paid]

↓  
here due date is 7th of next month.  
also

### Case II → Equalisation Levy on E-commerce Supply.

Non Resident E-commerce Operator.

[NO. PE in India]  
[Amazon/Flipkart]



Resident (or)  
Any person who is using I.P. address located in India.

EL<sup>is</sup> @ 2% on amount of consideration received/receivable by NR E-commerce operator from such supply.

Such levy shall be paid by NR E-commerce Operator to C.G. Quarterly in following manner.

<u>Quarter ending</u>	<u>Due date</u>
June	7 <sup>th</sup> July
sept	7 <sup>th</sup> Oct.
Dec	7 <sup>th</sup> Jan
March	31 <sup>st</sup> March

Interest on delayed payment of EL.

Interest @ 1% p.m / mt of month after due date till date of payment.

Penalty: For non payment upto due date = Equal to EL  
[In addition to EL]

### NON-APPLICABILITY OF EL :-

- ① If NR Ecommerce operator has PE in India
- ② Aggregate Turnover/Gross receipts from supply of goods/services to specified persons is < ₹ 2 Crores during P.Y.
- ③ If EL is leviable under case I.

## Furnishing of statement:

Statement of EL shall be furnished **by** in Form No. 1, on or before 30th June immediately following F.Y.

- ① person receiving specified service (Case I)
- ② NR E-commerce operator (Case II)

Penalty for failure to furnish statement on time = ₹ 100 per day.

## Relevant provisions of I.T Act relating to EL:

① Section 10(50) :- [Case I & Case II]

TO Avoid double Taxation.

Income from  $\left\{ \begin{array}{l} \rightarrow \text{Specified Services (Case I)} \\ \rightarrow \text{E-commerce supply (Case II)} \end{array} \right.$  are chargeable to EL.

Exempt In the hands of  $\downarrow$

- ① NR providing specified services [Case I]
- ② NR E-commerce operator [Case II]

② Section 40(a)(ib) :- [Only Case I]

If any payment for specified services made to NR on which EL is deductible.

• But not deducted during P.Y.

(Or)

• Deducted but not deposited to Govt. upto due date of RDI.

$\downarrow$   
Such payment for specified service = 100% disallowed in current P.Y.

[Allowed in P.Y. of deposit to Govt]

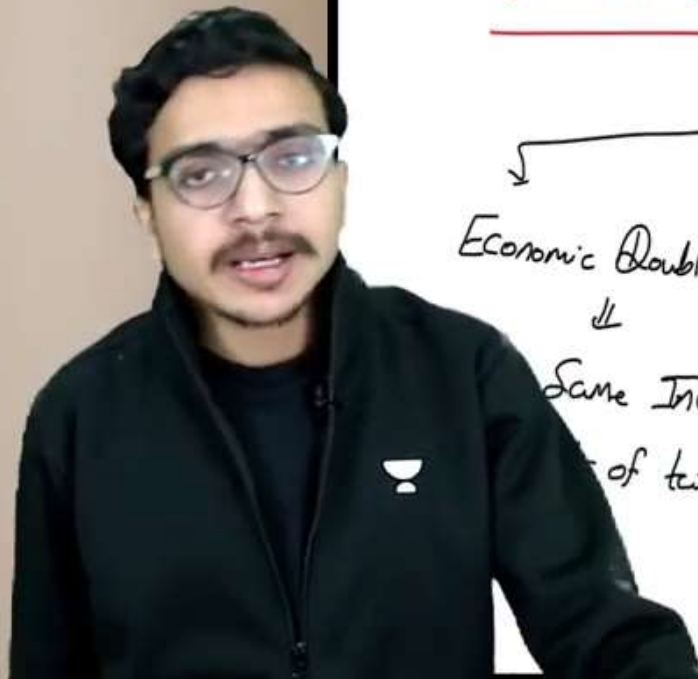
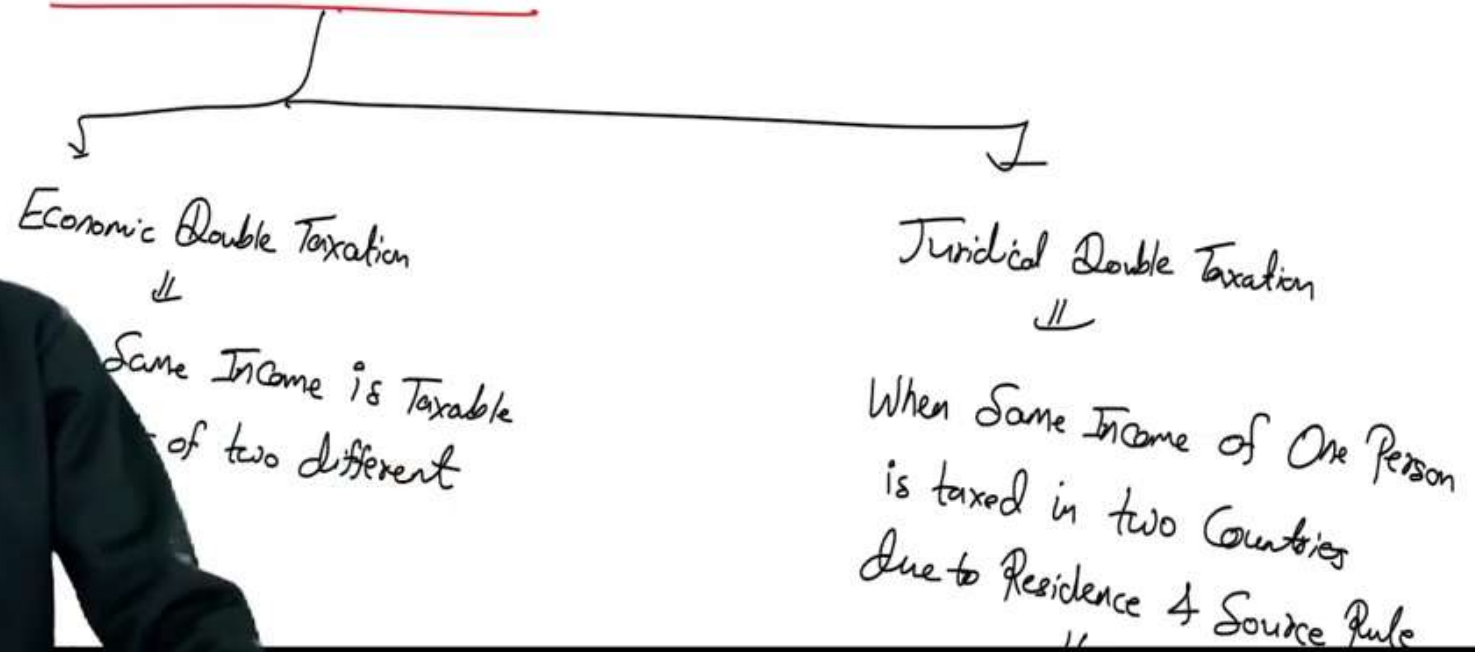


## Double Taxation Relief

### Double Taxation

When One Income is Taxed Twice

### Types of Double Taxation





Economic Double Taxation  
⇓

When Same Income is Taxable  
in hands of two different  
Persons

⇓

No Double Tax Relief

Juridical Double Taxation  
⇓

When Same Income of One Person  
is taxed in two Countries  
Due to Residence & Source Rule

⇓

Relief 4/15 90/91

of Relief





## Types of Relief

Bilateral  
⇓  
Agreement (DTAA)  
⇓  
Section 90

→ Tax Treaty / Tax Convention

Unilateral  
⇓  
No Agreement  
⇓  
Section 91

### Bilateral Relief







# Bilateral Relief

Exemption Method

↓  
Particular Income is Taxable  
Only in One Country

Tax Credit Method

↓  
Income is Taxable in both Countries  
But  
Country of Residence gives Credit  
of Tax Charged in Source Country  
↓  
Same as Sec 91



## Double Taxation Avoidance Agreement [Section 90]

→ Central Government may enter into an agreement with Government of Foreign Country for:

- Avoidance of double taxation
- Exchange of Information
- Recovery of Income Tax

→ If there is DTAA, then DTAA Provisions will override Income Tax Act to the extent they are more beneficial to the Assessee

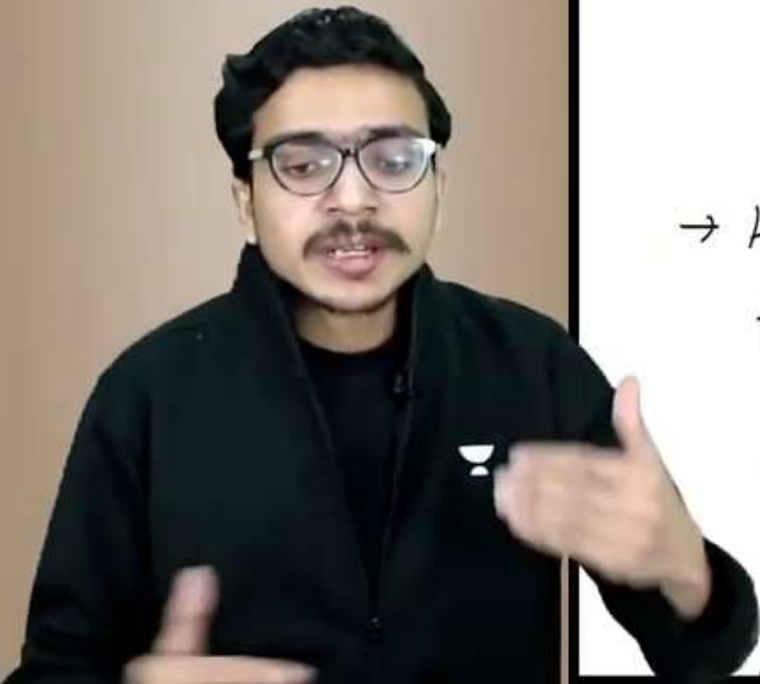


Provisions of DTAA

or

Income Tax Act

} ⇒ More Beneficial



CA Final DT • Double Taxation Relief

→ If there is DTAA, then DTAA Provisions will override Income Tax Act to the extent they are more beneficial to the Assessee

↓

Provisions of DTAA  
or  
Income Tax Act [except GAAR Provisions]

} ⇒ More Beneficial  
↓  
Apply to Assessee

→ However, in respect of Tax Rate of Foreign Company, the Rate shall not be treated as less favourable

↓

In other words, Beneficial Provision will not apply for Tax Rate of Foreign Company

Non Resident



## Double Taxation Avoidance Agreement [Section 90]

→ Central Government may enter into an agreement with Government of Foreign Country for:

- Avoidance of double taxation
- Exchange of Information
- Recovery of Income Tax

→ If there is DTAA, then DTAA Provisions will override Income Tax Act to the extent they are more beneficial to the Assessee

↓  
Provisions of DTAA



CA Final DT • Double Taxation Relief

[Except GAAR Provisions] Apply to Assessee

→ However, in respect of Tax Rate of Foreign Company, the Rate shall not be treated as less favourable  
↓  
In other words, Beneficial Provision will not apply for Tax Rate of Foreign Company

→ Non Resident can claim relief under DTAA only after furnishing TAC [Tax Residency Certificate] along with following information:

- Status
- Nationality
- Tax Identification Number (TIN)
- Period for which Residential Status is applicable
- Address outside India





In other words, Beneficial Provision will not apply for Tax Rate of Foreign Company

→ Non Resident can claim relief under DTAA only after furnishing TRC [Tax Residency Certificate] along with following information:

- Status
- Nationality
- Tax Identification Number (TIN)
- Period for which Residential Status is applicable
- Address outside India

Unilateral Relief [Section 91]



## Unilateral Relief [Section 91]

→ Assessee would be granted relief u/s 91, if following all conditions are fulfilled :

- Assessee is Resident in India during PY
- Income earned/arise outside India
- Income Subject to Tax in Foreign Country
- Assessee has Paid Tax on such Income in Foreign Country
- There is No Agreement of Relief u/s 90 between India & such Foreign Country



# → Computation of Relief & Net Tax Payable

First, Compute Total Income

Indian Income  
Foreign Income

₹  
₹

Gross Total Income

(-) Deductions under Chapter VIA

₹  
(₹₹)

Total Income

₹  
₹₹

Total Tax in India

₹₹

Including  
relief







Indian Income  
Foreign Income

₹  
₹

Gross Total Income

(-) Deductions under Chapter VIFA

Total Income

Including  
Surcharge  
& Cess

Total Tax in India

(-) Relief u/s 91 [WN]

Net Tax Payable

\_\_\_\_\_

₹

\_\_\_\_\_

₹

\_\_\_\_\_

₹

\_\_\_\_\_

₹

→ Given by way of Deduction  
from Indian Tax Payable



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ingabe XX tax payable

W.N.

Relief U/s 91

Doubly Taxed Income  $\times$   $\left. \begin{array}{l} \text{Indian Rate} \\ \text{or} \\ \text{Foreign Rate} \end{array} \right\} \Rightarrow \text{Lower}$

Doubly Taxed Income = Income which is taxable in Both Countries [Net of Special Deductions & Loss of Foreign Country setoff]

Indian Rate =  $\frac{\text{Total Tax in India}}{\text{Total Income}} \times 100$



Doubly Taxed Income  $\times$   $\left. \begin{array}{l} \text{Indian Rate} \\ \text{or} \\ \text{Foreign Rate} \end{array} \right\} \Rightarrow \text{Lower}$

Doubly Taxed Income = Income which is taxable in Both Countries [Net of Special Deductions & Loss of Foreign Country setoff]

$$\text{Indian Rate} = \frac{\text{Total Tax in India}}{\text{Total Income}} \times 100$$

$$\text{Foreign Rate} = \frac{\text{Foreign Tax}}{\text{Foreign Income}} \times 100$$



If Income is from more than 1 Foreign Country

→ Calculate relief Separately for each Foreign Country Income

- Calculate Foreign Rate Separately
- Calculate Doubly Taxed Income Separately

→ Calculate Total Relief by adding all

Important Deductions under Chapter VI-A for Double Tax Relief Questions

- 80c



by adding all

## Important Deductions under Chapter VI-A for Double Tax Relief Questions

- 80C
- 80CCC
- 80D
- 80QQB
- 80TTA
- 80TTB

Permanent Establishment [PE]



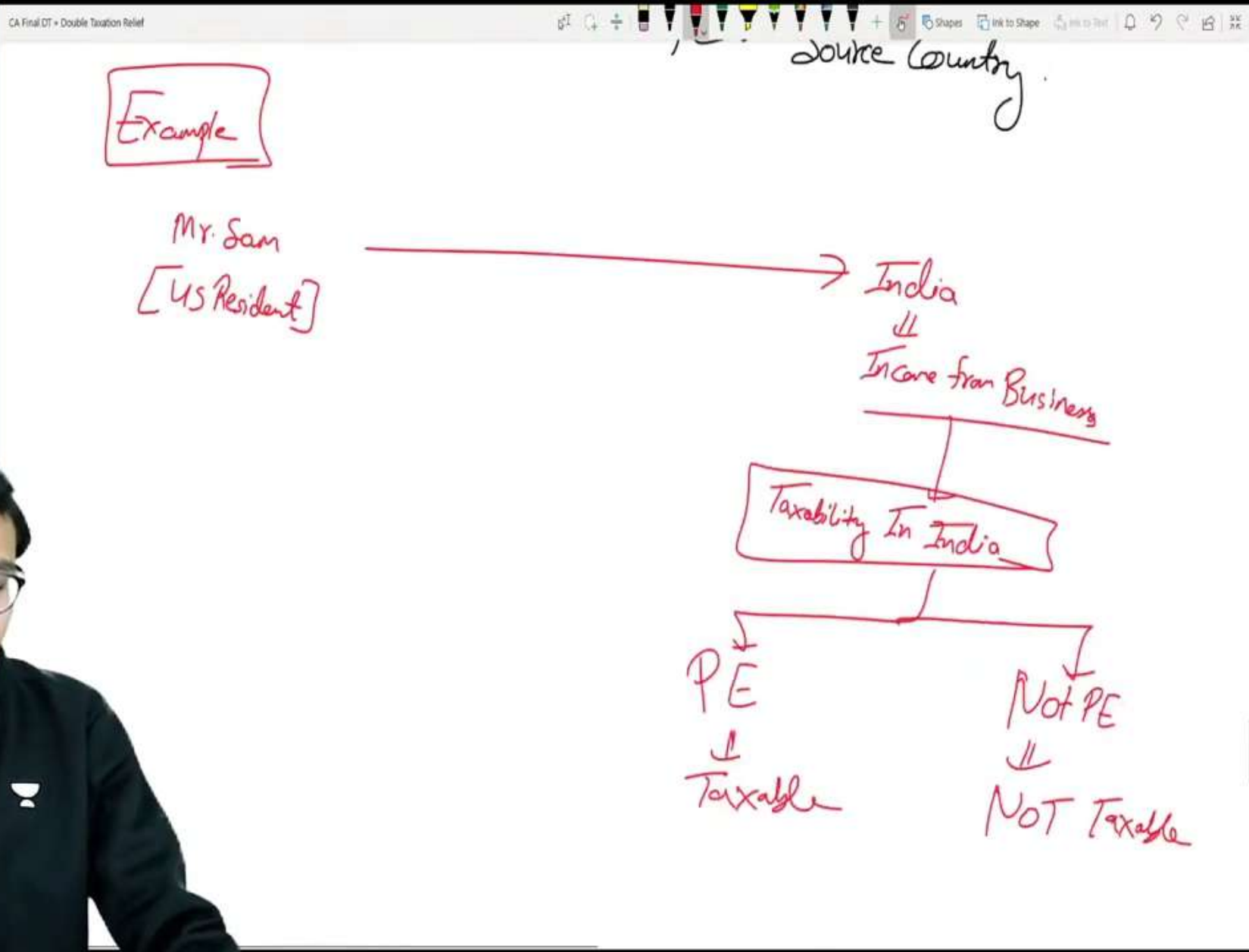


• 80TTB

## Permanent Establishment [PE]

PE means a Fixed Place of Business through which Business of Enterprise is wholly or Partly Carried on

- PE Includes
- Branch
  - Office
  - Factory
  - workshop
  - Sales Outlet
  - Place of Extraction of Natural Resources





PE means a Fixed Place of Business through which Business of Enterprise is wholly or Partly Carried on

- PE Includes —
- Branch
  - Office
  - Factory
  - workshop
  - Sales Outlet
  - Place of Extraction of Natural Resources

As Per DTAA, Business Income of Person will be taxable in Source Country only if such Person has PE in Source Country.







# Transfer Pricing

Nestle Group → MNC

Nestle Swiss Ltd.  
[Switzerland]

Sale of Chocolates →

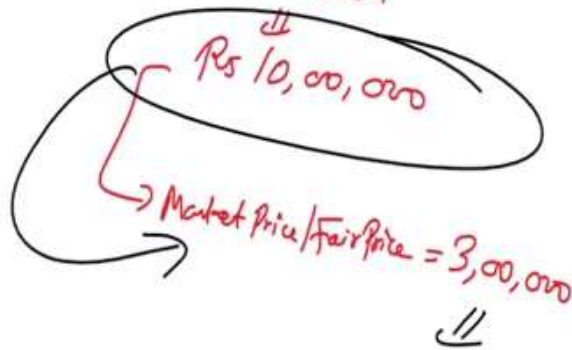
Nestle India Ltd.  
(India)

Transaction

Rs 10,00,000

High Tax Country  
[Tax Rate 30%]

Low Tax / No Tax /  
Tax heaven Country  
[Tax Rate 5%]



ALP

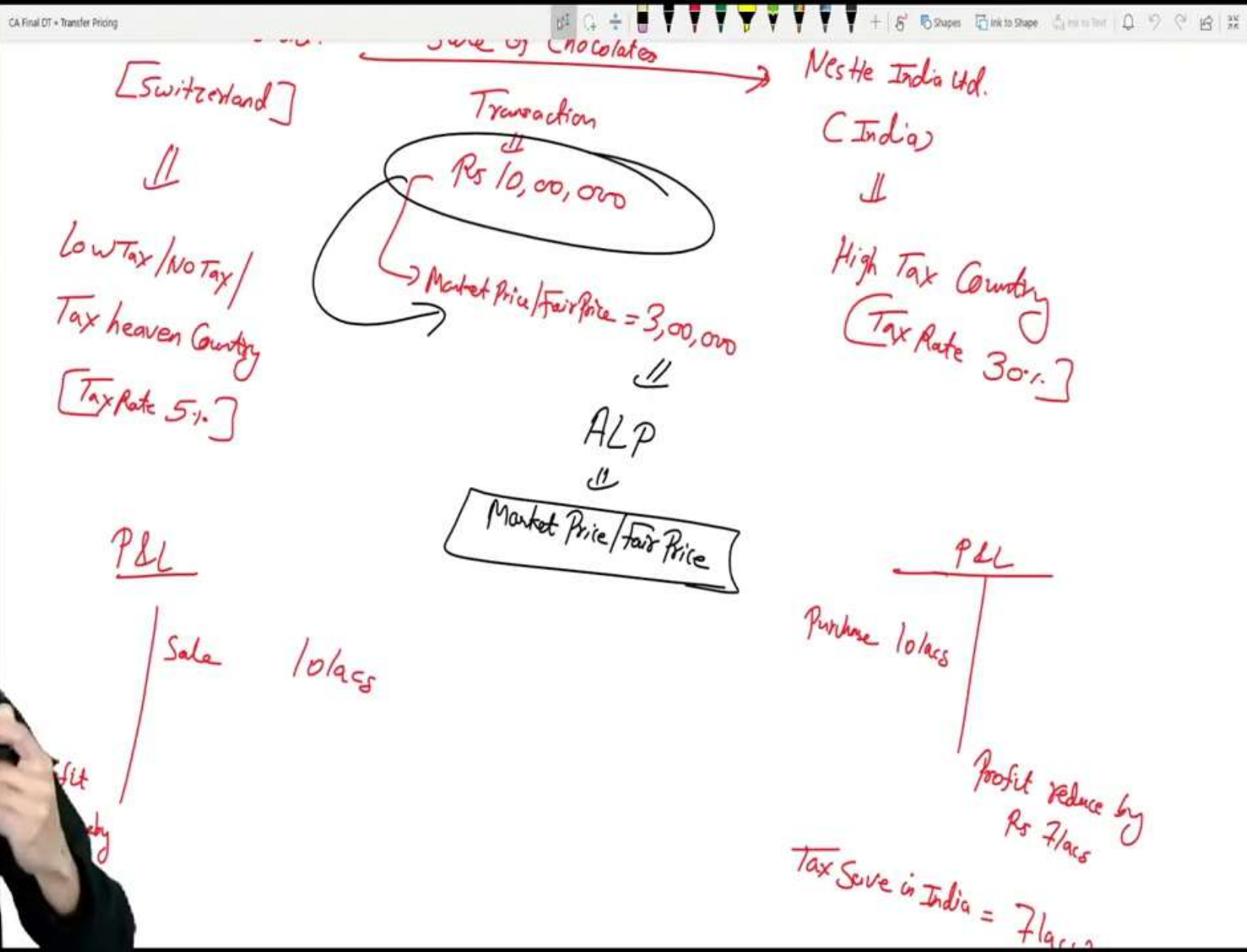
Market Price / Fair Price

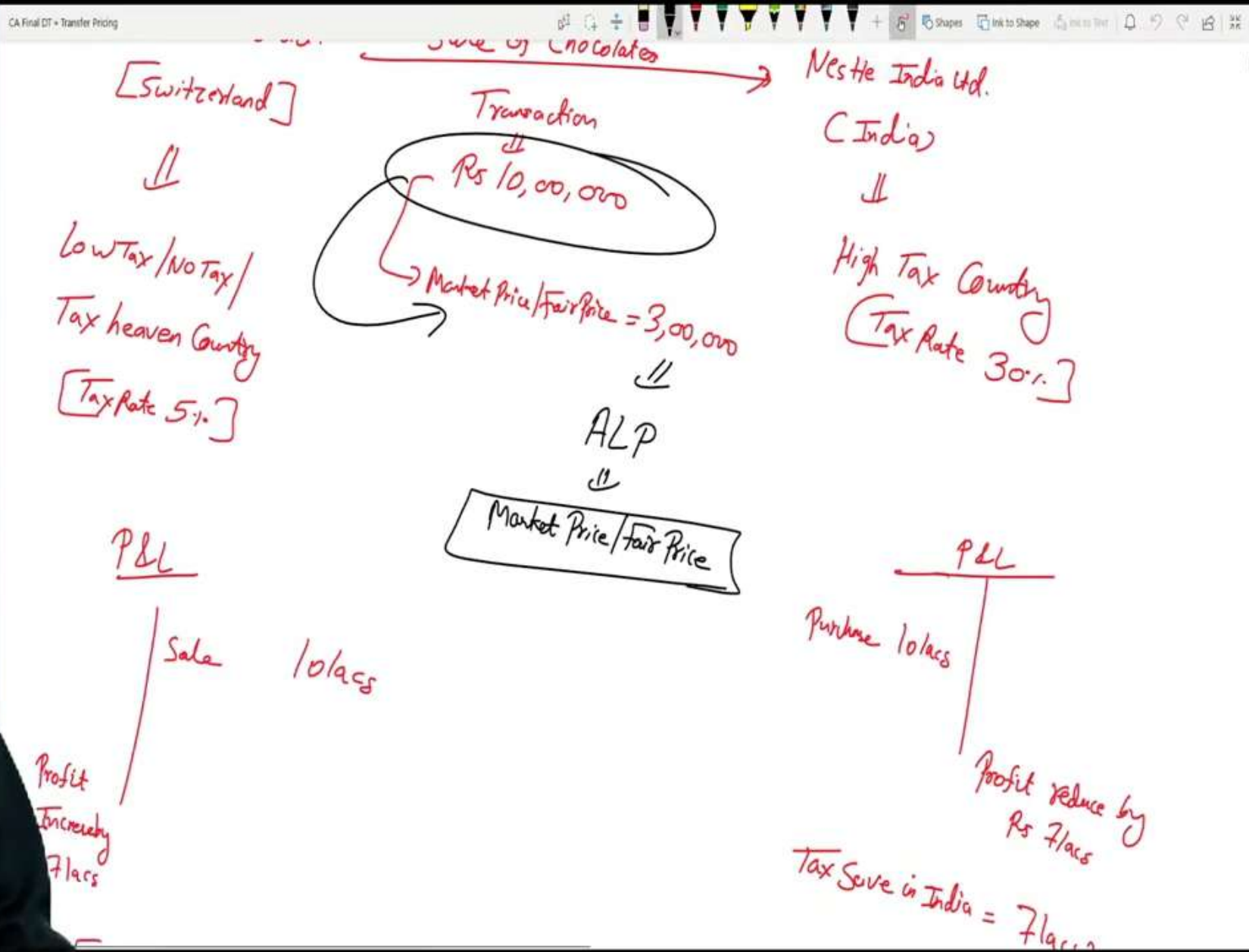
P&L

Sale / Profit

P&L

Purchase / Loss







Market Price / Fair Price

P&L

	Sale	10 lacs
		3 lac
Profit		
Increases by		7 lacs

Extra Tax in Switzerland  
 $\Rightarrow 7 \text{ lacs} \times 5\% = \boxed{35,000}$

P&L

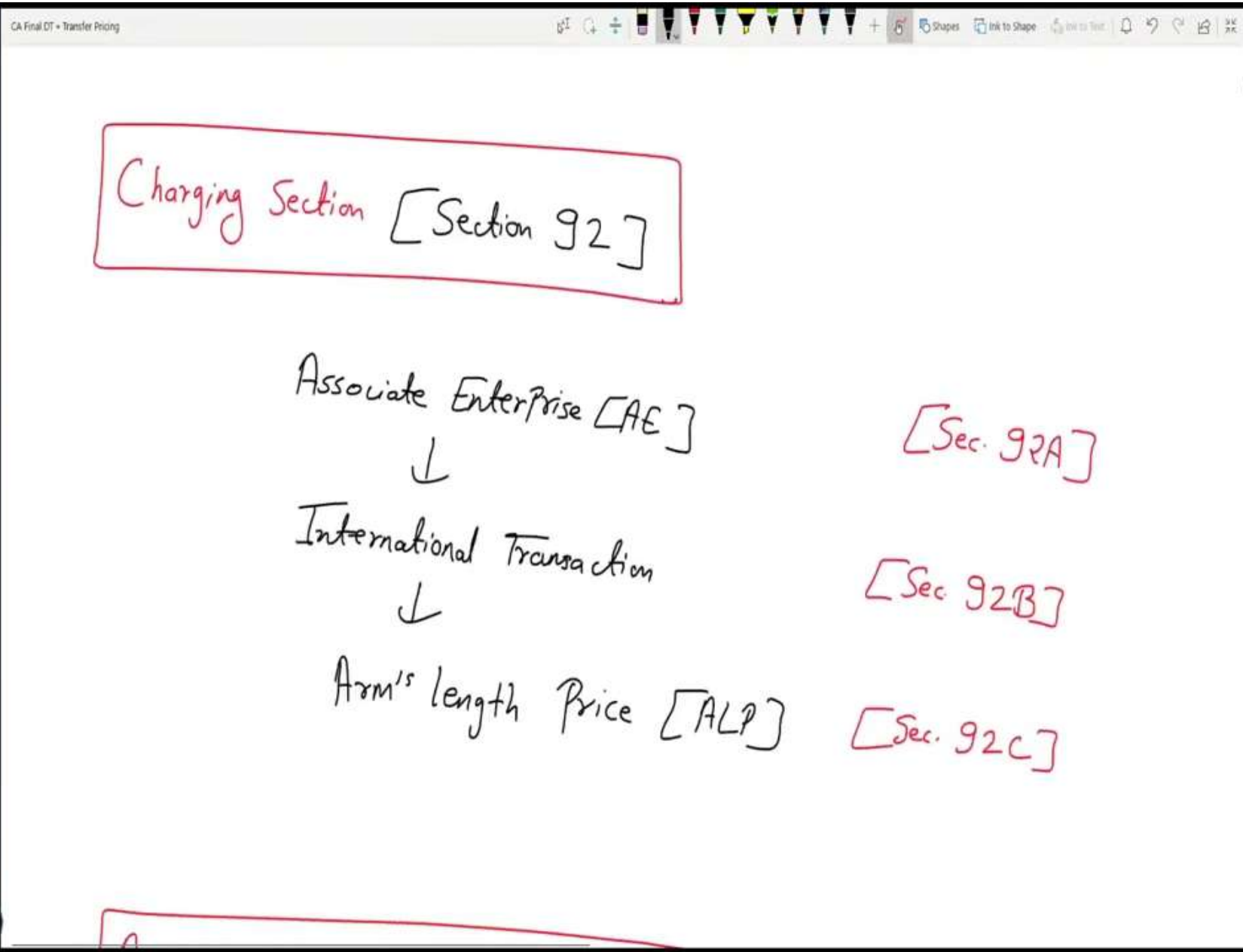
Purchase	10 lacs
Profit reduce by	Rs 7 lacs

Tax Save in India =  $7 \text{ lacs} \times 30\%$   
 $\Downarrow$   
 $\boxed{2,10,000}$

Net Benefit to Group

---

$2,10,000 - 35,000 = \boxed{1,75,000}$



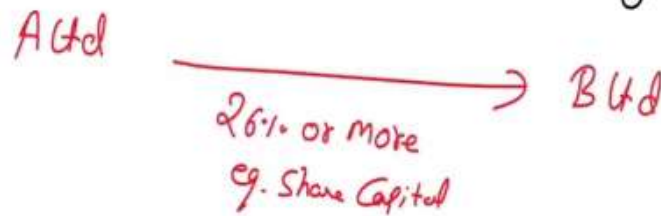


# Associate Enterprise [Section 92A]

Enterprise : Means any Person engaged in any Business Activity

Two Enterprise are deemed to be Associate Enterprise if :

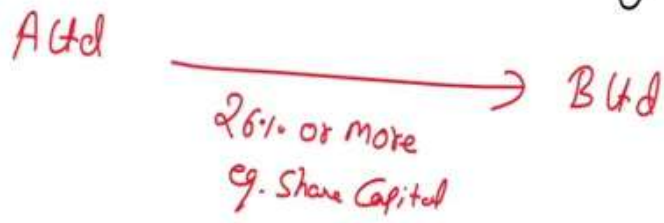
① One Enterprise holds 26% or more Voting Power in Other Enterprise



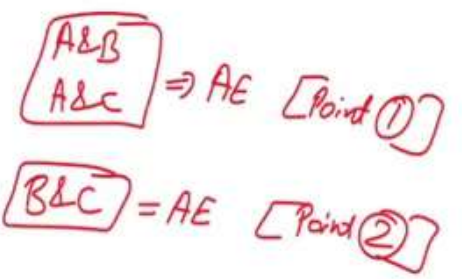
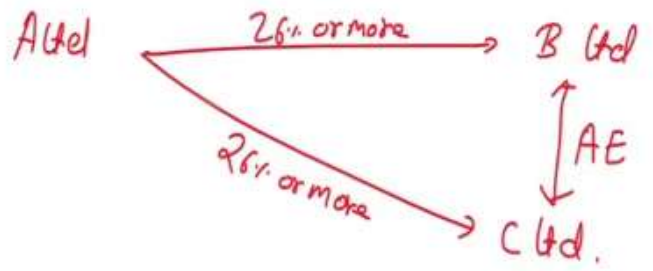
② Any Person holds 26% or more Voting Power in Other Enterprise



Power in Other Enterprise

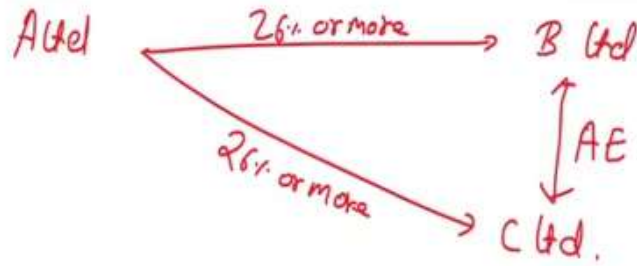


② Any Person holds 26% or More Voting Power in each of two Enterprises



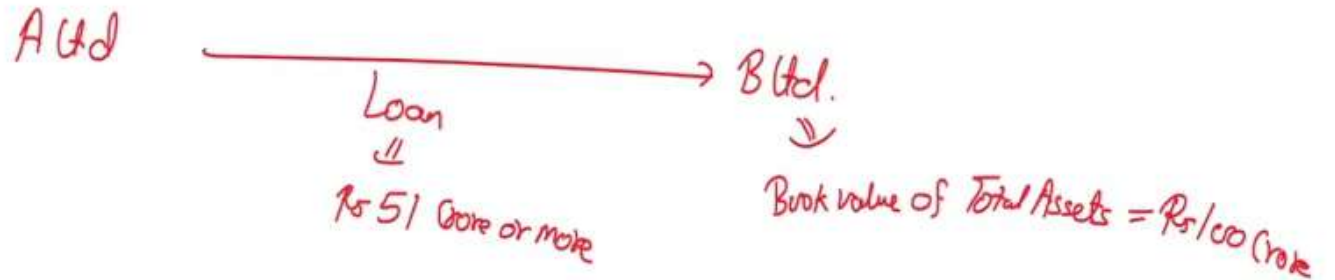
③ Loan Advanced by One Enterprise Constitutes 51% or more of Book Value of Total Assets of Other Enterprise





$\boxed{A \& B}$   
 $\boxed{A \& C} \Rightarrow AE$  [Point 1]  
 $\boxed{B \& C} = AE$  [Point 2]

③ Loan Advanced by One Enterprise Constitutes 51% or more of Book Value of Total Assets of Other Enterprise



$\boxed{A \& B} = AE$

④ One Enterprise guarantees 1





Net Assets of Other Enterprise

Atd



Loan



Rs 51 Crore or more

Btdl.



