

**INCOME-TAX RATES**

Abbreviations in Tables below: IT = Income-Tax, TI = Total Income, SC = Surcharge, HEC = Health and Education Cess 4%, TP = Tax Payable, Cess = HEC

For individuals

Total Income (₹)	Tax Rate			INCOME Tax (IT)	TP = IT + SC + HEC
	IT	SC	Cess		
(A) FOR INDIVIDUALS OTHER THAN (B) & (C) BELOW					
Up to 2,50,000	Nil	Nil	Nil	Nil	Nil
2,50,010 – 5,00,000	5%	Nil	4%	IT = (TI Less 2,50,000) x 5%	TP = IT + 4% of IT
5,00,010 – 10,00,000	20%	Nil	4%	IT = 12,500 + [(TI Less 5,00,000) x 20%]	TP = IT + 4% of IT
Above 10,00,000	30%	Nil	4%	IT = 1,12,500 + [(TI Less 10,00,000) x 30%]	TP = IT + 4% of IT
(B) RESIDENT SENIOR CITIZENS OF THE AGE 60 – 80 YEARS					
Up to 3,00,000	Nil	Nil	Nil	Nil	Nil
3,00,010 – 5,00,000	5%	Nil	4%	IT = (TI Less 3,00,000) x 5%	TP = IT + 4% of IT
5,00,010 – 10,00,000	20%	Nil	4%	IT = 10,000 + (TI Less 5,00,000) x 20%	TP = IT + 4% of IT
Above 10,00,000	30%	Nil	4%	IT = 1,10,000 + [(TI Less 10,00,000) x 30%]	TP = IT + 4% of IT
(C) RESIDENT VERY SENIOR CITIZENS OF THE AGE 80 YEARS OR MORE					
Up to 5,00,000	Nil	Nil	Nil	Nil	Nil
5,00,010 – 10,00,000	20%	Nil	4%	IT = (TI Less 5,00,000) x 20%	TP = IT + 4% of IT
Above 10,00,000	30%	Nil	4%	IT = 1,00,000 + [(TI Less 10,00,000) x 30%]	TP = IT + 4% of IT

Note:

- The Rates as prescribed in Part A of the Table above shall **also apply to a HUF, AOP, BOI and AJP**.
- Surcharge: W.e.f. FY 2019 – 20, the above calculated tax amount shall be increased by Surcharge as follows –

Total Income	Surcharge
TI > ₹ 50 Lakhs ≤ ₹ 1 Crore	10%
TI > ₹ 1 Crore ≤ ₹ 2 Crore	15%
TI > ₹ 2 Crore ≤ ₹ 5 Crore	25%
TI > ₹ 5 Crore	37%
Note: Marginal Relief shall be available	

Refer Chapter 1 for ceiling at Surcharge for Dividends, Sec. 112A, 111A & 115AC

- Rebate u/s 87A** is applicable for a Resident Individual whose Total Income does not exceed ₹ 5 Lakhs. Rebate = ₹12,500 or 100% of Tax Payable, whichever is **lower**.
- The above tax rates shall apply to the Total Income after deducting Certain Incomes which are chargeable at Specific Rates (Refer Para 1.3.4).



5. Total Income does **not** include taxable Long Term Capital Gain (20%/12.5%), Short Term Capital Gain (15%/20%) on Securities subjected to STT, Lottery Winnings, Horse Races, etc. (30%) and other Income chargeable at Special Rates.

Note: For transfers effected on or after 23.07.2024, the Capital Gains Rate shall be, - [Refer Chapter 7 for detailed discussion on Capital Gains Tax Rates]

(a) For LTCG: u/s 112/112A = 12.5%,

(b) For STCG u/s 111A = 20%

FOR OTHER ASSESSEES/ PERSONS					
Assessee	Rate of Tax	Applicable Surcharge			Rate of EC + HEC
		TI < ₹ 1 Crore	TI > ₹ 1 Crore, but TI ≤ ₹ 10 Crores	TI > ₹ 10 Crores	
1. Domestic Companies					
• TT/GR ≤ ₹ 400 Crores in FY 2022-23	25%	-	7%	12%	4%
• TT/GR > ₹ 400 Crores in FY 2022-23	30%	-	7%	12%	4%
• Domestic Companies opting u/s 115BA	25%	-	7%	12%	4%
• Domestic Companies opting u/s 115BAA	22%	10%	10%	10%	4%
• Domestic Companies opting u/s 115BAB	15%	10%	10%	10%	4%
2. Foreign Companies	40%	-	2%	5%	4%
3. Firms and LLP	30%	-	12%	12%	4%
4. Local Authorities	30%	-	12%	12%	4%
5. Co – operative societies					
For first ₹10,000	10%	-	-	-	4%
For next ₹10,000	20%	-	-	-	4%
For the Balance	30%	-	7%	12%	4%

Marginal Relief

- Marginal Relief is a reduction from the Tax Payable by the Assessee.
 - Relief from Tax Payable shall be given, where the additional Tax Payable together with Surcharge **exceeds** the Income earned by the Assessee in **excess** of ₹1 Crore/ ₹2 Crores/ ₹5 Crores. Such Relief is known as **Marginal Relief**.
 - The principle in Marginal Relief is that the Additional Amount of Income Tax Payable with Surcharge in excess of Income over ₹1 Crore/ ₹2 Crores/ ₹5 Crores, should not be more than the amount in excess of ₹1 Crore/ ₹2 Crores/ ₹5 Crores.
4. **Computation:**

Total Income exceeds ₹50 Lakhs		Total Income exceeds ₹1 Crore
Marginal Relief =	Tax on Total Income including Surcharge Less: (Total Income – ₹50 Lakhs) + (Tax on ₹50 Lakhs)	Tax on Total Income including Surcharge Less: (Total Income – ₹1 Crore) + (Tax on ₹1 Crore)



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BASIC CONCEPTS IN INCOME TAX LAW

Points to Remember

Components of Income Tax Law: (a) Income Tax Act, 1961, (b) Finance Act, (c) Income Tax Rules, 1962, (d) Circulars/Notifications from CBDT, (e) Supreme Court and High Court Decisions.

Factors determining gamut of taxation: (a) Residential Status, (b) Place of Accrual or Receipt of Income, (c) Time of Accrual or Receipt of such Income, i.e. Previous Year.

Stages of Imposing Tax: (a) Declaration of Liability, (b) Assessment of Income, (c) Process of Collection and Recover.

Heads of Income: (a) Salaries, (b) Income from House Property, (c) Profits and Gains of Business or Profession, (d) Capital Gains, and (e) Income from Other Sources.

Method of Accounting: Relevant only for Profits and Gains from Business or Profession and Income from Other Sources. Based on Cash or Mercantile System of accounting used regularly by Assessee, subject to specified exceptions.

Gross Total Income [Sec. 80B]: Aggregate of all Heads of Income after setting off loss but before Chapter VI – A Deductions.

Total Income [Sec. 2(45)]: Total amount of Income referred to in Sec. 5, computed in the manner laid down in the Act.

Rounding off of Total Income [Sec. 288A]: Rounded off to nearest Ten Rupees.

Rounding Off at Tax, Interest, etc. [Sec. 288B]: Rounding off to nearest Ten Rupees.

Assessment Year [Sec.2(9)]: 12 months commencing 1st April of every Year.

Previous Year [Sec. 3]: Financial Year prior to Assessment Year. In case of newly established Business or Profession from the date of set up to the end of Financial Year.

Chargeability of Income Tax: Income Tax is charged for any Assessment Year at the rates prescribed in the Finance Act in respect of Total Income of the previous year of every Person.

Income of Previous Year taxed in same Year:

- 1) **Assessment of Income of a Non – Resident from Shipping Business [Sec. 172]:** In case of any ship belonging to or chartered by a Non – Resident which shipped at a port in India then 7.5% of amount of such carriage including demurrage and handling charges shall be deemed as Income of the Non-resident and chargeable to in the same P.Y.
- 2) **Assessment of persons leaving India without intention to return [Sec. 174]:** If Assessee leaves India during P.Y. or shortly after its expiry and does not have intention to return to India immediately, then Total Income up to the date of departure charged to tax in the Previous Year of leaving.
- 3) **Assessment of AOP/BOI/AJPs formed for a particular event/purpose [Sec. 174A]:** Where AOP/BOP/AJP established for a particular purpose is likely to be dissolved in first A.Y. or shortly its expiry, then Total Income for the period from the beginning of P.Y. to the date dissolution is charged to tax in the P.Y. of dissolution.
- 4) **Assessment of person trying to transfer his assets with a view to avoid tax [Sec. 175]:** Where a person transfers his assets in the current A.Y. with a view to avoid tax, then Total Income for the period from the beginning of P.Y. to the date of commencement of proceedings u/s 175 is charged to tax in the P.Y. of transfer of assets.



5) Assessment of Discontinued Business [Sec. 176]: Where any Business or Profession is discontinued in any A.Y., then Total Income for the period from the beginning of P.Y. to the date of discontinuance is charged to tax in the P.Y. of discontinuance.

Cash Credits [Sec. 68]: Taxable in the FY in which it is found credited in books of accounts if Assessee offers no explanation or offers unsatisfactory explanation about its nature and source.

For a Closely Held Company, amount is credited towards Share Application Money, Share Capital, Share Premium, etc. and the Person being a Resident (not being Venture Capital Fund or Venture Capital Company u/s 10(23FB)), in whose name such credit is recorded in the Company's books offers no explanation or offers unsatisfactory explanation about its nature and source, it is deemed that the Assessee Company, has not offered satisfactory explanation.

Unexplained Investments [Sec. 69]: Investments made by the Assessee which are not recorded in books and he offers no explanation or offers unsatisfactory explanation about its nature and source, then the value of investment is deemed to be Income of the Assessee of such FY.

Unexplained Money, Bullion, Jewel or valuable article etc. [Sec. 69A]: Where in any FY the Assessee is found to be the Owner of Money, Bullion, Jewellery or any valuable article and those assets are not recorded in books and he offers no explanation or offers unsatisfactory explanation about its nature and source, then the value of those assets is deemed to be Income of the Assessee of such FY.

Investments, etc. not fully disclosed in books of account [Section 69B]: Where in any FY the Assessee has made Investments or is found to be the Owner of Money, Bullion, Jewellery, etc. & the AO finds that amount expended exceeds the amount recorded in books and Assessee Offers no explanation or offers unsatisfactory explanation about excess amount, then such excess amount is deemed to be Income of the Assessee of such FY.

Unexplained Expenditure, etc. [Sec. 69C]: Where Assessee incurred any expenditure and he offers no or unsatisfactory explanation about source of expenditure or part thereof, then such amount may be deemed to be Income of the Assessee of such FY. Such Expenditure shall not be allowed as deduction under any head of Income.

Amount borrowed/repaid on Hundi except by A/c Payee Cheque [Sec. 69D]: Where any amount borrowed on Hundi or repaid the same otherwise than through an Amount Payee Cheque drawn on Bank, then such amount shall be treated as Income of the person for the P.Y. in which the amount borrowed or repaid. If the amount is taxed at the time of borrowing the same cannot be taxed at the time of repayment. Amount repaid includes interest on borrowed amount.

Sec. 68, 69A, 69B, 69C, 69D Income is chargeable under the head "Other Sources" at **60% plus Surcharge at 25%**. No deduction in respect of any expenditure/allowance or any set-off of any loss shall be allowed. **(Sec. 115BBE).**

Alternate Minimum Tax (AMT) – Chapter XII BA [Sec. 115JC to 115JF]:

- (a) Applies to a Person (**other than a Company**) who has claimed any deduction under – (a) Chapter VI – A (u/s 80H to 80TT except Sec. 80P) (b) Sec. 10AA. (c) Sec. 35AD
- (b) Chapter XII – BA shall **not** apply to – (i) Individual, (ii) HUF, (iii) AOP/BOI, (iv) AJP, if the Adjusted Total Income \leq ₹20 Lakhs. [**Note:** For Firm and LLP, the above limit of ₹20 Lakhs does not **apply**.]

1. Tax Payable under AMT Provisions:

Points to Remember

Step	Description
1	Compute Adjusted Total Income, i.e. Total Income before giving effect to Chapter XII – BA as increased by Deduction claimed (if any) under –



	<p>(a) Chapter VI – A from Sec. 80H to 80TT (except Sec. 80P),</p> <p>(b) Section 10AA,</p> <p>(c) Section 35AD [with adjustment for depreciation, as per Note below]</p> <p>Note: If Deduction u/s 35AD is added back as above, then depreciation allowable u/s 32 on such assets will be deducted, as if no deduction u/s 35AD was allowed.</p>
2	<p>Compute Alternate Minimum Tax, i.e. 18.5% on Adjusted Total Income.</p> <p>w.e.f. 01.04.2023 AMOUNT Relief for Co-operative Societies rate shall be 15% instead of 18.5%</p> <p>Note: [w.e.f. 01.04.2019] Special Rate of 9% Shall be applicable in case of non-corporate person being Unit located in an International Financial Services Centre (IFSC) and the Income derived solely in convertible foreign exchange [sec. 115JC(4)]</p>
3	<p>Compute Regular Income Tax, i.e. the Income Tax payable for a Previous Year by a Person on its Total Income in accordance with the other normal of this Act.</p>
4	<p>Compute Tax Payable for the year = Step 2, or Step 3, whichever is higher.</p>

2. Alternate Minimum Tax Credit:

- AMT Credit arises if AMOUNT > Regular Income Tax for any Assessment Year. Such difference, i.e. AMT (less) Regular Income Tax = AMT Credit.
- AMT Credit can be set off in future years where Regular Income Tax > AMT, to the extent of such difference.
- AMT Credit shall be carried forward and set-off for **15 Years** immediately succeeding the Assessment Year for which Tax Credit becomes allowable

Assessee [Sec. 2(7)]: Person liable to pay Income Tax or any other sum under the Act and includes every person on whom any proceedings has been taken for assessment of – (i) Income, (ii) Loss, (iii) Refund, relating to on him or other person, or deemed to be an Assessee, or deemed to be an Assessee in Default.

Person [Sec. 2(31)]: Individual, HUF, Firm, Company, AOP, BOI, Local Authority, AJP.

Income [Sec. 2(24)]: Includes – (a) Income Chargeable under various heads, (b) Voluntary Contributions Received, (c) Employees Contribution to Welfare Funds, (d) Amount Received under keyman Insurance Policy including Bonus, (e) Gift in kind, (f) Any sum of money or value of property as defined u/s 56(2)(vii)/(viia), (g) Value of Shares of a Company (Closely Held Company) received in any Previous Year, by a Firm or a Company (Closely Held Company), from any person(s), (h) Any Consideration received for Issue of Shares as exceeds the Fair Market Value referred u/s 56(2)(viib), (i) Advance forfeited on failed negotiations for transfer of Capital Asset, (j) Assistance by way of Subsidy/Grant/Cash Incentive/Duty drawback by whatever name called by Cent. Govt. or State Govt. or any Authority given to the Assessee. (k) Any sum of money or Value of Property referred u/s 56(2)(x) received on or after 01.04.2017., (l) Income **includes FMV of Inventory** referred to u/s 28(via) [Inventory being converted/treated as Capital Asset], (m) Income **includes** any compensation or other payment referred to u/s 56(2)(xi) being payment due to or received by any person in connection with the termination of his employment or the modification of the terms and conditions, (n) specified sum received by a unit holder from a business trust as specified u/s 56(2)(xii), (O) any sum (including bonus) received under Life Insurance Policy as specified u/s 56(2)(xiii).

Application of Income: An obligation to apply income, which as accrued or has been received amounts to merely the appointment of Income. Essentials are – (a) Income accrues to the Assessee, (b) Income reaches the Assessee, and (c) Income is applied to discharge an obligation, whether self-imposed or gratuitous.

Diversion of Income: An obligation to apply the income in a particular way **before** it is received by the assessee or before it has arisen or accrued to the assessee results in diversion of income. The source is



charged with **an overriding title**, which diverts the income. Essentials of “Diversion of Income” are – (a) Income is diverted at source, (b) There is an overriding charge or title for such diversion, and (C) Charge/Obligation is on the Source of Income & not on the Receiver.

Sec. 115BBE: Where the Total Income of an Assessee, -

- (a) Includes any income referred to in Section 68, 69, 69A – 69D and reflected in the return of income furnished u/s 139, or
- (b) Determined by the Assessing Officer includes any income referred to in Section 68, 69, 69A, 69B, 69C or 69D, if such income is not covered under Clause (a),

The income – tax payable shall be the aggregate of –

- The amount of income-tax calculated on the income referred to in Clause (a) and Clause (b), at the rate of 60%, and
- The amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred above.
- The Tax rate of 60% is further increased by a Surcharge of 25%

Important Case Decisions

Sec. 68 to Sec. 69D – Scope of Taxability

1. Assessee failed to justify his stand that there was no unaccounted sale as indicated in seized documents, and so, addition made on basis of seized documents was justified. [**S. Rudramuniyappa 75 taxmann.com 241 [2016] (SC)**].
2. Where evidence of one of two witnesses was by itself sufficient to draw adverse inference against assessee that commission payments made by it were fictitious, refusal by assessee to cross examine said witness must follow that assessee had accepted said witness and commission payments were rightly disallowed. [**Roger Enterprises (P). Limited. 72 taxmann.com 167 [2016] (SC)**].
3. Where there was nothing on record to show that sister of assessee was in exclusive possession of bedroom in assessee’s house from where cash was seized further, there was contradiction in statement of assessee and his sister with respect to ownership of actual amount in cash seized cash would be included as unexplained income in hand of assessee u/s 69A. [**Ashokbhai H Jariwala Vs. ACIT [2017] 84 Taxmann 196 (SC)**]
4. Addition u/s 68 could be made even for an unexplained credit amount on account of supply of goods, and not necessarily only for a cash credit. [**Rekha Krishnarai Vs. ITO [2017] 85 Taxmann 256 (SC)**]
5. **Jewellery received in the form of ‘Sreedhan’:** Collecting Jewellery of 900 grams by a Woman in a married life of 25 years, in form of “Sreedhan” or on other occasions is not Abnormal. A.O. was unjustified in treating only 400 grams as ‘reasonable’ and treating remaining as ‘unexplained’. Hence addition made was to be deleted. [**Ashok Chaddha Vs. ITO (2011) 202 Taxmann 395 (Del)**].
6. **Income U/s 69A:** Wrist watches seized at the time of raid by Custom Authorities, Assessee did not tender any evidence proving that it did not belong to him. The Value of those Wrist watches could be treated as the Income of the Assessee. [**Chuharmal Vs. CIT (198) 172 ITR 250 (SC)**].
7. **Assessee’s Responsibility:** Onus is placed on the Assessee to disclose identity of Creditors, and he is not required to prove genuineness of transactions as between its Creditors and Creditors’ source of Income [**CIT Vs. Kinetic capital Finance Limited 202 Taxmann 548 (Del.)**]
8. **If identity is proved, no addition can be made u/s 68:** When the Return submitted by the Creditor had not been rejected by the AO, the AO is bound to accept the same as genuine, when the identity of the Creditor and the genuineness of transaction through Account Payee Cheque has been established. Therefore, no addition could be made u/s 68 [**CIT Vs. Dataware Private Limited (Cal.)**]



9. **AO can open assessment – Shareholders are bogus:** If the Revenue believes that the **Shareholders are bogus**, AO is free to **open the individual assessment** of each Shareholder. AO cannot treat the same as Undisclosed Income u/s 68, suspecting the credentials of the Share Applicants. **[CIT Vs. Divine Leasing & Finance Limited 2008 TIOL 118 (SC)]**.
10. **Onus of proof of source – On Assessee:** If the investigation establishes that the Firm was fictitious and its Partners were also bogus and there was no Bank Account found in the name of the Firm, the undisclosed sum cannot be linked to the account of a non – existent Firm. The onus of proving the source of deposit primarily rested on the persons in whose names the deposit appeared in various Banks. Individual assessments in the hands of Respondent Assessee can be made. **[CIT Vs. K Chinnathamban 292 ITR 682 (SC)]**
11. **Responsibility on the Assessee to prove source:** The responsibility of proving the source of subsequent year's Cash Credit or investment is only on the assessee. **[Anantharam Veera Sinaiah & Co. 123 ITR 457 (SC)]**
12. **Reasonable Opportunity for Assessee:** Cash Flow Statements submitted by Assessee were not supported by documents. The Supreme Court held that the matter should be remitted to Commissioner (Appeals) giving opportunity to Assessee to produce relevant document and that the High Court cannot decide otherwise. **[M.K. Shanmugam Vs. CIT 26 taxmann.com 255 (SC)]**
13. **Assessee's Responsibility:** Concept of "shifting onus" does not mean that once certain facts are provided, the Assessee's duties are over; if on verification, or during proceedings, the AO cannot contact the Share Applicants, or that the information becomes unverifiable, or there are further doubts in the pursuit of such details, the onus shifts back to the Assessee and at that stage, if it falters, the consequence may well be an addition u/s 68. **[N.R. Portfolio Private Limited (Del)] [29 Taxmann 291 (2013)]**
14. **Cross Verification: Facts:** CIT(A) noted that amounts were received as gift and that it was unusual for a wealthy NRI to accept gifts from his agriculturalist father and brother, and he confirmed the addition u/s 68.