Book value of Total Assets = Rs 100 Crore

$$A \& B = AE$$

④ One Enterprise guarantees 10% or more of Total Borrowing of Other Enterprise

Atd



Rs 10 Crore or more  
Guarantee

Btdl.



Total Borrowing = Rs 100 Crore

$$A \& B = AE$$

⑤ Enterprise against M...



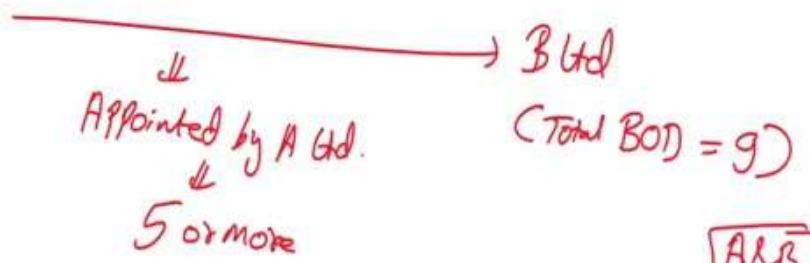
source

meaning = %s 100 crore

$A \& B = AE$

⑤ One Enterprise appoints More than half of Board of Directors Or at least One Executive Director of Other Enterprise

A Ltd



$A \& B = AE$

⑥ Any Person appoints more than half of board of directors or at least one Executive Director of each of two Enterprise

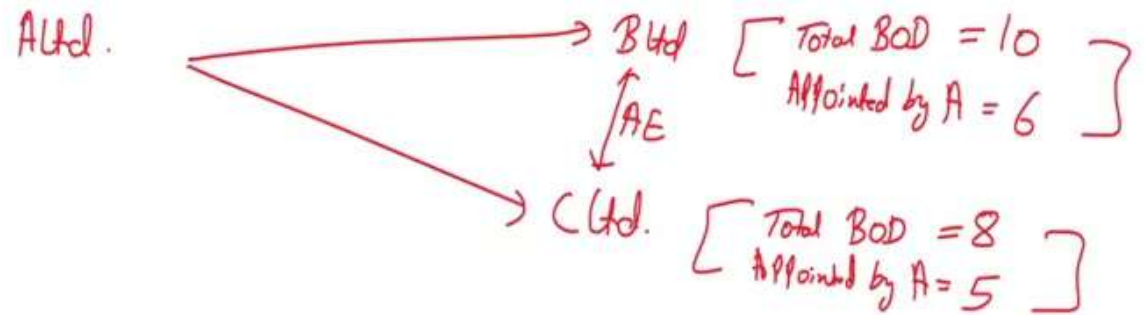
A Ltd.





$$\boxed{A \& B} = AE$$

⑥ Any Person appoints more than half of Board of directors or at least one Executive Director of each of two Enterprises



$$\boxed{\begin{matrix} A \& B \\ A \& C \end{matrix}} = AE \text{ [Point 5]}$$

$$\boxed{B \& C} = AE \text{ [Point 6]}$$

⑦ Manufacturing or Processing of One Enterprise is wholly dependent on Intangible Asset [Knowhow, Patent, Copyright, Secret]



CA Final DT • Transfer Pricing

$\boxed{A \& B}$  = AE [Point 5]  
 $\boxed{B \& C}$  = AE [Point 6]

⑦ Manufacturing or Processing of One Enterprise is wholly dependent on Intangible Asset [Knowhow, Patent, Copyright, Secret Formula etc.] of Other Enterprise

A Ltd. ————— B Ltd.  
↓  
Manufacturing → Dependent on B Ltd.  
Secret Formula

$\boxed{A \& B}$  = AE

⑧ 90% or more Raw Material/Consumable requirement of One Enterprise is Supplied by Other Enterprise  $\boxed{\text{and}}$  Price & Terms decided by Such Other Enterprise

A Ltd. ←———— B Ltd.





Manufacturing  $\rightarrow$  Dependent on B Ltd.  
Secret Formula

$$\boxed{A \& B} = AE$$

⑧ 90% or more Raw Material/Consumable requirement of One Enterprise is Supplied by Other Enterprise  $\boxed{\text{and}}$  Price & Terms decided by Such Other Enterprise

A Ltd.  $\leftarrow$  B Ltd.  
Supply 90% or more RM  
Price & Terms decided by B Ltd.

[RM Requirement  
 $\downarrow$   
Rs 10 Crores]

$$\boxed{A \& B} = AE$$

⑨ Goods Manufactured by One Enterprise is Sold to Other Enterprise  $\boxed{\text{and}}$  Price & Term decided by Such Other Enterprise





CA Final DT • Transfer Pricing

Rs 10 Crores ]  
Price & Terms decided by B Ltd.  $A \& B = AE$

9) Goods Manufactured by One Enterprise is Sold to Other Enterprise and Price & Term decided by Such Other Enterprise

A Ltd  $\xrightarrow{\text{Sold Goods to B}}$  B Ltd  
 $\downarrow$   
Price & Terms decided by B Ltd.  $A \& B = AE$

10) If One Enterprise is Controlled by an Individual, Other Enterprise is Controlled by Individual or his relative or Jointly

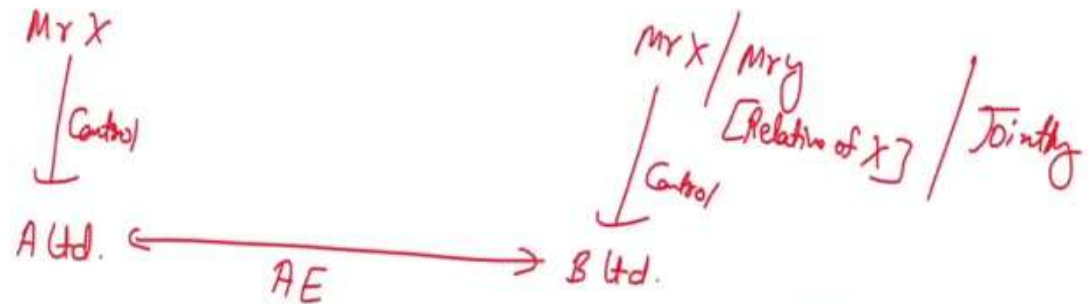
Mr X Mr X / Mr Y



Sold Goods to B  
↓  
Price & Terms decided by B Ltd.

$$\boxed{A \& B} = AE$$

⑩ If One Enterprise is Controlled by an Individual, Other Enterprise is Controlled by Individual or his relative or Jointly



$$\boxed{A \& B} = AE$$

⑪ If One Enterprise is Controlled by HUF Other Enterprise is Controlled by HUF



CA Final DT • Transfer Pricing

A Ltd. ← AE → B Ltd.

Control ↓

$A \& B = AE$

① If One Enterprise is Controlled by HUF, Other Enterprise is Controlled by member of HUF or Relative of member or Jointly

HUF

Control ↓

A Ltd. ← AE → B Ltd.

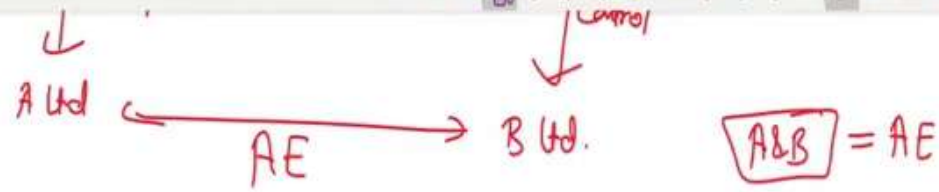
Member/Relative of member/Jointly

Control ↓

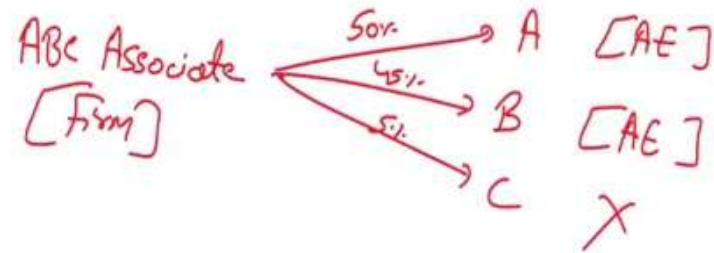
$A \& B = AE$

② If One Enterprise is Firm/AOP/BOI, Other Enterprise holds atleast 10%





(12) If One Enterprise is Firm/AOP/BOI, Other Enterprise holds atleast 10% Profit Share Ratio [PSR] in Such Enterprise

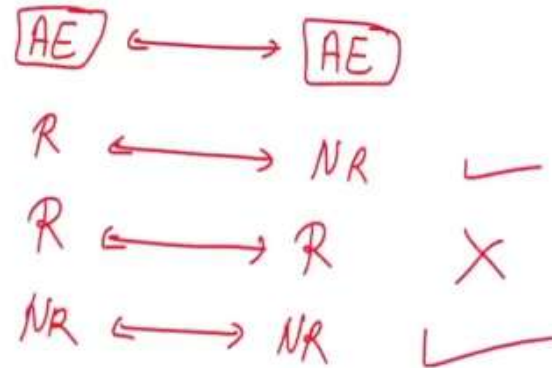


(13) There exist any relationship of mutual Interest between two Enterprise  
eg. → Joint Venture



## International Transaction [Section 92B]

→ It means a transaction between Two or More Associate Enterprise in which at least 1 shall be Non Resident.



→ Such Transaction should be in the nature of :

- Purchase, Sale or Lease of Property
- Provision of Service

• Lending or Borrowing



→ Such Transaction should be in the nature of :

- Purchase, Sale or Lease of Property
- Provision of Service
- Lending or Borrowing of Money
- Allocation of Cost or Expense
- Any Other Transaction which effects Profit

→ Such International Transaction must be done at Arm's length Price [ALP],  
If not done at ALP, it requires adjustment of Income

Primary Adjustment

The above adjustment shall either result in Increase in Income of Assessee.

Adjustment results in decrease in Income of Assessee.



CA Final DT • Transfer Pricing

... or service

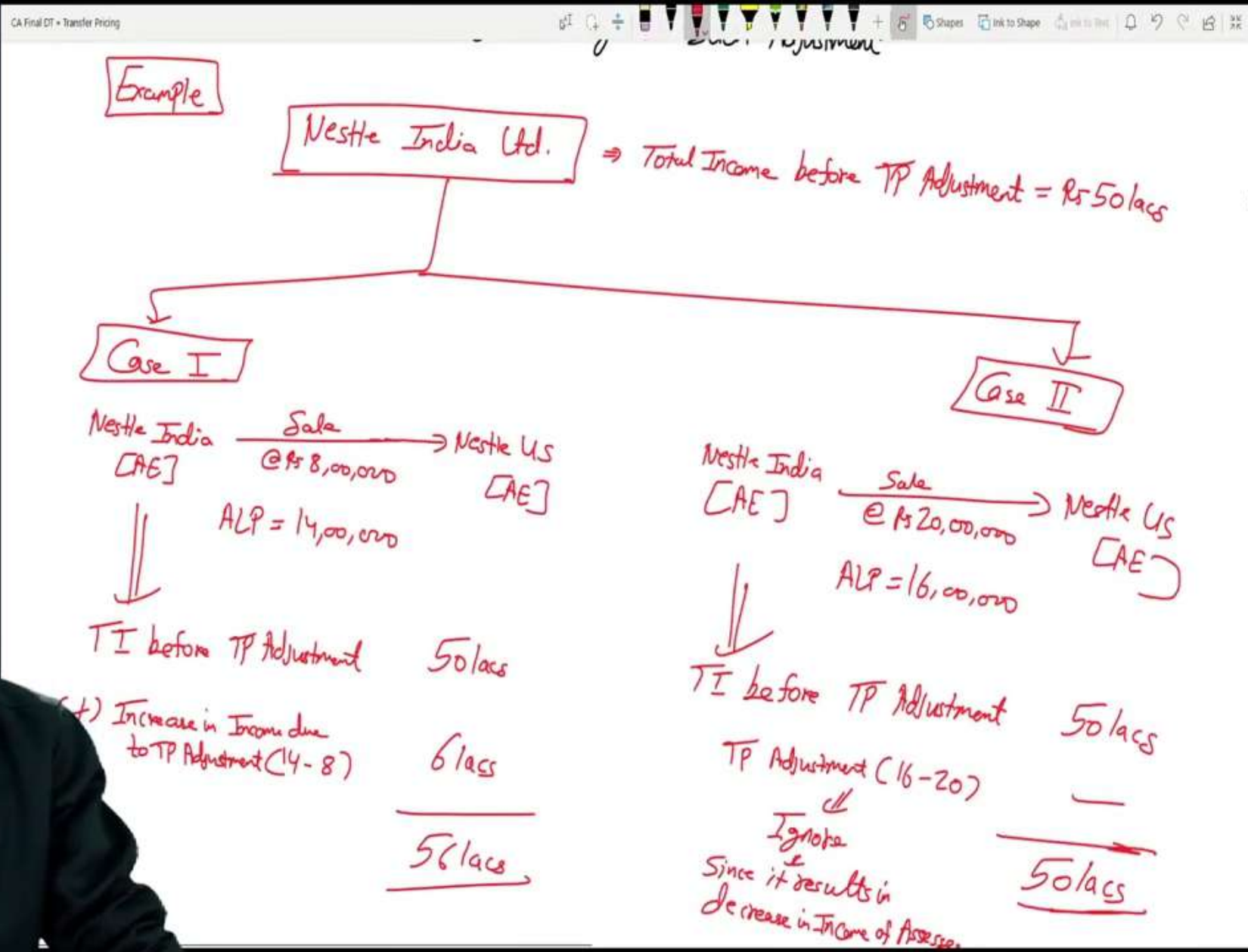
- Lending or Borrowing of Money
- Allocation of Cost or Expense
- Any Other Transaction which effects Profit

→ Such International Transaction must be done at Arm's length Price [ALP],  
If not done at ALP, it requires adjustment of Income → → Primary Adjustment

→ The above adjustment shall either result in Increase in Income of Assessee.  
If Adjustment results in decrease in Income of Assessee, Transfer Pricing Provisions shall not apply → Ignore Such Adjustment

Example

Nestle India Ltd. ⇒ Total Income before TP Adjustment = Rs 50 lacs





## Deemed International Transaction [Section 92B(2)]

If Transaction entered into by Enterprise with third Person [Not AE]

and

There exist a Prior Agreement between third Person & AE of Such Enterprise

⇓

Such Transaction between Enterprise & third Person shall be deemed as International Transaction

[Whether Such Third Person is Resident or Non Resident]

Example

Nestle India Ltd.  
(AE)

—————

Nestle US Ltd.  
(AE)





Nestle India Ltd.  
(AE)

Nestle US Ltd.  
(AE)

Sale of Goods  
1.10.2020

Prior Agreement on 30.9.2020  
↓  
Goods purchased by X from Nestle India  
will be sold to Nestle US

Mr X [Unrelated Person]

Deemed International Transaction

⇒ ₹ INR

Computation of Arm's length Price [Section 92C]





## Computation of Arm's length Price [Section 92C]

ALP shall be determined by any of the following methods :

- ① Comparable Uncontrolled Price Method [CUP] L
- ② Resale Price Method [RPM]
- ③ Cost Plus Method [CPM]
- ④ Profit Split Method [PSM]
- ⑤ Transactional Net Margin Method [TNMM]

Most Appropriate Method shall be Selected





## Comparable Uncontrolled Price Method [CUP]

Compare transaction with AE with Similar Uncontrolled Transaction [i.e. Similar Transaction with Outsiders/Unrelated]

Calculation of ALP

Price Charged/Paid in Comparable Uncontrolled Transaction

(±) Functional Difference Adjustment

- FOB & CIF
- Warranty
- Quantity Discount

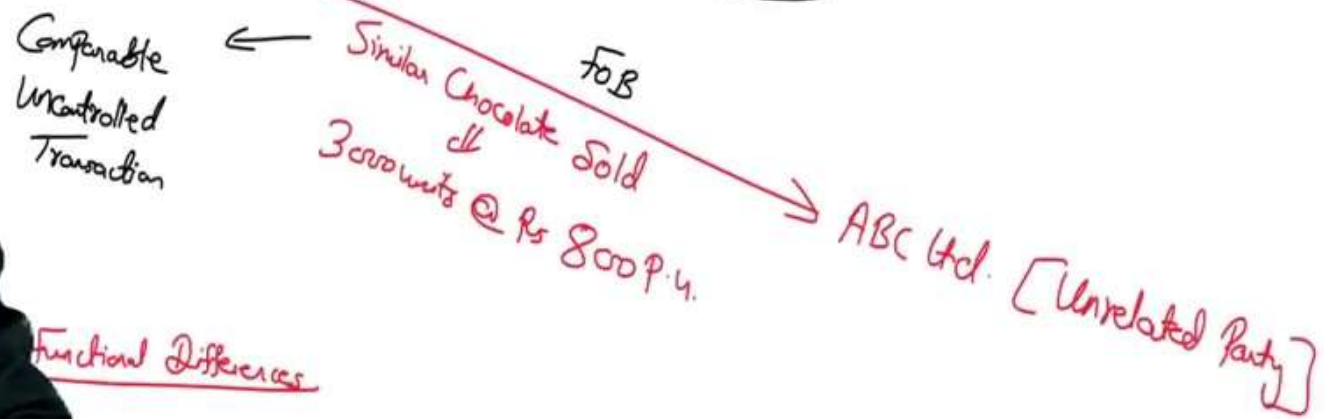
XX



ALP =

XX

Example





Transaction with Outsiders [unrelated]

Transaction [i.e. Similar

Calculation of ALP

Price Charged/Paid in Comparable Uncontrolled Transaction

xx

(±) Functional Difference Adjustment

- FOB & CIF
- Warranty
- Quantity Discount

xx

$$ALP = \frac{\quad}{\quad}$$



- Rs 800 p.u.

ABC Ltd. [Unrelated Party]

Functional Differences

① Sale to AE is on CIF basis, while Sale to ABC Ltd. is on FOB.  
Insurance & Freight Cost = Rs 40 p.u.

CIF to AE

↓  
Insurance & Freight Cost  
bear by Seller  
↓  
Nestle India Ltd.

FOB to ABC Ltd.

↓  
Insurance & Freight Cost  
bear by Buyer  
↓  
ABC Ltd.

② Nestle India Ltd. gives Warranty to AE for 6 months but not to ABC Ltd. Cost of warranty = Rs 70 p.u. per annum



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- FOB & CIF
- Warranty
- Quantity Discount

xx

ALP =  $\frac{\text{xx}}{\text{xx}}$

FOB  
↓  
Buyer

CIF  
↓  
Seller

**Example**

Nestle India Ltd. [AE] (India)  $\xrightarrow{\text{CIF}}$  Nestle US Ltd [AE] (USA)  
Sold Chocolate  
5000 units @ \$5350 p.u.

← Similar Chocolate FOB

Comparable Uncontrolled



Insurance & freight Cost = Rs 40 P.u.

**CIF** to AE

↓  
Insurance & Freight Cost  
bear by Seller  
↓  
Nestle India Ltd.

**FOB** to ABC Ltd.

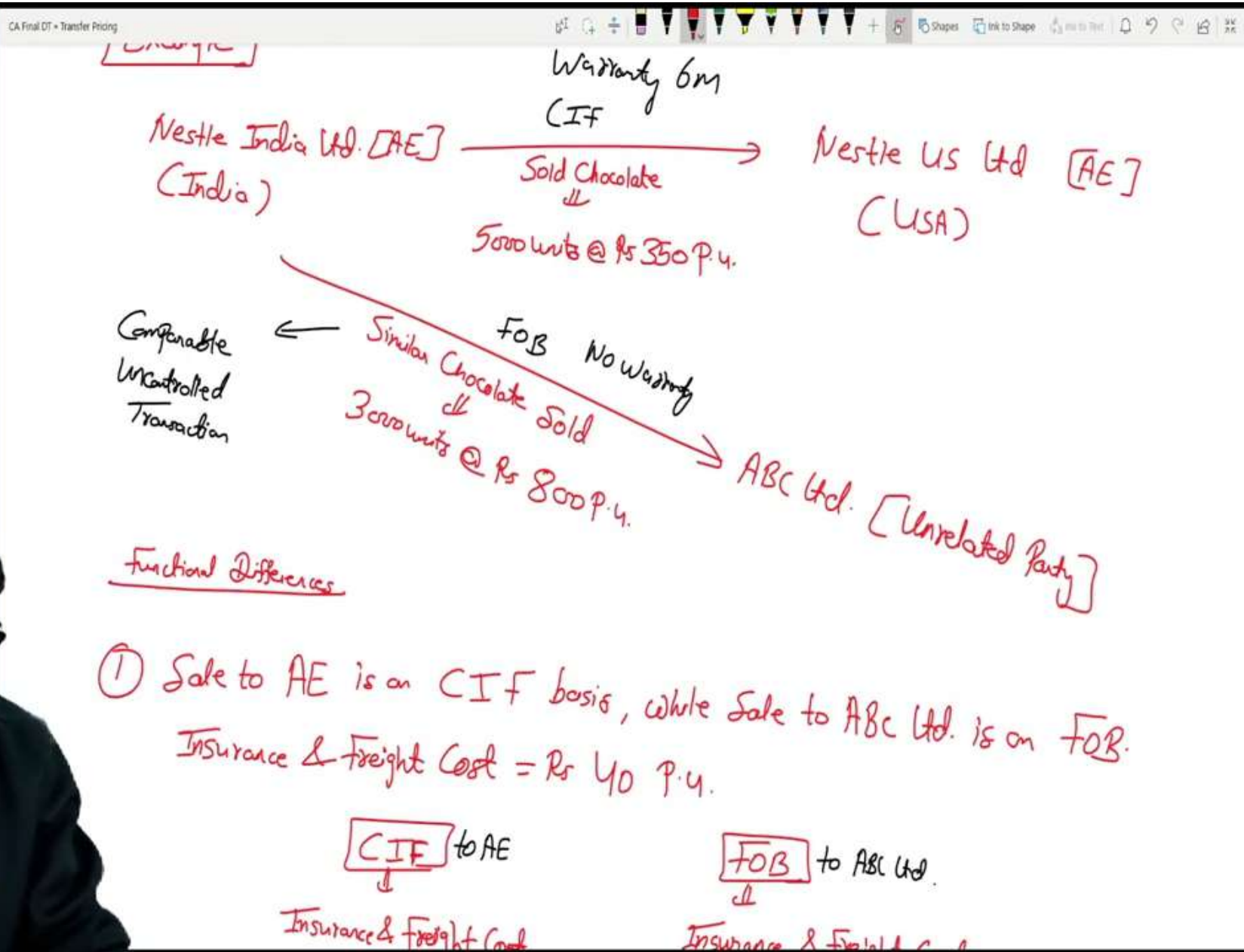
↓  
Insurance & Freight Cost  
bear by Buyer  
↓  
ABC Ltd.

- ② Nestle India Ltd. gives Warranty to AE for 6 months but not to ABC Ltd. Cost of warranty = Rs 70 P.u. per annum
- ③ Since Sales to AE is high in Quantity, Discount of Rs 60 P.u. is to be given

**Solution**











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Price charged in Comparable Uncontrolled Transaction (₹4.)  
800

(±) Functional Adjustment

FOB & CIF	+ 40
Warranty $\left[ 70 \times \frac{6}{12} \right]$	+ 35
Discount	- 60
	<hr/>
ALP	815
	<hr/>

Increase in Income of Nestle India Ltd. =  $(815 - 350) \times 5000$   
Primary Adjustment



ALP

60  
-----  
815  
-----

$$\text{Increase in Income of Nestle India Ltd.} = \underbrace{[815 - 350]}_{\text{Primary Adjustment}} \times 5000$$
$$\underline{\underline{23,25,000}}$$

Resale Price Method

When Purchase made from AE and resale as it is to Outsider

[Conceptual Case]



## Resale Price Method

When Purchase made From AE and resale as it is to Outsider

Computation of ALP

Resale Price to Outsider

(-) Normal GP Margin

(-) Additional Purchase Related Expenses

ALP =

xx

$\frac{(xx)}{xx}$

(xx)

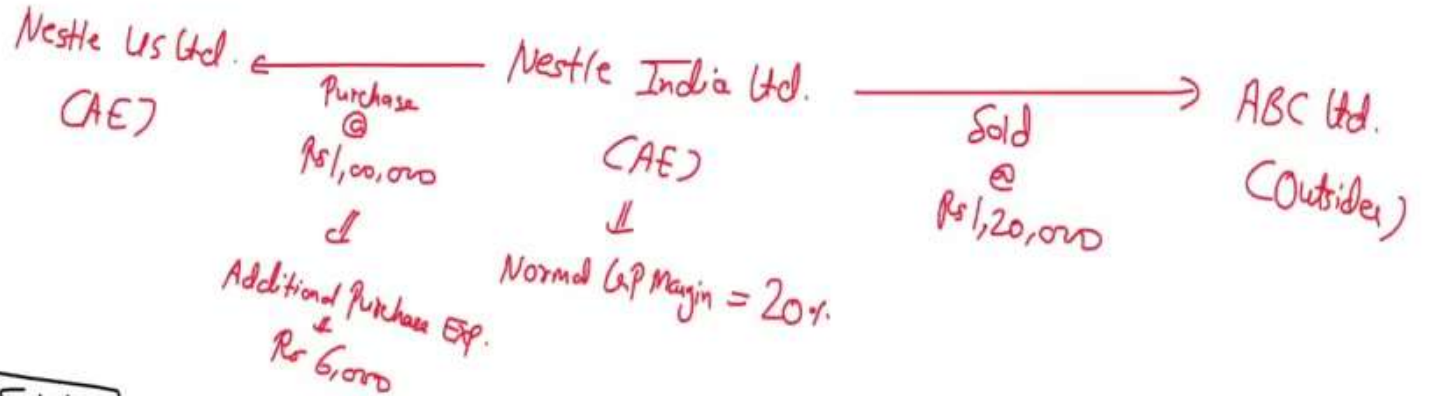
$\frac{(xx)}{xx}$



ALP =

$$\frac{\text{Business Expenses (XX)}}{\text{XX}}$$

Example



Solution

Calculation of ALP

Resale Price to Outsider

1,20,000

(→ Normal GP Margin =



# Cost Plus Method

When Goods Manufactured by Enterprise is Sold to its AE

## Computation of ALP

Direct & Indirect Cost of Production

xx

Add: Normal GP Margin → Sales

xx

(±) Functional Difference Adjustment in GP Margin

- Technical Support
- Quantity Discount
- Credit Period

xx

xx

xx

xx



# Direct & Indirect Cost of Production

xx

Add: Normal GP Margin

xx

50%

(±) Functional Difference Adjustment  
in GP Margin

- Technical Support
- Quantity Discount
- Credit Period

+4% xx

-3% xx

xx

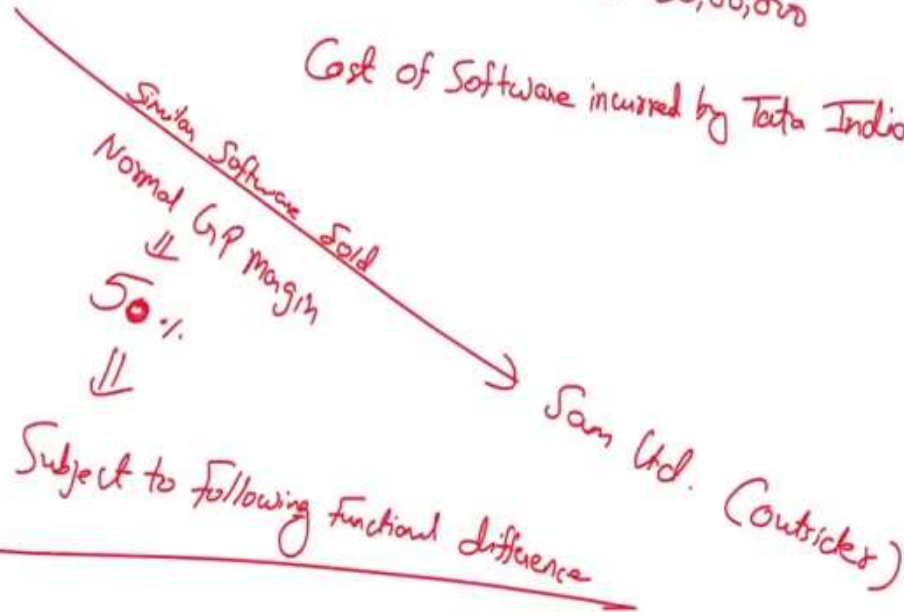
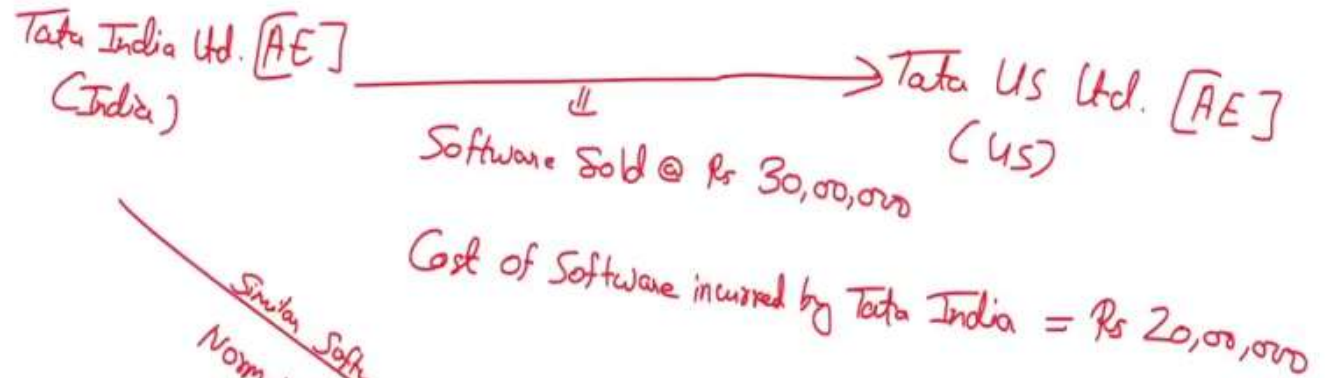
xx

ALP =

xx



Example



- ① Tata US Ltd. gives technical support to Tata India Ltd.



- U (margin difference) (wider)
- ① Tata US Ltd. gives technical support to Tata India Ltd. but Sam Ltd. doesn't give any support  
Value of Technical Support = 8% of GP Margin
  - ② Work for Tata US Ltd. is huge, so Qty. Discount is to be given to Tata US Ltd. @ 6% of GP Margin
  - ③ Tata India Ltd. gives Credit Period to Tata US Ltd. but not to Sam Ltd.  
Cost of Credit Period = 2% of Normal Billing Rate

Solution





Solution

Calculation of ALP

Cost Incurred

20,00,000

GP Margin

50%

(±) Functional Adj.

Technical Support [8% x 50%]

(4%)

Qty Discount [6% x 50%]

(3%)

Credit Period

2%

1%



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$100 \times 50\%$  (3%)

Credit Period

2%

---

45%

ALP

16,36,364  $\left[ \frac{45}{55} \times 20,00,000 \right]$

---

36,36,364

Increase in Income of Tata India  $(36,36,364 - 30,00,000) = 6,36,364$

**Profit Split Method**

Used in Joint Venture



## Profit Split Method

Used in Joint Venture

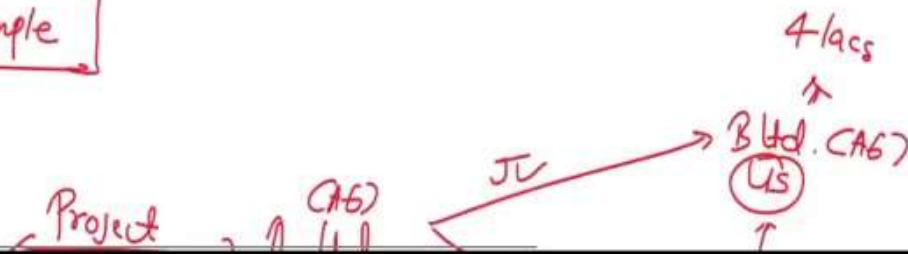
Profit/Contribution Split on the basis of given ratio of Capital Employed, Manpower, Risk Taking etc.

## Calculation of ALP

Calculate Combined Net Profit, then divide Net Profit in given ratio

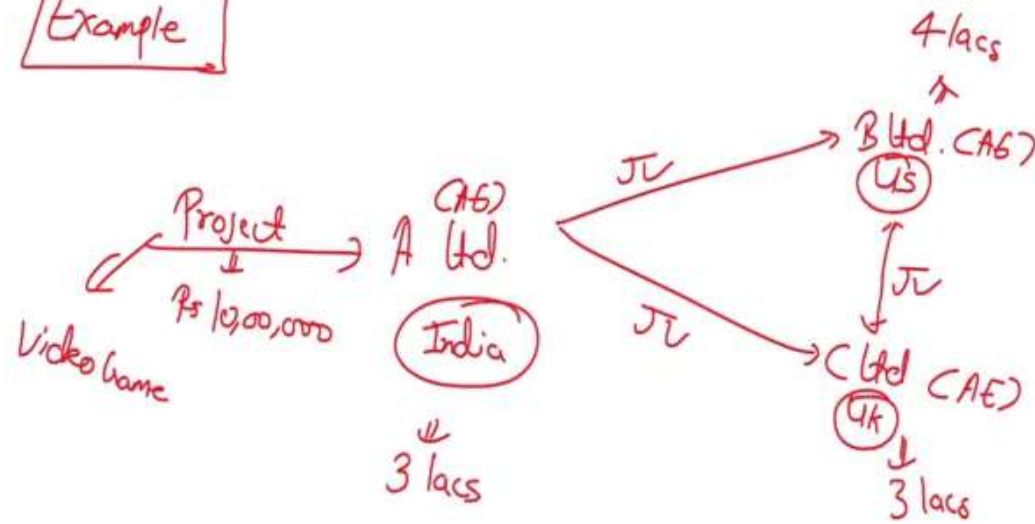
$$ALP = \text{Cost Incurred} + \text{Net Profit Share}$$

## Example





Example



Contribution Ratio on basis of Capital Employed, Manpower, Risk Taking etc. = A B C  
 Total Cost incurred on Project = 8,00,000 = 50:25:25  
 Cost Incurred by A Ltd = 2,50,000

Solution

Combined Net Profit = 10,00,000 - 8,00,000 = 2,00,000



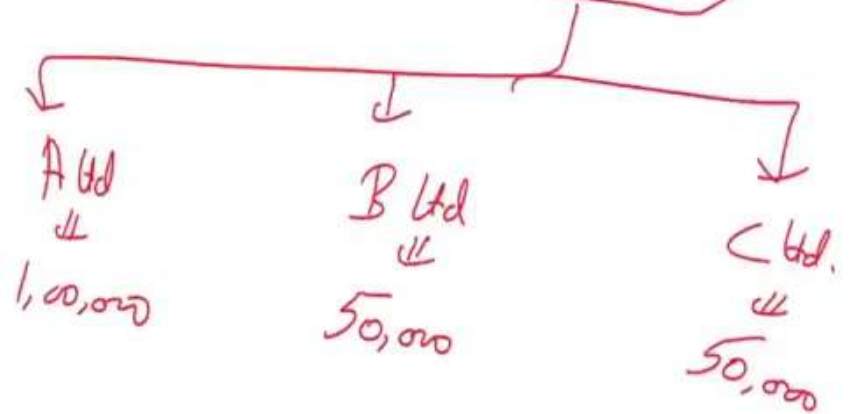


Cost Incurred by A Ltd = 8,00,000  
Cost Incurred by A Ltd = 2,50,000

**Solution**

$$\text{Combined Net Profit} = 10,00,000 - 8,00,000 = \boxed{2,00,000}$$

[50:25:25]



$$\text{ALP for A Ltd.} = 2,50,000 + 1,00,000 = \underline{\underline{3,50,000}}$$



[50:25:25]

1,00,000

50,000

C Ltd.  
50,000

$$\text{ALP for A Ltd.} = 2,50,000 + 1,00,000 = 3,50,000$$

Transactional Net Margin Method [TNMM]

Operating Profit Margin of Other Enterprise in Similar industry shall be taken for Computing ALP

Computation of ALP



Transactional Net Margin Method [TNMM]

Operating Profit Margin of Other Enterprise in Similar industry shall be taken for Computing ALP

Computation of ALP

Cost Incurred

∕

(+) Operating Profit Margin of Other Enterprise in Similar Industry

∕

OP Margin  
↓

$$ALP = \frac{\quad}{\quad}$$



### Computation of ALP

Cost Incurred

xx

(+) Operating Profit Margin of Other Enterprise  
in Similar Industry

xx



OP Margin  
↓

ALP =

xx

$$\frac{\text{Operating Profit}}{\text{Total Cost}} \times 100$$

### Example

Infosys India  
CAD

Software Support Service → Infosys US (CAD)  
@ 15,50,00,000





... in case of Infosys India  $(52 \text{ lacs} - 50 \text{ lacs}) = 2,00,000$

If More than 1 ALP is arrived by Most Appropriate Method

If More than 1 but  
upto 5 ALP Arrived

↓  
Arithmetic Mean Concept

If 6 or more  
ALP Arrived

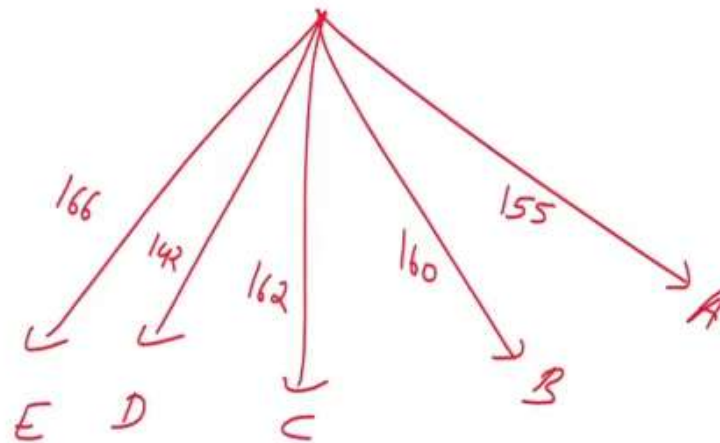
↓  
Range Concept



### Example

Nestle India Ltd (A.E.)  $\xrightarrow{\text{Sale @ Rs 150}}$  Nestle US Ltd. (A.E.)

$\rightarrow$  Actual Transaction Price



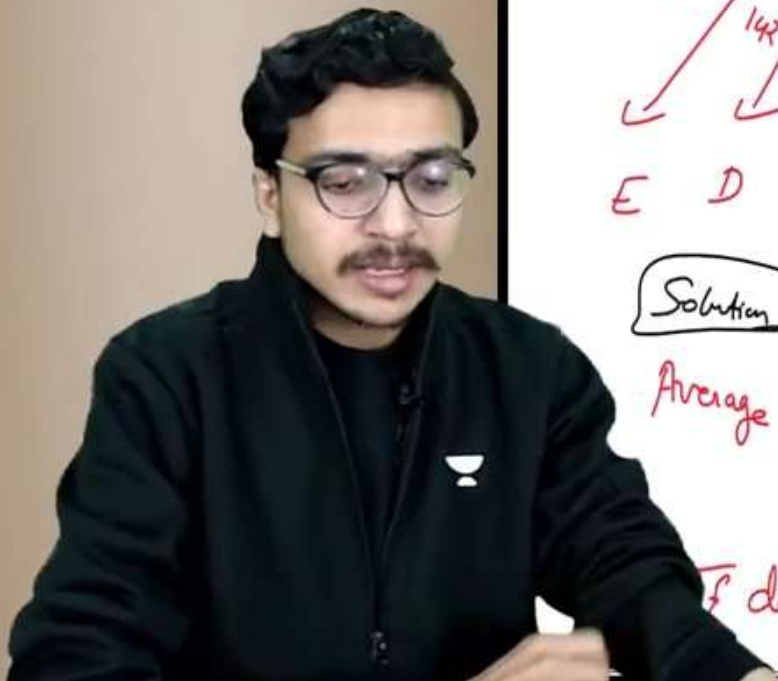
Actual TP  
(+) 150 x 3 =

150
<u>4.5</u>
154.5

### Solution

$$\text{Average ALP} = \frac{166 + 142 + 162 + 160 + 155}{5} = 157$$

Diff. b/w Average ALP & Actual TP is Rs 2.00





## Calculate Average ALP

IF difference between Actual Transaction Price and Average ALP is upto 3% of Actual Transaction Price

ALP = Actual Transaction Price

IF difference is more than 3%.

ALP = Average ALP

Example

Nestle India Ltd (A/E)  $\xrightarrow{\text{Sale @ Rs. 15}}$  Nestle US Ltd. (A/E)



Actual TP  
(+) 150 x 3%

$$\begin{array}{r} 150 \\ 4.5 \\ \hline 154.5 \end{array}$$

Solution

$$\text{Average ALP} = \frac{166 + 142 + 162 + 160 + 155}{5} = 157$$

If diff. b/w Average ALP & Actual TP is upto 3% (if Avg ALP is upto 154.5)  
then Actual TP will be ALP

In this case, since difference is more than 3%, So ALP = Average ALP

$$\begin{array}{r} \text{Average ALP} \\ \hline 157 \end{array}$$



## Arithmetic Mean Concept

Calculate Average ALP

IF difference between Actual Transaction Price and Average ALP is upto 3% of Actual Transaction Price

↓  
ALP = Actual Transaction Price

IF difference is more than 3%.

↓  
ALP = Average ALP

Example



## Range Concept

- Range Concept is not applicable in Case of Profit Split Method
- It is applicable only if Number of Values in Dataset is 6 or more [i.e. ALP is 6 or more]

### Steps for Range Concept

- Arrange value in dataset in Ascending Order
- Calculate 35% and 65% of Total Number of Values in dataset
- Range will start From 35% value and end at 65% value
- If Actual Transaction Price Falls within range, then ALP = Actual Transaction Price
- If Actual Transaction Price Doesn't fall within range, Calculate Median [50%] of Total Number of Values in dataset
- Median Value will be ALP



- If Actual Transaction Price falls within range, then ALP = Actual Transaction Price
- If Actual Transaction Price doesn't fall within range, Calculate Median [50%] of Total Number of Values in dataset
- Median Value will be ALP

### Note

- If  $35\% / 65\% / 50\%$  is not a whole number, then value of next whole number will be considered
- If  $35\% / 65\% / 50\%$  is a whole number, then take average of value of that whole number & value of next whole number

### Example 1

Tata India [AF]  $\xrightarrow{\text{Sale}}$  Tata US [AE]  
@ Rs 150 → Actual Transaction Price



... value of Next Whole Number

Example 1



$$ALP = [151, 146, 140, 155, 160, 169, 165]$$

Solution

Ascending order  $\rightarrow$  ALP

1	140
2	146
3	151
4	155
5	160

Range Start  $\rightarrow$  151

$$7 \times 35\% = 2.45 \rightarrow 3$$

Not whole no.





2	146
3	151
4	155
5	160
6	165
7	169

Range Start (between 3 and 4)  
Range End (between 4 and 5)

$$7 \times 35\% = 2.45 \rightarrow 3$$

↓  
Not whole no.

$$7 \times 65\% = 4.55 \rightarrow 5$$

↓  
Not whole no.

Range 151 - 160

If Actual TP falls within Range, then ALP = Actual TP

Since Actual TP is 150, it doesn't fall within Range, Calculate 50% [Median]

$$7 \times 50\% = 3.5 \rightarrow 4$$

↓  
Not whole no.

Median Value (50%) will be ALP, So ALP = 155





### Example 2

Actual Transaction Price = 150

1	140	11	174
2	146	12	177
3	151	13	178
4	155	14	180
5	160	15	189
6	165	16	191
7	169	17	193
8	170	18	194
9	171	19	198
10	172	20	200

$20 \times 35\% = 7$   
Whole no. =  $\frac{169+170}{2}$   
 $\downarrow$   
169.5

$20 \times 65\% = 13$   
Whole no. =  $\frac{178+180}{2}$   
 $\downarrow$   
179

Range 160



1	155
5	160
6	165
7	169
8	170
9	171
10	172

169.5  
Range start

14	180
15	189
16	191
17	193
18	194
19	198
20	200

179  
Range end

$$20 \times 35\% = 7$$

Whole no. =  $\frac{169 + 170}{2}$

$\downarrow$   
169.5

$$20 \times 65\% = 13$$

Whole no. =  $\frac{178 + 180}{2}$

$\downarrow$   
179

Range 169.5 - 179

$$\text{Median (50\%)} = 20 \times 50\% = 10$$

Whole no. =  $\frac{172 + 174}{2}$

$\downarrow$   
173

ALP



## Circumstances where AO may determine ALP [Section 92C(3)]

- ① TP Assessee fails to compute ALP as per most appropriate method
- ② Data used in computation of ALP is not reliable or correct
- ③ Documents specified in Section 92D not maintained
- ④ Documents called by AO is not furnished within time

## Consequences of ALP determined by AO [Section 92C(4)]

- ① Deduction under Chapter VI-A or Section 10AA shall not be available



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U

**Example ①**

Tata India Ltd.  
(SEZ)

↓  
TP Provision Apply

	<u>As Per ROI</u>	<u>As Per AO</u>
PLBP (export)	100 cr.	160 cr.
GTI	100 cr.	160 cr.
(-) Deduction u/s 10AA TI	<u>(100 cr.)</u> =	<u>(100 cr.)</u> 60 cr.

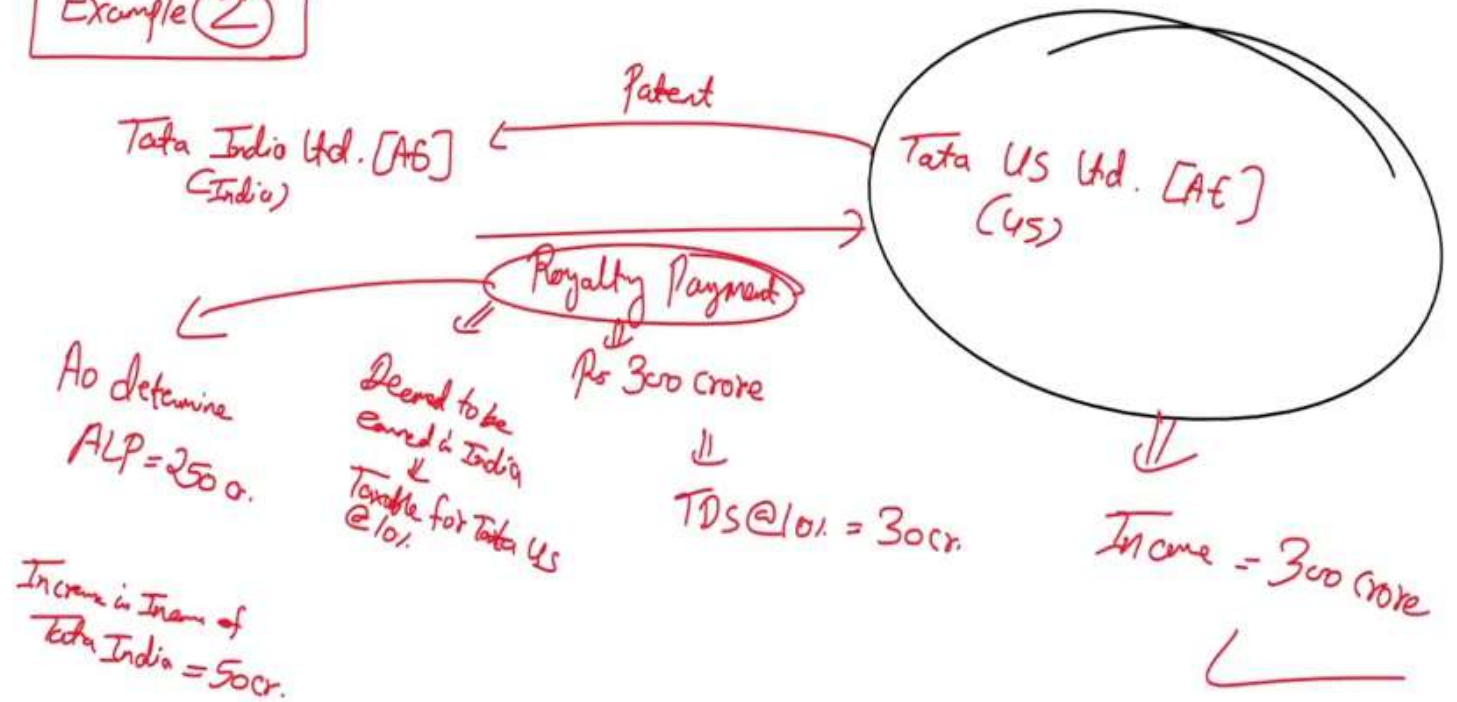


T I

(100 cr.)  
=

(100 cr.)  
60 cr.

**Example (2)**





## Reference to Transfer Pricing Officer (TPO) [Section 92CA]

- Option to make reference to TPO is given to AO but not to Assessee
- Before Making Reference, Prior Permission of CIT shall be taken
- TPO can call upon assessee to produce documents & evidence
- TPO can also determine the ALP of Other International Transactions identified subsequently during proceedings
- Order of TPO is binding upon AO and AO shall compute Total Income of Assessee in conformity with ALP determined by TPO



## Safe Harbour Rules [Section 92CB]

- To Reduce Transfer Pricing disputes, CBDT can make Safe Harbour Rules.
- IF Assessee declares minimum Margin as given in Safe Harbour Rules, then AO shall Accept the Transfer Price declared by Assessee
- For Ay 21-22, Safe Harbour Rules are not notified by CBDT till yet

## Advance Pricing Agreement [APA] [Section 92CC & 92CD]

- An APA is an agreement between Assessee & CBDT for determination of ALP of an International Transaction.





## Advance Pricing Agreement [APA] [Section 92CC & 92CD]

- An APA is an agreement between Assessee & CBDT for determination of ALP of an International Transaction as per Method & Manner given in Agreement
- CBDT can enter into APA with Applicant [Assessee] only after Approval of Central Government
- If APA exist, Section 92C & 92CA shall not apply
- APA shall be valid for Maximum 5 Consecutive Previous Years from Application year



Government

- If APA exist, Section 92C & 92CA shall not apply
- APA shall be valid for Maximum 5 Consecutive Previous Years from Application year
- Binding Nature of APA
  - Applicant
  - Income Tax Authority upto the level of CIT
  - In respect of Transaction for which APA was entered
- APA to be Void

If APA entered by assessee by Fraud or Misrepresentation of facts, CBDT may declare such APA to be void ab initio



CA Final DT • Transfer Pricing

Government

- If APA exist, Section 92C & 92CA shall not apply
- APA shall be valid for Maximum 5 Consecutive Previous Years from Application year
- Binding Nature of APA
  - Applicant
  - Income Tax Authority upto the level of CIT
  - In respect of Transaction for which APA was entered
- APA to be Void

If APA entered by assessee by Fraud or Misrepresentation of facts, CBDT may declare such APA to be void ab initio

Application  $\Leftrightarrow$  By

15-16  
16-17  
17-18  
18-19  
19-20 }  $\Rightarrow$  Rollback APA

20-21  
21-22  
22-23  
23-24 }  $\Rightarrow$  Max 5 Normal APA



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0 - - - - - such TPA to be void ab initio

Roll Back Provisions for APA

- A Person who makes application for APA can apply for Rollback for Maximum 4 Preceding FY From application year
- Conditions for Applying for Rollback
  - ① Assessee has to make application for Rollback in Form No. 3CEDA along with fees of Rs 5,00,000
  - ② Request has been made by Assessee for All Rollback years
  - ③ International Transaction is Same as mentioned in APA



- A person who makes application for APA can apply for Rollback for Maximum 4 Preceding FY from application year

23-24 ✓  
under APA

Conditions for Applying for Rollback

- ① Assessee has to make application for Rollback in Form No. 3CEDA along with fees of Rs 5,00,000
- ② Request has been made by Assessee for All Rollback years
- ③ International Transaction is same as mentioned in APA
- ④ Return for Rollback years is furnished by Assessee on or before due date

Non Applicability of Rollback

Determination of ALP is Subject Matter of Appellate





- ② Request has been made by Assessee for All Rollback years
- ③ International Transaction is Same as mentioned in APA
- ④ Return for Rollback years is furnished by Assessee on or before due date

• Non Applicability of Rollback

- ① Determination of ALP is Subject Matter of Appeal before ITAT and ITAT Pass Order before signing of APA
- ② Rollback has the effect of reducing Total Income as declared in ROI

Example

Total Income

As Per ROI

As Per AP

As P



CA Final DT • Transfer Pricing

① Determination of ALP is Subject Matter of Appeal before ITAT and ITAT Pass Order before Signing of APA

② Rollback has the effect of reducing Total Income as declared in RoI

**Example**

	As Per RoI	As Per AO [Assessment]	As Per Rollback APA	Rollback
<b>Case I</b>	30 cr.	35 cr.	32 cr.	✓
<b>Case II</b>	30 cr.	35 cr.	25 cr.	✗
<b>Case III</b>	30 cr.	No Assessment	26 cr.	✗



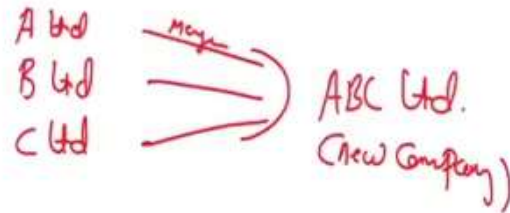
Roll Back Provision in Case of Mergers or Demergers

Only the Companies which exist in Rollback years at the time of Making APT Application after merger/demergers are entitled for Rollback

Example

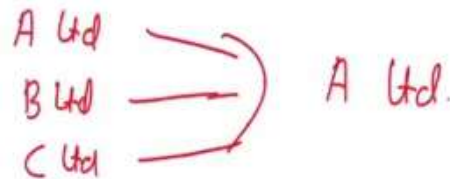
Merger

Case 1 →



ABC Ltd. Cannot Apply for Rollback

Case 2 →



A Ltd. Can Apply for Rollback

Demergers



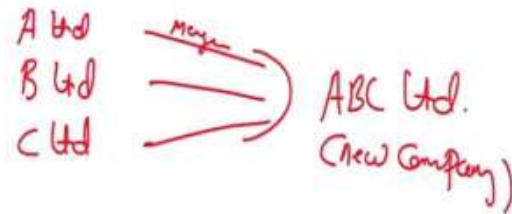


... are entitled for Rollback

### Example

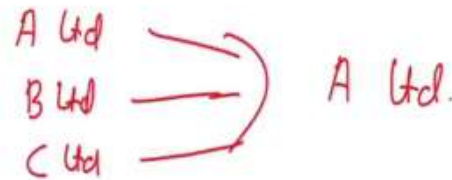
#### Mergers

Case 1 →



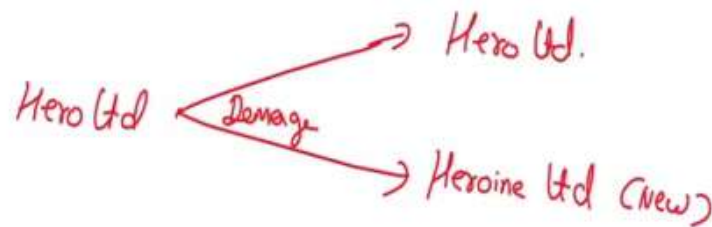
ABC Ltd. Cannot Apply for Rollback

Case 2 →



A Ltd. Can Apply for Rollback

#### Demerges



Hero Ltd. Can Apply for Rollback



## Effect of APA

- If ROI already filed for any year to which APA/Rollback Applies Modified ROI is to be filed within 3 months from end of month in which APA was entered
- If Assessment of any Py to which APA/Rollback Applies already Completed, Ao shall reassess such year Assessment as Per APA
- If Assessment of any Py to which APA/Rollback Applies is Pending, Ao shall Complete Assessment of such year as Per APA



## Secondary Adjustment [Section 92CE]

~~99.99%~~ 99.99%

Primary Adjustment : Increase in Income of Assessee due to ALP Adjustment

Secondary Adjustment : Treating 'Excess Money' as deemed loan & Calculating Interest Income on such Excess Money

$$\text{Excess Money} = \text{ALP} - \text{Actual Transaction Price}$$

Forms of Secondary Adjustment : Dividend, Equity or Loan

India Follows deemed loan Approach

Cases where Secondary Adjustment is applicable



② If Primary Adjustment is made in respect of Ay 2016-17 or Earlier

Example

Nestle India Ltd. [AE]  
(India)

PY 20-21

Chocolate sold  
@ Rs 10 crore



ALP = Rs 15 crore

Nestle US Ltd. [AE]  
(US)

Increase in Income of Nestle India = ALP - Actual TP



Suo moto in ROI

⇒ 15 cr. - 10 cr. = 5 cr. ⇒ Primary Adjustment

D. H. S.





Example

Nestle India Ltd. [AE]  
(India)

Py 20-21

Chocolate sold  
@ Rs 10 crore



ALP = Rs 15 crore

Nestle US Ltd. [AE]  
(US)

Increase in Income of Nestle India = ALP - Actual TP



5 cr. more in ROI

→ 15 cr. - 10 cr. = 5 cr. ⇒ Primary Adjustment

Due date of ROI



30th Nov 2021

Repatriate to India



CA Final DT • Transfer Pricing

Chocolate Sold @ ₹ 10 Cr. (45) - [unclear]

↓

ALP = ₹ 15 Cr.

Increase in Income of Nestle India = ALP - Actual TP

↓

5 cr. moto in ROI ⇒ 15 cr. - 10 cr. = 5 cr. ⇒ Primary Adjusted

Due date of ROI

↓

30th Nov 2021

↓

Repatriate to India

↓

30.11.2021 + 90 days

↓

28.2.2022



## Secondary Adjustment [Section 92CE]

Primary Adjustment : Increase in Income of Assessee due to ALP Adjustment

Secondary Adjustment : Treating 'Excess Money' as deemed loan & Calculating Interest Income on such Excess Money

$$\boxed{\text{Excess Money}} = \text{ALP} - \text{Actual Transaction Price}$$

Forms of Secondary Adjustment : Dividend, Equity or Loan

India Follows deemed loan Approach

Cases where Secondary Adjustment is applicable





## Cases where Secondary Adjustment has to be made

Where Primary Adjustment of Transfer Price has been :

- ① Made suo-moto by Assessee in ROI
- ② Made by AO / Appellate Authority AND Accepted by Assessee
- ③ Determined by APA
- ④ Made due to Safe Harbour Rules

## Excess Money Repatriation

Excess Money available with AE shall be Repatriated to India within

90 days from the date of assessment





④ Made due to Safe Harbour Rules

### Excess Money Repatriation

Excess Money available with AE shall be Repatriated to India within

90 days from

- Date of Order [ If Primary Adjustment made by Ao/ Appellate Authority ]
- Due Date of ROI [ Other Case ]  
↓  
30th Nov of Ay

If not repatriated within 90 days, Excess Money shall be deemed to be an Advance given to AE and Interest Income on such Advance shall be...



Excess Money available with AE shall be Repatriated to India within 90 days from

- Date of Order [ If Primary Adjustment made by Ao/ Appellate Authority ]
- Due Date of RoI [ Other Case ]

If not repatriated within 90 days, Excess Money shall be deemed to be an Advance given to AE and Interest Income on such Advance shall be Computed from

- Date of order [ If Primary Adjustment made by Ao/ Appellate Authority ]
- Due Date of RoI [ Other Case ]

Calculation of Interest Rate for





WPI Rate as on  
1st April of Py  
+  
3.25%

6 Months LIBOR Rate as on  
30th September of Py  
+  
3%

Option to Pay Additional Income Tax, if the Excess Money is Not Repatriated

- Assessee has Option to Pay Additional Income Tax @ 20.9664% [18% Tax + 12% Surcharge + 4% Cess] on Such Excess Money
- If Assessee Paid Additional Income Tax, he will not be required to make Secondary Adjustment and there is no Interest Income from date of Payment of Such Tax





## Option to Pay Additional Income Tax, if the Excess Money is Not Repatriated

- Assessee has Option to Pay Additional Income Tax @ 20.9664% [18% Tax + 12% Surcharge + 4% Cess] on Such Excess Money
- If Assessee Paid Additional Income Tax, he will not be required to Make Secondary Adjustment and there is no Interest Income from Date of Payment of Such Tax

## No Requirement of Secondary Adjustment in Following Cases:

- ① If Amount of Primary Adjustment is upto Rs 1 Crore  
or

② If Primary Adjustment is upto Rs 1 Crore

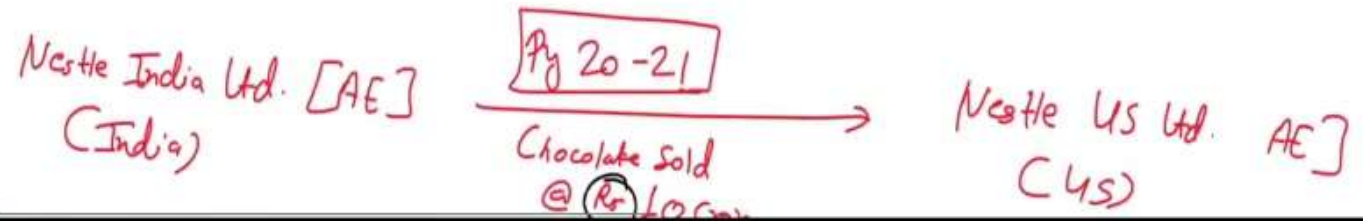


Adjustment and there is no Interest Income from date of Payment of Such Tax <sup>primary secondary</sup>

No Requirement of Secondary Adjustment in following Cases:

- ① If Amount of Primary Adjustment is upto Rs 1 Crore
- or
- ② If Primary Adjustment is made in Respect of Ay 2016-17 or Earlier

Example





CA Final DT - Transfer Pricing

Chocolate Sold @ ₹ 10 Cr. (45) - 100

↓ ↓

ALP = ₹ 15 Cr.