Conclusion: ITAT observed that the AO before drawing any adverse inference against the assessee, should have cross verified the fact from the donors and that no adverse inference could be drawn against the assessee in absence of any counter-record with Revenue **[Atul H. Patel Vs. ITO (2022)]**

Application of Income Vs. Diversion of Income

15. **Underwriting Commission:** Any underwriting Commission received by the Underwriters on Shares subscribed by them shall reduce the cost of Shares and net taxable as Income **[UP State Industrial Development Corpn 225 ITR 703 (SC)]**
16. **Resolution for Diversion of Income: (a)** Where a **resolution was passed** at the General Meeting for the levy for a particular purpose the Surcharge then paid was **clearly impressed with an obligation** in the **nature of trust** for being applied for the local Charities **(b) If this becomes an allocation** of a receipt for Local Charities before it could become Income for the Assessee **[CIT Vs. Tollygunge Club Limited (1977) 107 ITR 776 (SC)]**.
17. **Dharmada or Charity Account:** Dharmada realized from Customers along with sale proceeds and credited to "Dharmada Account" **did not constitute a part** of the price and so did not form a part of the Assessee's Income. **CIT Vs. Bijli Cotton Mills (P) Limited (1979) 116 IR 60(SC)**

Application of Income Vs. Diversion of Income

18. **Annuity Policy by Diversion:** Amount utilized for purchase of a Single Premium Deferred Annuity Policy by the Employer, out of Commission payable to the Employee in his name, will form part of remuneration payable to the Assessee and chargeable under "**Salaries**". **[Navnit Lal Sarkar Lal 113 ITR 692 (SC)]**



19. **Termination Compensation – Release Agreement:** Where under Release Agreement, Assessee – CA Firm which was representing a Foreign Firm for 13 years was to no longer represent Foreign CA Firm in India, and Foreign Firm would not refer any work to Assessee – Firm compensation received by Assessee – Firm from said Foreign CA Firm for termination of its service would be Capital Receipt **[Khanna and Annadhanam (2013)(Del)] 30 Taxmann 332 (P & G) (2013)**
20. **Capital contributed by Partners with no explanation for source:** The Firm received cash from its Partners towards Capital. In the absence of any material to indicate that they are the profits of the Firm, Cash Credits cannot be assessed in the hands of firm, although it may be assessed in individual's Partner's hands. **[M. Venkateshwara Rao (2015) 370 ITR 212 (T & AP)]**

Income taxed at Special Rates

21. The rate of 30% prescribed u/s 115BB is applicable in respect of winnings from lottery on unsold tickets received by the distribution **[CIT Vs. Manjoo and Co. (2011) 335 ITR 527 (Kerala)]**

Capital Vs. Revenue Receipts

22. The amount received by the assessee towards compensation for sterilization of the profit earning source (i.e. delay in supply of machinery), is not in the ordinary course of business, hence it is a capital receipt in the hands of the assessee. **[CIT Vs. Saurashtra Cement Limited. (2010) 325 ITR 422 (SC)]**



2

RESIDENTIAL STATUS

Points to Remember

Individual [Sec. 6(1)]: (i) At least 182 days stay in India in RPY, or (ii) At least 60 days stay in India in RPY and at least 365 days in India in 4 Prior P.Y.s

Note: Indian Citizen leaving India for employment, Indian Citizen being a Crew Member of Indian Ship leaving India, Citizen (or) Person of Indian Origin visiting India, 182 days' condition alone shall apply.

HUF, Firm, AOP or BOI [Sec.6(2)]: Control and Management wholly or partly in India – Resident, Otherwise – Non – Resident.

Sec.6(3):

1. **Indian Company** – Resident.
2. **Other Company** – If place of effective management in the year is India – Resident, Otherwise – Non – Resident.

W.e.f. 01.04.2017, The existing provision of Sec.6(3)(ii) for determining the Place of Effective Management of a Company for deciding the residential status, shall not apply to a Company having turnover of gross receipts of ₹50 Crores or less in a financial year. **[Circular No. 8/2017] [For Detailed discussion on POEM, refer Chapter 19 – Taxation of Companies]**

Every other person [Sec.6(4)]: Control and Management wholly or partly in India – Resident, otherwise – Non – Resident.

Sec.6(5): If Resident for one Head of Income, then Resident for all Heads of Income.

Sec.6(6):

1. **RNOR** (i) If stay in India is ≤ 729 days in 7 prior P.Y.s or (ii) Non-Resident in at least 9 out of 10 prior P.Y.s. For HUF – Karta's stay in India is considered.
2. **R & OR:** If both of the above are not satisfied then they are R & OR

Points to Remember

Scope of Total Income [Sec. 5]

1. **R & OR:** Every Income is taxable
2. **RNOR:** The following are not taxable –
 - Income earned and received outside India (First receipt outside India)
 - Income accruing or arising outside India from any source other than Business or Profession controlled from India.
3. **NR:** Only Indian Income is taxable

[Note: Non-Resident [Section 2(30)]: Not a Resident u/s 6(1)]

Income deemed to be received in India [Sec. 7]: (a) Annual accretion in P.Y. in RPF, (b) Transferred balance in a RPF, (c) Contribution made by CG or any other Employer in P.Y. to Employees A/c under a Pension Scheme u/s 80CCD.

Income deemed to accrue/arise in India [Sec.9]: Income through Business Connection, Transfer of Property, Assets or Source in India, Salaries, Dividend, Interest, Royalty, Fees for Technical Services.



Interest, Royalties and Fees for Technical Services shall be deemed to accrue or arise in India whether or not the Non-Resident has – (a) A residence or place of business or business connection in India, or (b) He has rendered services in India.

Any sum of money paid, or any property situate in India transferred, on or after 05.07.2019 by a person resident in India to a person outside India not being a company, or to a foreign company shall be deemed to accrue or arise in India.

Important Case Decisions

- 1. Leaving India for Employment:** Leaving India for Employment outside India also includes self-employment outside India. [CIT Vs. O. Abdul Razak (2011) 337 ITR 267 (Ker.)], [Mrs. Smitha Anand (2014) (AAR)], [British Gas India (P) Limited (AAR) 285 ITR 218]
- 2. Income deemed to accrue or arise in India:** Offshore Supply Contract Agreement regarding the transfer of Ownership, payment mechanism in the form of Letter of Credit which ensures the credit of the amount in Foreign Currency to the Applicant's Foreign Bank on A/c on receipt of Shipment Advice and Insurance Clause, would go to establish that the transaction of sale and the title took place outside Indian Territory. The Ownership and Property in Goods passed outside India. So, the Applicant was not able to tax in respect of Offshore Supplies as per the Act. [LS Cable, In re (2011) (AAR)]
- 3. Taxability of Sale of Shares invested in Indian JV:** US Company invested in Shares of Indian Joint Venture, and R.B.I. permitted the Shares to be issued in the name of its 100% Mauritius Subsidiary. On sale of Shares to Indian JV Partners, Gains accrued in India would give rise to Tax Liability in the hands of US Company, and not in hands of Mauritius Company. [Aditya Birla Nuvo Limited Vs. DDIT (International Taxation) (2011) (Bom.)]
- 4. Capital Gains** from the **transfer of Capital Assets** situated in India is **taxable in India**, even if the transaction relating to the Capital Asset took place **outside India** [Trinity Corporation 295 ITR 258 (AAR)]
- 5. Royalty:** Payment made by Indian Insurance Company to Singapore Company for providing access to applications and to serve hardware system hosted in Singapore and related support under the terms of Service Agreement is **not** in the nature of Royalty within the meaning of Explanation 2 to Sec.9(1)(vi). [BharatiAxa General Insurance Co. Limited, In re 210(AAR)]
- 6. Royalty:** Where Non-Resident TV Channel uplinks TV Programme to Satellite through their own facilities situated outside India, and Satellites which are not stationed over Indian Airspace amplifies and relays waves using Transponders Capacity and Indian Cable Operators receive the signals, merely because footprint area of satellite Transponders includes India and ultimate viewer are watching programmes in India, it would not mean that Satellite Owners are carrying out its business operations in India. Such amounts is not Royalty as defined in Explanation 2 to 9(1)(vi). [Asia Satellite Telecommunications Co Limited Vs. DIT (2011)(Del.)]
- 7. Sharing of Capacity = Royalty:** A Foreign Consortium constructed and maintained Submarine Optic Fibre Telecommunication Cable System which was a Facilitating and Networking Telecommunication Infrastructure, and Foreign Consortium Members were allocated capacity, who in turn transfer a part of allocated capacity to Indian Company for consideration, such payment would be Royalty, and taxable in India. [Dishnet Wireless Limited, 353 ITR 646 (2012)]
- 8. Stay due to impounding of Passport:** Involuntary stay of assessee in India caused by unauthorized impounding of passport must be excluded for determining his Residential Status u/s 6. [Suresh Nanda (2015) 57 taxmann.com 448 (Del) (HC)]



9. Assessee, an Australian company, transferred its right, title and interest in a trademark in India. Since it was a case of transfer of intangible asset and, assessee was not located in India at time of transaction, income accruing to assessee from transfer of its right, title or interest in trademark **was not** taxable in India. [CUB Pty Limited. 71 taxmann.com 315 [2016] (HC)(Del.)]
10. **Facts:** AO had observed that assessee made payments in foreign currency to various agencies on which no tax was deducted at source and held the payments to be in the nature of managerial and technical services u/s 9(1)(vii).

Conclusion: ITAT held that inspection with regards to quality, quantity and weight of the product pre-shipment cannot be treated as technical and managerial services under the provisions of the Act or DTAA. As per ITAT, inspection and examination of the goods before shipment is a common practice and it cannot be treated as a technical and managerial service. [Maharashtra Seamless limited. Vs. DCIT (2018)]



3

EXEMPTIONS FROM TOTAL INCOME

Section	Assessee	Nature of Exempt Income				
10(1)	All Assessee	Agricultural Income in India				
10(2)	Members of HUF	Share Income from HUF. A married daughter/widow receiving Income from Father’s HUF is not exempt from tax.				
10(2A)	Partner of a Firm	Share in Total Income of the Partnership Firm to the extent allowed u/s 40(b), when Firm is assessed as such.				
10(4)	Individuals	(i) Interest from Notified Bonds including Premium on redemption, for Non – Resident. (ii) Interest on NRE A/c earned by NR or any individual permitted by R.B.I.				
10(4D)	Non – resident	Any income accrues or arisen or is received by a specified fund or transfer of Capital asset u/s 47(viiab) in RSE located in International Financial Services Centre (IFSC).				
10(4E)	Non – resident	[W.e.f. 01.04.2022] Income accrued or arisen or received on transfer of non – deliverable forward contracts or Offshore Derivative Instruments or over-the-counter derivatives entered into with off-shore banking unit of IFSC u/s 80LA(1A) on fulfillment of prescribed conditions				
10(4F)	Non – resident	[W.e.f. 01.04.2022] Income by way of Royalty or interest, on account of lease of an aircraft or a ship in P.Y. paid by a unit of IFSC referred u/s 80LA(1A). Meaning: <table><tr><td>Aircraft</td><td>Aircraft/Helicopter/Engine, or any part thereof.</td></tr><tr><td>Ship</td><td>Ship/Ocean Vessel/Engine, or any part thereof</td></tr></table> Note: Operations Commencement date on or before 31.03.2025	Aircraft	Aircraft/Helicopter/Engine, or any part thereof.	Ship	Ship/Ocean Vessel/Engine, or any part thereof
Aircraft	Aircraft/Helicopter/Engine, or any part thereof.					
Ship	Ship/Ocean Vessel/Engine, or any part thereof					
10(4G)	Non – resident	1. Applicability: Non – Resident 2. Exempt Income: Any income from portfolio of securities or financial products or funds, managed or administered by any portfolio manager on behalf of such non-resident, in an account maintained with an Offshore Banking unit of IFSC referred u/s 80LA(1A) 3. Condition: Such Income accrues or arises outside India and is not deemed to accrue or arise in India. 4. Meaning: Portfolio Manager shall have the meaning u/r 2(1)(z) of the IFSC Authority (Capital Market Intermediaries) Regulations, 2021.				



10(4H)	Non – Resident or IFSC Unit specified u/s 80LA	<p>1. Nature: Capital Gains</p> <p>2. Condition for the Capital Asset: Equity shares of domestic company being, -</p> <p>(a) IFSC Unit engaged in the business of leasing of aircraft</p> <p>(b) Commenced the operations before 31.03.2020.</p> <p>3. Condition for objection: Assessee also should be engaged to the Business of Leading of aircraft</p> <p>4. Time Limit: 10 AYs beginning with A.Y. relevant to P.Y. in which such domestic company has commenced operations</p> <p>Note: If the above period ends before 01.04.2024, the above calculation shall be started taking the 1st year as A.Y. commencing from 01.04.2024</p>
10(6) (ii)	Individual not being an Indian Citizen	Remuneration of Foreign Diplomats, subject to conditions
10(6) (vi)	Individual not being an Indian Citizen	<p>Remuneration of Employee of Foreign Enterprise for services rendered by him during his stay in India provided –</p> <ul style="list-style-type: none"> • Employer does not engage in any trade or business in India, • His stay in India is ≤ 90 days in such P.Y. • Remuneration is not deductible from the Taxable Income of Employer.
10(6) (viii)	Individual not being an Indian citizen	Salary received by Crew member of Foreign Ship where his stay in India is ≤ 90 days in such P.Y.
10(6) (xi)	Individual not being an Indian citizen	Remuneration received by an Employee of a Foreign state in connection with his training in India, in specified undertakings.
10(6BB)	Foreign Enterprise/Govt.	Tax paid by an Indian Company on behalf of the Foreign Enterprise/Govt. in respect of payment made for leasing an Aircraft or Aircraft Engine.
10(6C)	Notified Foreign Company approved by the Government	Royalty or Fees for Technical Services rendered in India or abroad for defence and security purposes
10(6D)	National Technical Research Organization (NTRO)	<p>(i) Any income arising by way of Royalty from NTRO, or</p> <p>(ii) Any Income by way of Fees for technical services rendered in or outside India from NTRO.</p>
10(8)	Individual	Remuneration from Foreign State under co-operative technical assistance program in accordance with agreement with CG [withdrawn w.e.f. 01.04.2023]
10(8A)	<p>(a) Non – Indian Citizen</p> <p>(b) RNOR Indian Citizen</p> <p>(c) Any other Non – Resident</p>	Remuneration as Consultants out of funds made available to International Agencies under Technical Assistance Program approved by Government. [Withdrawn w.e.f. 01.04.2023]



10(8B)	Individuals	Remuneration and Other Income of the Employees of Consultants as per 10(8A). [withdrawn w.e.f. 01.04.2023]
10(9)	Individual being Family Member of the Consultant or his Employee	Income accrues or arises outside India, and is not deemed to accrue or arise in India. [withdrawn w.e.f. 01.04.2023]
10 (10BC)	Individual or his Legal Heir	Compensation received from Central/State Govt./Local Authority on account of disaster other than the amount allowed as deduction under this Act.
10(10D)	All Individuals	<p>Any sum received under Life Insurance Policy, including sum allocated by way of Bonus, subject to certain exception. The premium limit shall be 15% for policy issued on or after 01.04.2013 to the person referred u/s 80U or 80DDB.</p> <p>Note: [W.e.f. 01.02.2021] Exemption u/s 10(10D) shall not apply to amount received from ULIP issued on or after 01.02.2021, if the premium payable for any of the P.Y. during the term of such policy exceeds ₹2,50,000.</p> <p>In case of premium payable for more than on UIP issued on or after 01.02.2021, with respect to those ULIPs, here the aggregate of premium exceeds ₹2,50,000 in any of the P.Y. during the term of any of those policies</p> <p>Not applicable: Any sum received on the death of a person.</p>
10(11A)	Individuals	Any payment from an account, opened as per the Sukanya Samriddhi Account Rules, 2014 made under the Government Savings Bank Act, 1873, is exempt from Tax.
10(12A)	Individuals	<ol style="list-style-type: none"> Applicability: All Assesseees, who have subscribed to the National Pension System Trust. {Earlier it was applicable only to an Employee} Nature of Exemption: Payment from the National Pension System Trust on closure of account or on opting out of the Pension Scheme referred u/s 80CCD is exempt up to 60% of the total amount payable.
10(12B)	Individuals	w.e.f. 01.04.2018, New Section 10(12B) – Exemption to Partial Withdrawal: Payment from the National Pension System Trust to an employee on partial withdrawal out of his account from the Pension Scheme referred u/s 80CCD, is exempt up to 25% of the contributions made by him.
10(12C)	Persons enrolled in Agnipath Scheme	Any payment from Agniveer Corpus Fund (Even Payment to their Nominees is exempt)
10(15)	All Assesseees	Income from Notified Bonds/Deposits & Securities. W.e.f. 01.04.2020 Interest Payable to Non – Resident by a Unit located in IFSC in respect of monies borrowed by it on or after 01.09.2019 is exempt from tax.
10(15B)	[W.e.f. 01.04.2025] Foreign Company	1. Nature of Income: Lease rental from leasing of cruise ships (Income is received or accrued or arisen in India)