Increase in Income of Nestle India = ALP - Actual TP  
⇓  
5 cr. more in ROI ⇒ 15 cr. - 10 cr. = 5 cr. ⇒ Primary Adjustment

Due date of ROI  
⇓  
30th Nov 2021

⇓

Repatriate to India

⇓

30.11.2021 + 90 days

⇓

28.2.2022



30.11.2021 + 90 days

⇓

28.2.2022

Assura, Not repatriated upto 31.3.2022

↓ Year SBI Rate as on 1.4.2021 = 8.1.

Solution

Interest Income  
for Py 21-22

$$= 5 \text{ cr.} \times 11.25\% \times \frac{122}{365}$$

→ [8.1 + 3.25%]

⇓

18,80,137

From due date of ReI

From 30.11.21 to 31.3.2022

⇓  
122 days





10.4.2022

Assume, Not repatriated upto 31.3.2022

1 year SBI Rate as on 1.4.2021 = 8.1.

Solution

Interest Income  
for FY 21-22

$$= 5 \text{ cr.} \times 11.25\% \times \frac{122}{365}$$

→ [8.1 + 325%]

From due date of ROI

From 30.11.21 to 31.3.2022

122 days

18,80,137

If Assessee opts to pay Additional Tax on 1.4.2022



18,80,137

From 30.11.21 to 31.3.2022

122 days

If Assessee opts to pay Additional Tax on 1.4.22

$$\text{Additional Tax} = 5 \text{ cr.} \times 20.9664\% = \underline{1,04,83,200}$$

In that case No need to Repatriate Excess Money  
and there is no Interest Income from 1.4.22



## Documents to be Maintained [Section 92D]

- Every Person who enters into an International Transaction is required to Maintain Documents & Records as Prescribed [TP Study Report]
- TP Study Report is to be maintained for Period of 8 years from end of Relevant Ay
- TP Study Report is Not required to be maintained if aggregate value of International Transactions is upto Rs 1 crore
- If Any Document is required by AoITPO/CITCA) during any Proceeding, it shall be Furnished within 30 days [Additional time of 30 days]

## Audit Report [Section 92E]

Every Person who enters into an International Transaction is required to obtain



## Audit Report [Section 92E]

- Every person who enters into an International Transaction is required to obtain report from Chartered Accountant in Form No. 3CEB
- Due date of filing Audit Report is 31st Oct of Ay [i.e. One Month prior to due date of filing of ROI]

## Penalties

Nature of Default	Penalty
Failure to Report International Transaction at ALP [Misreporting of Income u/s 270A]	200% of Tax on Underreported Income
Note: If Assessee maintains documents u/s 92D, declare International Transaction and disclose all facts - No Penalty	



CA Final DT • Transfer Pricing

Nature of Default	Penalty
<p>Failure to Report International Transaction at ALP [Misreporting of Income u/s 270A]</p> <p>Note: If Assessee maintains documents u/s 92D, declare International Transaction and disclose all facts = No Penalty u/s 270A</p>	<p>200% of Tax on Underreported Income</p>
<p>Failure to Furnish Audit Report u/s 92E</p>	<p>Rs 1,00,000</p>
<p>Fails to keep &amp; Maintain Documents u/s 92D Fails to Report International Transaction Fails to Furnish Documents required by Ao/CIT(A) within time Maintain or furnish Incorrect Information or Documents</p>	<p>2% of Value of International Transaction</p>



## Country by Country [CBC] Reporting Requirement [Section 286]

- By Action Plan 13 of BEPS

- Three level of documentation

- Local file : TP Study Report

- Master file : Contains Group Overview [Submitted by Constituent Entity]

- Country by Country [CBC] Report : Contains detail information regarding Profit, Assets, Employees etc [Submitted by Parent Entity]

Parent Entity ⇒ Ultimate Holding Company [CFS Prepare]



## Country by Country [CBC] Reporting Requirement [Section 286]

- By Action Plan 13 of BEPS
- Three level of documentation

→ Local file : TP Study Report

→ Master file : Contains Group Overview [Submitted by Constituent Entity]

→ Country by Country [CBC] Report : Contains detail information regarding Profit, Assets, Employees etc [Submitted by Parent Entity]

Parent Entity ⇒ Ultimate Holding Company [CFS Prepare]

Constituent Entity ⇒ AE of Such Parent Entity



### Master file

- Master file Contains group Overview
- Master file shall be furnished by Constituent Entity Resident in India upto due date of RoI
- Master file is required to be furnished if Consolidated Group Revenue exceeds Rs 500 crores
- If Master file is not filed within Time, Penalty will be Rs 5,00,000

### Country by Country [CbC] Report

- Cbc Report Contains details of Multinational Group for each Country in which they do business regarding
  - Profit before Tax
  - Income Tax
  - Capital Employed / Assets
  - Employees

It is Submitted by Parent Entity to the Tax Authority in its Country of Residence





- Cbc Report Contains details of Multinational Group for each Country in which they do business regarding
  - Profit before Tax
  - Income Tax
  - Capital Employed / Assets
  - Employees
- It is Submitted by Parent Entity to the Tax Authority in its Country of Residence
- Parent Entity Resident in India shall be required to Furnish Cbc Report to Joint Commissioner (Jc) for every Accounting year within 12 Months from end of said year
- Cbc Report is required to be furnished if Consolidated Group Revenue exceeds Rs 5500 Crores
- Constituent entity Resident in India shall be required to furnish Cbc Report, if:
  - Parent entity is resident of Country where no obligation to file Cbc Report
  - Parent entity is resident of Country with which India has no Information Sharing Agreement
  - There is a Systematic Failure



CA Final DT • Transfer Pricing

... o n systematic failure

... on Sharing Agreement

- Penalty for Non Furnishing of CbC Report on time

<u>Period of Delay</u>	<u>Penalty</u>
Not More than 1 Month	Rs 5,000 Per Day
Beyond 1 Month	Rs 15,000 Per Day [Beyond 1 Month]
Continuing default even after Notice	Rs 50,000 Per Day [From Notice Date]
- Penalty for Submission of Inaccurate Information in CbC Report = Rs 5,00,000

Sample →

Para. Switzerland Tax Authority



CA Final DT • Transfer Pricing

## Domestic Transfer Pricing

- Applicable on Specified Domestic Transaction  
↓  
Transaction between Two or More AE in which both are Residents
- Specified Domestic Transaction
  - Shifting of Profit to Tax holiday Enterprise [i.e. 80IA]
  - Shifting of Profit to Loss Making Enterprise
- Applicable only if Aggregate Value of Specified Domestic Transactions Exceed Rs 20 crore

Sec. 92A, 92C, 92CA 92D 92E





Transaction between Two or More AE in which both are Residents

• Specified Domestic Transaction

- Shifting of Profit to Tax holiday Enterprise [i.e. 80IA]
- Shifting of Profit to Loss Making Enterprise

- Applicable only if Aggregate Value of Specified Domestic Transactions exceeds Rs 20 crore
- Sec. 92A, 92C, 92CA, 92D, 92E, Penalties shall apply as it is

Transaction with Person local in India



• Sec. 92A, 92C, 92CA, 92D, 92E, Penalties shall apply as it is

Transaction with Person located in Notified Jurisdictional Area (NJA) [Section 94A]

**NJA**

Central Government may notify any Country as NJA

Earlier Central Govt. declared Cyprus as NJA, but later on Central Govt. by Notification removed Cyprus as NJA

**NJA Provisions**

Am. To ...



### NJA Provisions

- Any Transaction with Person located in NJA shall be deemed to be an International Transaction [whether such Person is AE or Not] and Transfer Pricing Provisions shall Apply
- Any Amount received from Person located in NJA shall be deemed to be Income of Recipient if recipient does not explain Source of such Income
- Rate of TDS for any Payment made to Person located in NJA shall be  $\left. \begin{array}{l} \rightarrow \text{Rate specified in Income Tax Act} \\ \text{or} \\ \rightarrow 30\% \end{array} \right\} \Rightarrow \text{Higher}$





## Limitation of Interest Deduction [Section 94B]

By Action Plan 4 of BEPS to remove Thin Capitalisation [i.e. Preference of debt over Equity]

→ Applicable to

Indian Company  
or

PE of Foreign Company in India

Who incurs Interest Expenditure on Any Debt taken from AE

→ Interest Meaning

Interest includes Interest on



By Action Plan 4 of BEPS to remove Thin Capitalisation [i.e. Preference of debt over Equity]

→ Applicable to

Indian Company  
or

PE of Foreign Company in India

Who incurs Interest Expenditure on Any Debt taken from AE

→ Interest Meaning

Interest includes Interest, discount, Other Financial Charges such as Commission, Fees, Brokerage related to Any debt

→ Excess Interest would be disallowed





Interest includes Interest, discount, Other financial Charges such as Commission, Fees, Brokerage related to Any debt

→ Excess Interest would be disallowed

Excess Interest

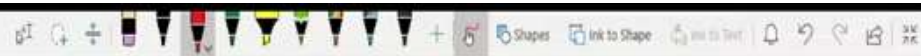
Interest to AE - 30% of EBITDA  
or

Interest to AE

}  $\Rightarrow$  Lower  $\Rightarrow$  Disallowed

In other words, Interest upto 30% of EBITDA is Allowed

EBITDA



Interest includes Interest, discount, Other financial Charges such as Commission, Fees, Brokerage related to Any debt

→ Excess Interest would be disallowed

Excess Interest

Interest to AE - 30% of EBITDA

$$48\text{cr} - 30\% \text{ of } 180\text{cr} = 18\text{cr}$$

Interest to AE

}  $\Rightarrow$  Lower  $\Rightarrow$  Disallowed  
 $\parallel$   
18cr

EBITDA = 180 cr.  
Int. to AE = 48 cr.

In other words, Interest upto 30% of EBITDA is Allowed

EBITDA = 180 cr





→ Carry Forward & Set off of Disallowed / Excess Interest

Excess Interest can be C/f for Maximum 8 Ay and can be Claimed /  
Setoff as deduction under P&BP head upto that limit

→ Special Point

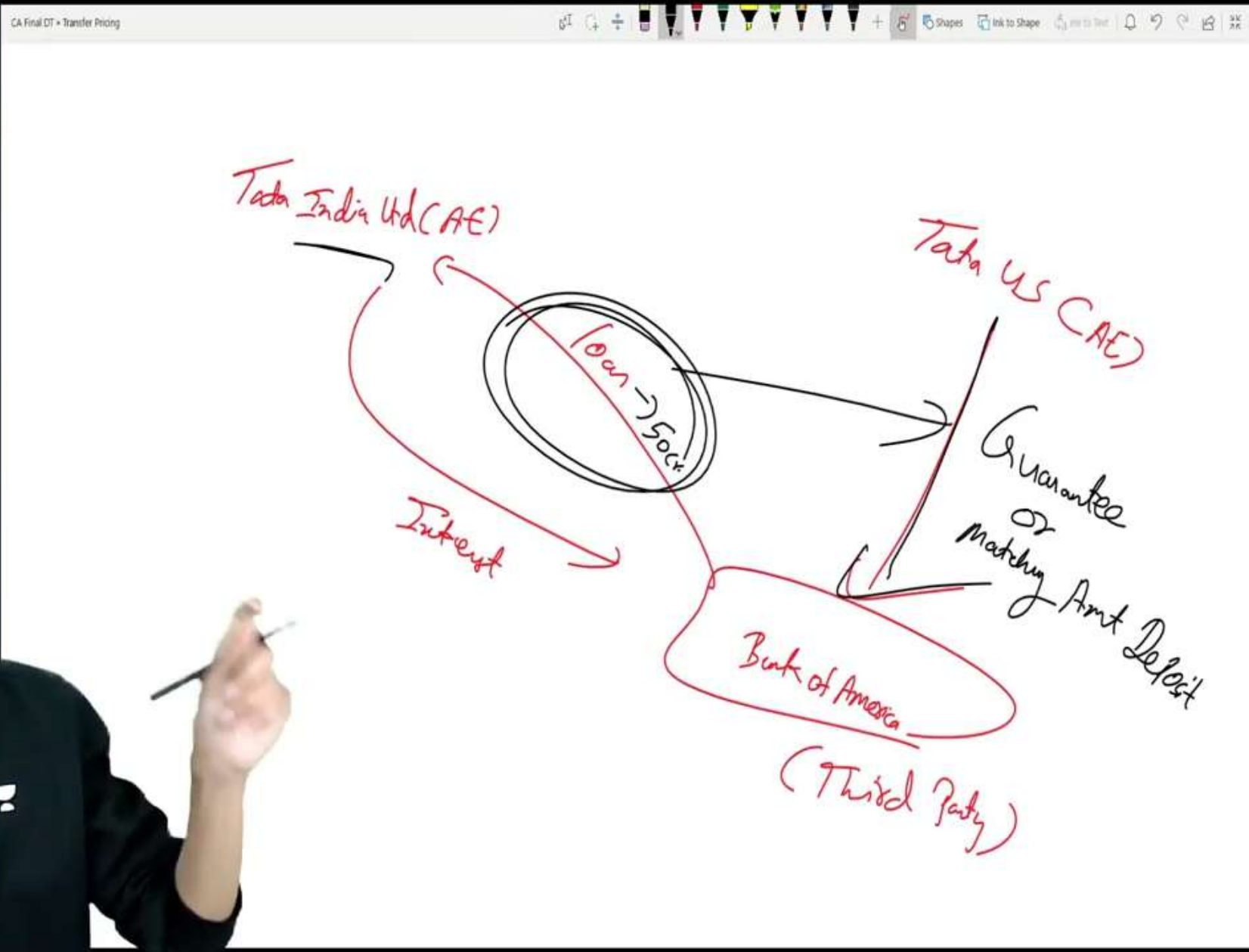
Where debt is given by Other Person which is not AE, but

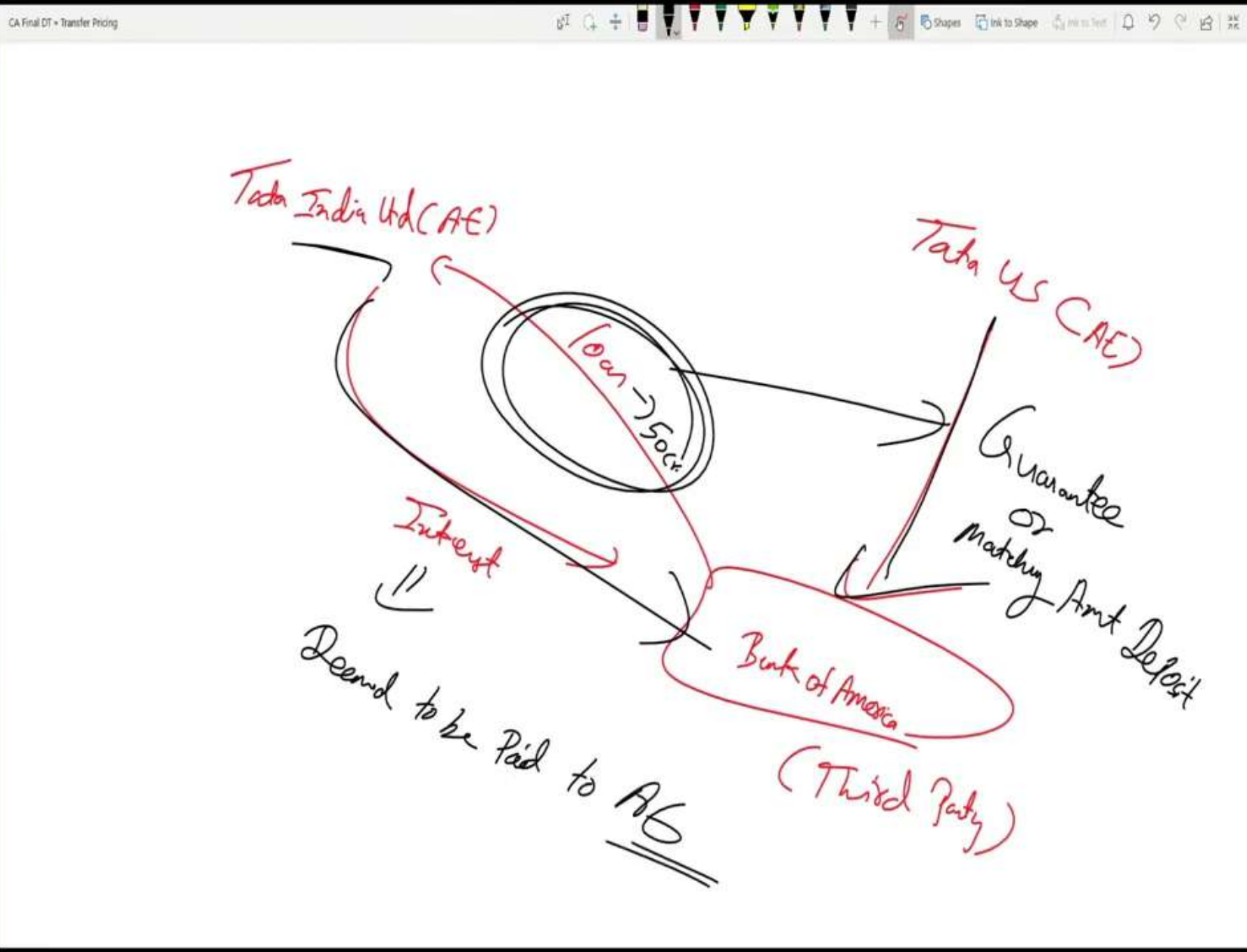
- AE either Provides guarantee to Other Person for such debt

or

- Deposit Matching & Corresponding Amt. with such Other Person

or







- HE either Provides guarantee to Other Person For Such debt  
or
- Deposit Matching & Corresponding Amt. with Such Other Person  
⇓

Such Debt shall be deemed to be taken From AE

→ Non Applicability of Section 94B

- If Total Interest to AE is upto Rs 1 Cr in Py
- If borrower is Banking or Insurance Company



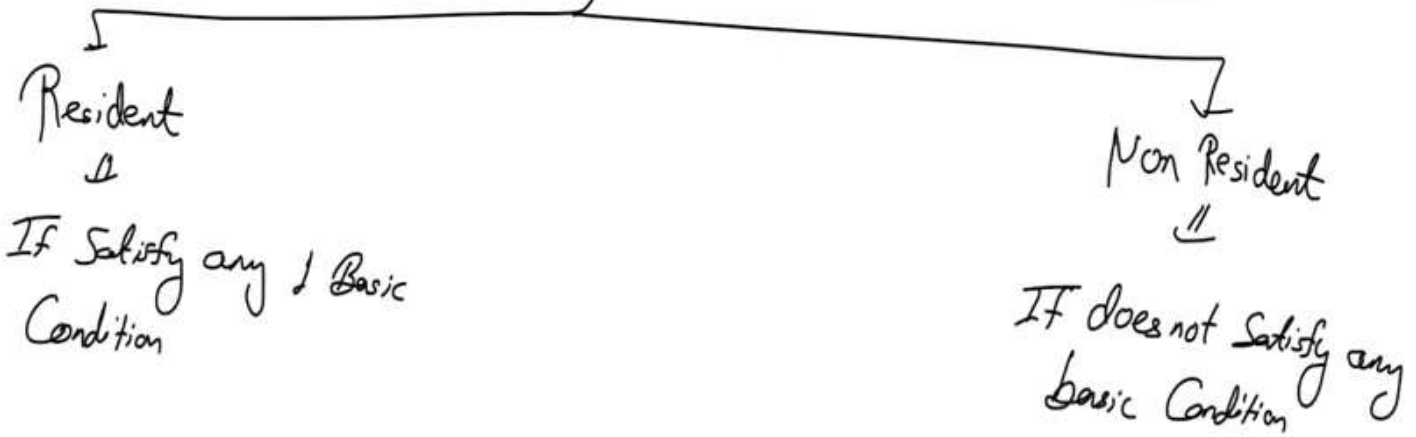
# Non Resident Taxation

Residential Status [Section 6]

Residential Status of Individual

- Pro Em
- 9(1)(a) (i) & (ii)
- 44B, 44BBA
- XII-A => NRI
- 115A -> Ind/Boz/FTS
- 115AD -> FII
- 115BBA -> Sportsman

Individual



additional income-tax so paid by Allepey Ltd., it will not be required to make secondary adjustment and compute interest from the date of payment of such tax. The additional income-tax so paid by Allepey Ltd. would be treated as the final payment of tax in respect of excess money not repatriated and no further credit would be allowed to Allepey Ltd. or to any other person in respect of the amount of additional income-tax so paid.

#### Question 8

Yamuna Ltd., an Indian Company, on 01-04-2020 has borrowed ₹ 80 crores from Rhine Inc, a Company incorporated in Country P, at an interest rate of 8% p.a. The said loan is repayable over a period of 12 years. Further, loan is guaranteed by Prague Inc incorporated in Country P. Brussels Inc, a non-resident, holds shares carrying 40% of voting power both in Yamuna Ltd. and Prague Inc. Brussels Inc has also deposited ₹ 80 crores with M/s Rhine Inc.

The net profit of Yamuna Ltd. was ₹ 7 crores after debiting the above interest, depreciation of ₹ 4 crores and income-tax of ₹ 2.70 crores. Yamuna Ltd. wants to know if interest is allowable as deduction under the head "Profits and gains of business or profession" and if so, to what extent.

#### Answer

If an Indian company, being the borrower, incurs any expenditure by way of interest in respect of any debt issued by its non-resident associated enterprise (AE) and such interest exceeds ₹ 1 crore, then, the interest paid or payable by such Indian company in excess of 30% of its earnings before interest, taxes, depreciation and amortization (EBITDA) or interest paid or payable to associated enterprise, whichever is lower, shall not be allowed as deduction as per section 94B.

Further, where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise and limitation of interest deduction would be applicable.

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1.112

#### INTERNATIONAL TAXATION

In the present case, since Brussels Inc. holds 40% of voting power i.e., 26% or more of voting power in both Yamuna Ltd and Prague Inc., Yamuna Ltd. and Prague Inc. are deemed to be associated enterprises.

Since loan of ₹ 80 crores taken by Yamuna Ltd., an Indian company from Rhine Inc. is guaranteed by Prague Inc. an associated enterprise of Yamuna Ltd., such debt shall be deemed to have been issued by an associated enterprise and interest payable to Rhine Inc shall be considered for the purpose of limitation of interest deduction under section 94B.

#### Computation of interest to be allowed in the computation of income under the head profits and gains of business or profession of Yamuna Ltd.

Particulars	₹
Net profit	7,00,00,000
Add: Interest already debited (₹ 80 crores x 8%)	6,40,00,000
Depreciation	4,00,00,000
Income tax	2,70,00,000
<b>EBITDA</b>	<b>20,10,00,000</b>
Interest paid or payable by Yamuna Ltd.	6,40,00,000
Less: Excess interest – Lower of	
Interest paid or payable in excess of 30% of EBITDA	
- ₹ 6,40,00,000 (-) ₹ 6,03,00,000	₹ 37,00,000
Interest paid or payable to non-resident AE	₹ 6,40,00,000
	<u>37,00,000</u>
Interest allowable as deduction	<b>6,03,00,000</b>

**Note** – Since Brussels Inc., an associated enterprise of Yamuna Ltd., has deposited a matching amount of ₹ 80 crores with Rhine Inc., the interest payable by Yamuna Ltd. to Rhine Inc. on loan of ₹ 80 crores borrowed from Rhine Inc. would be subject to limitation of interest deduction on the basis of this line of reasoning also.



As per section 92CA(2A), the Transfer Pricing Officer (TPO) can also determine the ALP of other international transactions which have not been referred to him, but which have come to his notice subsequently in the course of proceedings before him.

The Assessing Officer has made reference for determination of ALP in respect of the manufacturing unit at Hyderabad which shall be taken as the proceedings before him (TPO).

The TPO can enlarge his scope of work during the course of proceedings before him of Hyderabad unit by calling for details of trading activity at Surat, and the same is within the powers conferred by section 92CA(2A).

#### Question 7

*Allepey Ltd. is an Indian Company in which Andes Inc., a Country Z company holds 38% shareholding and voting power. During the previous year 2018-19, the Indian company supplied computers to the Country Z based company @CZD 1100 per piece. The price of computer supplied to other unrelated parties in Country Z is @CZD 1400 per piece. During the course of assessment proceedings relating to A.Y.2019-20, the Assessing Officer carried out primary adjustments and added a sum of ₹ 168 lakhs, being the difference between actual price of computer and arm's length price for 700 pieces and it was duly accepted by the assessee. The Assessing Officer passed the order, in which the primary adjustments were made, on 1.6.2020. On account of this adjustment, the excess money of ₹ 168 lakhs is available with Andes Inc., Country Z. In this context, Allepey Ltd. wants to know the effect of this transaction for the assessment year 2021-22 on the basis that it declared an income of ₹ 300 lakhs and the excess money is still lying with Andes Inc. till today. Assume the rate of exchange as 1 CZD = ₹ 80. [CZD stands for Country Z Dollars, which is the currency of Country Z]; six month LIBOR as on 30.9.2020 is 9.50%.*

#### Answer

In this case, Allepey Ltd., the Indian company, and Andes Inc., a Country Z company, are deemed to be associated enterprises as per section 92A(2) since Andes Inc. holds shares carrying not less than 26% voting power in Allepey Ltd.

On account of the primary adjustment of ₹ 168 lakhs made by the Assessing Officer, the total income of Allepey Ltd. for A.Y.2019-20 would increase by ₹ 168 lakhs.

#### I. If Allepey Ltd. opts not to pay additional income-tax on such excess money not repatriated

In this case, secondary adjustment has to be made under section 92CE, since –

- (1) The company has accepted the primary adjustment made by the Assessing Officer;
- (2) The primary adjustment is in respect of A.Y.2019-20; and
- (3) The primary adjustment exceeds ₹ 100 lakhs.

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Accordingly, the excess money (i.e., ₹ 168 lakhs) available with the associated enterprise (i.e., Andes Inc., Country Z) not repatriated to India within 90 days of the date of the order of the Assessing Officer would be deemed as an advance made by the Allepey Ltd. to its associated enterprise, Andes Inc. Interest would be calculated on such advance at 12.50% [i.e., the rate of six month LIBOR as on 30th September, 2020 (i.e., 9.50%)+ 3%], since the international transaction is denominated in foreign currency. Such interest computed from 1.6.2020 to 31.3.2021 amounting to 303/365 x 168 lakhs x 12.50% = ₹ 17,43,288 would be added to its total income for A.Y.2021-22.

#### II. If Allepey Ltd. opts to pay additional income-tax on such excess money not repatriated

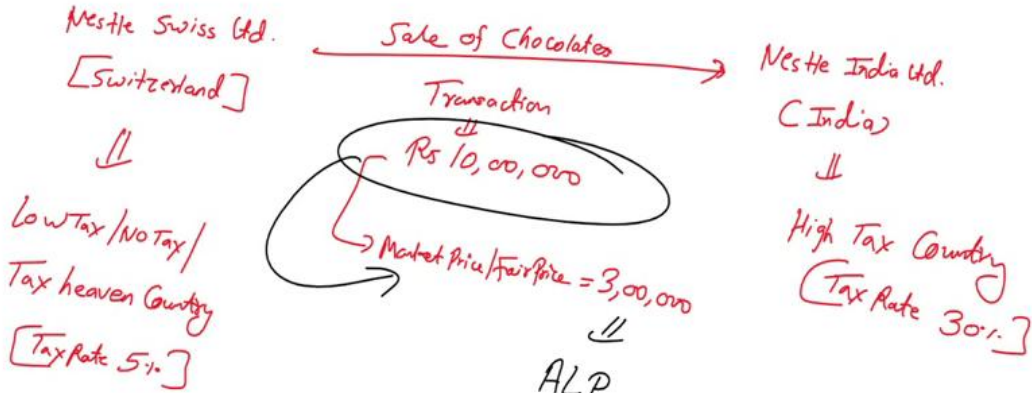
In such a case, Allepey Ltd. has to pay additional income-tax @20.9664% (tax @18% plus surcharge @12% plus cess@4%) on ₹ 168 lakhs, which amounts to ₹ 35,22,355. Where additional income-tax is so paid by Allepey Ltd., it will not be required to make secondary adjustment and compute interest from the date of payment of such tax. The additional income-tax so paid by Allepey Ltd. would be treated as the final payment of tax in respect of excess money not repatriated and no further credit would be allowed to Allepey Ltd. or to any other person in respect of the amount of additional income-tax so paid.