		<p>2. Payer: Specified company operating such ships in India</p> <p>3. Conditions: Foreign company and the specified company are the subsidiaries of the same holding company</p> <p>4. Time Limit: Exemption applicable till Assessment Year beginning on or before 01.04.2030</p>
10(16)	All Assessee	Scholarship granted to meet Cost of Education
10(17)	MLAs and MPS	Daily Allowance, Constituency Allowance.
10(17A)	All Assesseees	Reward or Award either in cash or in kind instituted and approved by Govt.
10(18)	Armed Personnel	Pension/Family Pension received by winner of Gallantry Award or his family members
10(19)	Widow or Children of member of Armed Forces	Family Pension received by family member of Armed Force died in duty.
10(19A)	Ex – Ruler	Income from any one House Property
10(20)	Local Authority	Income from House Property, Capital Gain or Other Sources and Other Income prescribed
10(21)	Research Association approved u/s 35	Any Income, Provisions of Sec. 11 shall apply for accumulation of Income.
10(22B)	News Agencies approved by Government	Any Income, provided it should not distribute income its Members [Not Applicable from A.Y. 2024 – 25]
10(23A)	Professional Bodies approved by Government	All income except Income from House Property, specified Services, and Interest & Dividend
	Note: [For Section 10(21)/(22B)/(23A)]: It should apply Income solely for its objectives. If conditions not satisfied, then CG can withdrawn the approval after giving Assessee, an opportunity of being heard.	
10 (23AA)	Regimental Fund or Non – Public Fund established by Armed Forces	All Income
10 (23AAA)	Notified Funds	Any Income. It should apply Income solely for its objectives and invest in the modes specified u/s 11(5).
10 (23AAB)	Approved Pension Fund of LIC or any other Insurer	Any Income
10(23B)	Approved Trust or Society's Income relating to production, sale, marketing of Khadi	Any Income attributable to business of production, sale, or marketing of Khadi or Village Industries products. It should apply its income solely for development of Khadi or Village Industries or both. Should be approved by Khadi and Village Industries Commission (KVIC).



	or Village Industrial Products	
10 (23BB)	Khadi or Village Industries Board established under State or Provincial Act	All Income
10 (23BBA)	Body/Authority constituted under Indian Law for administration of Public Charitable or Religious Bodies	All Income
10 (23BBB)	European Economic Community	Interest or Dividend or Capital Gain from Notified Scheme
10 (23BBC)	SAARC Fund for Regional Projects	All Income
10 (23BBE)	IRDA	All Income
10 (23BBG)	Central Electricity Regulatory Commission	All Income
10 (23BBH)	Prasar Bharathi (Broadcasting Corpn. of India)	Any Income
10(23C)	Notified Fund or Approved Institution or Hospital u/s 10(23C)(i) – (iiia) whose Gross Receipts not exceeding ₹500 Lakhs	<ul style="list-style-type: none"> For institutions specified u/s 10(23C)(iv)(v)(vi)(via), the same provisions as applicable in the case of Sec. 11 – 13 trusts and institutions shall be applicable. No fresh registrations u/s 10(23C)(iv), (v), (vi),(via) shall be approved from 01.10.2024 and all the institutions already registered shall be migrated to the Sec. 11 – 13 provisions in a phased manner.
10(23D)	Mutual Funds registered under SEBI or set up by Public Sector Bank or Public Financial Institution or authorized by R.B.I.	Any Income
10 (23DA)	Securitization Trust being a Special Purpose Distinct	Any Income from the activity of Securitization (as defined in SEBI Regulations/R.B.I. Guidelines).



	Entity or a Special Purpose Vehicle	
10 (23EA)	Investor Protection Fund of Recognized Stock Exchanges	Income by way of contributions from Recognized Stock Exchanges and members thereof, If the amount of standing to the credit of the Fund is shared with Stock Exchange, then the amount so shared is taxable in the P.Y. of sharing.
10 (23EB)	Credit Guarantee Trust Fund for Small Industries	Any Income [Omitted W.e.f. 01.04.2024]
10 (23EC)	Investor Protection Fund (w.r.t. commodity Exchanges)	Contribution received from Commodity Exchanges and Members is exempt. If the amount standing to the credit of the Fund is shared with Commodity Exchange, then the amount so shared is taxable in the P.Y. of sharing.
10 (23ED)	Investor Protection Fund (w.r.t. Depository)	Contribution received from Depository is exempt. If the amount standing to the credit of the Fund is shared with Depository, then the amount so shared is taxable in the P.Y. of sharing.
10 (23EE)	Income of Core Settlement Guarantee Fund (CSGF)	<p>(1) Entity: Core Settlement Guarantee Fund, set up by a Recognized Clearing Corporation in accordance with notified Regulation.</p> <p>(2) Exempt Incomes: Following Incomes of above Fund is exempt –</p> <p>(a) Contribution received from Specified Persons;</p> <p>(b) Penalties imposed by the Recognized Clearing Corporation and credited to the CSGF; or</p> <p>(c) Income from investment made by the Fund.</p> <p>(3) Taxable if Shared with Specified Person: If any amount standing to the credit of Fund and not charged to income-tax during any previous year is shared, either wholly or in part with the specified person, the whole of the amount so shared shall be deemed to be the Income of the previous year in which such amount is so shared and shall, accordingly, be chargeable to Income-Tax.</p>
10 (23FA)	Investor in Venture Company	Dividend (excluding 115 – O) & LTCG on Equity Share in VCC is exempt/ VCF or VCC must be approved by Central Govt.
10 (23FB)	Venture Capital Company/Fund	Any Income from Investment in a Venture Capital Undertaking referred in SEBI (Venture Capital Funds) Regulations.
Sec. 10 (23FBA) & (23FBB)	Incomes of Investment Fund/Unit Holder	<p>Following Incomes of Investment Fund/Unit Holder are exempt –</p> <p>(a) Sec. 10(23FBA): Any Income of an Investment Fund other than the Income chargeable under the head “Profits and Gains of Business or Profession”</p> <p>(b) Sec. 10(23FBB): Any Income referred to in Sec. 115UB, accruing or arising to, or received by, a Unit Holder of an Investment Fund, being that proportion of Income which is</p>



		of the same nature as Income chargeable under the head "Profits and Gains of Business or Profession"
10 (23FC)	Business Trust	Dividend u/s 115 – O or Interest Received or Receivable by a Business Trust from a Special Purpose Vehicle & Dividend u/s 115-O(7).
Sec.10 (23FCA)	Income of Real Estate Investment Trust	Any Income of a Business Trust, being a Real Estate Investment Trust, by way of renting or leasing or letting out any Real Estate Asset owned directly by such Business Trust, shall be exempt.
10 (23FD)	Any Assessee being Unit Holder of Business Trust	Distributed Income referred to in Sec. 115UA, received by a Unit Holder from the Business Trust, not being that proportion of the Income which is of the same nature as the Income referred u/s 10(23FC) or 10(23FCA). [Note: Exemption only for Sec.10(23FC)(a) Interest]
10(24)	Registered Trade Union/Association of Unions	House Property & Income from Other Sources
10(25)	Approved Retirement Benefit Funds	(a) Interest and Capital Gains from Securities held by Provident Fund. (b) Any Income of RPF/Approved Superannuation Fund / Approved Gratuity Fund/Deposit linked Insurance Fund.
10(25A)	ESI Fund under ESI Act	All Income
10(26)	SC/ST Individual in specified areas	Income from the specified areas and Dividend and Interest on Securities
10 (26AAA)	Individual being a Sikkimese	Income from any source in Sikkim or by way of Dividend or Interest on Securities
10 (26AAB)	Agricultural Produce Market Committee or Board for regulating the marketing of agricultural produce	All Income
10(26B)	Government Corporation/ Body/Institution financed by Government for the benefit of SC or ST or BC	All Income
10 (26BB)	Corporation established by Government for the benefit of Minority Community	All Income



10 (26BBB)	Corporation established by Government for the benefit of Ex-servicemen	All Income
10(27)	Co-Operative Society formed for the benefit of SC and ST	All Income
10(29A)	Coffee Board, Rubber Board, Tea Board, Tobacco Board, Spices Board, Coir Board etc.	All Income
10 (30)	Assessee engaged in growing & manufacturing tea in India	Subsidy from Tea Board for replantation/replacement
10(31)	Growing & Manufacturing of Rubber, Coffee or Cardamom or other notified commodity	Subsidy from Relevant Board
10(32)	Individual	Income of Minor clubbed u/s 64(1A) [Note: NO restriction on the number of children]
10(33)	All Assesseees	Income from transfer of Unit Scheme, 1964
10(34A)	Assessee, being a Shareholder	Income an account of buyback of Shares by Company referred in S.115QA. [Withdrawn w.e.f. 01.10.2024]
10(34B)	[W.e.f. 01.04.2024, IFSC Unit (engaged in leasing aircraft)]	Dividends from a Company being IFSC Unit engaged in leasing aircraft
10(35A)	All Assesseees	Income by way of Distributed Income referred in Sec. 115TA received from a Securitisation Trust, by any person being an Investor of the said Trust is exempt. [Exemption not available for income received on or after 01.06.2016]
10(37)	Individual or HUF	Capital Gain from transfer of Urban Agricultural Land compulsorily acquired by Central Government/R.B.I. The land is used for Agricultural purposes during the period of 2 years immediately before transfer by HUF or Individual or his parents.
10(37A)	Individual or HUF	<p>Exemption for Capital Gains on Specified Capital Asset:</p> <p>1. Transfer of Specified Capital Asset: Income chargeable under the head "Capital Gains" in respect of transfer of a 'Specified Capital Asset' arising to an assessee, being an individual or a HUF, who was the owner of such specified Capital Asset as on 02.06.2014, and transfers that specified Capital Asset under the Land Pooling Scheme is exempt</p>



		<p>2. Meaning of 'Land Pooling Scheme': Scheme covered under the Andhra Pradesh Capital City Land Pooling Scheme (Formulation and Implementation) Rules, 2015 made under the provisions of the Andhra Pradesh Capital Region Development Authority Act, 2014.</p> <p>3. Specified Capital Asset:</p> <p>(a) Land or Building or both owned by the assessee as on 02.06.2014 and which has been transferred under the above scheme, or</p> <p>(b) Land Pooling Ownership Certificate (LPOCs) issued under the above scheme to the assessee in respect of Land or Building or both referred above in (a); or</p> <p>(c) The reconstituted Plot or Land, received by the Assessee in lieu of Land or Building or both referred in (a) In accordance with the scheme. If such Plot or Land, so received is transferred within 2 years from the end of the financial year in which the possession of such Plot or Land was handed over to him</p>
10(38)	All Assesseees	<p>LTCG on Equity Shares in a Company/Units/ Equity Oriented Fund/ Units of a Business Trust, subject to Securities Transaction Tax. Not applicable for a transaction undertaken on a Recognised Stock Exchange (RSE) located in any International Financial Services Centre (IFS) and where the consideration for such transaction is paid or payable in Foreign Currency</p> <p>Long Term Capital Gain on Transfer of Securities not subject to STT [w.e.f. 01.04.2018]: Condition of payment of STT for availing exemption shall not apply to any Income arising from the transfer of a Long term Capital Asset, being an Equity Share in a Company, if the transaction of acquisition, (being other than the acquisition notified by the Central Government), is entered into on or after 01.04.2004 and which is not chargeable to STT.</p> <p>Exemption provided u/s 10(38) shall not apply to any income arising from the transfer of Long – term capital asset, being an Equity Share in a Company or a Unit of an Equity oriented fund or a Unit of a Business Trust, made on or after 01.04.2019</p>
10(39)	Notified Assesseees	Income from International Sporting Events held in India, International Broadcasting, Domestic Broadcasting, Sponsorship, Ticketing, Licensed merchandise and Donations.
10(40)	Power Sector Companies	Grant/ Subsidy received from Indian Holding Company if receipt of such income is for settlement of dues in connection with reconstruction or revival of an existing business of power generation and such transfer is notified u/s 80 – IA(4)(v)(a).
10(42)	Body (Organization) or Authority	Specified Income arising on an agreement between 2 countries.



10(43)	Individual	Any sum received as Loan under Reverse Mortgage Scheme u/s 47(xvi)
10(44)	New Pension System Trust	Income received for, or on behalf of, New Pension System Trust.
10(46)	Body/ Authority/ Board/ Trust/ Commission or class thereof constituted by CG / SG or under Central, State or Provincial Act [Not applicable for institutions covered u/s 10(46A)]	Specified Income (Entity should not be engaged in commercial activity) (e.g. National Skill Development Corporation, Competition Commission of India, Various State AIDS Control Societies, State Electricity Regulatory Commissions, etc.)
10(46A)	Body / Authority / Board / Trust / Commission	Any income of such persons shall be exempt. The following conditions shall be satisfied: <ol style="list-style-type: none"> 1. Not being a Company 2. Established or constituted under Central/ State Act for specified purposes 3. Notified by the Central Government under this Section
10(46B)	Any Income of the Following Institutions shall be exempt: <ol style="list-style-type: none"> (a) National Credit Guarantee Trustee Company Limited (NCGCTL), being a Company established & wholly financed by CG for operating Credit Guarantee Funds (CGFs) established & wholly financed by CG, (b) CGFs established & wholly financed by CG and managed by NCGTCL, (c) CGF Trust for Micro and Small Enterprises being a Trust created by Government of India and SIDBI 	
10(47)	Infrastructure Debt Fund set up as per Guidelines notified by the CG	Any Income
10(48)	Notified Foreign Company	Income received in India in Indian Currency an account of sale of Crude Oil or any other goods or rendering of services Agreement with CG or approved by CG Foreign Company is not engaged in any other activity in India.
10(48A)	Foreign Company	Any Income accruing or arising to a Foreign Company on account of storage of Crude Oil in a facility in India and sale of Crude Oil therefrom, to any Person Resident in India.
10(48B)	Foreign Company	Income accruing or arising to a Foreign Company on account of Sale of leftover stock of crude oil from the facility in India, after the expiry of the agreement or the arrangement referred to in Sec. 10(48A) or on termination of the said agreement or the arrangement, in accordance with the terms mentioned therein



		exempt , subject to such conditions as may be notified by the Central Government.
10(50)	Non – Resident Assessee	Any Income arising from any specified service provided on or after the date on which the provisions of Chapter VIII of the Finance Act, 2016 comes into force and chargeable to Equalisation Levy under that Chapter, is exempt. Income arising from any E-Commerce Supply or Services made or provided or facilitated on or after 01.04.2020 and chargeable to Equalization Levy

Exemption u/s Sec. 10AA

Eligible Assessee	Units located in SEZ
Nature of Business	Manufacture/ Produce Articles or Things or Computer Software or provide services
Conditions	(a) Commencement of Operations on or after 01.04.2005 but before 31.03.2021 (b) Not formed by splitting/reconstruction. (c) No Old machineries except – (i) Imports, (ii) Not used in India, (iii) No Depreciation ÷ < 20% of Value of P & M. (d) Export of Goods. (e) Audit Report in Form 56F. (f) No Double Deduction u/s 10AA and 35AD.
Use of Reserve	(a) Only for New Machinery or Plant (b) For Business Purposes, excluding Dividend, Foreign Remittance, Foreign Asset. (c) First use within 3 Years. (d) Report in Form 56FF. (e) Wrong use or use after 3 years is taxable.
Creation of Special Reserve A/c & Conditions (New Machine) for Addl. Reserve	Required
Form of Audit Report	Form 56F
Form for Return of Particulars of New Machine	Form 56F
Allowable Deduction	
Years 1 to 5	100% of Export Profits
Years 6 to 10	50% of Export Profits
Years 11 to 15	Least of: (a) 50% of Export Profits, or (b) Credit to Special Reserve.



	Note: No Double Deduction u/s 10AA and Sec. 35AD for the same or any other A.Y.
Deduction allowed from Total Income of the "Assessee"	The amount of deduction u/s 1AA shall be allowed from the Total Income of the assessee , computed as per this Act, before giving effect to the provisions of this section. Deduction u/s 10AA shall not exceed the Total Income.
Export Profit	$\text{Profit of Business of the Undertaking} \times \frac{\text{Export Turnover}}{\text{Total Turnover}}$
Export Turnover	Export Consideration brought to India in convertible Foreign Exchange within 6 months from the end of RPY <i>Less:</i> Freight, Telecommunication Charges or Insurance attributable to activities outside India and Foreign Exchange expense for Technical Services outside India.

Condition as to Sale Proceeds to be received in Convertible Forex within 6 months from the end of P.Y. is not specified.

Other Points to Remember

Sec. 14A: Applicable to All Assesseees. In computation of Total Income, the expenditure incurred in relation to Exempt Income will **not** be allowed as deduction. This section shall be applicable even in a case where such income has not accrued or arisen or received during the same P.Y. in which such expenditure has been incurred.

Prescribed Method (Rule 8D): The Disallowed Expenditure will be the aggregate of –

- The amount of expenditure directly relating to income which does not form part of total income, and
- An income equal to 1% of the Annual Average of the monthly averages of the opening and closing balances of the value of investment, income from which does not or shall not form part of Total Income, i.e.

$$1\% \times \frac{\text{Monthly Average Opening \& Closing Balances of the Value of Investment}}{12\% \text{ Months}}$$

Note: The amount referred to in (a) shall not exceed the total expenditure claimed by the assessee.

Note: Sec. 14A provides for disallowance of the expenditure, even where taxpayer in a particular year has not earned any Exempt Income. [Circular No. 5/2014 dated 11.02.2014]

Political Parties [Sec. 13A]: Exempt Income – House Property, Other Sources, Voluntary Contributions and Capital Gains.

Important Case Decisions

Sec.14A – Expenditure in relation to Exempt Income

- Shares acquired to obtain controlling Interest:** Sec. 14A disallowance would be attracted even if shares were acquired to obtain controlling interest in Companies [United Breweries Limited] 72 Taxman.com 102 (2016) (HC)(Kar.)]
- Disallowance u/s 14A:** In the absence of any material or basis to hold that Interest expenditure directly or indirectly was attributable for earning Dividend Income, Interest expenditure could not be disallowed u/s 14A [CIT Vs. K Raheja Corporation P Limited (2011) (Bom.)]
- Application of Sec. 14A:** Sec. 14A will not apply if no exempt income is received or receivable during the relevant previous year. [Chem invests Limited [2015] 61 Taxmann.com 118(Delhi)]



4. **No disallowance of Cost when Dividend is from Stock-in-Trade:** When Shares are purchased with the intention of carrying out business, and Dividend is received on such Shares remaining unsold, the Cost of Purchase of Shares is not for the purpose of earning Dividend Income (which is exempted) and hence the provisions of Sec. 14A shall not apply. **[CCI Limited Vs. CIT (Kar.)]**
5. **Relation between Expenditure & Income:** Condition precedent for disallowance of expenditure in relation to exempt income is **proximate cause** between expenditure and exempt income. Where the purchase of securities “cum-dividend” is sold at a loss, the claim to set-off of loss is permissible. The loss is not an “expenditure” relating to dividend. **[CIT Vs. Walfort Share and Stockbrokers Private limited 328 ITR 1(SC)]**
6. **Effect of Chapter VIA Deduction:** No disallowance can be made u/s 14A in respect of Income included in Total Income in respect of which deduction is allowable under Sections 80C to 80U. **[Kribhco (2012) 209 Taman 252 (Delhi)]**

Sec. 10/Sec. 10AA Exemptions

7. **Test for Profit Motive:** When a surplus is ploughed back for educational purposes, the Educational Institution exists solely for educational purposes and not for purposes of profit. Relevant factors are – (a) Predominant object test, (b) Whether Institution merely makes surplus by imparting Education or activities are being carried “for profit”, and (c) whether generating surplus is incidental to educational activity. **[Queen’s Educational Society 55 Taxman 255 (2015)(SC)] [St. Petr’s Educational Society 70 Taxmann.com 171 [2016](SC)]**
8. **Sec. 10(20) Intelligible:** An Authority constituted under a State Legislation for planned development of Industrial Areas and promotion of Industries cannot claim benefit of exemption u/s 10(20). **[Adityapur Industrial Area Development Authority Vs. Union of India Ors. 283 ITR(SC) 97]**
9. **Bank Interest [Sec. 10AA]:** Interest earned on Fixed Deposits cannot be treated as Income derived from Exports of an SEZ Unit. **[Shams Tabrez Vanti (2005) TIOL 6 (ARA)]**
10. **Appointment of Agricultural Income:** In the absence of details, appointment of Expenditure on the basis of Gross Receipts from Agricultural Operations and Non-Agricultural Operations is justified. **[Consolidated Coffee Limited Vs. State of Karnataka 176 TR 98 (SC)]**
11. **Agricultural Land – Sale of Unyielding Rubber Trees:** There was an Agreement for Sale of Land. The Agreement did not specify the amount towards the value of Latex. It was held that the entire consideration is capital in nature and is not taxable. **[Gandhimadi Plantation Limited Vs. State of Tamil Nadu (SC) 257 ITR 785]**
12. **Educational Institution Vs. Recognition by UGC:** Where a Society runs School or Educational Institution in systematic manner with regular classes, vacations, attendance requirements, etc. without profit motive it should be treated as Educational Institution. Mere fact that it was not recognized by UGC or it did not conduct its own Examination or Awards Degrees of its own would not disentitle it from being approved as Educational Institution. **[Delhi Music Society Vs. DGIT (Del.)]**
13. **Sale Proceeds of Land and Bonds** is in the nature of conversion of a Capital Asset from one form to another. Therefore, it should be excluded in considering monetary limited prescribed u/s 10(23C) (iiad). **[Madrasa E – Bakhiyath – Us – Salihath Arabic College 50 Taxmann.com 81 (Mad)(HC)(2014)]**
14. **Recruitment Services:** Where Assessee – Company provides recruitment Services to its Foreign Client using information technology, it would be entitled to benefit u/s 10A. **[ML Outstanding Services (P)(Limited)(Del.) (HC)(2014)]**
15. **Registration with STPI:** Registration with Software Technology Parks of India (STPI) is a pre-requisite for grant of deduction u/s 10B. **[Live Connection Software Solutions (P) Ltd (Mad.) (HC) (2014)]**



16. Expense deductible from Export Turnover: Software Development Charges incurred in Foreign Exchange attributable to the delivery of Technical Services outside India, deductible from export turnover, shall also be excluded from total turnover for computing deduction u/s 10AA, since one of the components of "Total Turnover" is Export Turnover. **[CIT Vs. HCL Technologies Limited [2018] 404 ITR 719 (SC)]**



4

INCOME FROM SALARIES

Points to Remember

Chargeability of Salaries [Sec. 15]: Year of Accrual or Receipt whichever falls earlier

Standard Deduction Sec.16(ia) [W.e.f. 01.04.2020]: Amount of ₹50,000 or the amount of the salary, whichever is less shall be allowed as deduction from Income under the head salaries. **[Note:** for assessee's Paying Tax under the default tax regime u/s 115BAC(1A) the standard deduction shall be ₹75,000].

Deductions for Entertainment Allowance [Sec. 16(ii)]: Only for Government Employee. Maximum ₹5,000

Deductions for Tax on Employment [Sec. 16(iii)]: Professional Tax actually paid.

Definition of 'Salary' [Sec. 17(1)]: Salary includes Wages, Annuity, Pension, Gratuity, Advance Salary, RPF Contribution, Interest on RPF, all Allowances and Perquisites.

Perquisite – Rent Free Accommodation [Sec. 17(2)(i)]: Valued as per Expenditure to Sec.17(2) & Rule 3.

Perquisite – Accommodation at Concessional Rent [Section 17(2)(ii)]: Valued as per Explan. To Section 17(2) & Rule 3.

Perquisite – Specified Employee [Sec. 17(2)(iii)]: Benefits given free of cost or at concessional rates.

Perquisite [Sec. 17(2)(iv)]: Payment of personal obligation of the Employee.

Perquisite [Sec. 17(2)(v)]: Contribution to Life Insurance or Contract for Annuity.

Perquisite [Sec. 17(vi)]: Any other benefit or amenity – As per Rule 3(2) to Rule 3(8). Specified Security or Sweat Equity Shares allotted by the Employer free of cost or at concessional rate.

Taxability of Medical Benefit to the Employee or Family Member u/s 10(5)

[Sec. 17(2)(vi) Proviso]:

(a) Local treatment to Employee or any other Member of his Family in –

- Hospital maintained by Employer,
- Government Hospital maintained by Government / Local Authority or Hospital appointed by Government.
- Notified Hospital for prescribed diseases [Sec. 17(2)(v)]

(b) Group Medical Insurance paid u/s 36(1)(ib)

(c) Medical Insurance paid u/s 80D.

} Health Insurance Scheme to be approved by the Central Government or IRDA

(d) Premium on Accident Insurance Policy.

Note: For Meaning of members of Employee's Family, refer Para 4.5.5

Medical Treatment Abroad [for Patient and Attendant]: If the employee or his Family Members underwent Medical Treatment abroad and expenditure is met by the Employer, the exemption will be subject to the following –

(a) Medical Treatment and Stay Expenses abroad (for Patient or his Family Members, and one attendant) are exempt from tax, subject to the maximum amount permitted by the Reserve Bank of India.

(b) Travel Expenditure of the Patient and the Attendant –

Gross Total Income, before including reimbursement of Foreign Travel Expenditure	Exemption
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Up to ₹2,00,000	Fully Exempt
Above ₹2,00,000	Fully Taxable

Perquisite [Sec. 17(2)(vii)]: Contribution by Employer to PF, Gratuity, Pension, Superannuation Fund in excess of ₹7,50,000.

Perquisite [Sec. 17(2)(vii)]: Taxability of any annual Accretion by way of interest or dividend or any other amount of similar nature to the extent relates to the Employer's Contribution u/s 17(2)(vii). **Taxable Value:** Value as per Rule 3B.

Perquisite [Sec. 17(2)(viii)]: Value of other Fringe Benefit/Amenity as may be prescribed.

Profits in lieu of Salary [Sec. 17(3)]:

- Compensation on termination/modification of Employment.
- Amount received from Keyman Insurance Policy
- Employer Contribution and Interest thereon to URPF at the time of withdrawal
- Amount received in lump sum or not either at the time of joining or cessation of employment.

Relief when Salary is paid in Arrears or in Advance, etc. [Sec. 89(1)]:

1. Form 10E to be submitted by the Employee, 2. No Relief if VRS compensation u/s 10(10C) is claimed.

Taxable Value of Perquisite [Rule 3]: Value determined as per Rule 3 Less Amount recovered from the Employee

FMV of ESOP [Rule 40C]:

1. **Unlisted Company** – Determined by Merchant Banker
2. **Listed Company** – On Exercise Date
 - (a) **Trading** – Average of Opening & Closing Price on Exercising date
 - (b) **No Trading** – Closing Price on Exercising Date

FMV of Specified Security [Rule 40D]: As determined by a Merchant Banker

Exemption u/s 10(7): Allowance/ Perquisite paid to a Citizen by Govt. for rendering services outside India is fully exempt.

Keyman Insurance Policy [Sec. 10(10D)]: Fully Taxable, **For Salaried Persons** – as Profits in Lieu of Salary, **For Business Persons** – as Business Income, **Others** – as Income from Other Sources.

Tax on Non – Monetary Perquisite [Sec. 10(10CC)]: U/s 192(1A), the Employer may, at his option, pay Income Tax on the whole or part of perquisite provided by way of non-monetary payments. It is exempt in the hands of Employee.

COMPUTATION OF INCOME UNDER THE HEAD SALARIES

Particulars	Exemption/ Deduction	Net Amount Taxable
BASIC SALARY	NIL	Fully Taxable
DEARNESS ALLOWANCE – Whether forming part of Salary or Not	NIL	Fully Taxable
ADVANCE SALARY	NIL	Fully Taxable
ARREARS SALARY	NIL	Fully Taxable
CITY COMPENSATORY ALLOWANCE	NIL	Fully Taxable



BONUS	NIL	Fully Taxable
COMMISSION AS % OF TURNOVER	NIL	Fully Taxable
FEES	NIL	Fully Taxable
LUNCH/TIFFIN ALLOANCE	NIL	Fully Taxable
OVERTIME ALLOWAN	NIL	Fully Taxable
SERVANT ALLOWANCE	NIL	Fully Taxable
WARDEN ALLOWANCE	NIL	Fully Taxable
NON-PRACTISING ALLOWANCE	NIL	Fully Taxable
FAMILY ALLOWANCE	NIL	Fully Taxable
RETIREMENTS BENEFITS – Received from		
Statutory PF/PPF [Sec. 10(11)]	Fully Exempt	NIL
RPF – subject to conditions [Sec. 10(12)]	Fully Exempt	NIL
Approved Superannuation Fund [Sec.10(13)]	Fully Exempt	NIL
GRATUITY [Sec. 10(10)]		
(a) Government Employee	Fully Exempt	NIL
(b) Employee covered by Gratuity Act: Least of:		
<ul style="list-style-type: none"> Actual Gratuity received, $15/26 \times \text{Last Drawn Salary} \times \text{Number of years of Completed Service or part thereof in excess of six months, (Salary = Basic + D.A.)}$ ₹20,00,000, 	Least is Exempt	Actual amount. Received <i>Less</i> Amount exempt
(c) Other Employees: Least of the following:		
<ul style="list-style-type: none"> Actual Gratuity received, $\frac{1}{2} \times \text{Average salary for 10 months preceding the month of retirement} \times \text{Number of fully completed years of service}$ ₹20,00,000, [Notification No. 16/2019 dated 08.03.2019] 	Least is exempt	Actual amount. Received <i>Less</i> Amount exempt
Salary = Basic + DA (if forming part of Retirement Benefits) + Commission on T/O		
Gratuity from more than one Employer: Aggregate amount exempted shall not exceed ₹ 20,00,000		
UNCOMMUTED PENSION	NIL	Fully Taxable
COMMUTATION OF PENSION [Sec. 10(10A)]		
a. Government Employee	Fully Exempt	NIL
b. Other Employee		
<ul style="list-style-type: none"> If in receipt of Gratuity If not receipt of Gratuity 	$\frac{1}{3} \times \text{Full Value of Pension is Exempt}$ $\frac{1}{2} \times \text{Full Value of Pension is Exempt}$	Actual amount. Received Less Amount exempt



		Actual amount received Less Amount Exempt
LEAVE ENCASHMENT DURING SERVICE	NIL	Fully taxable
LEAVE ENCASHMENT ON RETIREMENT [Sec. 10(10AA)]		
(a) Government Employees	Fully exempt	NIL
(b) Other employees, Least of the following: <ul style="list-style-type: none"> Amount actually received Average Salary of past 10 Months × 10 Months ₹25,00,000 <p>Leave credit at 30 days p.a. for every completed year of service × Average Salary of past 10 months</p> <p>Salary = Basic + DA (if forming part of retirement benefits) + Commission on Turnover. If the assessee receives Leave Encashment from more than one employer, the aggregate amount of Leave Encashment exempted shall not exceed ₹3,00,000.</p>	Least is Exempt	Actual amount received Less Amount Exempt
RETRENCHMENT COMPENSATION [Sec. 10(10B)] Least of – <ul style="list-style-type: none"> Amount determined u/s 25F(b) of Industrial Disputes Act, 1947 Amount actually received ₹5,00,000 	Least is exempt	Actual amount received Less Amount Exempt
VOLUNTARY RETIREMENT COMPENSATION (if relief u/s 89(1) is not claimed) [Sec. 10(10C)] & Rule 2BA, Least of – <p>(a) Amount actually received</p> <p>(b) ₹5,00,000</p> <p>(c) Maximum of:</p> <ul style="list-style-type: none"> Last drawn Salary × 3 × No. of fully completed years of service, or Last drawn Salary × Balance of months of service left <p>Salary = Basic Pay + DA (if forming part of Retirement Benefits). This exemption can be availed by assessee only once in a lifetime.</p>	Least is exempt	Actual amount received Less Amount Exempt
LEAVE TRAVEL ASSISTANCE Sec. 10(5) – Rule 2B <p>Twice in a block of four years: [Current Block is 2022 – 2025]</p> <p>(a) By Air – National Airways – Economy Class – Shortest route</p>		



<p>(b) By Train – I Class AC fare – Shortest Route</p> <p>(c) By Recognized Transport – Deluxe Class – Short Route</p> <p>(d) By other means – I Class AC Fare as per Railways, equivalent for distance travelled – Shortest Route</p> <ul style="list-style-type: none"> If LTA is not availed twice in a block of 4 years, 1st LTA availed in the next 4 years block can be taken as if it is for previous block. Exemption not available for more than two surviving children of an individual and born after 01.10.1998 	Amount is exempt only for the Shortest Route	Actual amount received Less Amount Exempt
<p>Value in lieu of LEAVE TRAVEL ASSISTANCE [2ND Proviso to Sec. 10(5)] – Rule 2B(1A) [W.e.f. 01.04.2021]</p> <p>Once in a block of four years [Current Block is 2022 – 2025]</p> <p>Exempt Income: Value in lieu of any Travel Concession or Assistance received or due</p> <p>Conditions: Prescribed conditions to be satisfied.</p> <p>Clarification: Where an Individual claims the above exemption, no such exemption shall be allowed in respect of such prescribed expenditure to any other Individual.</p>	<p>for A.Y. beginning on 01.04.2021, the maximum amount of exemption shall be the amount not exceeding lower of</p> <p>(a) ₹36,000 per person for the Individual and the member of his family or</p> <p>(b) 1/3rd of the specified expenditure</p>	Actual amount received Less Amount Exempt
<p>EMPLOYER CONTRIBUTION TO RPF Sec. 10(12)</p> <p>Actual Contribution made Less 12% of Salary</p> <p>Salary = Basic + DA (if forming part of Retirement Benefits)</p> <p>Note: Any sum received from Provident Fund Account is exempt u/s 10(11) & 10(12)</p> <p>1. [w.e.f. 01.04.2022] The above exemption shall not apply to Interest accrued during P.Y. in the account of a person to the extent it relates to the amount or the aggregate of amounts of Contribution made by that person exceeding ₹2,50,000 in any P.Y. in that fund, on or after 01.04.2021 and computed in accordance with Rule 9D.</p> <p>2. Also, If the contribution by such person is in a fund in which there is no contribution by the Employer of such person, the exemption limit shall be ₹5,00,000 instead of ₹2,50,000</p>	NIL	Fully Taxable
<p>EMPLOYER CONTRIBUTION TO URPF</p> <p>Taxable inly at the time of actual receipt from URPF or transfer from URPF to RPF, (Amount + Interest thereon is taxable)</p>	NIL	Fully Taxable



INTEREST ON RPF: Actual Interest received Less Interest at 9.5%	NIL	Fully Taxable
Allowance/Perquisites u/s 10(45): Notified Allowance or Perquisite paid to the Chairman/Retired Chairman/any other Member/Retired Member of UPSC is exempt.	Fully Exempt	NIL
INTEREST ON URPF: On Employee's contribution – taxable as Income from Other Sources		Not applicable
HOUSE RENT ALLOWANCE [Sec. 10(13A), Rule 2A]: <ul style="list-style-type: none"> Actual HRA received for relevant period. 50% (4 metros)/40% (others) of Salary of the relevant period. Rent for relevant period Less 10% of salary for relevant period. Salary = Basic + DA (if part of Retmt. Benefits) + Commission On T/O	Least is Exempt	Actual HRA received Less Amount Exempt
Sec. 10(14) ALLOWANCES – Partly Exempted <p>(a) Children Education Allowance (for Maximum 2 Children)</p> <p>(b) Children Hostel Expenditure Allowance (for Max 2 Children)</p> <p>(c) Running Allowance for Transport Sector Employees</p> <p>(d) Transport Allowance (for going to office and back)</p> <ul style="list-style-type: none"> Only If Employee is blind / handicapped / deaf and dumb <p>(e) Mining/Underground Allowance</p> <p>(f) Tribal Area Allowance</p> <p>(g) Composite Hill Compensatory Allowance</p> <p>(h) Border Area, Remote Area, Disturbed Area Allowance</p> <p>(i) Compensatory Field Area Allowance</p> <p>(j) Compensatory, Modified Field Area Allowance</p> <p>(k) Counter Insurgency Allowance</p> <p>(l) High Altitude Allowance</p> <p>(m) Special Compensatory Highly Active Field Area Allowance</p> <p>(n) Island Duty Allowance</p>	<p>₹100 p.m. per child ₹300 p.m. per child 70% of Amount Received or ₹10,000 p.m.</p> <p>₹3,200 p.m.</p> <p>₹800 p.m. ₹200 p.m. ₹300 to ₹7,000 p.m. ₹200 to ₹1,300 p.m. ₹ 2,600 p.m. ₹ 1,000 p.m. ₹ 3,900 p.m. ₹1,060 to ₹1,600 p.m. ₹4,200 p.m.</p> <p>₹3,250 p.m.</p>	<p>For all the allowances from (a) to (n): Actual amount received Less Amount Exempt</p>
Fully Exempted Allowances		
(i) Travelling Allowance		



(ii) Daily Allowance	Fully Exempt If incurred for performance of official duties	NIL
(iii) Conveyance Allowance		
(iv) Helper Allowance		
(v) Academic Allowance		
(vi) Uniform Allowance		
(vii) Allowances / Perquisites to Govt. Employees for Services rendered outside India – Sec. 10(7)		
GROSS SALARY (before Valuation of Perquisites)		Total of above
Add: Valuation of Perquisites	See Rule 3	
Gross Salary		
Less: Deduction u/s 16	₹50,000	
Standard Deduction		
Entertainment Allowance		
Tax on Employment (Professional Tax)		
INCOME UNDER THE HEAD SALARIES		

VALUATION OF PERQUISITES

1. ACCOMMODATION PROVIDED BY THE EMPLOYER TO THE EMPLOYEE

1) Value of Unfurnished Accommodation – Explanation 1 to Sec. 17(2).