#### Question 8

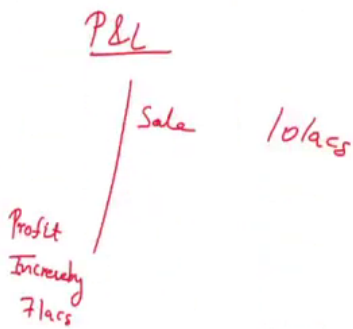
*Verma Ltd. an Indian Company on 01.01.2020 has borrowed ₹ 20 crore from Dhira, Inc. a*

Transfer Pricing

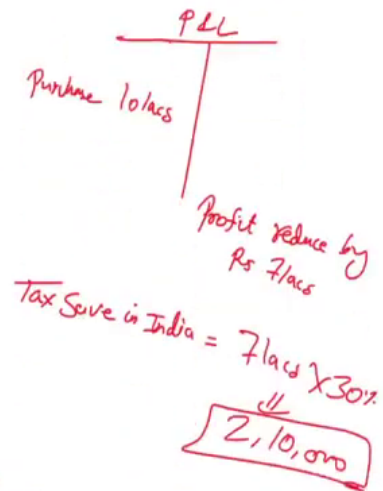
Nestle Group → MNC



ALP  
Market Price/Fair Price

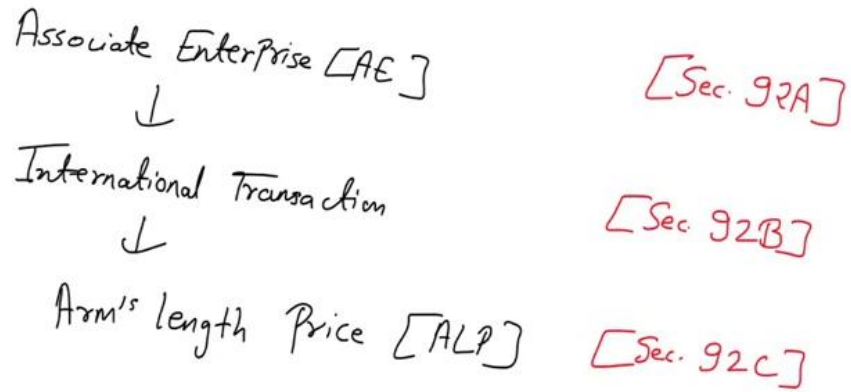


Extra Tax in Switzerland  
⇒ 7 lacs × 5% = 35,000



Net Benefit to Group  
2,10,000 - 35,000 = 1,75,000

Charging Section [Section 92]

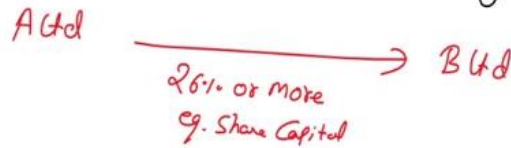


Associate Enterprise [Section 92A]

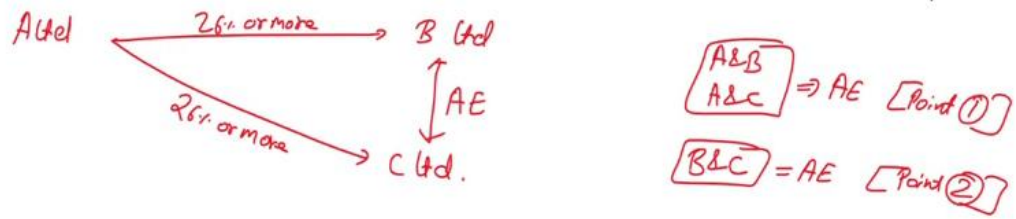
Enterprise : Means any Person engaged in any Business Activity

Two Enterprise are deemed to be Associate Enterprise if :

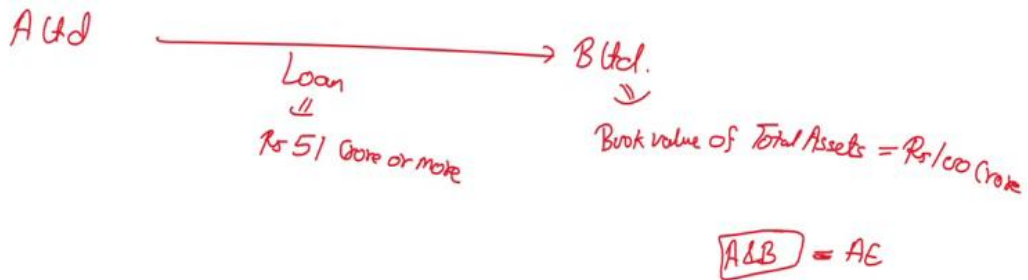
- ① One Enterprise holds 26% or more Voting Power in Other Enterprise



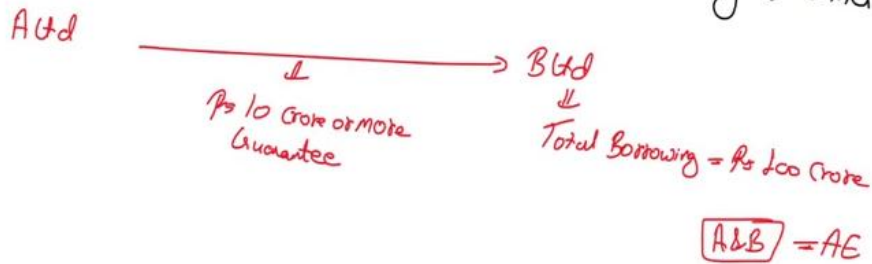
② Any Person holds 26% or More Voting Power in each of two Enterprise



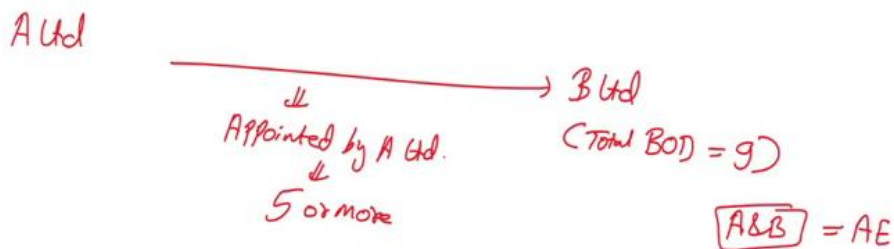
③ Loan Advanced by One Enterprise Constitutes 51% or more of Book Value of Total Assets of Other Enterprise



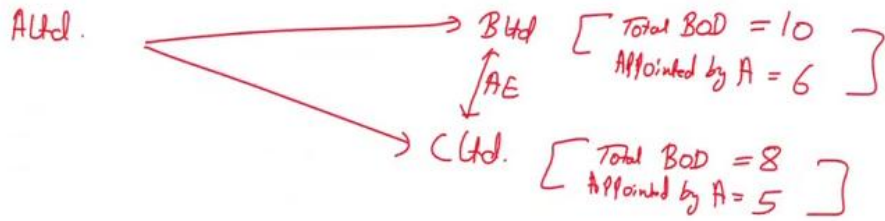
④ One Enterprise guarantees 10% or more of Total Borrowing of Other Enterprise



⑤ One Enterprise appoints More than half of Board of Directors Or at least One Executive Director of Other Enterprise



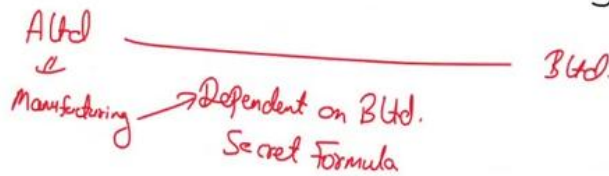
⑥ Any Person appoints more than half of Board of directors or at least one Executive Director of each of two Enterprise



$$\boxed{\begin{matrix} A \& B \\ A \& C \end{matrix}} = AE \text{ [Point 5]}$$

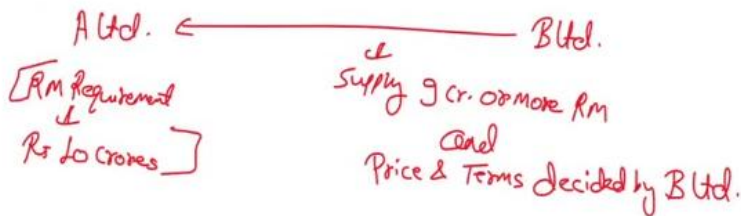
$$\boxed{B \& C} = AE \text{ [Point 6]}$$

⑦ Manufacturing or Processing of One Enterprise is wholly dependent on Intangible Asset [Knowhow, Patent, Copyright, Secret Formula etc.] of Other Enterprise



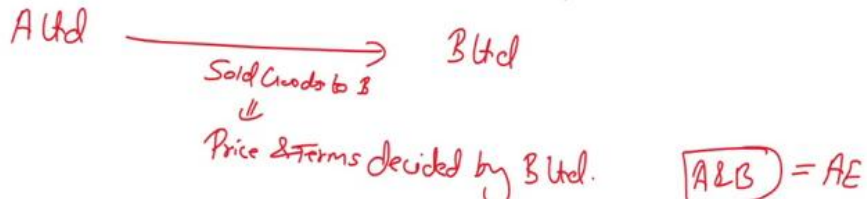
$$\boxed{A \& B} = AE$$

⑧ 90% or more Raw Material/Consumable requirement of One Enterprise is Supplied by Other Enterprise and Price & Terms decided by Such Other Enterprise

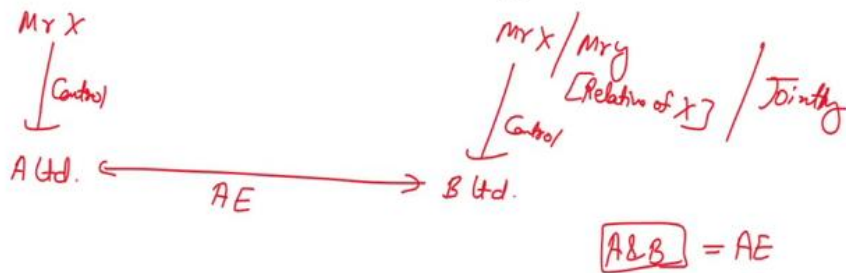


$$\boxed{A \& B} = AE$$

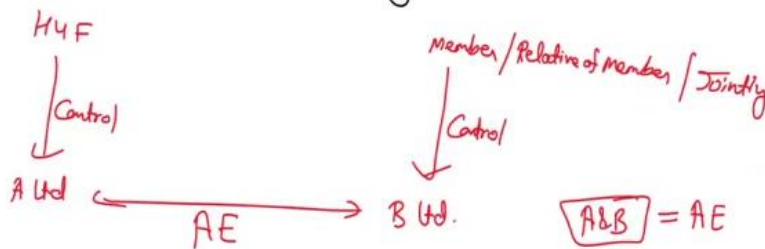
9) Goods Manufactured by One Enterprise is Sold to Other Enterprise and Price & Term decided by Such Other Enterprise



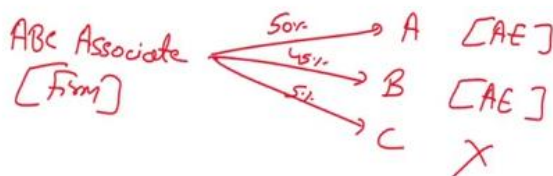
10) If One Enterprise is Controlled by an Individual, Other Enterprise is Controlled by Individual or his relative or Jointly



11) If One Enterprise is Controlled by HUF, Other Enterprise is Controlled by member of HUF or Relative of member or Jointly



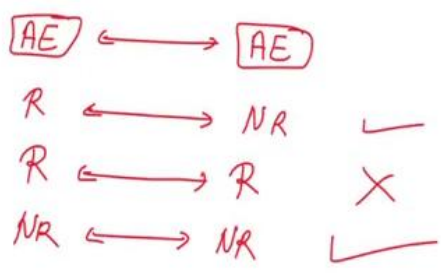
12) If One Enterprise is Firm/AOP/BOI, Other Enterprise holds atleast 10% Profit Share Ratio [PSR] in Such Enterprise



13 There exist any relationship of mutual Interest between two Enterprise  
eg. → Joint Venture

**International Transaction [Section 92B]**

→ It means a transaction between two or more Associate Enterprise in which at least 1 shall be Non Resident.



→ Such Transaction should be in the nature of :

- Purchase, Sale or Lease of Property
- Provision of Service
- Lending or Borrowing of Money
- Allocation of Cost or Expense
- Any other Transaction which affects Profit

→ Such International Transaction must be done at Arm's length Price [ALP],  
If not done at ALP, it requires adjustment of Income Primary Adjustment

→ The above adjustment shall either result in Increase in Income of Assessee.  
If Adjustment results in decrease in Income of Assessee, Transfer Pricing Provisions shall not apply → Ignore Such Adjustment

Example

Nestle India Ltd.

⇒ Total Income before TP Adjustment = ₹ 50 lacs

Case I

Nestle India [AE] → Sale @ ₹ 8,00,000 → Nestle US [AE]  
ALP = 14,00,000

TI before TP Adjustment 50 lacs

(+) Increase in Income due to TP Adjustment (14-8) 6 lacs

56 lacs

Case II

Nestle India [AE] → Sale @ ₹ 20,00,000 → Nestle US [AE]  
ALP = 16,00,000

TI before TP Adjustment 50 lacs

TP Adjustment (16-20)

↓  
Ignore  
Since it results in decrease in Income of Assn.

50 lacs

### Deemed International Transaction [Section 92B(2)]

If Transaction entered into by Enterprise with third Person [Not AE]

and

There exist a Prior Agreement between third Person & AE of Such Enterprise

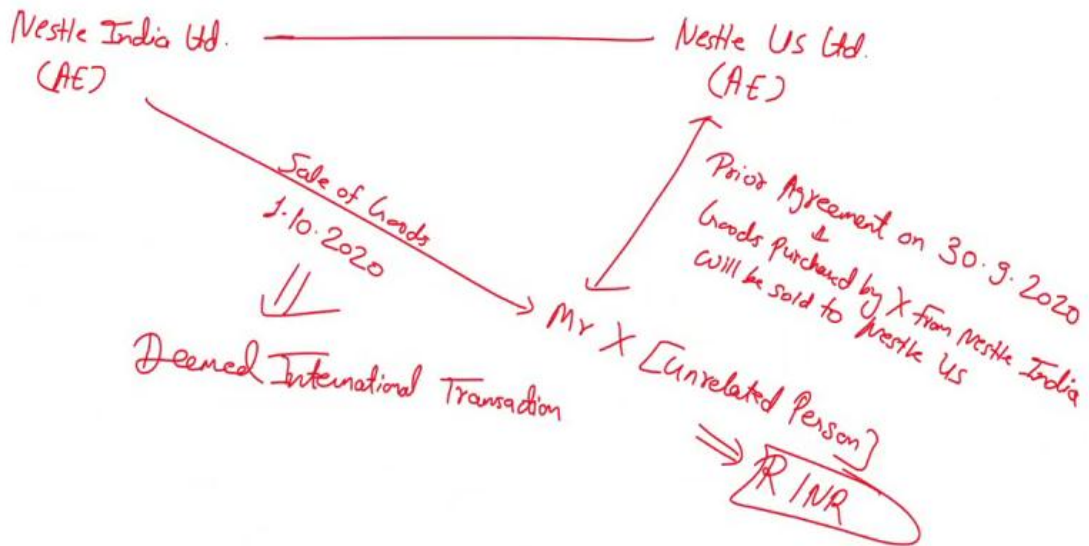
⇓

Such Transaction between Enterprise & third Person shall be deemed as International Transaction

[Whether Such Third Person is Resident or Non Resident]



### Example



### Computation of Arm's length Price [Section 92C]

ALP shall be determined by any of the following methods :

- ① Comparable Uncontrolled Price Method [CUP] L
- ② Resale Price Method [RPM]
- ③ Cost Plus Method [CPM]
- ④ Profit Split Method [PSM]
- ⑤ Transactional Net Margin Method [TNMM]

Most Appropriate Method shall be Selected

## Comparable Uncontrolled Price Method [CUP]

Compare transaction with AE with Similar Uncontrolled Transaction [i.e. Similar Transaction with Outsiders/Unrelated]

Calculation of ALP

Price Charged/Paid in Comparable Uncontrolled Transaction

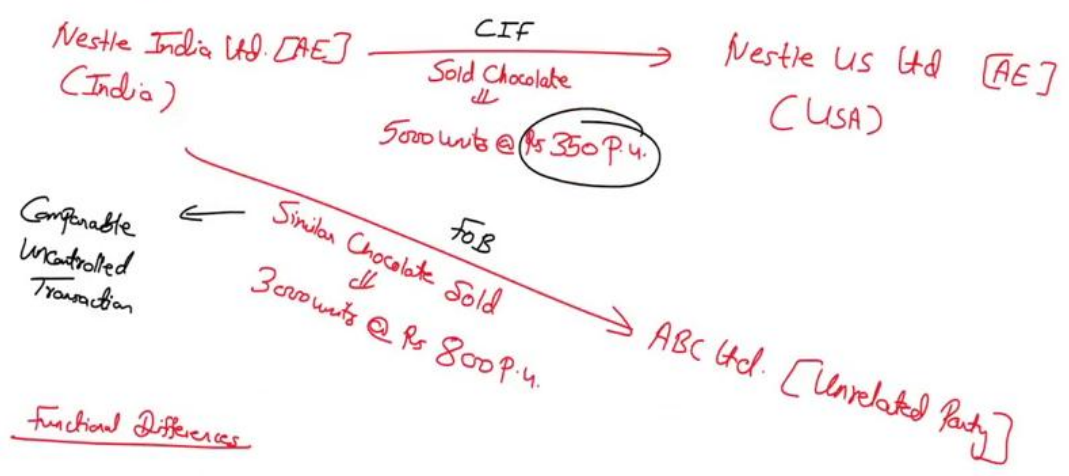
(±) Functional Difference Adjustment

- FOB & CIF
- Warranty
- Quantity Discount

ALP =

$$\frac{\text{XX}}{\text{XX}}$$

Example



Functional Differences

① Sale to AE is on CIF basis, while Sale to ABC Ltd. is on FOB.  
Insurance & Freight Cost = Rs 40 p.u.



② Nestle India Ltd. gives Warranty to AE for 6 months but not to ABC Ltd. Cost of warranty = Rs 70 p.u. per annum

③ Since Sales to AE is high in Quantity, Discount of Rs 60 p.u. is to be given

## Solution

### Calculation of ALP

Price charged in Comparable Uncontrolled Transaction	(₹4.)
	800
(±) Functional Adjustment	
FOB & CIF	+ 40
Warranty $[70 \times \frac{6}{12}]$	+ 35
Discount	- 60
	<hr/>
ALP	815

$$\text{Increase in Income of Nestle India Ltd.} = \underbrace{[815 - 350]}_{\substack{\text{Primary Adjustment} \\ \downarrow}} \times 5000$$
$$\underline{\underline{23,25,000}}$$

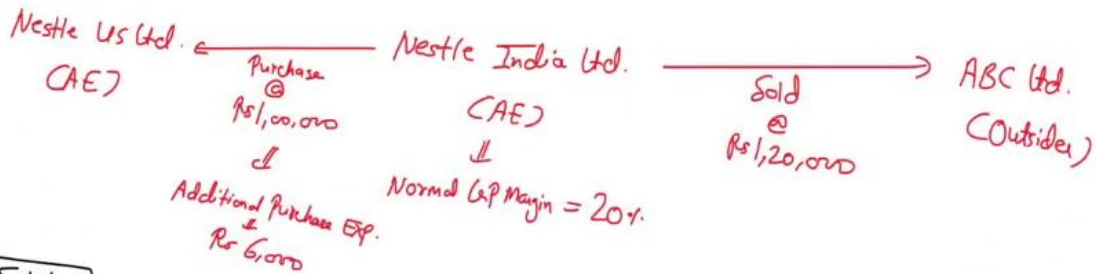
## Resale Price Method

When Purchase made From AE and resale as it is to Outsider

### Computation of ALP

Resale Price to Outsider	$xx$	
(-) Normal GP Margin	$\frac{Cxx}{xx}$	
(-) Additional Purchase Related Expenses	$(xx)$	
ALP =	<hr style="border: none; border-top: 1px solid black;"/>	
	$xx$	

### Example



### Solution

### Calculation of ALP

Resale Price to Outsider 1,20,000  
 (-) Normal GP Margin  $[1,20,000 \times 20\%]$  (24,000)  
 96,000  
 (-) Additional Purchase Exp. (6,000)  
 ALP 90,000

Increase in Income of Nestle India  $[1,00,000 - 90,000] = 10,000$

### Cost Plus Method

When Goods Manufactured by Enterprise is Sold to its AE

#### Computation of ALP

Direct & Indirect Cost of Production xx

Add: Normal GP Margin xx

(±) Functional Difference Adjustment in GP Margin

- Technical Support xx
- Quantity Discount xx
- Credit Period xx

$$\begin{array}{r} \text{xx} \\ \text{xx} \\ \text{xx} \\ \hline \text{ALP} = \underline{\underline{\text{xx}}} \end{array}$$

### Example

Tata India Ltd. [AE] (India)  $\xrightarrow{\text{Software Sold @ Rs 30,00,000}}$  Tata US Ltd. [AE] (US)  
Cost of Software incurred by Tata India = Rs 20,00,000

Similar Software Sold  
Normal GP Margin  
50%  
 $\xrightarrow{\text{Subject to following functional difference}}$  Sam Ltd. (Outsider)

- ① Tata US Ltd gives technical support to Tata India Ltd. but Sam Ltd. doesn't give any support  
Value of Technical Support = 8% of GP Margin
- ② Work for Tata US Ltd. is huge, so Qty. Discount is to be given to Tata US Ltd @ 6% of GP Margin
- ③ Tata India Ltd. gives Credit Period to Tata US Ltd. but not to Sam Ltd.  
Cost of Credit Period = 2% of Normal Billing Rate

Solution

Calculation of ALP

Cost Incurred

20,00,000

GP Margin

50%

(±) Functional Adj.

Technical Support [8% x 50%]

(4%)

Qty Discount [6% x 50%]

(3%)

Credit Period

2%

-----

45%

16,36,364

[ $\frac{45}{55} \times 20/acs$ ]

ALP

-----  
36,36,364  
-----

Increase in Income of Tata India  $(36,36,364 - 30,00,000) = 6,36,364$



## Profit Split Method

Used in Joint Venture

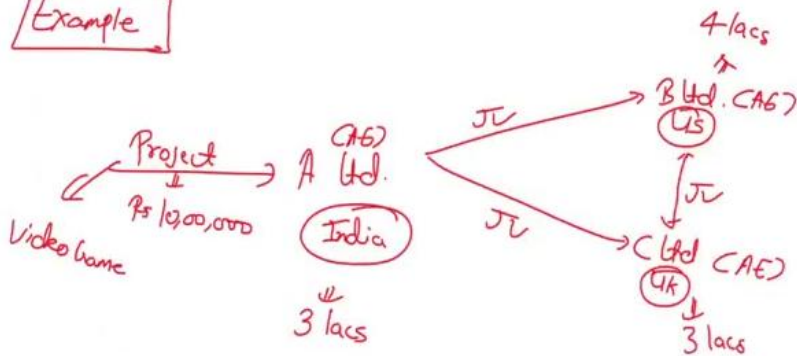
Profit/Contribution Split on the basis of given ratio of Capital Employed, Manpower, Risk Taking etc.

### Calculation of ALP

Calculate Combined Net Profit, then divide Net Profit in given ratio

$$ALP = \text{Cost Incurred} + \text{Net Profit Share}$$

### Example



Contribution Ratio on basis of Capital Employed, Manpower, Risk Taking etc. = A B C

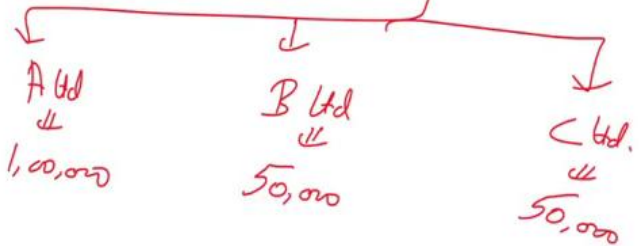
Total Cost incurred on Project = 8,00,000

Cost Incurred by A Ltd = 2,50,000

**Solution**

$$\text{Combined Net Profit} = 10,00,000 - 8,00,000 = 2,00,000$$

[50:25:25]



$$\text{ALP for A Ltd.} = 2,50,000 + 1,00,000 = 3,50,000$$

**Transactional Net Margin Method [TNMM]**

Operating Profit Margin of Other Enterprise in Similar industry shall be taken for Computing ALP

**Computation of ALP**

Cost Incurred

xx

(+) Operating Profit Margin of Other Enterprise in Similar Industry

xx

⇓

$$\frac{\text{OP Margin}}{\text{Total Cost}} \times 100$$

$$\text{ALP} = \underline{\underline{xx}}$$

Infosys India (AG)  $\xrightarrow{\text{Software Support Service @ Rs 50,00,000}}$  Infosys US (AE)  
 Cost Incurred for same = Rs 40,00,000

Wipro Ltd. = Operating Profit Margin = 30%

**Solution**

Cost Incurred by Infosys India	40,00,000
(+) OP margin of Wipro $[30\% \times 40,00,000]$	12,00,000
<b>ALP =</b>	<b>52,00,000</b>

Increase in Income of Infosys India  $(52 \text{ lacs} - 50 \text{ lacs}) = 2,00,000$

**IF More than 1 ALP is arrived by Most Appropriate Method**

IF More than 1 but upto 5 ALP Arrived  
 $\Downarrow$   
 Arithmetic Mean Concept

IF 6 or more ALP Arrived  
 $\Downarrow$   
 Range Concept

**Arithmetic Mean Concept**

Calculate Average ALP

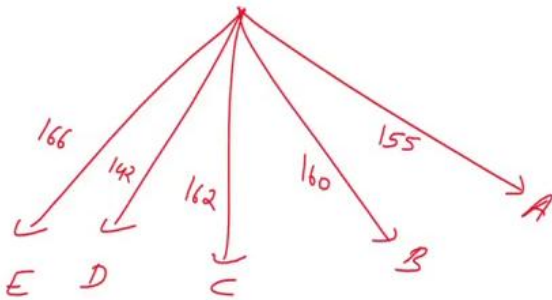
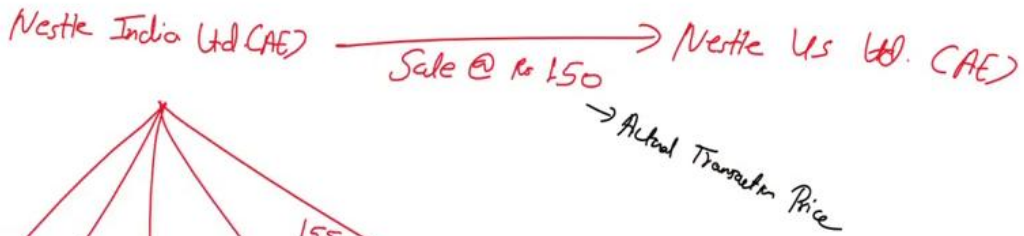
IF difference between Actual Transaction Price and Average ALP is upto 3% of **Actual Transaction Price**

ALP = Actual Transaction Price

IF difference is more than 3%.

ALP = Average ALP

**Example**



**Solution**

Actual TP	150
(+) 150 x 3%	4.5
	<hr/> 154.5

$$\text{Average ALP} = \frac{166 + 142 + 162 + 160 + 155}{5} = 157$$

If diff. b/w Average ALP & Actual TP is upto 3% (if Avg ALP is upto 154.5)  
 then Actual TP will be ALP

In this case, since difference is more than 3%, So ALP = Average ALP  
 157

### Range Concept

- Range Concept is not applicable in case of Profit Split Method
- It is applicable only if Number of Values in dataset is 6 or more [i.e. ALP is 6 or more]

#### Steps for Range Concept

- Arrange value in dataset in Ascending Order
  - Calculate 35% and 65% of Total Number of Values in dataset
  - Range will start from 35% value and end at 65% value
  - If Actual Transaction Price falls within range, then ALP = Actual Transaction Price
  - If Actual Transaction Price doesn't fall within range, Calculate Median [50%] of Total Number of Values in dataset
- Median Value will be ALP

## Steps for Range Concept

- Arrange value in dataset in Ascending Order
- Calculate 35% and 65% of Total Number of Values in dataset
- Range will start From 35% value and end at 65% value
- IF Actual Transaction Price falls within range, then ALP = Actual Transaction Price
- IF Actual Transaction Price doesn't fall within range, Calculate Median [50%] of Total Number of Values in dataset
- Median Value will be ALP

### Note

- IF 35%/65%/50% is not a whole number, then value of Next Whole Number will be Considered
- IF 35%/65%/50% is a whole number, then take Average of Value of that Whole Number & Value of Next Whole Number

### Example 1

Tata India [AF]  $\xrightarrow{\text{Sale}}$  Tata US [AE]  
@ Rs 150  $\rightarrow$  Actual Transaction Price

$$ALP = [151, 146, 140, 155, 160, 169, 165]$$

### Solution

	Ascending order $\rightarrow$ ALP
1	140
2	146
3	151 $\xrightarrow{\text{Range Start}}$
4	155
5	160 $\xrightarrow{\text{Range End}}$
6	165
7	169

$$7 \times 35\% = 2.45 \rightarrow 3$$

$\downarrow$   
Not whole no.

$$7 \times 65\% = 4.55 \rightarrow 5$$

$\downarrow$   
Not whole no.

Range 151 - 160

If Actual TP falls within Range then ALP = Actual TP

Since Actual TP is 150, it doesn't fall within Range, Calculate 50% [Median]

$$7 \times 50\% = 3.5 \rightarrow 4$$

not whole no.

Median Value (50%) will be ALP, so ALP = 155

Example 2

Actual Transaction Price = 150

1	140	11	174
2	146	12	177
3	151	13	178
4	155	14	180
5	160	15	189
6	165	16	191
7	169	17	193
8	170	18	194
9	171	19	198
10	172	20	200

$$20 \times 35\% = 7$$

Whole no.

$$= \frac{169 + 170}{2}$$

169.5

$$20 \times 65\% = 13$$

Whole no.

$$= \frac{178 + 180}{2}$$

179

Range 169.5 - 179

#  
179

$$\text{Median (50\%)} = 20 \times 50\% = 10 \text{ whole no.} = \frac{172 + 174}{2} = 173$$

ALP

### Circumstances where AO may determine ALP [Section 92C(3)]

- ① If Assessee fails to compute ALP as per most appropriate method
- ② Data used in computation of ALP is not reliable or correct
- ③ Documents specified in Section 92D not maintained
- ④ Documents called by AO is not furnished within time

### Consequences of ALP determined by AO [Section 92C(4)]

- ① Deduction under Chapter VI-A or Section 10AA shall not be allowed from Income enhanced by AO
- ② If Income of One AE is increased by AO, Income of other AE shall not change

Example ①

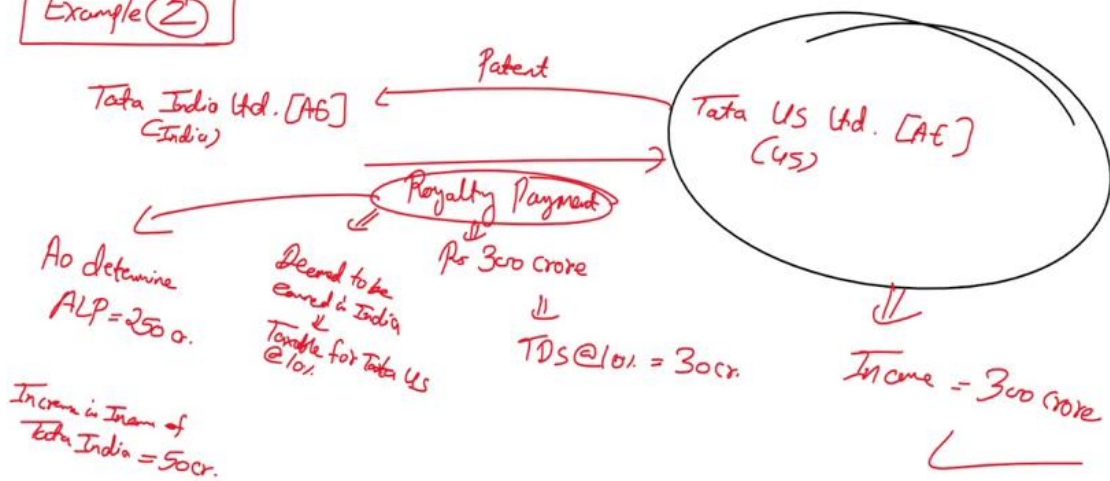


Tata India Ltd.  
(CSEZ)

TP Provision Apply

	<u>As Per ROI</u>	<u>As Per AO</u>
PLBP (cost)	100 cr.	160 cr.
GTI	100 cr.	160 cr.
(-) Deduction u/s 10AA TI	<u>(100 cr.)</u>	<u>(160 cr.)</u>
	<u>0</u>	<u>60 cr.</u>

Example 2



## Reference to Transfer Pricing Officer (TPO) [Section 92CA]

- Option to make reference to TPO is given to AO but not to Assessee
- Before Making Reference, prior permission of CIT shall be taken
- TPO can call upon assessee to produce documents & evidence
- TPO can also determine the ALP of Other International Transactions identified subsequently during proceedings
- Order of TPO is binding upon AO and AO shall compute Total Income of Assessee in conformity with ALP determined by TPO

## Safe Harbour Rules [Section 92CB]

- To Reduce Transfer Pricing disputes, CBDT can make Safe Harbour Rules.
- IF Assessee declares minimum Margin as given in Safe Harbour Rules, then AO shall Accept the Transfer Price declared by Assessee
- For Ay 21-22, Safe Harbour Rules are not notified by CBDT till yet

## Advance Pricing Agreement [APA] [Section 92CC & 92CD]

- An APA is an agreement between Assessee & CBDT for determination of ALP of an International Transaction as per Method & Manner given in Agreement
- CBDT can enter into APA with Applicant [Assessee] only after Approval of Central Government
- If APA exist, Section 92C & 92CA shall not apply
- APA shall be valid for Maximum 5 Consecutive Previous Years from Application year
- Binding Nature of APA
  - Applicant
  - Income Tax Authority upto the level of CIT
  - In respect of Transaction for which APA was entered
- APA to be Void

If APA entered by assessee by Fraud or Misrepresentation of Facts, CBDT may declare such APA to be void ab initio

Py 20-21 Application

21-22

22-23

Py 23-24

24-25

## Roll Back Provisions for APA

- A Person who makes application for APA can apply for Rollback for Maximum 4 Preceding Py From application year

### Conditions for Applying for Rollback

- ① Assessee has to make application for Rollback in Form No. 3CEDA along with fees of Rs 5,00,000
- ② Request has been made by Assessee for All Rollback years
- ③ International Transaction is same as mentioned in APA
- ④ Return for Rollback years is furnished by Assessee on or before due date

### Non Applicability of Rollback

- ① Determination of ALP is Subject Matter of Appeal before ITAT and ITAT Pass Order before signing of APA
- ② Rollback has the effect of reducing Total Income as declared in ROI

#### Example

	Total Income			
	As Per ROI	As Per AO [Assessment]	As Per Rollback APA	Rollback
Case I	30 cr.	35 cr.	32 cr.	✓
Case II	30 cr.	35 cr.	25 cr.	✗
Case III	30 cr.	No Assessment	26 cr.	✗

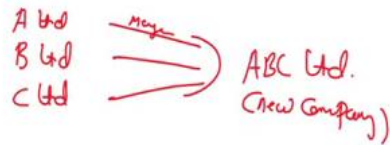
## Roll Back Provision in Case of Mergers or Demergers

Only the Companies which exist in Rollback years at the time of Making APA Application after merger/demergers are entitled for Rollback

### Example

#### Mergers

Case 1 →



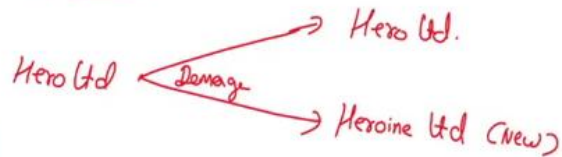
ABC Ltd. Cannot Apply for Rollback

Case 2 →



A Ltd. Can Apply for Rollback

#### Demerges



Hero Ltd. Can Apply for Rollback

### Effect of APA

- If ROI already filed for any year to which APA/Rollback Applies, Modified ROI is to be filed within 3 months from end of Month in which APA was entered
- If Assessment of any Py to which APA/Rollback Applies already Completed, Ao shall reassess such year Assessment as Per APA
- If Assessment of any Py to which APA/Rollback Applies is Pending, Ao shall Complete Assessment of such year as Per APA

## Secondary Adjustment [Section 92CE]

Primary Adjustment : Increase in Income of Assessee due to ALP Adjustment

Secondary Adjustment : Treating 'Excess Money' as deemed loan & Calculating Interest Income on such Excess Money

$$\text{Excess Money} = \text{ALP} - \text{Actual Transaction Price}$$

Forms of Secondary Adjustment : Dividend, Equity or Loan  
India Follows deemed loan Approach

### Cases where Secondary Adjustment has to be made

Where Primary Adjustment of Transfer Price has been :

- ① Made suo-moto by Assessee in ROI
- ② Made by Ao/Appellate Authority AND Accepted by Assessee
- ③ Determined by APA
- ④ Made due to Safe Harbour Rules

### Excess Money Repatriation

Excess Money available with AE shall be Repatriated to India within

90 days from  $\left\{ \begin{array}{l} \rightarrow \text{Date of Order [If Primary Adjustment made by Ao/} \\ \text{Appellate Authority]} \\ \rightarrow \text{Due Date of ROI [Other Case]} \end{array} \right.$

If not repatriated within 90 days, Excess Money shall be deemed to be an Advance given to AE and Interest Income on such Advance shall be computed from

- Date of order [If Primary Adjustment made by Ao/ Appellate Authority]
- Due Date of ROI [Other Case]

### Calculation of Interest Rate for Secondary Adjustment

If International Transaction is denominated in Indian Rs

↓  
1 year SBI Rate as on  
1st April of Py  
+  
3.25%

If International Transaction is denominated in Foreign Currency

↓  
6 Months LIBOR Rate as on  
30th September of Py  
+  
3%

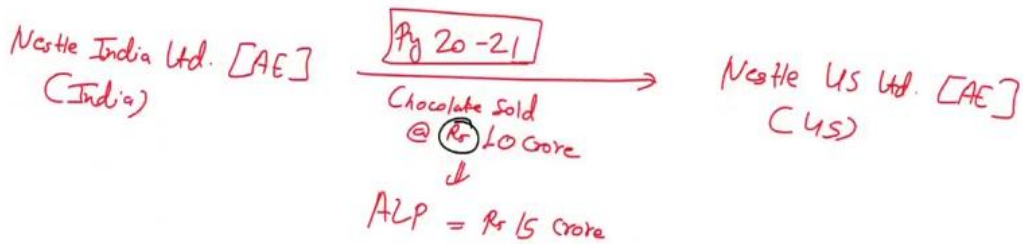
### Option to Pay Additional Income Tax, if the excess Money is Not Repatriated

- Assessee has option to pay Additional Income Tax @ 20.9664% [18% Tax + 12% Surcharge + 4% Cess] on such Excess Money
- If Assessee paid Additional Income Tax, he will not be required to make Secondary Adjustment and there is no Interest Income from date of payment of such Tax

No Requirement of Secondary Adjustment in following Cases:

- ① If Amount of Primary Adjustment is upto Rs 1 Crore
- or
- ② If Primary Adjustment is made in Respect of Ay 2016-17 or Earlier

Example



Increase in Income of Nestle India = ALP - Actual TP  
↓  
Suo moto in ROI  $\rightarrow 15 \text{ cr} - 10 \text{ cr} = 5 \text{ cr.} \Rightarrow$  Primary Adjustment

Due date of ROI  
↓  
30th Nov 2021

↓  
Repatriate to India

30.11.2021 + 90 days

↓  
28.2.2022

Assura, Not repatriated upto 31.3.2022

1 year SBI Rate as on 1.4.2021 = 8.1%



Solution

$$\text{Interest Income for FY 21-22} = 5 \text{ cr.} \times 11.25\% \times \frac{122}{365}$$

→ [8.1 + 3.25%]  
From due date of IIT  
From 30.11.21 to 31.3.2022  
122 days

18,80,137

If Assessee opts to pay Additional Tax on 1.4.22

$$\text{Additional Tax} = 5 \text{ cr.} \times 20.9664\% = 1,04,83,200$$

In that case No need to Repatriate Excess Money and there is no Interest Income from 1.4.22

Documents to be Maintained [Section 92D]

- Every Person who enters into an International Transaction is required to Maintain Documents & Records as Prescribed [TP Study Report]
- TP Study Report is to be maintained for Period of 8 years from end of Relevant Ay
- TP Study Report is Not required to be maintained if aggregate value of International Transactions is upto Rs 1 crore
- If Any Document is required by AoITPO/CIT(A) during any Proceeding, it shall be Furnished within 30 days [Additional time of 30 days]

## Audit Report [Section 92E]

- Every Person who enters into an International Transaction is required to obtain report from Chartered Accountant in Form No. 3CEB
- Due date of filing Audit Report is 31st Oct of Ay [i.e. One Month Prior to due date of filing of RoI]

## Penalties

Nature of Default	Penalty
Failure to Report International Transaction at ALP [Misreporting of Income u/s 270A]  <i>Note: If Assessee maintains documents u/s 92D, declare International Transaction and disclose all facts = No Penalty u/s 270A</i>	200% of Tax on Underreported Income
Failure to Furnish Audit Report u/s 92E	Rs 1,00,000
Failure to Furnish Audit Report u/s 92E	Rs 1,00,000
fails to keep & Maintain Documents u/s 92D fails to Report International Transaction fails to furnish Documents required by Ao/CIT(A) within time Maintain or furnish Incorrect Information or Documents	2% of Value of International Transaction

## Country by Country [CbC] Reporting Requirement [Section 286]

- By Action Plan 13 of BEPS

- Three Level of documentation

- Local file : TP Study Report

- Master file : Contains Group Overview [Submitted by Constituent Entity]

- Country by Country [CbC] Report : Contains detail information regarding Profit, Assets, Employees etc [Submitted by Parent Entity]

Parent Entity  $\Rightarrow$  Ultimate Holding Company [CFS Prepare]

Constituent Entity  $\Rightarrow$  AE of Such Parent Entity

### Master file

- Master file Contains group Overview
- Master file shall be furnished by Constituent Entity Resident in India upto due date of ROI
- Master file is required to be furnished if Consolidated Group Revenue exceeds Rs 500 crores
- If Master file is not filed within time, Penalty will be Rs 5,00,000

### Country by Country [CbC] Report

- Cbc Report Contains details of Multinational Group for each Country in which they do business regarding
  - Profit before Tax
  - Income Tax
  - Capital Employed / Assets
  - Employees

- It is submitted by Parent Entity to the Tax Authority in its Country of Residence

- Parent Entity Resident in India shall be required to furnish Cbc Report to Joint Commissioner (JC) for every Accounting year within 12 Months from end of said year

- Cbc Report is required to be furnished if Consolidated Group Revenue exceeds Rs 5500 Crores

- Constituent entity Resident in India shall be required to furnish Cbc Report, if :
  - Parent entity is resident of Country where no obligation to file Cbc Report
  - Parent entity is resident of Country with which India has no Information Sharing Agreement

There is a Systematic Failure

- Penalty for Non furnishing of Cbc Report on time

Period of Delay

Not More than 1 Month

Beyond 1 Month

Continuing Default even after Notice

Penalty

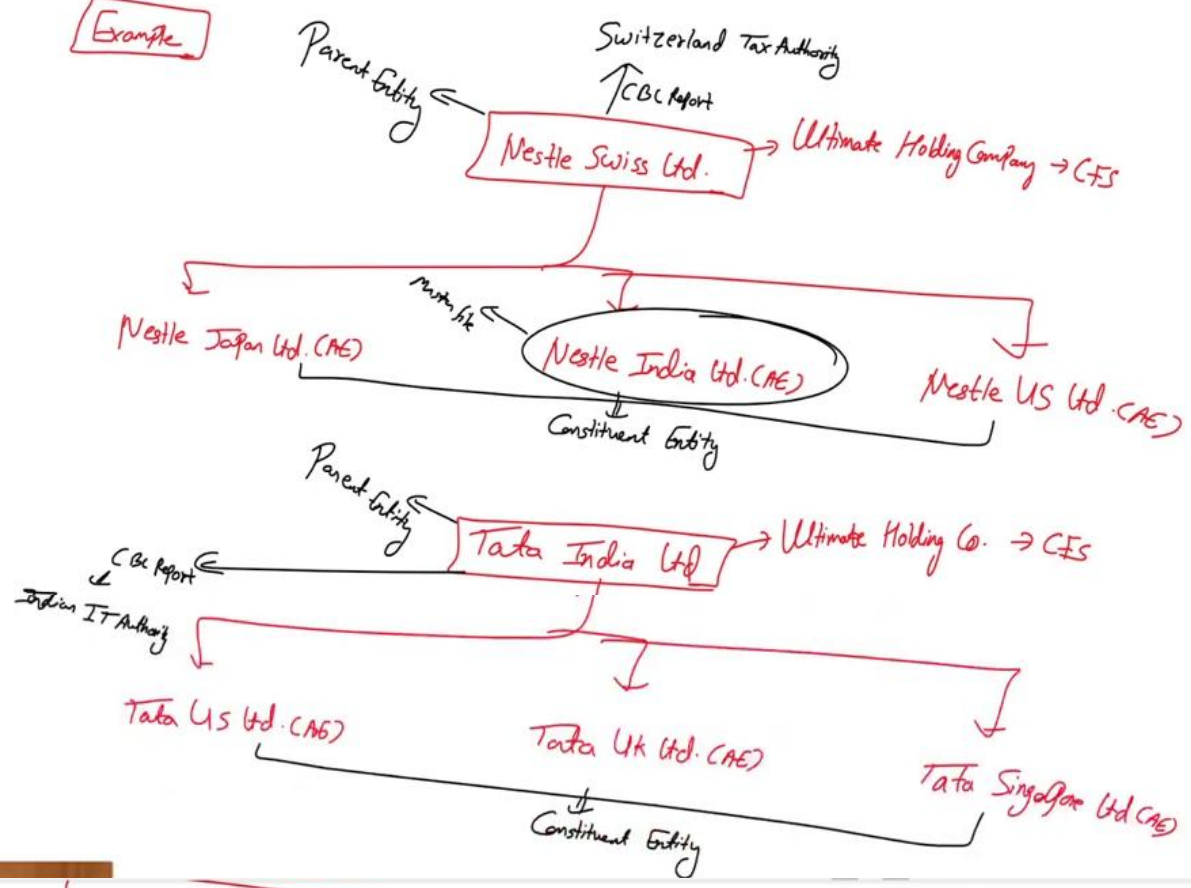
Rs 5,000 Per Day

Rs 15,000 Per Day  
[Beyond 1 Month]

Rs 50,000 Per Day  
[From Notice Date]

- Penalty for Submission of Inaccurate Information in Cbc Report = Rs 5,00,000

Example



### Domestic Transfer Pricing

- Applicable on Specified Domestic Transaction

Transaction between Two or More AE in which both are Residents

### Specified Domestic Transaction

- Shifting of Profit to Tax holiday Enterprise [i.e. 80IA]
  - Shifting of Profit to Loss Making Enterprise
- Applicable only if Aggregate Value of Specified Domestic Transactions exceed Rs 20 crore
  - Sec. 92A, 92C, 92CA, 92D, 92E, Penalties shall apply as it is

### Transaction with Person located in Notified Jurisdictional Area (NJA) [Section 94A]

#### NJA

Central Government may notify any Country as NJA

Earlier Central Govt. declared Cyprus as NJA, but later on Central Govt. by Notification removed Cyprus as NJA

#### NJA Provisions

- Any Transaction with Person located in NJA shall be deemed to be an International Transaction [whether Such Person is AE or Not] and Transfer Pricing Provisions shall Apply
- Any Amount received from Person located in NJA shall be deemed to be Income of Recipient if recipient does not explain Source of Such Income

→ Rate of TDS for any payment made to person located in NTA shall be  $\left. \begin{array}{l} \rightarrow \text{Rate specified in Income Tax Act} \\ \text{or} \\ \rightarrow 30\% \end{array} \right\} \Rightarrow \text{Higher}$

### Limitation of Interest Deduction [Section 94B]

By Action Plan 4 of BEPS to remove Thin Capitalisation [i.e. Preference of debt over Equity]

→ Applicable to

Indian Company  
or

PE of Foreign Company in India

Who incurs Interest Expenditure on Any Debt taken from AE

### Limitation of Interest Deduction [Section 94B]



By Action Plan 4 of BEPS to remove Thin Capitalisation [i.e. Preference of debt over Equity]

→ Applicable to

Indian Company  
or

PE of Foreign Company in India

Who incurs Interest Expenditure on Any Debt taken from AE

→ Interest Meaning

Interest includes Interest, discount, Other financial Charges such as Commission, Fees, Brokerage related to Any debt

→ Excess Interest Would be disallowed

Excess Interest

Interest to AE - 30% of EBITDA

or

Interest to AE

} lower ⇒ Disallowed

In other words, Interest upto 30% of EBITDA is Allowed

EBITDA = Earning before Interest, Tax, Depreciation and Amortisation

Example

EBITDA = 100 cr

Interest to AE = 48 cr

Solution

Excess Interest to be disallowed

48 cr. - 30% of 100 cr.  
30 cr.

or

48 cr.

18 cr

} lower ⇒ Disallowed

18 cr.



→ Carry Forward & Set off of Disallowed / Excess Interest

Excess Interest can be C/F for maximum 8 Ay and can be claimed /  
Set off as deduction under PGBP head upto that limit

→ Special Point

Where debt is given by Other Person which is not AE, but

• AE either Provides guarantee to Other Person for such debt

or

• Deposit Matching & Corresponding Amt. with such Other Person

⇓

⇓

U

Other Person

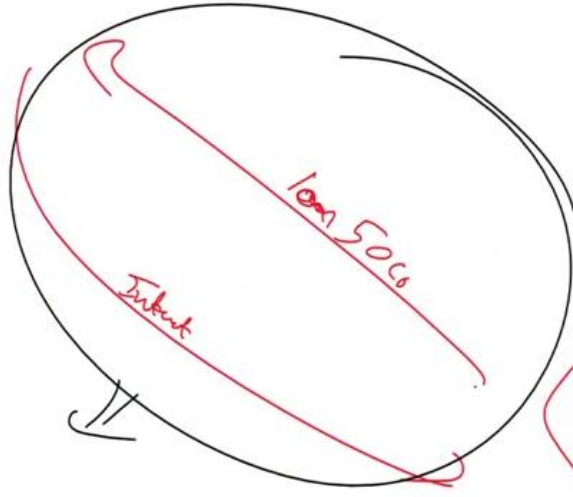
Such Debt shall be deemed to be taken from AE

→ Non Applicability of Section 94B

- If Total Interest to AE is upto Rs 1 Crore in Py
- If borrower is Banking or Insurance Company

Nestle India  
(India)  
AE

Nestle US  
(US)  
AE



Guarantee  
or  
Matching  $\rightarrow$  50%

Bank of America

Third Party



# Non-Resident Taxation

1

## Residential Status [Section 6]

### Residential status of Individual.

#### Individual

##### Resident

↓  
If satisfy any 1 basic  
Condition

##### Non-Resident

↓  
If does not satisfy any  
basic condition.

#### Basic condition:

(1) He must stay in India for atleast 182 days during Relevant P.Y.

(OR)

(2) He must stay in India for atleast 60 days during Relevant P.Y. and  
365 days or more during 4 preceding P.Y.

In following cases only 1<sup>st</sup> Basic condition is Applicable.

a) Crew member of Indian ship.

b) Indian citizen leaves India for Employment outside India.

c) Indian citizen (or) person of Indian origin comes India for visit.

• person of Indian origin = If he (or) his parents (or) grand parents were born in undivided India.

In case of Residential status of crew member of Indian ship, Following period shall be taken outside India.

From  
Date entered into continuous Discharge  
certificate at the time of Joining of the ship.

TO  
Date entered into continuous Discharge  
Certificate at the time of Sign off.

# Resident Individual

(2)

Resident and Ordinarily  
Resident [ROR]



If Satisfies Both Additional  
Conditions.

Resident but not ordinarily  
Resident. [RNOR]



If does not satisfy any one  
conditions.

## Additional Conditions:-

- ① He must be Resident of India for atleast 2 years during '10' Preceding P.Y.
- AND
- ② He must stay in India for atleast 730 days during '7' Preceding P.Y.

## SPECIAL PROVISIONS

- ① In case of Indian citizen (or) person of Indian origin who comes to India for visit, having Income from Indian sources [Other than Income earned & received outside India] exceeds 15 lacs in P.Y. shall also become RNOR, if  
↳ He stays in India for atleast 120 days during relevant P.Y  
AND 365 days or more during '4' preceding P.Y.
- ② In case of Indian citizen ~~and~~ ~~RNOR~~ having Income from Indian sources exceeds 15 lacs in P.Y. shall be treated as deemed RNOR, if  
He is not liable to pay in other country.

## Other points:-

- 1) Residential status is determined on year to year basis.
- 2) For considering stay in India, Date of departure & arrival are to be considered in India.
- 3) Stay in India includes stay in Territorial Water of India [upto 12NM from base line]

### Residential Status of HUF.

If Control and Management Wholly (Or) Partly in India

If Control & Management wholly outside India.



Non Resident

If Karta satisfies both Additional conditions of

Other case



RNOR

Individual



ROR

### Residential status of Firm/AOP/BOI/Local Authority/AJP.

If C&M wholly (or) Partly in India

If C&M wholly outside India



Non Resident

Resident

### Residential status of Company

Indian Company

Foreign Company



Always Resident

If POEM is in

If POEM is Outside

India

India



Resident

Non-Resident.

## Place of Effective Management (POEM)

POEM means a place where key management & commercial decisions which are necessary to conduct business are made.

### Determination of POEM:

#### Active Business Outside India (ABOI) Test :-

A company shall be said to be engaged in ABOI, if following

All conditions are fulfilled :-

- ① Passive Income is not more than 50% of its Total Income.
- ② Less than 50% of Total Assets are situated Outside India.
- ③ Less than 50% of Total Employees are situated in India (or) Resident in India.
- ④ Payroll expenses incurred on Indian employees is less than 50% of total payroll expense.

### ABOI TEST

If ABOI Test Pass

↓  
POEM Outside India, if majority of Board meetings are held outside India.

However, if decisions are not taken by Board, but by Holding company (or) any person Resident in India.  
↓  
POEM shall be In-India.

Other case.

↓  
Identify the persons who make key management and commercial decisions

↓  
Determine place where these decisions are made

↓  
Such place will be POEM.

## Meaning of certain Items :- (in ABOI)

### ① Total Income :-

- As per Tax Law of country of Incorporation
- As per Books of A/c's [If income as per Tax Law not available]

### ② Passive Income :

Aggregate of :

- a) Income from Transactions where Both purchase and sale is from/to Associate Enterprise.
- b) Income by way of Royalty, Interest, Dividend, Capital Gains and Rental Income.

**[NOTE]** : Interest is not passive income in case of Banking Company and Public Financial Institutions.

### ③ Value of Assets :

In case of Depreciable Asset  
↓  
Average value as per Tax law at beginning and end of year.

Any other Asset  
↓  
Closing value as per Books.

### ④ No. of Employees :

Avg no. of employees at beginning and end of year.

**[NOTE]** : Employees also includes person who not directly employed by Company but perform task similar to Employees [Contract Employees]

### ⑤ Payroll Exp :- All Emoluments payable to Employees.

### **[OTHER POINTS]** :

- ① POEM Guidelines shall NOT APPLY to a Company having Turnover of ₹ 50 Crores or less in a FY.
- ② Each subsidiary of Company has to be Examined Separately

# SCOPE OF INCOME [SECTION 5]

	<u>ROR</u>	<u>RNR</u>	<u>NR</u>
Income Earned/deemed to be Earned in India [Received Any where]	T	T	T
Income Received/deemed to be Received in India. [Earned Any where]	T	T	T
<p>(Received means First Received in India, [not remittance / Transfer])</p>			
Income Earned and Received outside India, but Business and profession controlled (or) setup in India.	T	T	X
Income Earned, received & controlled outside India.	T	X	X

→ Indian Income

→ Foreign Income.

**NOTE** → Past foreign Income brought to India is NOT taxable.



# Income deemed to be Earned [accrue or arise] in India [Sec 9]

## Section 9(1)(i)

Any income accrue/arise ~~outside~~ India to any Assessee through (or) From:

- ① Any Business connection in India.
- ② Any Property, Asset (or) Source of Income in India.
- ③ Transfer of capital Asset situated in India.
- ④ shall be deemed to be earned/arise in India.

### ① Business connection in India.

Business income of NR From

Business with India

↓  
Not Taxable.

Business in India

As per I.T. Act  
↓  
Taxable, if Business connection

As per DTAA  
↓  
Taxable, if PE.

### Business connection:-

Non Resident.

↓

Person in India  
(Acting on Behalf of NR)

Business Activity → [Includes through PE]

- Conclude contract in India (or)
- maintain stock in India. (or)
- secures orders in India mainly (or) wholly for NR.

Then such NR has Business connection in India.

**NOTE**

1) Business connection shall not be established if NR carries business through Broker/General Commission Agent/Any Independent Agent.

2) Significant Economic presence of NR in India shall also constitute Business connection.

3) In following cases, Income shall not be treated as deemed to be earned in India

a) Purchase of goods in India for Export

b) collection of news in India for Transmission outside India.

c) Shooting of films in India by NR non citizen.

d) Activities relating to display of uncut & unsorted diamonds in SNZ by Foreign Company.

↳ Special Notified Zone.

② Income from any property, Asset (or) source of Income in India.

Example - Rent outside India from any building located in India.

③ Income through transfer of Capital Asset situated in India.

Example :- Mr Sam (NR) sold his land situated in India to Mr. Ricky (NR) outside India. In that case capital gain arising to Mr. Sam shall be deemed to be earned in India.

**\* Retrospective Amendment due to Vodafone case \***

Share of Foreign company shall be deemed to be situated in India, if Foreign company share derive substantially its value from Asset located in India.

Substantially Meaning:-

If on 'specified date', value of Indian Asset :

- Exceeds ₹ 10 crores and
- Represent atleast 50% of total value of All Assets of Foreign Company.

NOTE

• Value of Assets = FMV without reduction of Liabilities.

• Specified Date  
 ↓  
 Last B/s date  
 preceding transfer

↓  
 Transfer date

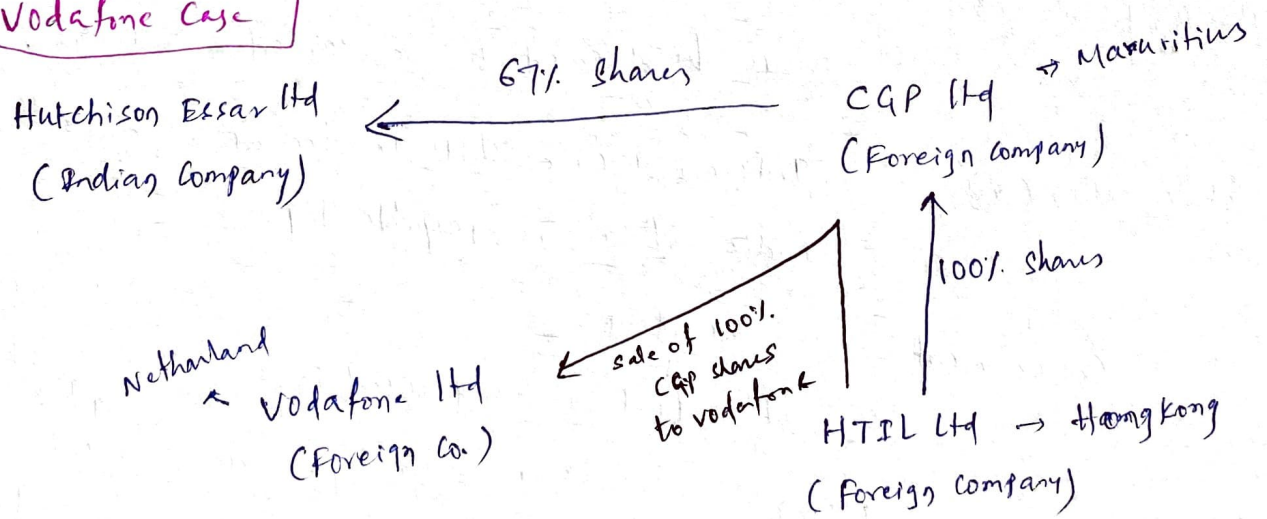
If Book value of Asset on Transfer date exceed by atleast 15% from Book value as on last B/s date.

• Income Taxable only proportionate to Indian Asset

$$\text{Total Capital Gain} \times \frac{\text{FMV of Indian Asset}}{\text{FMV of Total Asset}}$$

Above provisions shall not apply : if transferor holds up to 5% share capacity in such Foreign Company

Vodafone case



Share of CQP shall be deemed to be situated in India, if CQP shares derive substantially its value from Asset located in India. i.e., Hutchison Essar Ltd.

Example:

CGP Ltd.

Investment in Hutchison Essar Ltd.

	FMV	Conditions
	400 cr	① more than 10 cr ✓
Other Assets	100 cr	② $\frac{400 \text{ cr}}{500 \text{ cr}} \times 100 = 80\%$ ✓
	<u>500 cr</u>	

Suppose HTIL sold shares of CGP to Vodafone for ₹ 1100 crores (Purchase price = 300 cr)

then Capital gain = 1100 - 300 = 800 cr.

taxable Amount in India = 800 cr  $\times$   $\frac{400 \text{ cr}}{500 \text{ cr}}$  = 640 cr

Suppose HTIL holds only 5% share capital in CGP = provisions not apply.

**Section 9(1)(ii) :-** Salary Income from services rendered in India shall be deemed to be earned in India.

**Section 9(1)(iii) :-** Salary payable by Indian Govt to Indian citizen for services rendered outside India shall be deemed to be earned in India.

**NOTE:** Allowances and perquisites paid outside India is Exempt u/s 10(7)

**Section 9(1)(iv) :-** Dividend paid by Indian Company outside India shall be deemed to be earned in India.

**Section 9(1)(v) :-** Interest Income shall be deemed to be earned in India if it is payable by.

① Government

② Resident

③ Non-Resident

↓  
If amount borrowed used in

↓  
If Amt Borrowed used in

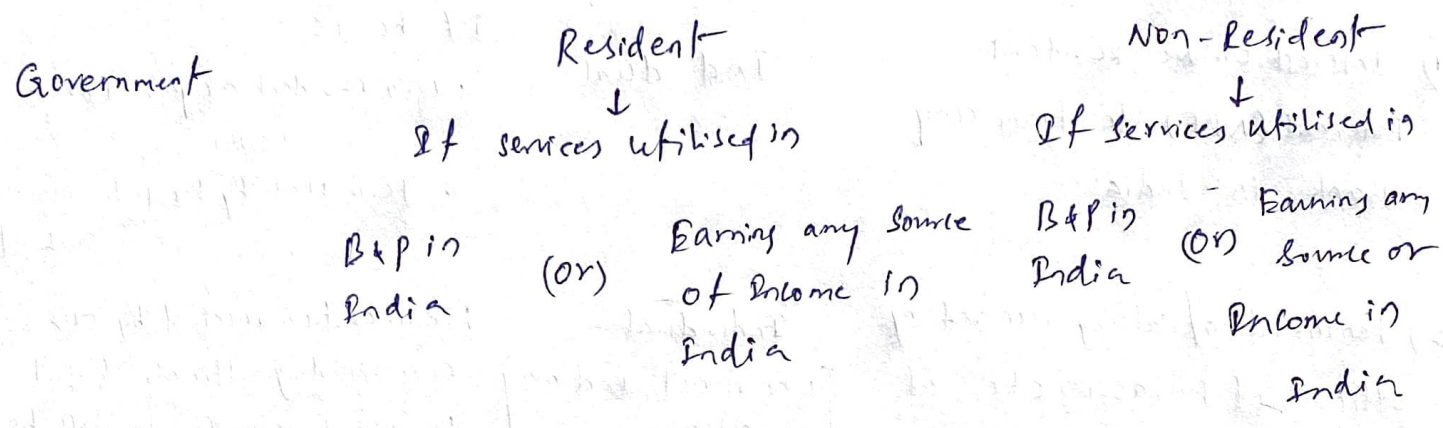
BAP in India

(Or)

Earning any source of Income in India

↓  
BAP in India.

Section 9(1)(vi) :- Royalty Income shall be deemed to be earned in India if it is payable by,



**NOTE**

- 1) Royalty means any consideration for
  - ① For use of Intangible Assets (or) Information
  - ② Transfer of any right.
- 2) Lumpsum consideration for supply of computer software embedded in computer hardware is NOT Royalty.
- 3) Payment for downlinking Television channels constitutes Royalty.
- 4) Consideration for sale/distribution/exhibition of films is Royalty.

Section 9(1)(vii) :- Fee for Technical Service shall be deemed to be earned in India, if it is payable by same as above.

- NOTE**:
- 1) Fee for Technical Service (FTS) means rendering of any Managerial, Technical and Consultancy Services
  - 2) Payment towards drawings & designs are in the nature of FTS.

## Exempt Income of Non-Resident.

Exempt Income	Eligible person	Conditions.
1) Interest on Non Resident External (NRE) A/c from any Bank in India.	Individual	If he is : <ul style="list-style-type: none"> <li>• Not resident as per FEMA (OR)</li> <li>• Permitted by RBI to maintain such A/c.</li> </ul>
2) Remuneration/salary received by officials of Embassies etc. of Foreign Country	Individual (who is not Indian citizen)	Remuneration received by our corresponding officials of govt in such Foreign Country shall be Exempt.
3) Salary Received by Employee of Foreign enterprise for services rendered in India	Individual (who is not Indian citizen)	<ul style="list-style-type: none"> <li>• Foreign enterprise is not engaged in any B&amp;P in India.</li> <li>• Aggregate stay of E'e in India does not exceed 90 days in p.y.</li> </ul>
4) Salary Received by Individual for services rendered in Foreignship.	Individual (who is not Indian citizen)	<ul style="list-style-type: none"> <li>• Aggregate stay of Individual in India doesn't exceed 90 days in p.y.</li> </ul>

## Presumptive Taxation for Non-Resident.

Cal. of BAP income on the basis of certain % of Gross Receipts.

### 1) Section 44B :- Regular Shipping Business.

Applicability :- Non Resident [COMPULSORY]

Presumptive Income :- 7.5% of Following :-

a) Amount charged for carriage of passengers, livestock, mail or goods from any ~~port~~ port in India.

b) Amount received in India for carriage of passengers, livestock, mail or goods from any port outside India.

[Above includes demurrage (or) handling charges]

Other points :- 1) section 28 to 43A shall not apply

2) No deduction of any Expenditure.

### 2) Section 172 :- Occasional Shipping Business.

Applicability :- Non Resident [COMPULSORY]

Presumptive Income :- 7.5% of following :-

a) Amount charged for carriage of passengers, live stock, mail (or) goods from port in India.

[Above includes demurrage (or) handling charges]

Other points :- if such in

1) Such income is taxable @ applicable to foreign company

2) No deduction of any expenditure

3) Master of ship shall furnish ROI along with Tax before departure of ship.

4) ROI may be filed within 30 days from departure of ship if ;

a) A.O. satisfies that it is not possible to file ROI before departure of ship

b) Master of ship made satisfactory arrangement for payment of Tax and filing of ROI.

5) A.O. shall pass Assessment order within 9 months from end of Fy. in which ROI was filed.  
(NINE)

3) Section 44BBA : Aircraft Business  
 Applicability : Non Resident (COMPULSORY)

Presumptive Income : 5% of following.

- a) same as 44B [Replace the word 'PORT' with PLACE]  
 b) same as 44B \*

Other points :- 1) & 2) → same as 44B.

4) Section 44BB :- Business of providing services relating to supply of plant & machinery on hire used in prospecting Extraction ~~of~~ (or) production of Mineral oils.