Nature of Perquisite	Taxable Value of Perquisite
Provided by Government	License Fee determined by the Government Less Rent recovered from Employee
Provided by Employer other than Central and State Government	
(a) Owned by Employer	In cities having population exceeding 40 Lakhs as per 2011 Census: 10% of salary Less Rent actually paid by Employee In cities having population exceeding 15 Lakhs but not exceeding 40 Lakhs as per 2011 Census: 7.5% of Salary Less Rent actually paid by Employee In Other places: 5% of Salary Less Rent actually paid by the Employee
(b) Taken on Lease by the Employer	Rent paid by Employer or 10% of Salary, whichever is lower Less Rent recovered from Employee
(c) Accommodation in hotel	24% of Salary paid/payable or Actual Charges paid/payable, whichever is lower Less Amount paid or payable by the Employee

Hotel Accommodation: Accommodation provided in a Hotel will not be a taxable Perquisite if –

- The period of such accommodation does not exceed 15 days,
- Such accommodation has been provided on the transfer of the Employee from one place to another

2) Valuation of Furnished Accommodation

Particulars	₹
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Value of Unfurnished Accommodation as above	100
Add: Value of Furniture	
- If Owned by Employer, then 10% per Annum of Original Cost of such Furniture	Xxx
- If hired from Third Party, then Actual Hire Charges	
Less: Any charges paid or payable by the Employee	Xxx
	(xxx)
Value of Furnished Accommodation	Xxx

Note: Furniture includes Television Sets, Radio, Refrigerator, other Household Appliance, Air-Conditioning Plant or Equipment.

VALUATION NOT APPLICABLE

(a) **Employees Covered:** Employees working at – Mining Site, Onshore Oil Exploration Site, Offshore Site, Project Execution Site, Dam Site, Power Generation Site.

(b) **Conditions:**

- The accommodation should be of a **temporary nature** and
- **Plinth area** should not exceed **1000 Square Feet**.
- Accommodation should be located at least 8 Kms away from local limits of Municipality/Cantonment or located in a remote area (30 Kms away – Measured aerially – from town with less than 1,00,000 population as per 2011 Census)

VALUATION OF ACCOMODATION IN CASE OF EMPLOYEES ON TRANSFER

(a) **For the firm 90 days of transfer:** Where accommodation is provided both at existing place of work and in new place, the accommodation, which as lower value, shall be taxable.

(b) **After 90 days:** Both accommodations shall be taxable

VALUATION OF ACCOMODATION IN CASE PROVIDED TO THE SAME EMPLOYEE FOR MORE THAN 1 YEAR

Where the accommodation is owned/leased/rented by the employer and provided to the same employee for more than 1 P.Y. then the value so calculated above shall not exceed: **Accommodation Value for Subsequent P.Y. = Accommodation value for First P.Y. × (CII subsequent P.Y./CII First P.Y.)**

First P.Y.: Later of – P.Y. 2023–24 or the First P.Y. in which the accommodation was provided to employee

MEANING OF SALARY FOR VALUATION OF ACCOMODATION FACILITIES

Salary includes	Salary excludes
<ul style="list-style-type: none"> • Basic Salary • D.A., if considered for Retirement Benefits • All Taxable Allowances • Bonus or Commission or Ex-gratia • Any other Monetary Payment 	<ul style="list-style-type: none"> • Other D.A. • Employer's Contribution to PF • Exempted Allowances • Value of Perquisite • Value of Perquisite specifically excluded

2. VALUATION OF OTHER PERQUISITE



Rule	Nature of Perquisite	Taxable Value of Perquisite (TVP)
3(3)	Service of Sweeper, Gardener or Watchman or Personal Attendant	Actual Cost to the Employer Less: Amount paid by the Employee
3(4)	Supply of Gas, Electricity or Water for household consumption	Procured from outside Agency: Amount paid to outside agency Resources owned by employer himself: Manufacturing cost p.u. Less: Amount paid by the Employee
3(5)	Education facilities to members of his household: (a) Free Education to children in the school maintained by the Employer or the school sponsored by the Employee (b) Other Schools	If the Cost of Education per Child does not exceed ₹1,000 p.m. – Not Taxable, otherwise fully taxable Cost to the Employer (See Limit of ₹1,000 p.m. above.) Less: Amount recovered from Employee Cost of education in similar locality / institution Less: Amount recovered from Employee
3(6)	Transportation of goods or passengers at free or concessional rate provided by the employer engaged in that business (other than Railways / Airlines)	Value at which offered to Public Less: Amount recovered from the Employee
3(7) (i)	Housing Loan/Vehicle Loan – For acquiring Capital Assets and not for repairs S.B.I. Rate = S.B.I. Rate prevailing on the First Day of the Previous Year	<ul style="list-style-type: none"> Interest Charged by Employer \geq S.B.I. Rates: Not Taxable. Interest charged is lower than S.B.I. rates: Interest at S.B.I. rates on maximum outstanding balance Less: Interest paid by the Employee on that loan
	Other Loans	Interest Charged by Employer \geq S.B.I. Rates: Not Taxable Interest charged is lower than S.B.I. rates: Interest at S.B.I. Rate on maximum outstanding balance Less: Interest paid by the Employee on that Loan Exceptions: (a) Medical Loan for treatment of diseases specified in Rule 3A except Loan reimbursed by Medical Insurance (b) Loan not exceeding ₹20,000 in aggregate
3(7) (ii)	Travelling, Touring, Accommodation and Other Expenses met by the Employer other than specified in Rule 2B. (To be calculated only for the period of vacation)	Amount incurred by Employer or Value offered to public Less: Amount recovered from Employee



3(7) (iii)	Free Meals during office hours Free Meal in remote area or offshore installation area is not a taxable perquisite	<ul style="list-style-type: none">Actual Cost to the Employer (up to ₹50 per Meal /Tea/Snacks is NOT taxable) Less Amount recovered from the EmployeeTea or Non-Alcoholic Beverages/Snacks during working hours are not taxable		
3(7) (iv)	Value of any gift or voucher or token other than gift made in cash or convertible into money (e.g. gift cheques) on Ceremonies.	<ul style="list-style-type: none">Value of GiftIn case the aggregate value of gift during the previous year is less than ₹5,000, then it is not taxable Perquisite.		
3(7) (v)	Expenditure incurred on credit or add on card including membership fee and annual fee.	<ul style="list-style-type: none">Actual expenditure to Employer Less Amount recovered from EmployeeIf it is incurred for official purpose and supported by necessary documents then it is not taxable		
3(7) (vi)	Expenditure on Club other than Health Club or Sports Club or similar facilities provided uniformly to all Employees	<ul style="list-style-type: none">Actual Expenditure incurred by the Employer Less Amount recovered from EmployeeIf the expenditure is incurred exclusively for official purposes and supported by necessary documents, then it is not taxableInitial Fee of Corporate Membership of a Club is not a taxable Perquisite		
3(7) (vii)	Use of any Movable Asset other than Computer or Laptops or other assets already mentioned	10% of Actual Cost if owned by the Employer, or Actual Rental Charge Paid/ Payable by Employer Less: Amount recovered from Employee		
3(7) (viii)	Transfer of Movable Asset to Employees:			
	Computers & Electronic Items	Motor Car	Other Assets	
	Actual Cost	Actual Cost	Actual Cost	
	<i>Less:</i> Depreciation @ 50% for every completed year under WDV method	<i>Less:</i> Depreciation @ 20% for every completed year under WDV method	<i>Less:</i> Depreciation @ 10% for every completed year under SLM method	
	Value of the Asset	Value of the Asset	Value of the Asset	
	<i>Less:</i> Amount recovered from the employee	<i>Less:</i> Amount recovered from the employee	<i>Less:</i> Amount recovered from the employee	
	Value of the Perquisite	Value of the Perquisite	Value of the Perquisite	
	<ul style="list-style-type: none">Electronic gadgets include Computer, Digital Dairies and Printers, but exclude washing machines, Microwave ovens, Mixers, Hot Plates, Ovens etc. Transfer of assets, which are 10 years old, shall not attract taxability			
3(7) (ix)	Any other benefit or amenities or service or right or privilege provided by the employer other than telephone or mobile phone	Cost to the employer <i>Less:</i> Amount recovered from employee		

- Member of household includes:** Spouse(s), Children & their spouses, Parents, Servants and dependents



- **Completed year** means actual completed year from the date of acquisition of asset to the date of transfer of such asset to Employees.



5

TAXABILITY OF MOTOR CAR BENEFITS [Rule 3(2)(A)]

Owner of Car	Expenses met by	Purpose	Taxable Value of Perquisite
1(a) Employer	Employer	Fully Official	Not a perquisite provided the documents specified in Rule 3(2)(B) are maintained.
1(b) Employer	Employer	Fully personal use	Aggregate of – (a) Actual expenditure on car (b) Remuneration to Chauffeur (c) 10% of the Cost of Car (normal wear & tear) Less: Amount charged from Employee
1(c) Employer	Employee	Fully Official use	Not a perquisite , provided the documents specified in Rule 3(2)(B) are maintained
2(a) Employer	Employee	Fully Personal	10% of the Cost of Car (normal wear & tear) / hire charges
2(b) Employer	Employer	Partly for official and partly personal	Cubic Capacity of Car Engine up to 1.6 Litres ₹1,800 p.m. + ₹900 p.m. for Chauffeur Cubic Capacity of Car Engine above 1.6 Litres ₹2,400 p.m. + ₹900 p.m. for Chauffeur
2(c) Employer	Employer	Partly for official and partly for personal	Cubic Capacity of Car Engine up to 1.6 Litres ₹600 p.m. + ₹900 p.m. for Chauffeur Cubic Capacity of Car Engine above 1.6 Litres ₹900 p.m. + ₹900 p.m. for Chauffeur
3(a) Employee	Employer	Fully Official use	Not a perquisite, provided the documents as per in Rule 3(2)(B) are maintained
3(b) Employee	Employer	Partly for official use and partly for personal use	Subject to Rule 3(2)(B) Actual Expenditure incurred Less Car Cubic Capacity up to 1.6 Litres – Value as per 1(c)(i) Car Cubic Capacity above 1.6 Litres – Value as per 1(c)(i)
3(c) Employee	Employer	Fully Personal	Actual Expenses incurred by Employer.
3(i) Employee owns other auto-motive but not car	Employer	Fully Official use	Not a perquisite , provided documents as per Rule 3(2)(B) are maintained
3(ii) Employee owns other auto-motive but not car	Employer	Partly for official and partly for personal use	Subject to Rule 3(2)(B) Actual Expenditure incurred by Employer Less: ₹900 p.m.

**Notes:****1. Using Cars from a Pool of Cars owned or hired by Employer:**

The employee is permitted to use any or all cars for both official and personal use:

For one car	Valued as per 1(c)(i)
For more than one car	Valued as per 1(b) as if fully used for personal purpose

2. Documents to be maintained for claiming 'not taxable perquisite' or higher deduction whenever applicable [Rule 3(2)(B)]

- (a) Employer should maintain complete details of journey undertaken for official purpose, which includes date of journey, destination, mileage and amount of expenditure incurred thereon.
- (b) Certificate of supervising authority of the employee, wherever applicable to the effect that the expenditure was incurred wholly and exclusively for performance of official duties, should be provided.

Important Case Decisions**Scope of Salary**

- Dual Capacity:** An assessee functioning in dual capacity, one as an Employee and another under a **Contract for Service**. The Commission paid for **Contract for Service**, not taxable under the head Salary. It may be assessed either as Income from Business or Income from Other Sources. [**P. Ramajayam 133 Taxman 33 (Mad.)**]
- LIC Officers:** Incentive Bonus received by LIC Development Officers is taxable as Salary Income. No deduction shall be allowed on it. [**HM Parikh 257 ITR 790 (Raj.)**]
- Embezzlement:** Money Embezzled by an Employee constitutes his Income. [**Wankanar Jain Social Welfare Society 260 ITR 241 (Mad.) Trailokya Chandra Bora 261 ITR 299 (Mad.)**]
- Commission:** If Commission is paid by the Employer at a fixed percentage of Turnover achieved by an Employee, such Commission will be considered as Salary. [**Gestener Duplicators Private Limited [1979] 117 ITR 1(SC)**]
- Assignment of Keyman Insurance Policy:** Sec. 17(3)(ii) will apply only in respect of 'any sum received in a Keyman Insurance Policy'. As no amount is received at the time of assignment, it is not taxable in the hands of the Director. When the Keyman Insurance Policy is assigned, the Insurance Company has clarified that it will get converted into an ordinary policy, hence the amount received maturity will also be tax free. [**Rajan Nanda (2012) 349 ITR 8 (De.)**]
- Compensation for Denial of Employment:** An amount received by a Prospective Employee 'as Compensation for denial of employment' is not in nature of Profits In lieu of Salary. It is a Capital Receipt that could not be taxed as Income under any other head. [**Pritam Das Narang [2015] 61 Taxmann.com 322 (Delhi) (HC)**]

Allowances and Perquisites

- Rule 3 is valid:** Rule 3 framed u/s 17(2)(i) is constitutionally valid, which is not arbitrary or unreasonable, [**Arunkumar & Ors. Vs. UOI & Ors. 286 ITR 89 (SC)**]
- Constitutional Validity:** Taxability of Perquisite is constitutionally valid. [**BHEL Workers Union Vs. Union of India 324 ITR 26 (SC)**]
- CCA:** City Compensatory Allowance paid to meet additional expenditure is an Additional Salary and consequently, chargeable to tax. [**Karamchari Union Vs. UOI (200) 109 Taxman 1(SC)**]



- 10. Daily Allowance of Non – Resident Employee:** Salary is received by an Non-Resident Employee, employed outside India and who is deputed to India for a specific Assignment in India. No portion of the Income deemed to accrue or arise in India and the Daily Allowance received in India on account of absence from normal place of duty will be **exempt from tax**. [**Morgen Stern Werner 132 Taxman 214(SC), Kammholz Kurt 130 Taxman 270 (Del.) Goslino Mario 241 ITR 312, Hindustan Power Plus Limited. 271 ITR 433 (AAR)**].
- 11. Notional Interest on Security Deposit:** National Interest on Security Deposit given by the Employer to the Landlord cannot be considered in valuing the perquisite of Rent-Free Accommodation. Perquisite Value of Residential Accommodation provided by the Employer would be based on the actual amount of lease rental paid or payable by the Employer. [**Shankar Krishnan (2012) 349 ITR 0685 (Bom.)**].
- 12. In case the value of Perquisite for free/concessional educational facility arising to an employee exceeds ₹1,000 per month per child, the whole Perquisite shall be taxable in the hands of the employee and no standard deduction of ₹1,000 per month per child can be provided from the same.**
- In case the Perquisite value is less than ₹1,000 per month per child, the Perquisite value shall be taken to be nil.
 - Therefore, ₹1,000 per month per child is not a standard deduction to be provided while calculating such a Perquisite. [**CIT Vs. Director, Delhi Public School (2011) 202 Taxmann 318 (Punk & Har)**]
- 13. Scholarship to Children:** The Scholarship to the Children of the Employees paid by the Company is not received by the Employees and hence cannot be treated as a Perquisite. However, it is subject to Fringe Benefits Tax. [**CIT, Meerut Vs. B.L.Garg 155 Taxman 189 (All.)**]
- 14. Education Facility to Employees Children:** Where the Perquisite Value of Free Education of Employees of Assessee School exceeded to ₹1,000, deduction to extent of ₹1,000 p.m. per Child would have to be allowed while computing Taxable Perquisite in respect of Free Educational Facilities. [**ITO Vs. Bal Bharati Public School 17 SOT 151 (ITAT – Del.)**]

Retirement Benefits

- 15. Exemption for R.B.I. Employees:** Amount received under Optional Early Retirement Scheme by an employee of R.B.I. is exempt u/s 10(10C) **Chandra Ranaganathan Vs. CIT 326 ITR 49(SC)**
- 16. Leave Encashment at the time of Voluntary Retirement entitled for Exemption:** Voluntary Retirement from Service is one such case, which comes within the four corners of the word “Otherwise than Superannuation.” [**RJ Shahney 159 ITR 160 (Mad.), DP Malhotra 229 ITR 394 (Bom.)**]
- 17. Gracious payment to Widow or Legal Heirs of Employee:**
- (a) Payment made graciously or by way of compensation or otherwise to the Widow of the Legal Heirs of an Employee, who dies while in service, is not taxable. [**Circular No. 573/21.08.1990**]
 - (b) Ex-gratia payment from the Central Government, State Government, Local Authority, Public Sector Undertaking, and consequent upon to injury to the Person/death of a Family Member, while on Duty the ex-gratia payment will not be liable to Income Tax. [**Circular No. 776/08.06.1999**]



6

INCOME FROM HOUSE PROPERTY

Points to Remember

Chargeability [Sec. 22] (a) Property = Buildings or Lands Appurtenant thereto. (b) Annual Value is chargeable to tax, (c) Assessee should be Owner, (d) Property used for any purpose other than Business/Profession.

Deemed Ownership [Section 27]: Person treated as Owner even if no document of title is registered in his name. Includes –

- Property transferred to Spouse or Minor Child for inadequate consideration,
- Holder of Impartible estate,
- Member of Co-operative Society, Company, etc. who is allotted a House Property,
- Part – performance of a Contract u/s 53A of the Transfer of Property Act,
- Holder of a Power of Attorney,
- Property constructed on a Leasehold Land.
- Ownership of a Property is under dispute,
- Lessee of a Property taken on a lease for a period of not less than 12 years.

Unrealized Rent [Sec. 23(1) Expln.]: Reduced from Actual Rent, if – (a) Tenancy is Bona-fide, (b) Tenant has vacated the property, (c) Tenant not in occupation of any other Property of Assessee, (d) Steps taken for Recovery.

Recovery of Unrealized Rent [Sec. 25A]: Treated as the Income of the Previous Year in which it is realized, to the extent of the benefit enjoyed by way of reduction in Net Annual Value. 30% of the amount recovered will be allowed as deduction.

Municipal Tax including Tax for Services [Sec. 23(1) Proviso]: Paid during current previous year allowed as deduction.

Deductions u/s 24: 30% of NAV and Interest on Borrowed Capital.

Treatment of Prior Period Interest [Sec. 24 Expln.]: Allowed in 5 equal installments from the P.Y. in which acquisition was made or construction completed.

Interest paid outside India [Section 25]: Disallowed if paid without deduction of TDS and no person treated as Agent u/s 163

Determination of Annual Value [Sec. 23(1)(a)/(b)/(c)]: In case of Let Out Property – see **Note 1, 2** below Table.

Self Occupied Property or SOP kept vacant due to employment or business [Sec. 23(2)]: Annual Value is **NIL**, if Not Let Out for any part of the year & no benefit derived therefrom. [**SOP** = Self Occupied Property]

More than Two House Property Self-Occupied [Sec. 23(4)]: Two house treated Self-Occupied, and all other Houses Deemed Let out at the option of the Assessee.