Applicability :- Non Resident [OPTIONAL]

Presumptive Income : 10% of Gross Receipts.

[Receipts earned in India / Received in India]

Other points :- 1) No deduction of any expenditure

- 2) If assessee wants to claim lower profit  
 ↓  
 Maintain Books of A/c's & Audit.

5) Section 44BBB :- Business of civil construction (or) erection of plant & machinery relating to turnkey Power Projects.

Applicability :- Foreign Company [OPTIONAL]

Presumptive Income :- 10% of Gross receipts

[Receipts earned / received in India]

Other points :- 1) No deduction of any expenditure

- 2) If assessee wants to claim lower profit.  
 ↓  
 Maintain Books of A/c's & Audit.



# Deduction in respect of Head office Expenses of Non-Resident [Sec 44AC]

Business Income of PE of Non Resident in India shall be computed as per Section 28 to 44D.

## Head office Expenses :-

Expenses Incurred by Assessee [Head Office] outside India attributable to Business & Profession [PE] in India.

## Deduction in respect of HO Expenses to PE in India.

Actual Head office Expenses allocated to PE in India  
 (OR)  
 % of Adjusted Total Income (ATI) of PE in India

} ↓ which ever is lower

## Adjusted Total Income (ATI) of PE in India.

Total Income of PE in India		xxx
<u>Add :-</u>		xxx
Allowance under this Section (44C)	If deduction claimed	xxx
Unabsorbed depreciation		xxx
Family planning Expenditure		xxx
B/F losses set off		xxx
deduction under chapter VIA		xxx
ATI		

**NOTE** If ATI is a loss, then last 3 years Average ATI shall be taken.

## Capital Gain Taxation in case of Non-Resident.

16

Capital Gain shall be taxable in hands of NR if:

- There is a capital Asset situated in India

AND.

- Transfer of such capital Asset during P.Y.

Transactions not regarded as Transfer in case of NR.

- ① Transfer of shares held in an Indian Company by Amalgamating Foreign Company to Amalgamated Foreign Company.
- ② Transfer of shares held in Indian Company by Demerged Foreign Company to Resulting Foreign Company.
- ③ Transfer of Bonds, GDR (or) Rupee denominated bonds of an Indian Company by a NR to another NR outside India.

First proviso to Section 48 :-

Special provision for computation of Capital Gain on Transfer of shares (or) debentures of an Indian Company by NR.

↓  
Applicable if NR invest Foreign Exchange to Acquire such capital Asset  
[only if TTBR and TTSR is given]

TTBR/TTSR = Telegraphic Transfer Buying Rate/Selling Rate of State Bank of India (SBI).

Cal. of Capital Gain in Foreign Currency:

Sale Consideration in Foreign Currency

xxx

[By Avg. of TTBR & TTSR on date of Transfer]

(-) Transfer Expenses in Foreign Currency

(xxx)

[By Avg. of TTBR & TTSR on date of Transfer]

xxx

Net sale consideration

(xxx)

(-) Cost of Acquisition in Foreign Currency

[By Avg. of TTBR & TTSR on date of Acquisition]

[NO Indentation Benefit]

STCG/LTCG in Foreign Currency

xxx

Now, Reconvert STCG/LTCG into Indian Rs. by  $\frac{B}{TTBR}$  on date of Transfer

(NOTE) This provision shall not apply if section 112A is applicable.

(LTCG on Listed Equity Shares)

# Special provision for Non Resident Indian [NRI]

(Chapter XII-A, 115C TO 115I)

- This provision is **OPTIONAL**.
- Applicable to NRI who derives Investment Income and LTCG from forex Asset.

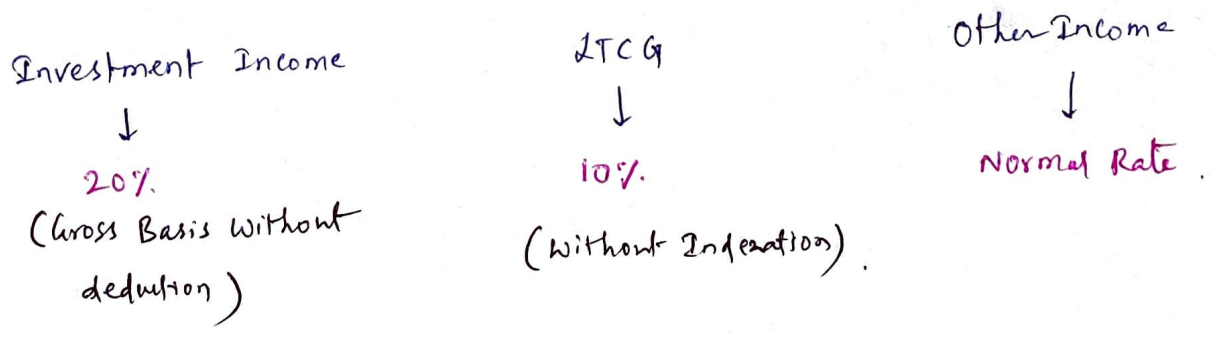
• NRI :- Indian citizen  
(or)  
Person of Indian Origin } + Non Resident

- Foreign Asset :-  
Following Assets purchased in Convertible Foreign currency :
  - a) shares of Indian Company
  - b) Debentures/Deposits of Indian public Company.
  - c) Central Government Security.

- Investment Income :-  
Interest/dividend Income from Foreign Asset.

- LTCG :-  
Capital Gain from Transfer of Long Term Foreign Asset.

- Tax Rate on NRI.



## Exemption on LTCG :

19

If consideration Invested in other Foreign Asset within 6 months from the date of transfer,

$$\text{Exemption} = \text{LTCG} \times \frac{\text{Investment in New Asset}}{\text{Net Sale Consideration}}$$

However, if New Foreign Asset is transferred within 3 years of Acquisition, then Exemption allowed earlier shall be Taxable as LTCG.

## Exemption From Filing of ROI :

ROI not required to be filed if:

- NRI Income consist of only Investment Income and LTCG from Foreign Asset

AND

- TDS has been deducted on Such Income.

## Continuance of Benefit if NRI becomes Resident.

He may furnish declaration in writing for taking benefit of Chapter XII-A even after he becomes resident.

# Tax Rate on Interest, Royalty, FTS [Section 115A]

20

## Interest Income of NR/FC.

	Tax	TDS Section
1) From Infrastructure deb fund	5%	194LB
2) Interest distributed by Business Trust to NR Unitholders.	5%	194LBA
3) Interest from Indian Co. (or) Business trust on money Borrowed by them in foreign currency under: a) Loan Agreement b) By issue of Long term bonds c) By issue of Rupee denominated bonds.	5%	194LC
4) Interest Received by FII (or) QFI on: a) Rupee denominated bonds b) Govt. securities c) municipal debt securities	5%	194LD
5) Interest from Govt (or) Indian concern on money borrowed by them in Foreign currency.	20%	195

Dividend From Indian Company = Taxable @ 20%

Income from units of UTI/mutual funds = Taxable @ 20%

# Royalty and FTS Income of NR/FC

If PE in India

If NO PE in India

↓  
Taxable @ u/s 44DA

↓  
Taxable u/s 115A

↓  
Normal provisions and Rate

↓  
Tax @ 10%

[Gross Basis, NO deduction of Expenses]

- Expenses incurred by PE wholly & Exclusively for earning such income allowed as deduction
- Required to maintain Books of A/c's & Audit

**Section 115AB:-** Income from units of UTI/mutual funds to overseas Financial organisation [offshore fund]

Income from units of UTI/mutual funds }  
LTCG on units of UTI/mutual funds } Taxable @ 10%

**Section 115AC:-** Income from Bonds (or) GDR of Indian company purchased in Foreign currency by NR.

Interest/Dividend } Taxable @ 10%  
LTCG on Transfer }

**Section 115AD:-** Income of Foreign Institutional Investor (FII)

Interest on Securities (other than 115A)	Dividend	STCG u/s 111A	STCG on other Securities	LTCG u/s 112A	LTCG on other Securities	Other Income
↓	↓	↓	↓	↓	↓	↓
20%	20%	15%	30%	upto 1Lac exempt Excess Taxable @ 10%	10%	Normal provisions

## Section 115BB :- Casual Income

Taxable @ 30% to both Resident & Non Resident

TDS u/s 194B/194BB.

Section 115BBA :- Tax Rate on certain Income of Non Resident (Non Citizen) Sportsmen, sports Association and Entertainers.

Nature of Income :-

Sportsmen :- a) Income from participation in any Game in India [other than 115BB]  
 ↓  
 (Match Referee & Umpire not covered)  
 b) Advertisement in India  
 c) Contribution of Articles in Newspaper, Magazines etc.

Sports Association :- Amount guaranteed to be paid to such Association.

Entertainer :- Income from performance in India.

Tax Rate :-

On above Income

↓

20%.

(Without any deductions)

Balance Income

↓

Normal Provisions

Exemption from filing of ROI :-

ROI not required to be filed if:

• Income consist of only section 115BBA nature income.

AND.

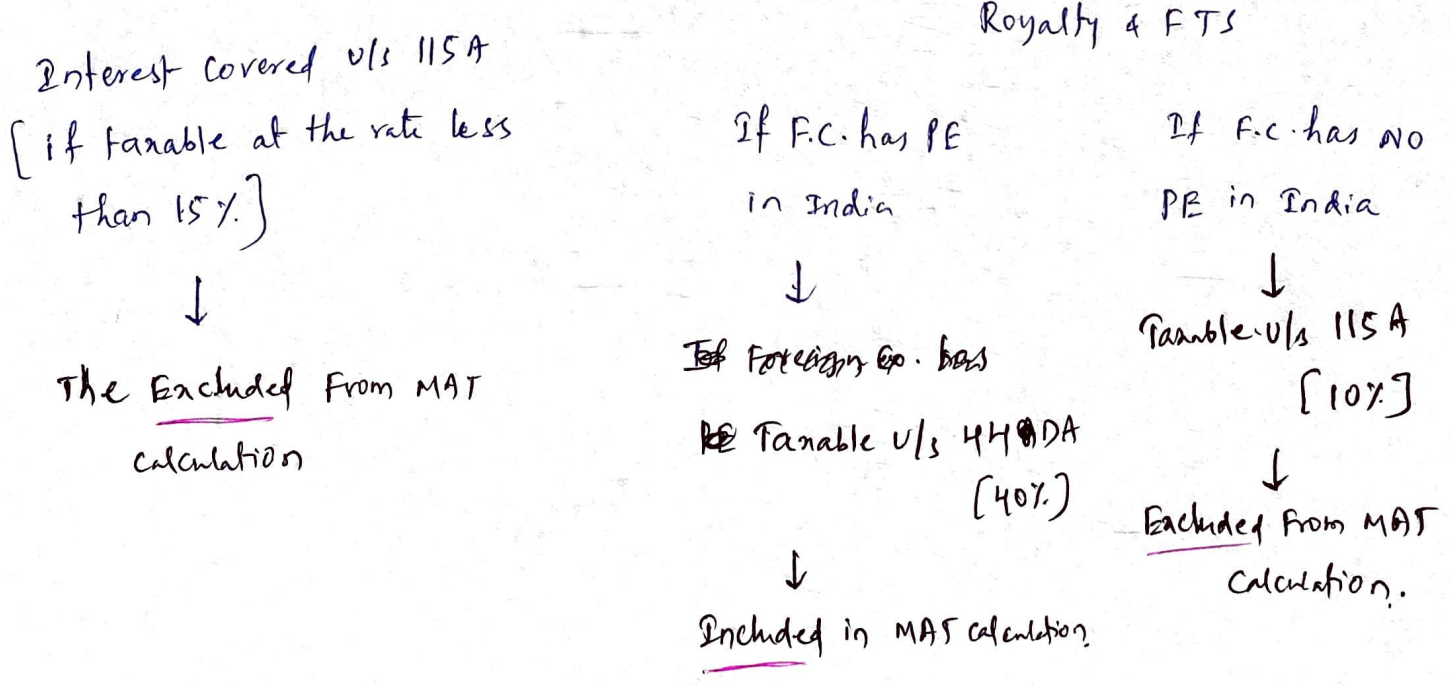
• TDS has been deducted on such Income.



### Common points for Section 115A, 115AB, 115AC, 115AD, 115BB, 115BBA.

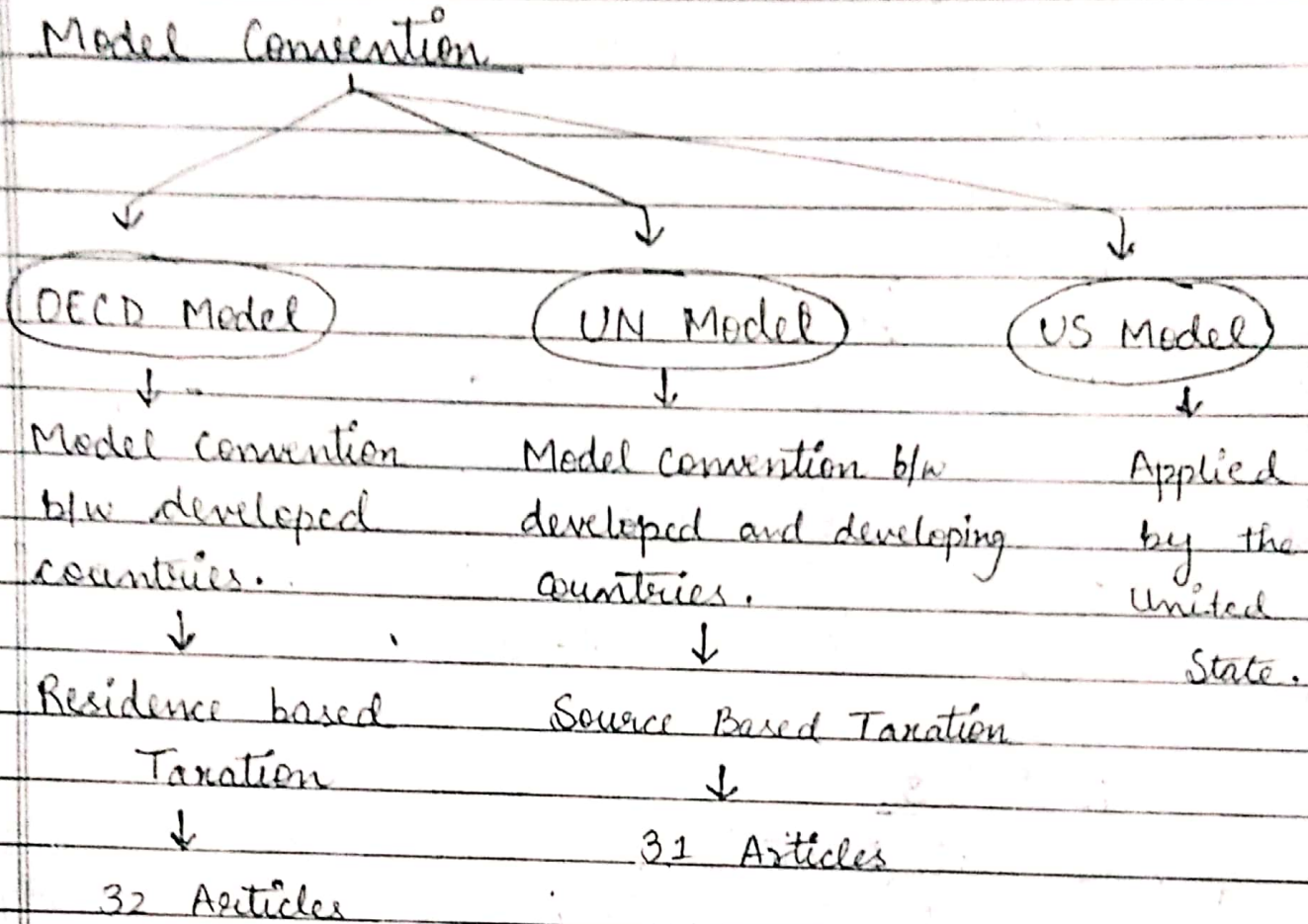
- 1) Special Rates will apply on Income mentioned in above sections, Balance Income will be taxable as per normal provisions.
- 2) No deduction of Any Expenditure u/s 28 to 44C and section 57 from above Income.
- 3) Benefit of Indexation on LTCG in above sections is not available [Transfer Expenses allowed]
- 4) Deduction under chapter VI - A is not available from above Income [Except Royalty & FTS u/s 115A]
- 5) Benefit of Basic Exemption limit is not available from above Income.
- 6) Above provisions Mandatory.

### Applicability of MAT on Foreign Company (Section 115JB).



# Chapter - 9

## Overview of Model Tax Conventions



### OECD and UN Model

#### Title

"Convention between 'State A' and 'State B' for elimination of double taxation on Income and capital and prevention of Tax evasion and tax avoidance."

#### Preamble

This convention is for avoidance of double taxation and not for treaty shopping.

### Article 1

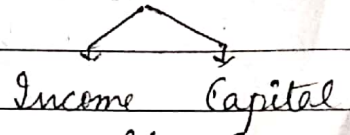
#### Persons covered

This convention shall apply to persons who are resident of one or both of contracting states.

### Article 2

#### Taxes Covered

This convention shall apply to taxes on



• Also apply on any similar or identical tax imposed after signature of convention

### Article 3

#### General Definitions

- 1) Person: Includes individual, Co., any body of persons.
- 2) Company: means any body corporate.
- 3) Enterprise: means person carrying any business
- 4) Business: Business includes professional services

entry to  
OECD

Imp

### Article 4

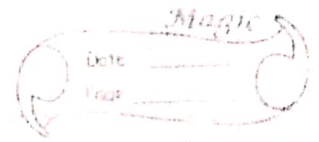
(Imp for DT also)

(learn whole)

#### Resident

• Determine residential status of a person as per respective domestic laws of contracting state

(individual)



- If person becomes resident of both countries, then his residential status will be determined as follows :-

### Tie Breaker Rule

- He shall be deemed to be resident of contracting state in which he has permanent home available.
- If he has permanent home in both states shall be deemed to be resident of contracting state with which his personal and economic relations are close.
- If his personal and economic relations cannot be determined or if he has no permanent house in both states, he shall be deemed to be resident of contracting states in which he has habitual abode. (उत्तम टिम जीत स्पन्द कर)
- If he has habitual abode in both states, he shall be deemed to be resident of state of which he is a national.
- If he is a national of both states or neither of them, competent authorities determine his status by mutual agreement.

## Imp Article 5

### Permanent Establishment

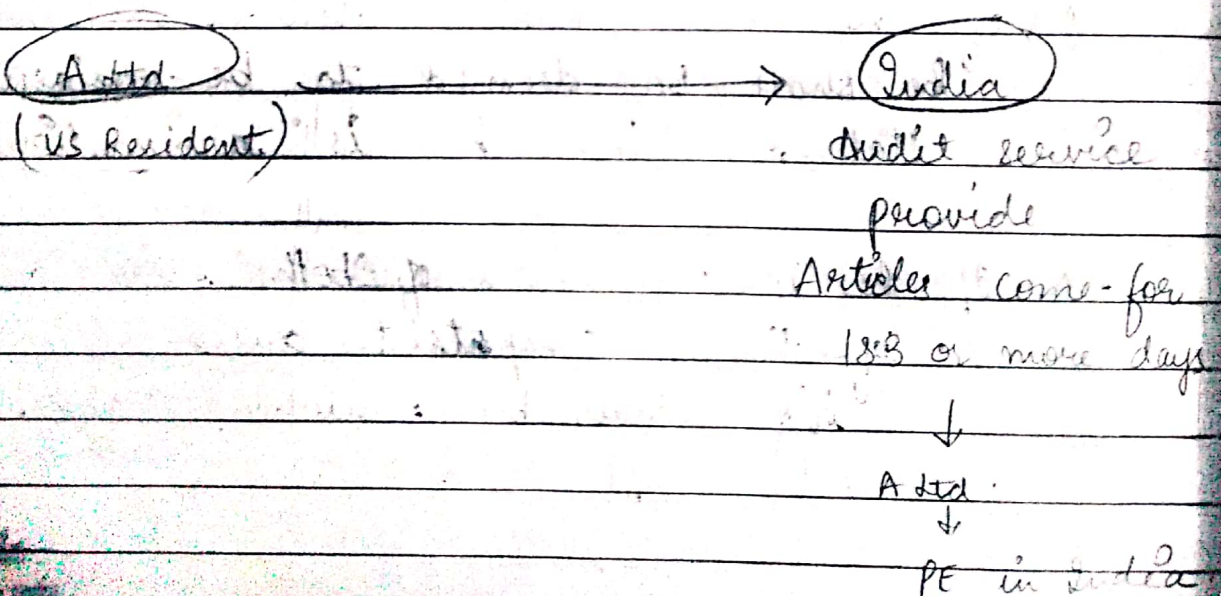
PE means a fixed place of business through which business ~~through~~ or Enterprise is carried on. PE Includes,

- Branch
- Office
- Factory
- Workshop
- Place of Mgmt.
- Mine / quarry.

As per UN model → P<sup>o</sup>E also includes furnishing of services through employees or other persons if activities continue for aggregate more than 183 days in FY.



Service PE



PE shall not include

- Use of facility for storage, display, delivery only for "OECD."

Sam Ltd.

US Resident

India

Office / warehouse used for

Storage - No PE

Display - No PE

Delivery - NO PE

(for OECD)

- Maintenance of stock of goods for storage, display, delivery only OECD.

- Maintenance of stock of goods for processing by another enterprise.

- Maintenance of fixed place of Business for purchasing or collecting info.

- Maintenance of fixed place of business only for preparatory or auxiliary activities! (Training etc) (support activities) Subject to anti fragmentation rule.

ex co. ki zari activities ko mila kr dekhna hai

- Advertising & promotional activities. ex office prep. or office auxiliary to co. ka PE ho jayega



- Profit of PE is calculated as it is a separate and independent enterprise.
- Deduction shall be allowed for expenses by PE for its business.

Article 11

Interest Income

→ Interest arising to person of contracting state shall be taxable in resident state.

→ Interest income may also be taxed in source state

Tax shall not exceed 10% (OECD)

Tax shall not exceed such % as decided (UN)

Article 12 / 12A

Royalty / FTS

Royalty / FTS income arising to person of contracting state ← may (UN)

shall be taxable in resident state.

Royalty / FTS

~~Interest~~ income may also be taxed in source state

Tax shall not exceed such % as decided (UN)



## Article 13 Capital Gains

- CG may be exclusively taxable in resident state  
or  
shared between resident & source state.
- CG from immovable property may be taxable in contracting state where such property is situated.

## Article 14

Independent Professional Service (only UN)  
→ Income from professional services shall be taxable in resident state.

- ⇒ It may be taxable in source state if :-
- If person has fixed base in source state
  - If person stays in source state exceeds 183 days / aggregate F

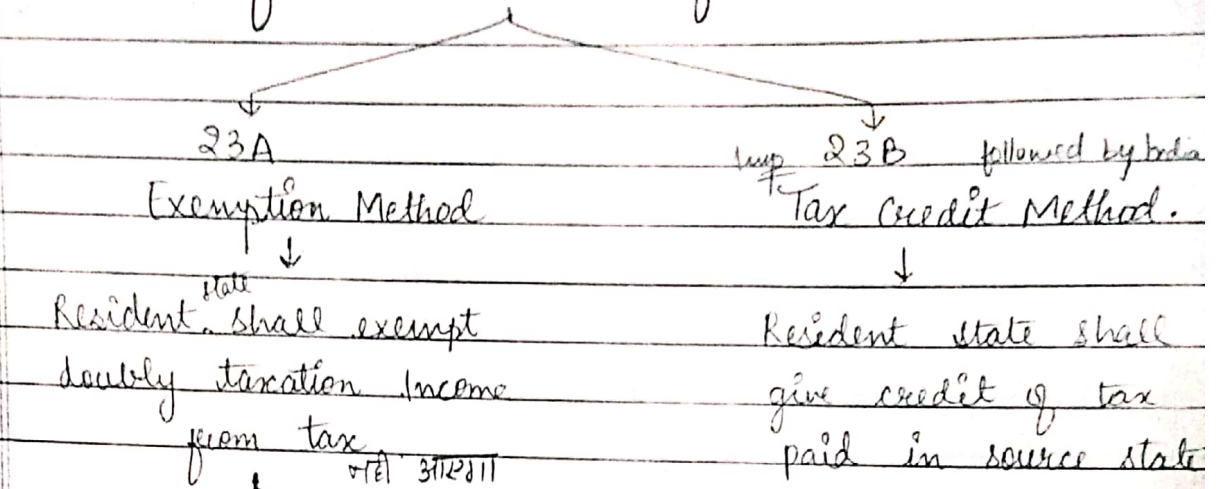
## Article 21

### Other Income

Other income shall be taxable only in resident state.

Article 23

Methods for elimination of Double Taxation



Full Exemption Method  
172000

Exemption with progression Method  
= 162000

Eg Income earned in India 1000000  
Income earned in England 300000  
Virat Kohli → Resident of India.

(i) Full Exemption Method

India exempt 300000 from tax  
∴ Taxable Income = 1000000.

(ii) Exemption with Progression Method  
In India

from India	1000000
from England	300000
	<hr/>
	1300000
Tax	210600
Avg. Rate in India	16.20%
Tax in India =	(1000000 × 16.20%)
	= 162000

## ② Tax Credit Method

T.I	1300000
Tax	210600
Avg. Tax Rate	= 16.20%
Foreign Rate	= 10%

$$\text{Relief} = 300000 \times 10\% = 30000$$

$$\begin{aligned}\text{Tax in India} &= 210600 - 30000 \\ &= 180600\end{aligned}$$

## Article 24

### Non Discrimination

B/w Resident and NR.

## Article 25

### Mutual Agreement Procedure (MAP)

Agreement through which tax authorities of contracting state resolve disputes regarding any article / income of DTAA.

Imp.

## Article 26

### Exchange of Information

- Competent authorities of contracting state shall exchange such info. which is precisely relevant.
- Scope of exchange is not limited to tax payer specific info. They may also exchange info related to tax administration & compliance improvement.

- Non disclosure of Info. to tax country.

- Contracting state has no obligation :
  - To supply info. which is not obtainable.
  - To supply info. which disclose any trade, business, professional secret or any info. the disclosure of which is contrary to public policy.

## Chapter - 8

### Anti Avoidance Measures

(5-7 marks)

#### Base Erosion and Profit Shifting (BEPS)

It refers to tax planning strategy

↓

that exploits gaps and mismatch in tax rules

↓

To make profit disappear or to shift profit where no tax / low tax.

#### Adverse effects of BEPS.

- 1) Government has to cope with less revenue & higher cost.
- 2) It leads to underfunding of public investment that hampers economic growth.
- 3) Individual tax payers has to bear greater share of burden of tax.
- 4) Enterprise in domestic market may face difficulty in competing with MNC.

OECD recommend 15 Action plans to address BEPS

Action plans are based on 3 fundamental pillars

→ Introducing coherence

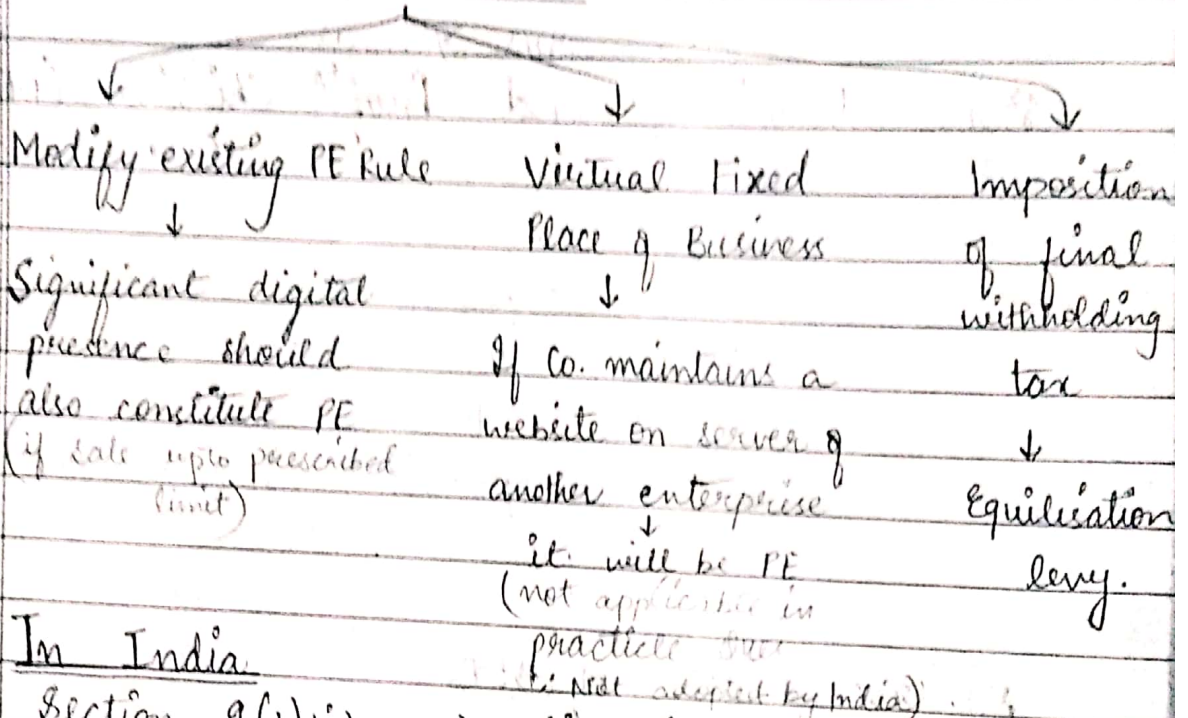
→ Substance over form

→ Improving Transparency

# Action Plan 1 Digital Economy

PE ← Server  
Not PE ← Website

## OECD Recommendation

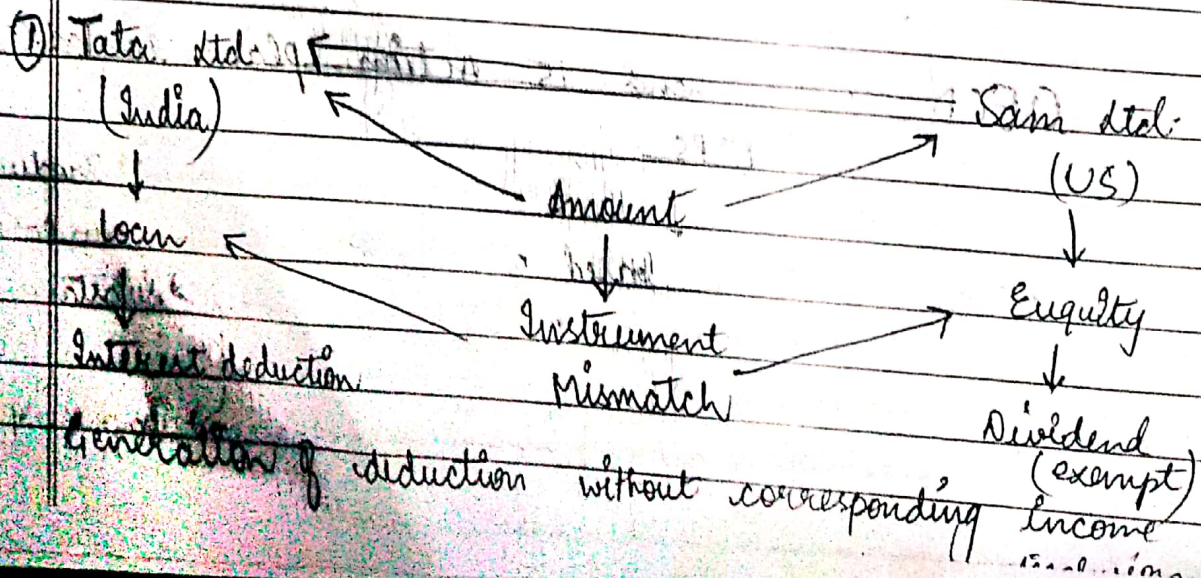


### In India

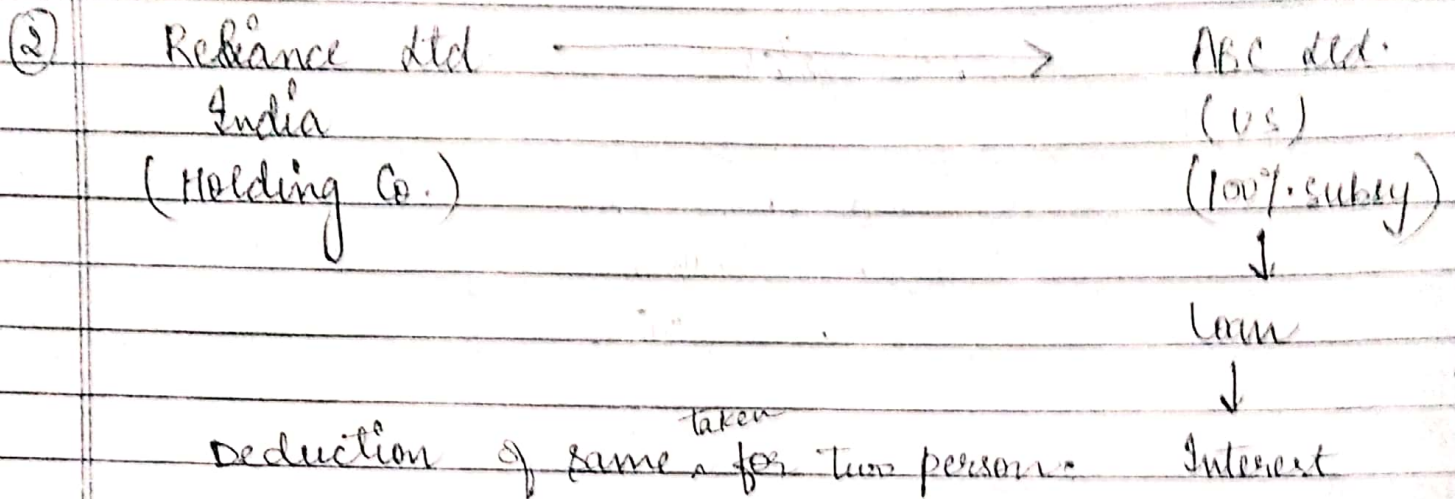
- Section 9(1)(ii) → Significant Economic Presence
- Finance Act, 2016 → Equilisation levy.