Receipt of Arrears of Rent [Sec. 25A]: Treated as Income of the P.Y. in which it is received, 3% of Arrears shall be allowed as deduction.

Co-Ownership [Sec. 26]: If their Shares are defined, it is assessable in their hands independently to the extent of their Share, otherwise assessable as an AOP.

Income from a House Property earned in Foreign Currency [Rule 115]: Determined at TT Buying Rate of such currency on the last day of RPY



Annual Value of House Property held as Stock in Trade – Sec. 23(5) w.e.f. 01.04.2018: Property consisting of any Building/ Land appurtenant thereto, held as Stock in Trade and is **not let out** during the whole or any part of the P.Y. Annual Value of that property of part of the property, for the period **up to 2 years** from the end of the FY in which the certificate of completion of construction of the property is obtained from the Competent Authority, shall be taken as **NIL**

Note 1 Annual Value (AV) u/s 23(1)(a)/(b)	Note 2 Annual Value (AV) u/s 23(1)(c)
<p>Step 1: Compare Fair Rent and Municipal Value and select whichever is higher</p> <p>Step 2: Compare Step 1 with Standard Rent select whichever is lower</p> <p>Step 3: Compare Step 2 with Actual Rent Received or Receivable (excluding Unrealized Rent under Rule 4). The Higher Value in Step 3 is AV</p>	<p>Step 1: Compare Fair Rent with Municipal Value and select whichever is higher.</p> <p>Step 2: Compare Step 1 with Standard Rent, if applicable –</p> <p>a) If Step 1 > Standard Rent, select Standard Rent,</p> <p>b) Step 1 < Standard Rent, then select Step 1</p> <p>Step 3: Compare Actual Rent received or Receivable for the Whole Period (excluding Unrealized Rent under Rule 4) with Step 2. The higher figure shall be the Annual Value.</p> <p>Step 4: Applicable only if the higher figure in Step 3 is Actual Rent Received. If owing to such Vacancy, Rent Received or Receivable is less, then Annual value is Rent Received or Receivable for the let-out period only.</p>

COMPUTATION OF INCOME FROM HOUSE PROPERTY

Particulars	SOP or SOP kept Vacant u/s 23(2)	Let-out for Full year	Let-out property kept vacant for whole year	Let – out Property kept vacant for part of the year	More than Two property self-occupied	SOP for part of the year and let out for part of the year
	(1)	(2)	(3)	(4)	(5)	(6)
Annual Value	NIL	u/s 23(1)(a)(b) (Refer Note 1)	u/s 23(1)(c) (refer Note 2)	u/s 23(1)(c) (Refer Note 2)	Two Property like Column 1	For Whole year u/s 23(1)(a)/(b) (Refer Note 1)
Less: Municipal Tax paid	NIL	Municipal Tax Paid	Municipal Tax Paid	Municipal Tax Paid		Municipal Tax Paid for whole year
Balance	NIL	NAV	NAV	NAV		NAV
Less: Dedn. u/s 24						



General Dedns. (30%)	NIL	30% of NAV	NIL	30% of NAV	Other Properties like Column 2	30% of NAV
Interest (Acqn, Construction, Repairs, Renewals, Reconstruction)	2,00,000 (or) 30,000 (Note)	No Limit	No Limit	No Limit		Interest for Whole year (No ceiling Limit)

Note:

<p>(a) Conditions for Interest on Housing Loan up to a maximum of ₹2,00,000:</p> <ul style="list-style-type: none"> Loan taken for acquisition or construction of House Property, On or after 01.04.1999 Acquisition or Construction should be completed within 5 years from the end of the financial year in which capital was borrowed. 	<p>(b) Interest on Housing Loan up to a maximum of ₹30,000, if –</p> <ul style="list-style-type: none"> Any of the above conditions in (a) is not satisfied; or Loan is taken for repair, renovation or reconstruction at any point of time.
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Note: w.e.f. 01.04.2020: Maximum amount of deduction u/s 24 shall be allowed as ₹2,00,000

Important Case Decisions

Scope of Income chargeable under the head Income from House Property

- Business of Letting Out:** Letting out of Rooms in Lodging House is a Business, however letting out of building to the bank on Long Term Lease could be treated as Income from House Property. [**Joseph George and Co. Vs. ITO 328 ITR 161 (Ker.)**]
- Real Estate Business – Taxable under the head “Income from House Property”:**
 - For a Company with the object of buying and developing landed properties, or purchasing and selling buildings, the Income from **unsold property let-out** is taxable. [**Charandas & Co. 55 ITR 17 (SC)**]
 - The Flats have been claimed as not chargeable to Wealth – Tax, treating the same as Stock-in-Trade, will not affect the computation of income under the Income–Tax Act. [**Azimganj Estate (P) Limited (2012) 206 Taxman 308 (Cal)**].
 - Irrespective of whether it is deemed rent or actual rent, which forms the basis of computing income from unsold flats held as stock-in-trade [**New Delhi Hotels Limited. Vs. ACIT (2014) 360 ITR 0187 (Del.)**]
- Leasing of Property:** The business of the Company is to lease its property and to earn rent and therefore, the income so earned should be treated as its business income. [**Rayala Corporation Vs. ACIT (2016) 386 ITR 500 (SC)**]
- Sec. 22 & 28 – Company dealing property business – Income realized from letting out buildings – Income from Property:** Assessee, as the owner of the building, was only exploiting the property by leasing out the same and realizing the income by way of rent. Such Rental Income was liable to be assessed under the head “Income from House Property”. [**Chennai Properties and Investments Limited 265 ITR 685 (Mad.)**]



5. **Objective of letting out:** If from agreement two parties, it is clear that primary object was to let out portion of a property with the additional right of using Furniture, Fixtures and other common facilities, then Rent charged from month to month is income derived from said property, and is assessable as Income from House Property. **[Shambhu Investment (P) Limited 129 Taxman 70 (SC)]**
6. **Not separately identifiable:** If such Income is inseparable, it will be charged to tax under the head "Income from Other Sources". **[Sultan Bros. (P) Limited 51 ITR 353 (SC)]**. When the other party does not accept letting out of buildings without other assets, then the rent is taxable either as Business Income or Income from Other Sources. This is applicable even if sum receivable for the two lettings is fixed separately.
7. **Firm using Partner's House property for business:** Partner using his own property for his own business of the Firm, and hence not taxable as income under the head House Property. It is deemed he is using his property for his own business. **[Mustafa Khan 145 Taxman 522 (All.)]**
8. **Registration not required:** If the person receives Income from the property in his own capacity and not on behalf of others, a Registered Sale Deed is not necessary to tax it u/s 22. **[Poddar Cement Private Limited 226 ITR 625 (SC)]**
9. **Commercial Complex:** Where Assessee was not engaged in any business activity, Rental Income earned from letting out Commercial Complex would be assessed as Income from House Property and not as Business Income **[Keyaram Hotels (P) Limited Taxmann.com 469 (Mad.)(HC) (2014)]**

Determination of Annual Value and Deductions

10. **Annual Value in case of Leasing of Property to Relatives:** An Assessee leased out his premises to a Firm consists of his wife, daughter and trusted employee as Partners, and the Firm subsequently let it out to tenants. The annual value for the Assessee in the rent paid by tenants to the Firm. **[N Natraj 266 ITR 277 (Mad.)]**
11. **Determination of Annual Value of Property covered by Rent Control Act:**
 - It is the duty of AO to determine standard rent if it is not fixed under Rent Control Legislation. **[Smt. Kokilaben D. Ambani Vs. CIT (Mum.) [2014] 49 Taxmann.com 371].**
 - A.O must undertake exercise to fix rent himself in terms of said Act or have it determined by Court or Tribunal and until then he is not justified in applying any other formula or method and determine 'Fair Rent' by abiding with same **[CIT-12 Vs. Tip Top Typography [2014] 48 Taxmann.com 191 (Bombay) HC]**
12. **Treatment of Notional Interest:** Notional Interest on Interest-Free Rental Advance cannot be added for computing Annual Letting Value of the property, but it could be used for determining the Fair Rent of the Property. **[Shastra Pharma Laboratories (P) Limited (2013) 88 DTR (Kar.) 115]**
13. **Service Charges Received:** Amount received as Service Charges should be considered as a part of the Rent Received, and taxable under the head "Income from House Property". **[J.K. Investors (Bom.) Limited (2012) 211 Taxman 383 (Bom.)]**
14. Municipal Tax paid by Tenant is neither to be added to actual rent nor to be allowed as deduction. **[Gillandese Arbuthnot & Co. Limited 142 ITR 598 (Cal.)]**
15. Repair Expenses met by Tenant shall not be added to actual rent. **[Parbathu Churn Law 57 ITR 609 (Cal.)]**
16. **Interest on Interest:** Interest on unpaid interest shall not be allowed as deduction. **[Shewkisan Bhattar 89 ITR 61 (SC)].**



17. Benefit of Self – Occupied Property to HUF: A HUF can be seen as a Family of a group of natural persons, and hence benefit of Sec. 23(2) is also available to a HUF. [**CIT Vs. Hariprasad Bhojnagarwala (2012) 342 ITR 69 (Guj.)**]

18. Determination of Annual Value of Property:

Issue: IT Dept. Noted that Assessee had not shown any rental income with respect to a vacant property on the ground that the said property was old and partly damaged and not in a condition to let out, thus remained vacant.

Facts: ITAT observed that no description of the property as to the area and the market rates prevalent for rentals was brought on record by Revenue and that annual value noted by revenue was not based on any reasonable working and also vacancy allowance was not given to the assessee.

Conclusion: ITAT deleted addition made on account of deemed rental income u/s 23 as the determination of annual value of the property was held to be absent of any rational working. [**Shri Sunil Kumar Vs. ACIT (2021)**]

19. In the absence of any evidence with regard to completion of construction and its readiness to let out, such as having the power connection, water connection, etc., the interest on loan to be capitalized to the cost of the building. [**Netra Software Technologies P. Limited Vs. ACIT (2021)**]

Exemptions

20. Part of Residential Palace Let out: As long as an assessee continues to remain in occupation of his official residential palace for his own use, he would be entitled to claim exemption u/s 10(19A) for entire palace notwithstanding fact that a part of his official residence has been let out. [**Maharaja Bhi, Singh of Kota Vs. CIT 2016**] 76 Taxmann.com 274 (SC)

Deemed Ownership

21. Where IT Authorities found that Assessee had leased out his property to his own family members to show lesser income in his hand and family members had in turn sub-leased it to outsiders on much higher rentals, Assessing Authorities could be tax the said income in hands of the assessee. [**Maneklal Agarwal Vs. DCIT [2017] 84 Taxmann 116 (SC)**]



7

PROFITS & GAINS OF BUSINESS OR PROFESSION

COMPUTATION OF INCOME UNDER THE HEAD PROFITS AND GAINS OF BUSINESS OR PROFESSION
[Sec. 29]

Section	P & L Item	Conditions/Restrictions
	Net Profit as per Profit and Loss Account	
Less:	Allowable Expenditure and not debited to Profit & Loss A/c	
30	Rent, Rates, Taxes, repairs and Insurance for Building	Current Repairs of capital nature not allowed as a deduction
31	Repairs & Insurance for Machinery, Plant & Furniture	Current Repairs of capital nature not allowed as a deduction
32	Depreciation	<ol style="list-style-type: none"> Conditions for Claim: (a) Ownership, (b) Use, (c) Block of Assets, (d) Mandatory. Method: (a) SLM Optional for Tangible Assets of Power Sector Units, (b) WDV Method in all other cases. Newly acquired assets during current P.Y. put into use for less than 180 days, entitled for depreciation at 50% of Normal rate. Balance Additional Depreciation allowable in next P.Y.: If Additional Depreciation is restricted to 50% of allowable amount since used for < 180 days, the balance 50% shall be allowed u/s 32 in the immediately succeeding previous year in respect of such asset. [w.e.f. 01.04.2016] Additional Depreciation: 20% of Actual Cost of Machinery or Plant (10% if used for < 180 days). Days Ratio apportionment for Succession/Business Re-organization. STCG/STCL on Sale of Depreciable Assets u/s 50 Unabsorbed Depreciation carried forward for any number of years & set off against any Income.
32(1)(iia)	Special Rate of Additional Depreciation for Machinery or Plant for Undertakings in Backward Areas of Specified States [w.e.f. 01.04.2016]	<ol style="list-style-type: none"> Date of Commencement: Assessee should set up an Undertaking or Enterprise on or after 01.04.2015 Applicability: It is applicable to Assessee engaged in the business of manufacture or production of any article or thing, or in the business of generation, transmission or distribution of power Location: In any Backward Area notified by the Central Government, in the State of Andhra Pradesh or Bihar or Telangana or West Bengal.



		<p>4. Machinery Dates: Assessee should acquire and install new Machinery or Plant (other than Ships and Aircraft) for the purposes of the said Undertaking or Enterprise during the period 01.04.2015 to 31.03.2020</p> <p>5. Rate: Additional Depreciation shall be at 35% instead of 20%</p> <p>6. Usage < 180 days: Only 50% Depreciation of the depreciation is allowed if Asset used for < 180 days in the previous year. Balance 50% is allowed in the immediately succeeding previous year.</p>
32AC(1A)	Investment in New Plant or M/c with limit of ₹25 Crores	<p>1. Eligible Assessee: Company, engaged in business of manufacture or production of any article or thing.</p> <p>2. Condition:</p> <p>(a) Acquisition and Installation of New Assets, Actual Cost whereof during any Previous Year exceeds ₹25 Crores.</p> <p>(b) Installation of New Asset in a year other than the year of acquisition – deduction allowed only in the year of installation.</p> <p>3. Deduction for that A.Y.: 15% of Actual Cost of such New Assets.</p> <p>4. Exception: If deduction is allowable u/s 32AC(1), i.e. for investment up to 31.03.2015, then no deduction is allowed u/s 32AC(1A), for A.Y. 2015 – 2016.</p> <p>5. Time: Deduction u/s 32 AC(1A) available only up to A.Y. 2017 – 2018.</p> <p>6. If the installation of the New Assets are in a year other than the year of acquisition, the deduction shall be allowed in the year in which the new assets are installed.</p>
32AD	Investment Allowance for under takings in Backward Areas for Acquisition & Installation of New Assets.	<p>1. Applicability: All Assessee engaged in business of manufacture or production of any article or thing.</p> <p>2. Condition:</p> <p>(a) Commencement: Assessee should set up an Undertaking or Enterprise on or after 01.04.2015 to 31.03.2020.</p> <p>(b) Location: In any notified Backward Area in the State of Andhra Pradesh or Bihar or Telangana or West Bengal.</p> <p>3. Deduction: 15% of actual cost of such new assets for that A.Y.</p> <p>4. Time: Deduction available up to A.Y. 2020 – 2021.</p>



Rule 7	Where Agricultural Produce of the Assessee used as Raw Material for Manufacture	Average Market Price of Agricultural Produce consumed is debited to Manufacturing Account. No deduction towards Agricultural Operations shall be allowed.											
Rule 7A	Income from growing and manufacture of Rubber	65% of POB Agricultural Income 35% of POB is Business Income											
Rule 7B	Income from grown and cured Coffee	75% of POB Agricultural Income 25% of POB is Business Income											
Rule 7B	Income from grown and cured, roasted and grounded Coffee	60% of POB Agricultural Income 40% of POB is Business Income											
Rule 8	Income from growing and manufacture of Tea	60% of POB Agricultural Income 40% of POB is Business Income											
33ABA / Rule 5AD	Site Restoration Fund account [for Petrol and Natural Gas]	Least of Amount deposited with S.B.I. or 20% of POB											
35	Expenditure on Scientific Research												
	(A) In-House Research	Revenue (or) Capital Expenditure, and Prior Period Expenditure of 3 years fully allowed as deduction in year of commencement of business											
	(B) Weighted Deduction on In-House Research by Company engaged in Bio – Technology or of Manufacture or Production of any article or thing (not specified in XI schedule)	<ul style="list-style-type: none">100% of Revenue of Capital Expenditure incurred (except Land & Building) is allowed. Building 100% allowed, Prior Period Expenditure 100% allowed.The prescribed authority shall submit its report in relation to the approval of the said facility to PCCIT/CCIT/PDGIT/DGIT.											
	(C) Weighted Deduction for Contributions	<table><tr><th>Payment made to</th><th>Deduction %</th></tr><tr><td>Any Research Association (or) University/College, etc. for Scientific Research</td><td>100%</td></tr><tr><td>Company approved by Prescribed Authority for Scientific R & D</td><td>100%</td></tr><tr><td>Any Research Association (or) University/College, etc. for Social Science or Statistical Research</td><td>100%</td></tr><tr><td>National Laboratory/ University/ IIT/ Specified Person</td><td>100%</td></tr></table>	Payment made to	Deduction %	Any Research Association (or) University/College, etc. for Scientific Research	100%	Company approved by Prescribed Authority for Scientific R & D	100%	Any Research Association (or) University/College, etc. for Social Science or Statistical Research	100%	National Laboratory/ University/ IIT/ Specified Person	100%	
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Any Research Association (or) University/College, etc. for Social Science or Statistical Research	100%												
National Laboratory/ University/ IIT/ Specified Person	100%												



35ABA	Capital Expenditure for obtaining right to use Spectrum for Telecommunication Services	<div>1. A deduction equal to the appropriate fraction of the amount of such expenditure</div> <div>2. Period of Deduction: Deduction shall be allowed for each of the relevant P.Y.s.</div> <div>Explanation:</div> <div>(a) Relevant Previous Years (RPY).</div> <div><table><tr><th>Situation</th><th>RPY means -</th></tr><tr><td>(i) Spectrum Fees actually paid before commencement of business</td><td>i. From P.Y. in which business commenced,</td></tr><tr><td>(ii) Any other case</td><td>ii. From P.Y. in which Spectrum Fee is paid</td></tr></table><div>Note: In Both cases, all P.Y.(s) during which the Spectrum is in Force.</div></div> <div>(b) Appropriate Fraction = $\frac{1}{\text{Total No. of RPY}}$</div>	Situation	RPY means -	(i) Spectrum Fees actually paid before commencement of business	i. From P.Y. in which business commenced,	(ii) Any other case	ii. From P.Y. in which Spectrum Fee is paid
Situation	RPY means -							
(i) Spectrum Fees actually paid before commencement of business	i. From P.Y. in which business commenced,							
(ii) Any other case	ii. From P.Y. in which Spectrum Fee is paid							
35BB	Expenditure for obtaining Licence to operate Telecommunication Services	Licence Fee shall be distributed over the period of licence after the payment was made.						
35AC	Expenditure on Eligible Projects/ Schemes	100% Contribution shall be allowed as Deduction						
35AD	<div>Expenditure for Specified Business –</div> <div>(a) Cross country Natural Gas Pipe Line Network</div> <div>(b) Cold Chain Facility, Ware Housing Facility for Storage of Agricultural Produce.</div> <div>(c) Building 2 Star Hotel, Hospital with at least 100 beds, Housing Project for Slum Redevelopment</div> <div>(d) Developing & Building a Housing Project under a</div>	<div><div>• General: 100% of Capital Expenditure incurred, except on Land, Goodwill or Financial Instrument.</div><div>• Prior Period expenditure: 100% allowed, if capitalized in Books.</div><div>• Deduction: 100% of Expenditure incurred allowed as deduction for – (a) Cold Chain Facility, (b) Warehousing Facility for Storage of Agricultural Produce, (c) Hospitals, (d) Affordable House Projects, (e) Fertilizer Plant</div><div>• No other deduction allowed for same expenditure. Provisions of 80A and 80-IA shall apply for goods in specified business.</div><div>• No Double Deduction: For Assessee claiming deduction u/s 35AD, no deduction shall be allowed u/s 10AA or Chapter VI-A “C Deductions in respect of Certain Incomes”</div></div>						



	<p>scheme framed by CG/SG</p> <p>(e) Production of Fertilizer in India</p> <p>(f) Setting up and Operating Inland Container Depot or Freight Station, Bee-keeping, Warehousing Facility for Storage of Sugar</p> <p>(g) Laying and operating a Slurry Pipeline for the transportation of Iron Ore</p> <p>(h) Setting - up and opening a Semi - Conductor Wafer Fabrication Manufacturing Unit, and which is notified by CBDT</p> <p>(i) Business of developing or maintaining and operating or developing, maintaining and operating a New Infrastructure Facility</p>	<ul style="list-style-type: none"> Capital Expenditure in respect of which, payment or aggregate of payments made to a person in a day, exceeding ₹10,000 is made otherwise than by an Account Payee cheque drawn on a Bank or an Account Payee Bank Draft or use of Electronic Clearing system through a Bank account or such other electronic mode as may be prescribed is disallowed. Usage: Any asset in respect of which a deduction is claimed and allowed u/s 35AD shall be used only for the Specified Business, for 8 years beginning with the previous year in which such asset is acquired or constructed Taxable for non - usage of Asset: <ul style="list-style-type: none"> (a) Situation: Asset used for other purpose during the 8 - year period except demolished/ discarded/ destroyed/ transferred as referred u/s 28(vii) (b) Taxable Amount: Total Amount of deduction claimed and allowed in one or more previous years, as reduced by the amount of Depreciation Allowable u/s 32, shall be deemed to be the Income of the Assessee, as if no deduction u/s 35AD was allowed. (c) Manner of Charge: It is chargeable as "PGBP" of the previous year in which the asset is so used. (d) Exception: The above shall not apply to a Company which has become a Sick Industrial Company u/s 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, during the 8 year period
35CCA	Payment to Associations and Institutions for Rural development Programmes	100% Contribution shall be allowed as deduction. If approval is withdrawn subsequent to payment, then deduction cannot be denied.
35CCC	Expenditure on Agricultural Extension Project notified by CBDT	150% of the expenditure incurred.
35CCD	Expenditure on Skill Development Project notified by CBDT	150% of the expenditure incurred (other than cost of Land & Building)
35D/ Rule 6AB	Amortization of Preliminary Expenses incurred for setting up or extension undertaking or Business Unit	<ul style="list-style-type: none"> For Indian Companies: 5% of Cost of Project, or 5% of Capital Employed. Resident Non - Corporates: 5% of Cost of Project. Time Period: Amortised in 5 equal installments



35DD	Amortization in case of Amalgamation/ Demerger	<ul style="list-style-type: none"> Only for Indian Company Allowed in 5 installments from the year of Amalgamation/ Demerger.
35DDA	Amortization of Expenditure incurred under VRS	<ul style="list-style-type: none"> Allowed in 5 installments after the payment was made. Deduction to Resulting Entity in case of Business Re – organization.
35E/ Rule 6AB	Expenditure on prospecting, etc. for certain minerals	<ul style="list-style-type: none"> Only for Indian Company & Resident Non Corporate Assessee Expenses of 5 Years (year of commercial production + 4 Prior years) allowed in 10 Equal Installments
36(1)(i)	Insurance Premium of Stocks	Allowed on Payment basis
36(1)(ia)	Insurance Premium on Life of Cattle	Allowed on Payment basis – for Federal Milk Co – operative Society.
36(1)(ib)	Insurance on Health of Employees	Allowed on Payment basis. Payment in any mode other than Cash.
36(1)(ii)	Bonus or Commission to Employees	Allowed when paid before due date of filing Return [Sec. 43B]
36(1)(iii)	Interest on Borrowed capital	Allowed when paid before due date of filing Return in respect of Loans from Financial Institutions/ Banks.
36(1)(iiia)	Discount on Zero Coupon Bonds	<ul style="list-style-type: none"> Applicable for Infrastructure Capital Co./ Fund, Public Sector Co & Scheduled Bank Written off over the period of the Bond
36(1)(iv)	Employer's Contribution to a RPF/ Approved Superannuation Fund	Allowed when paid before due date of filing return [Sec. 43B]
36(1)(iva)	Contribution towards Pension Scheme u/s 80CCD	Contribution should not exceed 10% of Salary. [w.e.f. 01.04.2025, 14%] Salary includes DA if the terms of employment so provide, but excluded all other Allowances and Perquisites.
36(1)(v)	Employer's Contribution to an Approved Gratuity Fund	Allowed when paid before due date of filing Return [Sec. 43B]
36(1)(va)	Recoveries from Employees towards Welfare Funds	<p>Paid before the prescribed due date (including grace days) under the respective Act [ESI/EPF, etc.]</p> <p>Note: Sec. 43B shall not apply and shall be deemed never to have been applied for the purposes of determining the “due date” for Sec. 36(1)(va) for Provident Fund, Superannuation Fund, Employees State Insurance or any other Fund.</p>
36(1)(vi)	Allowance in respect of dead or permanently useless animals	Cost of Animal Less Insurance Claim or any other receipt. No amortization of cost is allowed



36(1)(vii)	Bad Debts	Revenue Bad Debts subject to write-off in the books of accounts.
36(1)(viii)	Provisions for Bad and Doubtful Debts	<ul style="list-style-type: none"> For scheduled Banks, Non – Scheduled Banks, Co – operative Bank other than Primary Agricultural Credit Society or Primary Co-operative Agricultural & Rural Development Bank: 8.5% of GTI + 10% of Average Rural Advances. Banks incorporated outside India, Public Financial Institutions, SFCs, SIICs, NBFC: 5% of GTI.
36(1)(ix)	Expenditure on promoting Family Planning amongst the Employees	<ul style="list-style-type: none"> Allowable only for Companies. Revenue Expenditure is fully allowed. Capital Expenditure is allowed in five equal installments.
36(1)(xii)	Revenue Expenditure incurred by a Corporation, etc. established by a Central, State or Provincial Act.	<ul style="list-style-type: none"> Expenditure incurred towards its object and purposes authorized by Governing Act, fully allowed. No Deduction for Capital Expenditure
36(1)(xiii)	Banking Cash Transaction Tax paid	Allowed as a deduction
36(1)(xiv)	Contribution to Credit Guarantee Fund Trust for Small Industries	<ul style="list-style-type: none"> Applicable only for Public Financial Institutions The Trust must be notified by the Central Government.
36(1)(xv)	Securities Transaction Tax Paid	Fully allowed as deduction only when paid if Income from such transaction is included as PGBP
36(1)(xvi)	Commodities Transaction Tax Paid	<ul style="list-style-type: none"> Taxable Commodities Transactions should be entered into in the course of the Assessee's business during the previous year. Income arising from such transactions is included as PGBP.
26(1)(xvii)	Expenditure incurred for purchase of Sugarcane [w.e.f. 01.04.2016]	<ul style="list-style-type: none"> Applicability: Co-Operative Society manufacturing Sugar Amount of Deduction: Price which is equal to or less than the price fixed or approved by the Govt. is allowable as a deduction.
36(1)(xviii)	Marked to Market Loss or other Expected Loss	<p>(a) Applicability: All Assesseees</p> <p>(b) Deduction: Deduction in respect of any Marked to market loss or other expected loss shall be allowed, if the same is computed in accordance with the ICDS notified u/s 145(2).</p>
37(1)	General Deductions	Revenue Expenses, wholly and exclusively non-personal, related to Business and not contrary to provision of Law, fully allowed. Corporate Social Responsibility (CSR)



		expenditure u/s 135 of the Companies Act, 2013 is not allowed.
Add:	Inadmissible Expenditure debited in Profit and Loss Account	
37 (Expl. 2)	Corporate Social Responsibility (CSR) expenditure u/s 135 of the Companies Act, 2013	Fully disallowed
37(2B)	Advertisement in Political Parties' Souvenir, Brochure, Pamphlet, etc.	Fully disallowed
38	Building, etc. partly used for business	Proportionate Depreciation and Expenses used for non – business purpose disallowed
40(a)(i)	Payments to Non – Residents	Payments outside India or to Non – Resident or Foreign Company without TDS not allowed. Where an Assessee fails to deduct tax at source but is not deemed to be an Assessee in Default u/s 201(1), then it shall be deemed that the Assessee has deducted and paid the tax on such sum, on the date of furnishing of Return of Income by the Payee .
40(a)(ia)	Any Payment made to be a Resident , on which Tax is deductible, but tax has not been deducted / after deduction, tax has not been paid before the due date of furnishing Return u/s 139(1).	<ol style="list-style-type: none"> 1. 30% of the Expense will not be allowed. 2. Allowable in the year of remittance of TDS. <p>Note: If Payer fails to deduct TDS, but is not deemed to be an assessee in default u/s 201(1), it is deemed that TDS is not deemed and paid on the date of furnishing Return of Income by the Resident Payee.</p>
40(a)(ib)	Payment to Non-Resident without Equalization levy	Allowed as a deduction while computing Income of the previous year in the year in which such Levy has been paid.
40(a)(ii)	Rates or Taxes levied on Profits or Gains of any business or profession	Not allowed as deduction. (Including Tax paid abroad, eligible for relief / deduction u/s 90/90A/91, surcharge or cess paid on the Tax).
40(a)(ia)	Wealthy Tax	Fully disallowed
40(a)(iib)	Royalty, License Fee, Service Fee, Privilege Fee, Service Charge or any other Fee or Charge levied on, or appropriated either directly or indirectly from, State Government Undertakings by the State Govt.	Fully disallowed



40(a)(iii)	Salary paid outside India or to Non – Resident	Payment without TDS not allowed	
40(a)(iv)	Contribution to Welfare Fund of Employees if no arrangements for TDS	Not allowed	
40(a)(v)	Tax on Perquisites paid by Employer	Not allowed	
40(b)	For Partnership, Interest Allowable =	Least of: 12% or as specified in Partnership Deed.	
40(b)	For Partnership Firm, Remuneration allowable = Least of: following or as per Partnership Deed or paid -	Book Profit	Maximum Remuneration
		Up to ₹6 Lakhs	₹3,00,000 or 90% of Book Profit
		On balance	60% of Book Profit
40(ba)	Disallowances in case of AOP/BOI	Interest, Remuneration, etc. paid to Member shall not be allowed	
40A(2)	Payments to Relatives as specified	Payment considered as excessive or unreasonable shall not be allowed. No disallowance, if transaction is at Arm’s Length Price as per Sec. 92F.	
40A(3) & Rule 6DD	Single or Aggregate Payments in respect of allowable expenditure in excess of ₹10,000, (₹35,000 if Payment is made for Plying, Hiring or Leasing Goods Carriages) other than by way of A/c Payee Cheque or A/c Payee DD use of ECS through a Bank A/c or such other prescribed electronic mode to a single person on a single day.	<ul style="list-style-type: none">• Whole of the payment shall be disallowed. Expenditure allowed on due basis but aggregate payments made in subsequent P.Y.s in excess of ₹10,000/ 35,000 shall be disallowed.• Exceptions given in Rule 6DD	
40A(7)	Provision for Gratuity	<ul style="list-style-type: none">• Disallowed, except in case of provision for contribution to Recognized Gratuity Fund or actual liability incurred.	
40A(9)	Contribution to Non-Recognized Funds	<ul style="list-style-type: none">• Payment to any Unrecognized/ Non-Statutory Employer Welfare Fund is disallowed• Contribution u/s 36(1)(iv)/(iva)/(v) or under any Law, is allowable	
40A(13)	Marked to Market Loss or other expected loss	No deduction or allowance shall be allowed in respect of any marked to market loss or other expected loss except as allowable u/s 36(1)(xviii). In other words, Loss can be allowed only if it is computed in accordance with the provisions of ICDs	



43B	Deductions only on actual payment	<p>A. Items covered:</p> <ol style="list-style-type: none"> 1. Employer's Contribution to RPF or other Employee Welfare Funds, 2. Tax, Duty, Cess, etc. 3. Bonus or Commission to Employees, 4. Interest payable to Public Financial Institution or Scheduled Bank, Co – operative Bank, Rural Development Bank NBFC's 5. Leave Salary 6. Payment to Indian Railways for use of Railway Assets. <p>B. Allowability:</p> <ul style="list-style-type: none"> • Allowed if paid on or before due date of filing Return u/s 139(1). • Otherwise, it is allowed only in the year of payment. <p>Note: Sec. 43B shall not apply and shall be deemed never to have been applied to a sum received by the Assessee from any of his Employees to which provisions of Sec. 2(24)(x) applies i.e. Employees Contribution to PF, Superannuation Fund, ESI or any other Fund.</p>
Add:	Sec. 41 – Deemed Business Income	
Less:	Incomes credited in Profit and Loss Account not chargeable to tax under this head.	
	<ul style="list-style-type: none"> • Agricultural Income • Exempt Income u/s 10 • Income chargeable under the heads Salary, House Property, Capital Gains or Other Sources • Any Reserve Withdrawn • Dividend Income • Bad Debts Recovered not allowed as deduction in the earlier years 	
Add:	Expenditure debited to Profit and Loss A/c but not deductible under this head	
	<ul style="list-style-type: none"> • Expenditure on Agricultural Income • Expenditure incurred in relation to Exempt Income • Expenditure incurred in relation to other Heads of Income like Salary, HP, Capital Gains or Other Sources • Any Reserve created other than allowable Statutory Reserve u/s 33AC or 36(1)(viii) • Debits in P & L A/c allowable as Deduction under Chapter VI-A • Capital Expenditure • Personal Expenditure • Charities and Donations 	



	<ul style="list-style-type: none"> • Depreciation as per Books • Preliminary Expenses in excess of permissible limit
	Income chargeable under the head PROFITS AND GAINS OF BUSINESS OR PROFESSION

Points to Remember

Income under the head PGBP: Sec. 28 defines what Income is chargeable to tax under this head, and includes sum received on account of any Capital Asset allowed as deduction u/s 35AD.

Recovery of Loss or Expenditure already allowed or remission of liability [Sec. 41(1)]: Recovered Amount shall be deemed to be PGBP for him or successor of Business and chargeable to tax in the P.Y. of receipt.

Profit on Sale of assets of Power Sector Unit which has claimed Depreciation under SLM [Section 41(2)]: If Moneys payable is greater than WDV, then the difference between Actual Cost and WDV shall be chargeable tax as Business Income in the P.Y. in which the amount is due.

Amount realized on Sale of Capital Asset used for Scientific Research [Sec. 41(3)]: Lower of – (i) Amount of Deduction, or (ii) Sale Proceeds, is chargeable to tax as PGBP in the P.Y. of transfer

Recovery of Bad Debt allowed u/s 36(1)(vii) [Sec. 41(4)]:

1. If Recovered amount is greater than the Unallowed Amount, then such excess is treated as Income u/s 41(4)
2. If the Recovered amount is less than the Unallowed Amount, then such deficiency is allowed as deduction u/s 36(2)(ii).

Note: Recovery by Successor of business is not Taxable

Set off of Losses incurred in the year of discontinuance of business [Sec. 41(5)]: First set off against Income u/s 41(1), 41(3), 41(4), 41(4A).

Deduction in case of business for prospecting etc. for mineral oil [Sec. 42]: Provision as per Income Tax Act or provision as per the agreement with the Government, whichever is beneficial to the Assessee shall apply.

Changes in Rate of Exchange of Currency [Sec. 43A]: Fluctuation related to –

- (a) Depreciable Asset – Adjusted towards Actual Cost/WDV
- (b) Revenue – Adjusted towards Income

Taxation of Foreign Exchange Fluctuation [Sec. 43AA] [w.e.f. 01.04.2017]: Nature of Income [Sec. 43AA(2)]: Any gain or loss arising on account of the effects of change in foreign exchange rates of all foreign currency transactions, including those relating to – (i) Monetary items and non – monetary items, (ii) Translation of financial statements of foreign operations, (iii) Forward exchange contracts, and (iv) Foreign currency translation reserves.

Taxability [Sec. 43AA(1)]: Subject to the provisions of Sec. 43A, above referred Gain or Loss shall be treated as Income or Loss, and such gain or loss shall be computed in accordance with the ICDS notified u/s 145(2)

Cost of Acquisition of Stock in Trade [Sec. 43C]: Cost to Previous Owner (+) Cost of Transfer (+) Cost of Improvement

Full Value of Consideration in certain cases [Sec. 43CA]

1. **Situation:** Consideration received or accruing to the Assessee < Value adopted by the Stamp Valuation Authority.



2. **Full Value of Consideration** = Value adopted by Stamp Valuation Authority, for Transfer of Land/Building other than Capital Assets.
3. **Determination of Full Value of Consideration in Special Situation: [w.e.f. 01.04.2019]**
 - (a) **Situation:** Valuation adopted or assessed or assessable by the Stamp valuation authority does not exceed 105% of the consideration received or accruing as a result of the transfer,
 - (b) **Full value of Consideration:** For the purposes of computing profits and gains from transfer of such asset, the consideration so received or accruing as a result of the transfer shall be **deemed to be the full value** of the consideration

Computation of Income from construction and service contracts. [Sec. 43CB](w.re.f 01.04.2017)

1. **Nature of Income:** The profits and gains arising from a construction contract or a contract for providing services
2. **Determination of Income:** Such Income shall be determined on the basis of **Percentage of Completion method** in accordance with ICDS notified u/s 145(2)
3. **Exception:** For the following services profits and gains shall be based on –

Nature of Contract	Basis of Determination
Duration of contract not more than 90 days	Project completion method
Contract involving indeterminate number of acts over a specific period	Straight line method

Interest on Bad Debts and Doubtful Debts for Scheduled Bank, etc. [Sec. 43D]: Treated as the Income in the year of Credit to P & L A/c or Year of Receipt, whichever is **earlier**. **W.e.f. 01.04.2020** Sec. 43D, is amended to include **deposit – taking NBFC's and Systematically Important Non – deposit taking NBFCs** within the scope of this section

Speculative Transactions [Sec. 43(5)]: Transactions involving transfer of Commodities, Securities, etc. which are settled without actual delivery. Derivative Transactions including Commodity Derivatives are not speculative

Transactions relating to Trading in agricultural commodity derivatives – Not a Speculative Transaction:

- (a) **Nature of Transaction:** Trading in agricultural commodity derivatives.
- (b) **Condition of CTT not applicable:** For transaction in respect of trading in agricultural commodity derivatives, the requirement of chargeability to commodity transactions tax under Chapter VII of the Finance Act, 2013 shall not apply.
- (c) **Non Speculative Transaction:** A transaction in respect of trading of agricultural commodity derivatives, which is not chargeable to CTT, in a registered stock exchange or registered association, will be treated as **non – speculative transaction**.