## Action Plan 2

### Hybrid Mismatch Arrangement



- Transparent entity
- Opaque Entity.



India → ABC Ltd → transparent Entity  
 ∴ "Interest ded<sup>n</sup>" taken by Rel.

USA → ABC Ltd → Opaque entity  
 ∴ "Interest ded<sup>n</sup>" taken by ABC Ltd.

### OECD Recommendation

### Hybrid Mismatch Arrangement

↓  
Is an arrangement that

↓  
exploits a difference in the tax treatment

↓  
of an entity or an instrument

↓  
under two tax Jurisdiction

↓  
To achieve double non taxation

OECD Recommendation

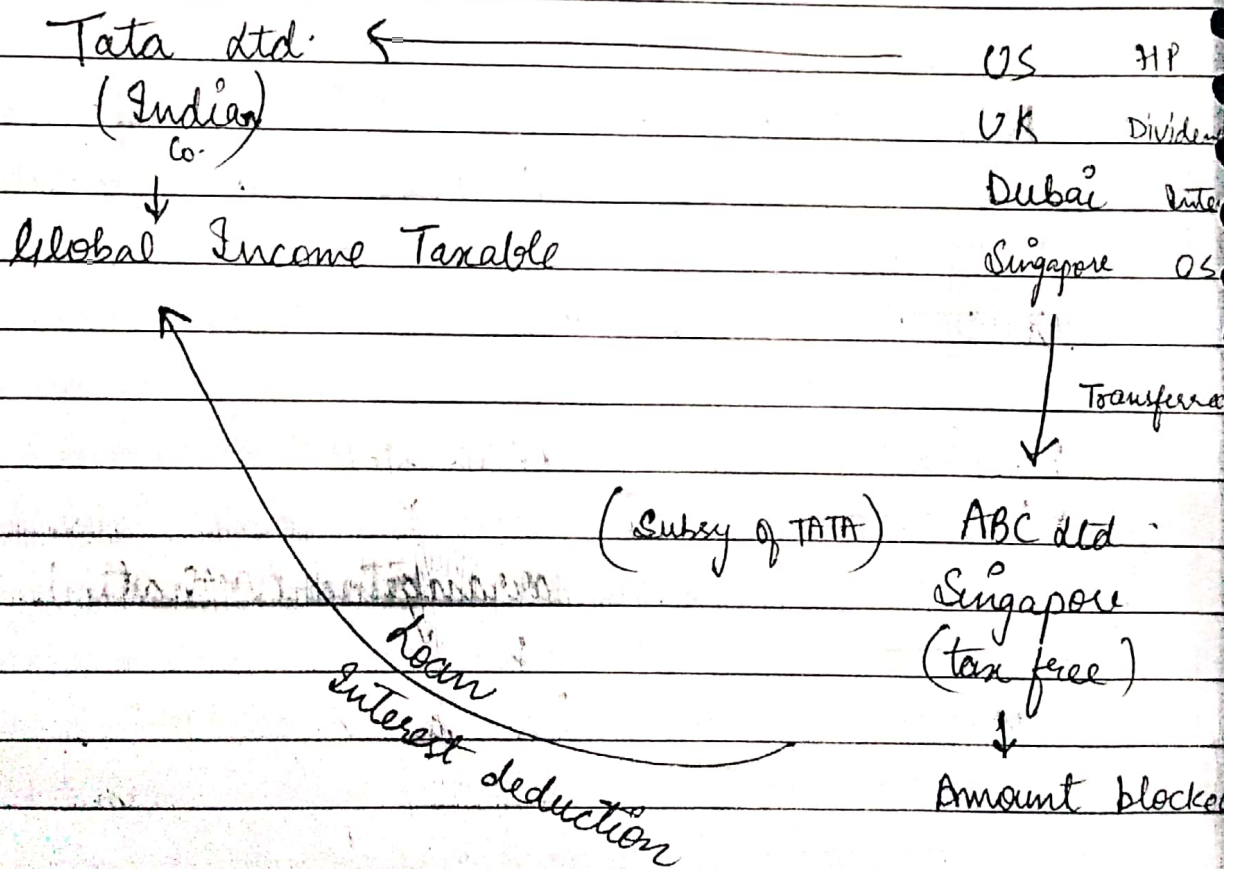
Ammend tax law and tax treaty.

Branch Mismatch

Rules for allocating income and expense b/w branch and HO result in escaping charge to tax in both branch and residence jurisdiction. (OECD Recommendation is same)

Action Plan 3

Controlled Foreign Corporations / Company (CFC)



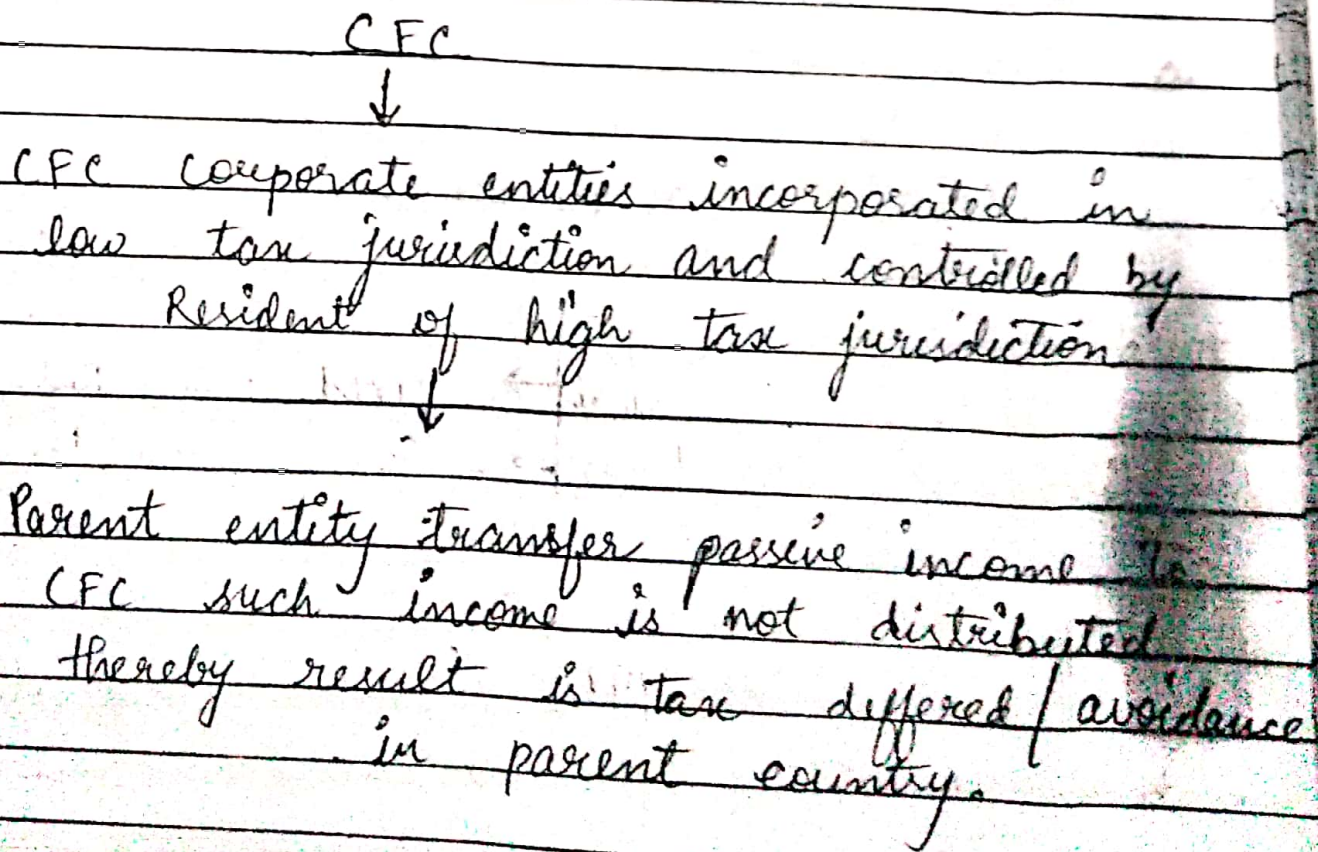
\* Interest deduction  
+  
\* Income



# OECD Recommendation

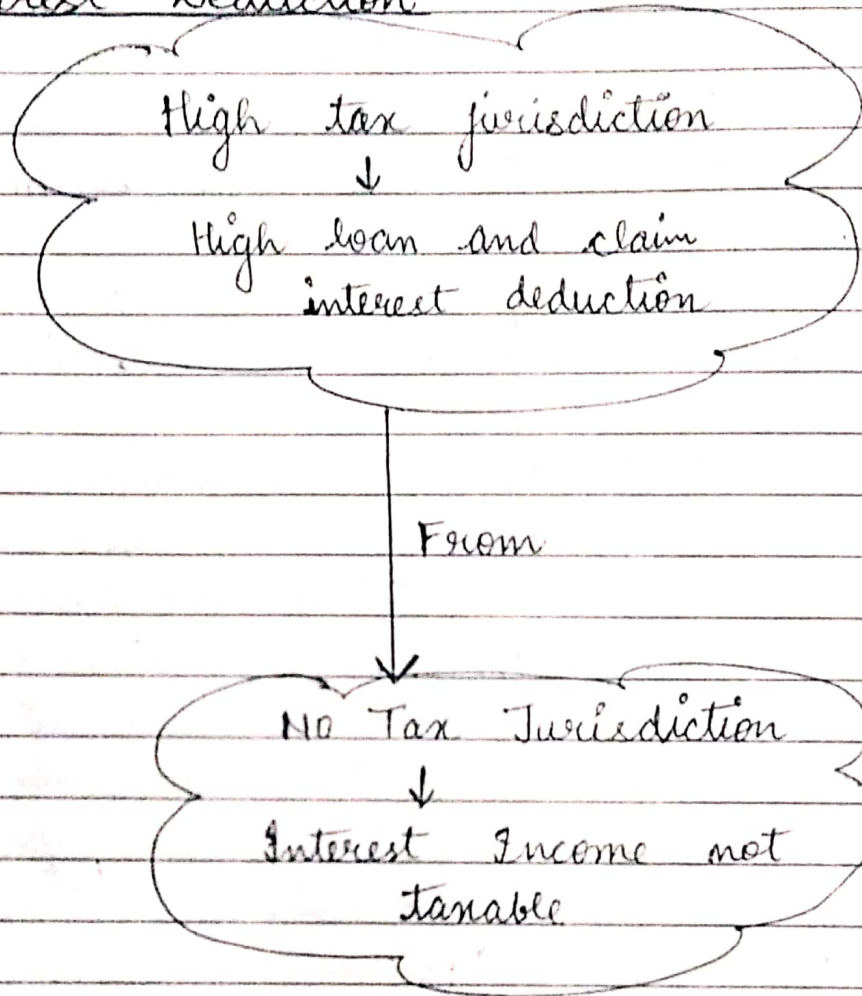
POEM } concept apply  
Sec 115BBD }

- 1) Ownership | Control Test → Treat CFC only if certain (%) of control is in hands of parents
- 2) Computation of CFC Income → As per parent jurisdiction tax law
- 3) CFC Definition → Corporate as well as non corporate.
- 4) CFC Income → Passive Income such as interest, dividend, royalty, rent etc.
- 5) CFC Exemption → If their tax rate is not below parent co. tax rate



## Action Plan 4

### Interest Deduction



### OECD Recommendation

Limit interest deduction based on EBITDA

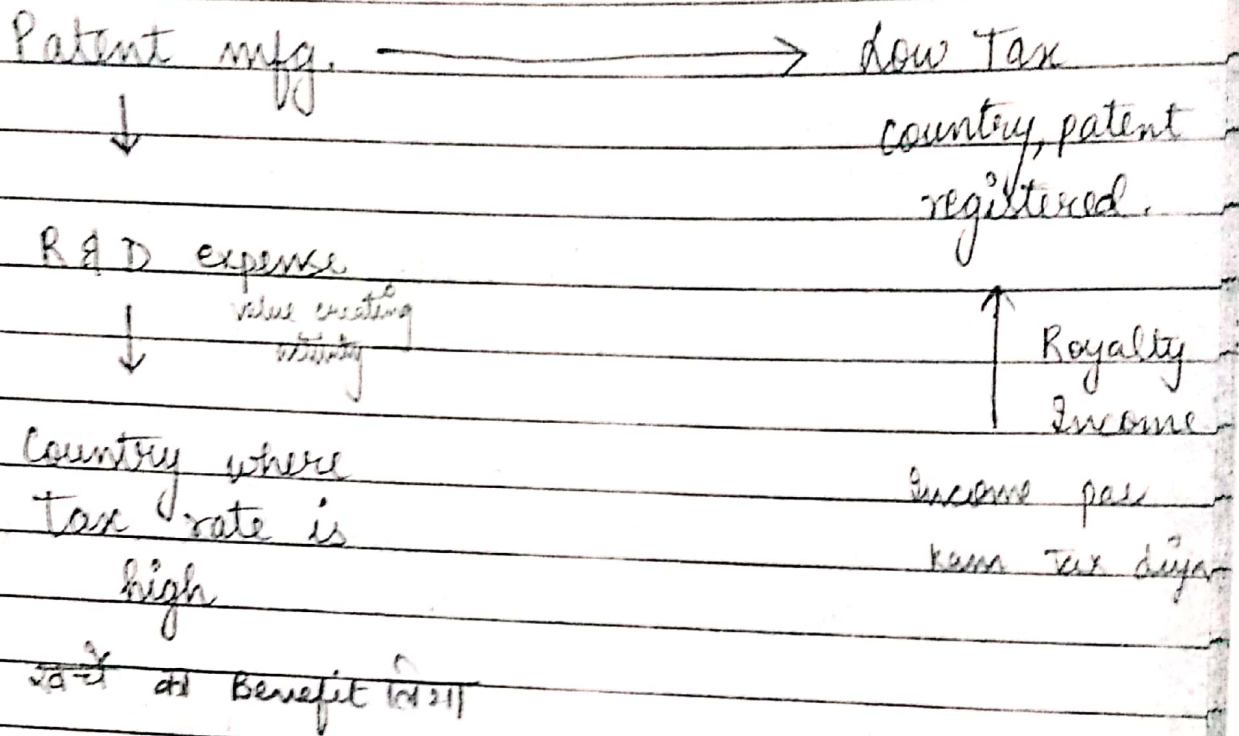
- Fixed Ratio Rule
- Group Ratio Rule
- Targeted Rule

In India

Sec. 94B. (applied) as recommendation

## Action Plan 5

### Counter Harmful Tax Practices



### OECD Recommendation

- Benefit of low tax rate shall provide only if majority of R&D exp/ value creating activity is incurred in that low tax country.

### In India

#### Section 115BBF

Concessional Rate of tax on royalty on Patent

↓  
Taxable @ 10% (Gross Basis)

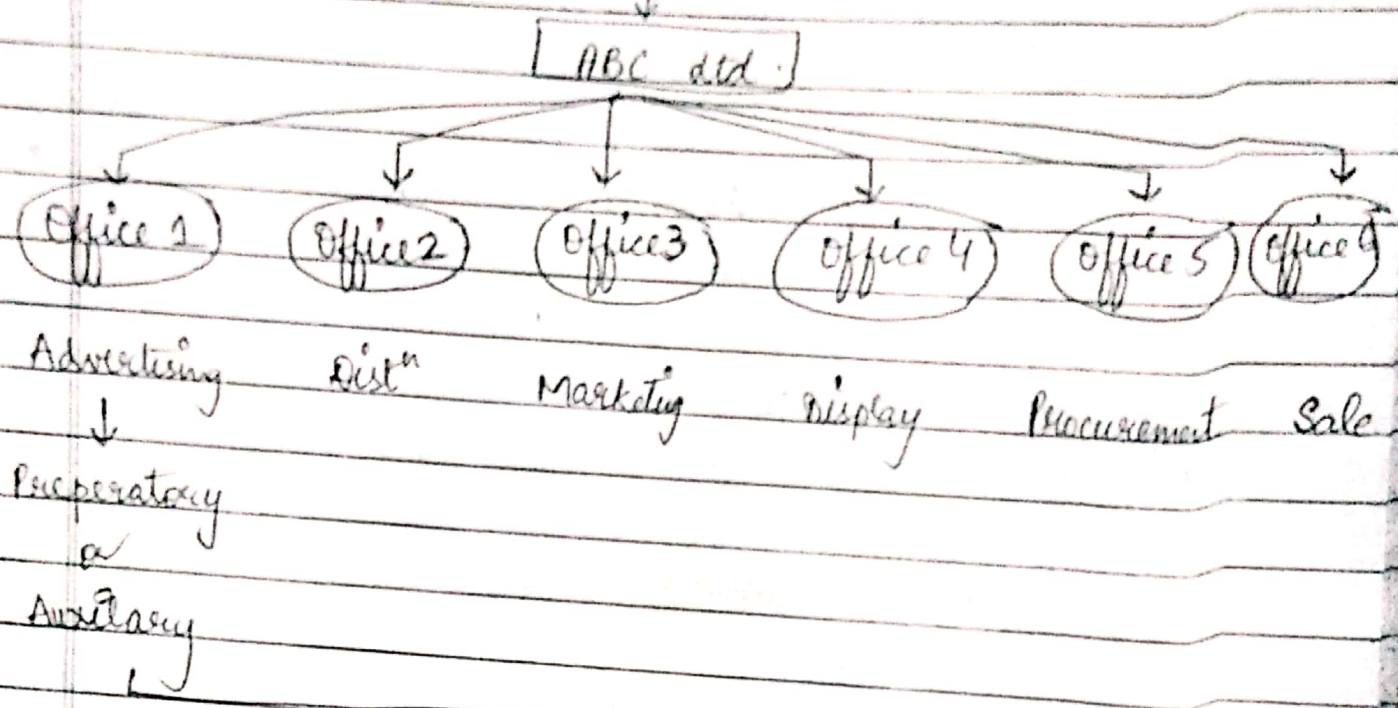
↓  
To Resident

↓  
If atleast 75% of exp incurred in India



## Action Plan 7

Prevent the artificial avoidance of PE status



### OECD Recommendation

↓  
Anti Fragmentation Rule → Aggregate all activities carried on by enterprise through diff. offices.

## Action Plan 8-10

Transaction Pricing - High risk transaction

8 → Relating to TP of intangibles

9 → How to allocate risk and calculate cont<sup>n</sup> ratio.

10 → Limitation on certain intra-group services b/w AE.

## OECD Recommendation

- Risk and return to be allocated b/w parties based on their capacity.
- limitation on low value adding intra group services max. markup of 50%.

## Action Plan II

### Measuring and monitoring BEPS

↓  
Six indicators of BEPS activity are :-

- 1) Profit rate of MNE in low tax rate country is higher than their group average worldwide profit rate.
- 2) Effective tax rate paid by MNE is lower than paid by domestic entity.
- 3) Foreign direct investment is being concentrated.
- 4) Location of value creating activity and profit taxability is different.
- 5) Royalties received by entities located in low tax countries is 37% of total royalties.
- 6) Debt from both related & third party is more concentrated in high tax countries.

## Action Plan 12

Disclosure of aggressive tax planning arrangement

Objective : Increase transparency

↓  
By providing tax department with early info. regarding potentially aggressive tax planning.

## Deterrence

So that tax payers may think into entering such planning.

## Action Plan 13

Re-examine transfer pricing documentation

- local file
- Master file
- CBC Report.

In India Sec. 92 D and Sec. 286

## Action Plan 14

Making dispute resolution more effective

Minimize risk of uncertainty.

Minimize unintended double taxation.



Through



- Proper implementation of tax treaties
- MAP (Mutual Agreement Procedure)

Action Plan 15

Developing a multinational Instrument

(only name.)



# Tax Management



Timely compliance of law



Timely filing of ROI, Timely deposit of TDS, Advance Tax.

# Tax Planning



Best utilisation of exemptions and deductions given in law.



Sec. 80

Salary Exemptions etc.

# Tax Evasion



Bogus Bills, fraud, fake expenses etc.

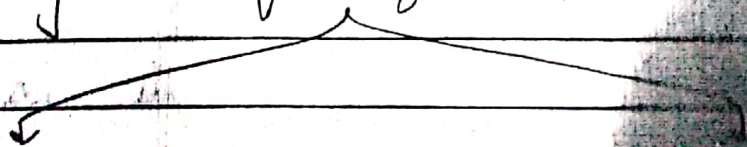


penalty and prosecution.

# Tax Avoidance



Taking benefit of loophole of law



SAAR



Specific <sup>Anti</sup> Accepted

Avoidance ~~Method~~ Rule

GAAR



Generally <sup>Anti</sup> Accepted

Avoidance ~~Method~~ Rule

Page No. \_\_\_\_\_  
Date \_\_\_\_\_

## General Anti Avoidance Rule (GAAR)

[w.e.f. AY 18-19]

### Section 95

### Applicability of GAAR

- An arrangement entered into by assessee may be declared to be an "Impermissible Avoidance Arrangement".
- Arrangement means transaction, agreement, scheme or understanding.
- GAAR provision overrides other provisions of Income Tax Act, 1961 and also DTAA.
- GAAR provisions shall not apply if aggregate tax benefit to all parties of transaction in AY does not exceed ₹ 3 crore.

# Impermissible Avoidance Agreement

↓  
Is an agreement

↓  
whose main purpose is to obtain  
tax Benefit.

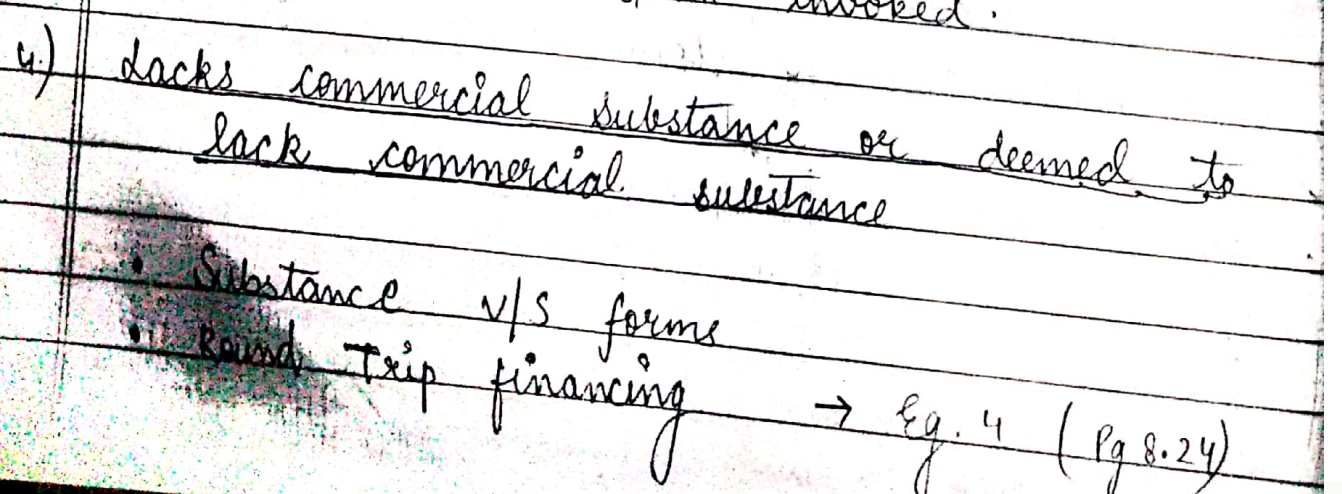
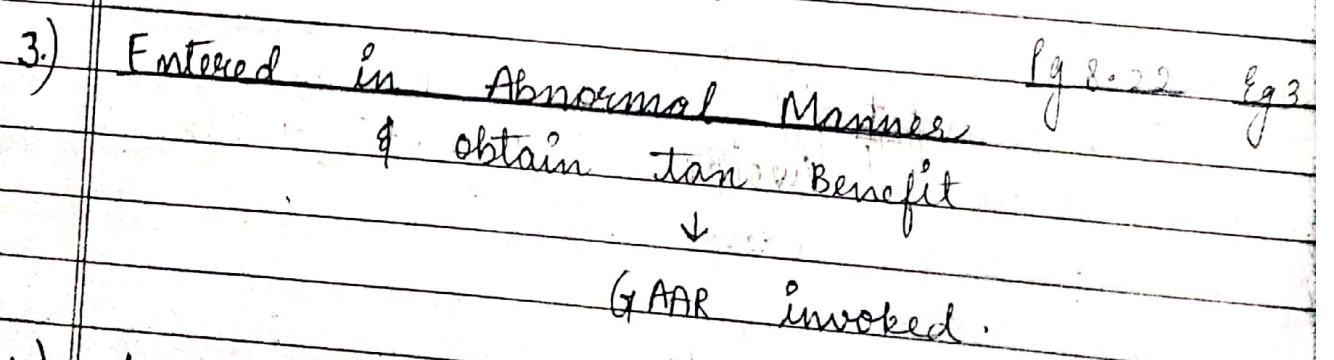
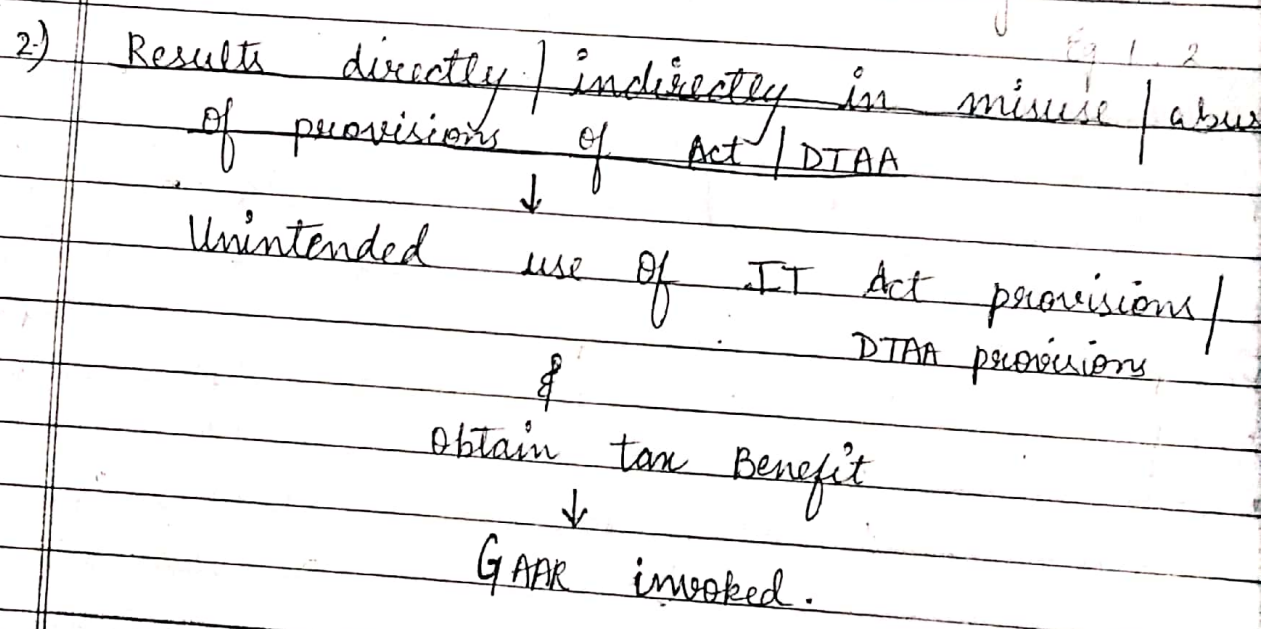
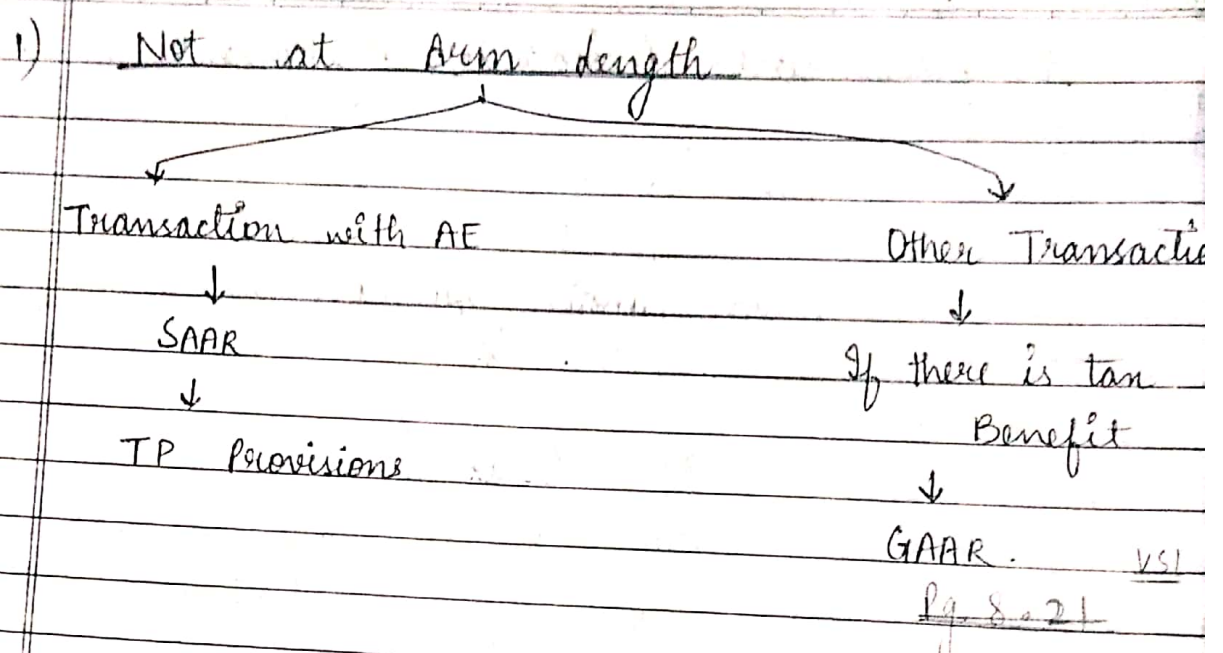
(AND)

satisfies any one of the following  
conditions :-

- 1.) Not at Arm's length
- 2.) Results directly / indirectly in misuse  
or abuse of provisions of Act /  
DTAA.
- 3.) Entered in abnormal manner
- 4.) Lacks commercial substance or deemed  
to lack commercial substance

## Tax Benefit

- Reduction / Avoidance / Deferred of Tax / Other Amt  
payable under this Act / DTAA.
- Reduction in total income / Increase in losses
- Increase in Refund.





## Consequences of Impermissible Avoidance Agreements

↓  
Denial of Tax Benefit

- Disregarding Arrangement
- Treating arrangement has not carried out.
- Disregarding Accounting Policy
- Reallocating Income / Expenses