Income of Insurance Business [Sec. 44]: Income shall be computed as per I Schedule of the Act.

Deduction in the case of Trade, Professional or Similar Association [Sec. 44A]: Excess of expenditure incurred for members over and above the subscriptions received from Members shall be allowed as deduction subject to a maximum of 50% of Total Income.

Maintenance of Accounts [Sec. 44AA, Rule 6F]

4. **Notified Professionals:** Gross Receipts of Income exceeds ₹1,50,000 in all three Prior Previous Years.
5. **Non – Specified Professionals and Business Assessee:**



- Business Income exceeds ₹2,50,000 either during the current P.Y. in which business commences or any one of three Prior Previous Years.
- Gross Turnover or Receipts exceeds ₹25 Lakhs either during the current P.Y. in which business commences or any one of three Prior Previous Years.
- Declaring lesser income than as prescribed u/s 44AD/44AE/44BB/44BBB
- **W.e.f. 01.04.2017, Eligible Assessee** to whom provisions of Sec. 44AD(4) applies, and whose Income exceeds the maximum amount which is not chargeable to tax in any previous year.

Audit of Accounts [Sec. 44AB, Rule 6G]:

1. **Business Assessee:** Gross Turnover or Receipt exceeds ₹1,00,00,000.
2. **Professionals:** Gross Income or Receipts exceeds ₹50,00,000.
3. Declaring lesser Income than as prescribed u/s 44AD/ 44AE/ 44BB/ 44BBB/ 44ADA/ 44AD(4)
4. **Exclusion from the requirement of Tax Audit u/s 44AB:** From the requirement of Audit of Books of Accounts u/s Sec. 44AB, person Eligible person, who declares Profits for the P.Y. u/s 44AD(1) is **excluded**.
5. **Enhanced Turnover limit in certain cases:** Turnover Limit for Tax Audit u/s 44AB is enhanced to **₹10 Crores** for a person whose aggregate of all –
 - (a) Cash payments made including amount incurred for expenditure, or
 - (b) Cash received including amount received for Sales in Cash

Does not exceed 5% [Due Date of filing the Tax Audit Report is as per Sec. 139(1)]

Presumptive Income of Eligible Business [Sec. 44AD]:

1. Profits and Gains of Business other than Plying, Hiring or Leasing Goods Carriage Vehicles and whose Total Turnover \leq 2 Crores shall be 8% (6%) pf Turnover or any other higher sum declared by the Assessee. (**Note:** Where the aggregate amounts received in cash does not exceed 5% of the Total Turnover or Gross Receipts the Turnover limit shall be **₹ 3 Crores**).
2. **Condition for Lower Rate:** Total Turnover or Gross Receipts, received by way of an Account Payee Cheque or an Account Payee Bank Draft or Use Electronic Clearing System through a Bank Account or such other electronic mode as may be prescribed during the P.Y. or before the due date u/s 139(1) for such P.Y., alone are eligible for this lower rate of tax.
3. Existing rate of deemed profit of 8% u/s 44AD, shall continue to apply in respect of Total Turnover or Gross Receipts received in any other mode.
4. Deductions u/s 30 to 38 shall be deemed to have been allowed. Firm cannot claim deduction u/s 40(b):
5. Section 44AD is not applicable to – (i) Person carrying on profession as referred in Section 44AA, (ii) Person earning income in the nature of Commission or Brokerage, or (iii) Person carrying on any Agency Business.

Presumptive Income in case of Profession [Section 44ADA]:

1. **Applicability:** An Assessee being Individual or Partnership Firm other than LLP defined u/s 2(1)(n) of LLP Act, who is a resident in India, engaged in a Profession as per Sec. 44AA(1)
2. Assessee's Total Gross Receipts in the previous year does not exceed **₹50 Lakhs**. (**Note:** Where the aggregate amounts received in cash does not exceed 5% of the Total Turnover or Gross Receipts the Turnover limit shall be **₹75 Lakhs**)
3. **Presumptive Income = 50%** of Total Gross Receipts, or higher sum declared by the Assessee in the previous year.



Profits & Gains of Business of Plying, Hiring or Leasing Goods Carriages if not more than 10 Vehicles are owned [Sec. 44AE]:

1. **Heavy Goods Vehicle: ₹1,000** per ton of gross vehicle weight or unladen weight per month or part of a month during which vehicle is owned by the assessee in the P.Y.
2. **Other Vehicle: ₹7,500** per month or part of a month during which vehicle is owned by the assessee in the P.Y.

Presumptive Income Non-Resident Shipping Business [Sec. 44B]: 7.5% Gross Turnover. (Not applicable for Cruise-Ships covered u/s 44BBC)

Profits and Gains of Non-Residents from Business of providing Services or facilities connected with supply of Plant / Machinery on hire for Extraction of Mineral Oil [Sec. 44BB]: 10% of Gross Turnover (at his option)

Note: Sec. 44BB shall not apply in case where provisions of Sec. 42/44D/44DA/115A/293A apply.

Profits and Gains of Non – Residents from Business of Operation of Aircraft [Sec. 44BBA]: 5% of Gross Turnover

Profits and Gains of Foreign Company from the Business of Civil Construction in connection with Trunk Power Projects [Sec. 44BBB]: 10% of Gross Turnover (at his option)

Presumptive Taxation in case of operation of Cruise Ships applicable for Non-Residents [Sec. 44BBC]: Non-Residents engaged in the operation of cruise ships subject to specified conditions (20% of Aggregate of Payments made (payable) to the assessee or received (deemed to be received) by the assessee on carriage of Passengers)

Head Office Expenditure [Sec. 44C]

1. **Amount of Deduction:** 5% of Adjusted Total Income or Head Office Expenses attributable to Indian Business, whichever is less.
2. **Adjusted Total Income means:** Total Income computed before giving deductions for Unabsorbed Depreciation, Unabsorbed Business Loss and Depreciation under Chapter VI – A

Royalty or Technical Fees derived by a Foreign Company from Govt. or Indian Concern [Sec. 44D]: Rate of Tax 20%

Royalty or Technical Fees agreement entered after 31.03.03 [Sec. 44DA]: Computed as per provisions of Business Income

Re – Organization of Co – Operative Banks [Sec. 44DB]: Successor Co-Operative Bank or Converted Banking Company entitled for deduction u/s 35D, 35DD, 35DDA in the FY subsequent to the year of Business Reorganization

Submission of Statements [Sec. 285B] W.e.f. 01.04.2022:

1. **Applicability:** Any person carrying on the production of a cinematograph film or engaged in any specified activity, or both, during the whole or any part of any FY.
2. **Statement:** Furnish a Statement in the prescribed form and manner to the prescribed authority within the prescribed time limit.
3. **Period:** In respect of the period during which such production or specified activity is carried on by him in such FY
4. **Contents:** Particulars of all payments of **more than ₹50,000** in the aggregate made by him or due from him to each such person as is engaged by him in such production or specified activity.
5. **Specified Activity** means any event management, documentary production, production of programmes for telecasting on television or over the top platforms or any other similar platform, sports event management, other performing arts or any other notified activity.



COMPUTATION OF DEPRECIATION [Sec. 32]

Particulars	Nature of Block	
	Building	P & M
A. Opening WDV as on 1st April of Relevant Previous Year		
B. Additions to the Block		
1. Asset Acquired and put to use in the same P.Y. for - (a) Less than 180 days (b) 180 days or more		
2. Asset acquired in preceding Previous Year(s) and put to use during the P.Y.		
Total Additions (1) + (2)		
C. Deduction from the Block		
1. Money P'ble towards any asset which is sold, discarded, demolished or destroyed (incl. Scrap Value)		
2. In case of Slump Sale, Actual Cost of asset as reduced by all Depreciation		
Total Deductions (1) + (2)		
D. Net Block Value (A) + (b) - (C)		
E. Depreciation		
1. Normal Depreciation (a) Asset put to use for less than 180 days – 50 % of Normal Depreciation [Point B 1(a)] (b) On the balance Net Block Value		
2. Additional Depreciation for Plant and Machinery used by Manufacturer/ producer of any article or thing or in the Business of generation or transmission and distribution of Power (a) New asset put to use for less than 18 days at 10% [Point B 1(a)] (b) New asset put to use for 180 days or more at 20%		
3. Additional Depreciation for Machinery or Plant for undertakings in Backward areas of specified states shall be at 35%		
Note: For assets put to use less than 180 days – Balance 50% of additional depreciation shall be allowed in the immediately succeeding previous year		
Total Depreciation		
F. Closing WDV		

Important Case Decisions

Scope of Income chargeable under the head Profits and Gains of Business or Profession

- 1. Business Income Vs. House Property Income:** In order to exploit Business Assets, as a prudent decision, the Appellant took Interest Free Loan from CitiBank and rented out one of its properties to the Bank, and shifted its Regional Office. In this commercial venture, Appellant received a higher Income regularly from its Commercial Assets. Therefore, the whole Income from Renting of Property



would be assessed as Business Income and not Income from House Property. **[CIT Vs. The Scientific Instruments Co. Limited (2011) (All)]**

2. **Compensation for Loss of Income:** Compensation on termination of distributorship shall be treated as Capital Receipt, because the Assessee's source of income was totally severed whereby the profit earning apparatus could never be utilized by the Assessee. **Ambadi Enterprises Limited 267 ITR 702 (Mad.)**
3. **Compensation for Termination of Contract:** Compensation paid to the Assessee, a Journalist, by a Foreign Publisher upon termination of contract for performance of authorship/professional services for a continuous period of 23 years, is to be regarded as Capital Receipt not liable to tax. **[Sharda Sinha (2016) 65 Taxmann.com 153 (Del.) (HC)]**
4. **Subsidy granted for providing employment to weaker sections of community is a Capital Receipt:** Such Subsidy was not reimbursement of salary or made for the normal working of the Mill or for the benefit of the Assessee, but was paid with a social objective in mind. Such Subsidy is capital in nature. **Kanyakumari District Co-Operative Spinning Mills Limited 264 ITR 684 (Mad)**
5. **Principle of Mutuality:** Where a Club has Nationalized Banks as its Members and it has placed its surplus funds in Deposits in such Member Banks, then interest on such Bank Deposits will be taxable. Principle of Mutuality will not be applicable to this transaction, as the relationship is of a Banker and its Customer. **Bangalore Club 287 ITR 263 (Kar.)**
6. **Temporary Membership – Principle of Mutuality does not apply:** Where an Assessee, a Private Club providing entertainment to its Members by offering accommodation, library, etc. rented out its Marriage Halls to Non-Members by making them temporary members, such amounts received from non-members (Temporary Members) would form part of its Total Income, and principle of mutuality will not apply to such a case. **Trivandrum Club 153 Taxman 481 (Ker.)**
7. **Lease Rent on temporary suspension of business:** Rental Income of leasing out Machinery used in the business, because of temporary suspension of business to tide over the crisis condition, is "Business Income". **[Shri Lakshmi Mills Limited, 20 ITR 451, Vikram Cotton Mills Limited, 169 ITR 597 (SC)]**
8. **Lease Rent on Stoppage of Business:** Receipt of Lease Rental of factory after stoppage of business is chargeable under "Income from Other Sources". **[Universal Plast Limited 237 ITR 454 (SC)]**
Lease Rent on Stoppage of Business: Receipt of Lease Rental of factory after stoppage of business is chargeable under "Income from Other Sources". **[Universal Plast Limited 237 ITR 454 (SC)]**
9. **Object of Subsidy determines nature of income:** (a) If the object of the Subsidy was to enable the Assessee to **run the business more profitably**, then the **receipt is on revenue Account**. (b) If the object of the assistance was to enable the Assessee to set up a new unit or to expand the existing unit then the receipt of subsidy is Capital Account. (c) Hence, it is the **object for which the Subsidy/ Assistance is given** which **determines the nature** of the Incentive Subsidy. The form or the mechanism through which the subsidy is given is irrelevant. **[CIT Vs. M/s Ponni Sugars & Chemicals Limited 2008 TIOL 174 (SC)]** **[CIT Vs. Kisan Sahkari Chinni Mills Limited 328 ITR 27 (All)]**
10. **Stock for personal use:** Stock drawn for personal use, neither treated as Income, nor the value of the stock shall be considered in purchases. No Taxable Profit. **[Kikabhai Premchand 24 ITR 506 (SC)]**
11. **Underwriting Commission:** Underwriting Commission received for underwriting the Shares should be reduced from cost of Shares, and not credited to P & L A/c **[UP State Indl. Development Corpn. 225 ITR 703 (SC)]**.
12. **Face Value of DEPB:** Face Value of DEPB is taxable u/s 28(iib) in the year in which Assessee applies for DEPB Credit against exports. Excess of Sales Proceeds of DEPB over its Face Value is taxable u/s 28(iid) in the year of transfer **[Topman Exports 18 Taxman 120 (SC)]**.



13. Power Subsidy received by an Assessee is revenue in nature, since it goes to reduce the Electricity Bills and hence **taxable u/s 28. [Rajaram Maize Products 251 ITR 427 (SC)]**.
14. Interest Income on the awards of arbitration are Trading Receipts, and hence taxable as Business Income. **[Govinda Choudary & Sons 203 ITR 881 (SC)]**.
15. Forfeiture of Margin Money deposits represents Bank's Business Income. **[Lakshmi Vilas Bank Limited 220 ITR 305 (SC)]**. It cannot be reduced from the cost of the investment for which such margin money was received
16. Where Agreement provides for Liquidated Damages without proof of actual loss, and Supplier fails to supply within scheduled time, the Liquidated Damages received by the Assessee is a **Capital Receipt**, and is not taxable. **[Saurashtra Cements Limited 325 ITR 422 (SC)]**
17. Interest on money borrowed for purchase of Plant, and kept in Short-Term Deposits. **[Autokast Ltd 248 ITR 110 (SC)]**.
18. **Power Subsidy based on actual power Usage = Revenue Receipt:** Power Subsidy was given after commencement of production and it was linked to production, hence a revenue receipt. Assistance by way of subsidy is given for the purpose of carrying on of business by the Assessee. **[Rassi Cements Ltd (2013) 351 ITR 169 (AP)]**
19. **Hypothetical Income:** Unit Imports are actually made by Assessee, benefits under Advance License or under Duty Entitlement Pass Book represents only "hypothetical income" which cannot be brought to tax by applying provisions of Sec. 28(iv) **[CIT Vs. Excel Industries Limited (2013) 38 Taxmann.com 100 (SC)]**
20. **Non - Competence Fee:** Dispute between two groups of Company was settled in terms of Share Purchase Agreement under which Members of one group agreed to sell their Shares to the other group at a certain price, and also agreed not to engage in similar business for certain period. A part of the consideration should to be apportioned towards restrictive covenants and would be **Capital Receipt** in hands of Members of Transferor group. **[Smt. Usha Saboo [2015] 59 Taxmann.com 397 (P & H) (HC)]**
21. **Franchises Fee:** The Assessee Company has leased some of its loss making hotel units to various Franchises for a consideration. The Assessee received Franchisee Fee for giving a special right or privilege to the Franchisees to undertake Tourism Business in the Property. Thus, Franchisee Fee is in the nature of Business Income and not Income from House Property. **[Tamil Nadu Tourism Development Corporation Limited (2014) 368 ITR 533 (Mad.)]**
22. **Interest Income on Margin Money:** Interest income received on funds kept as Margin Money for obtaining the Bank Guarantee would be taxable under the head "Profits and Gains of Business or Profession". **[K and Co. (2014) 364 ITR 93(Del.)]**
23. **Trading in Shares:** Assessee carried out activities of trading in Shares in a systematic manner and its average holding period of different Shares ranged from merely 3 days to 3 months, income from Sale of Shares was to be taxed as Business Income. **[Equity Intelligence India (P) Limited [2015] 61 Taxmann.com 256 (Ker.) (HC)]**
24. In term of construction agreement, Assessee handed over a piece of land to the Builder, for construction of multi-storied building. Since the construction and sale of flats did not change character of asset and there was no material to show that Assessee ever had any intention to exploit plot as a commercial venture, transaction could not be characterized as 'an adventure in nature of trade' **[Raj Dulari Bhasin (2016) 65 Taxmann 136 (Del.) (HC)]**.
25. **Letting out of Premises in Industrial Park:** In case of an undertaking which develops, develops and operates or maintains and operates an Industrial Park / SEZ notified in accordance with the Scheme framed and notified by the Government, the income from letting out of premises / developed space



along with other facilities in an Industrial Park / SEZ is to be charged to tax as Business Income. [Circular No. 16/2017, dated 25.04.2017].

Method of Accounting u/s 145 & 145A

- 26. Method of Accounting:** In the absence of maintenance of proper accounts by the Assessee, the Contractors are bound to follow the accepted method of calculating Annual Profits on the basis of receipts under percentage of completion method. **N. M Associates 174 CTR 385 (Mad.)**
- 27. Valuation of Obsolete items in Closing Stock:** Obsolete items in Closing Stock were valued at 10% of Cost and was duly certified in the Auditor's Report. This was done consistently by following the principle of valuing at cost of market price, whichever is lower. The same amount was taken as the value of Opening Stock in the subsequent year. In subsequent year, such obsolete items were sold at a price less than 10% of the cost. The Assessing Officer was not justified, without any basis, to value the obsolete items at 50% of the Cost. **Alpha Laval India Limited 266 ITR 418 (Bom.)**
- 28. Interest Income on Amortisation Basis:** Interest Income arising on difference between Purchase Price of Debentures and Redemption Price after 6 years is to be calculated on amortization basis (i.e. spread over basis) and not on accrual basis in year of allotment **[Rakesh Shantilal Mardia Vs. DCIT 26 Taxmann.com 253 (SC)]**
- 29. Method of Accounting Vs. Guidance Note of ICAI:** Assessing Officer cannot disregard the method of accounting followed by Assessee based on Guidance Note of ICAI. The Guidance Note reflects the best practices adopted by Accountants the world over and has not attained any mandatory status. **[CIT Vs. Virtual Soft Systems Limited 18 Taxmann 119 (del.)]**
- 30. Method of Accounting – no bar on choice:** An Assessee is **free to arrange his affairs**, and choose a **method of accounting** as per his choice and the Revenue cannot insist of changing the same method until it arrives at findings that such a method distorts profits in a particular year. **[Bilahari Investment (P) Limited 299 ITR 1(SC)]**
- 31. Valuation should be correct and consistent:** The Assessing Officer has the power to adopt the correct method of valuation of Closing Stock instead of wrong method adopted by the Assessee, for a long period. Method of Stock Valuation followed should not only be consistent, but should also be correct. **[British Paints India Limited 188 ITR 44 (SC)]**
- 32. Different Methods of Valuation for Closing Stock and Purchases:** It is **not permissible for the AO** to adopt different methods of valuation of Excise Duty paid on Raw Material purchased and the Unconsumed Raw Material on hand at the end of the year. Therefore, he cannot adopt the 'Gross Method' at the time of purchase of duty paid raw material and the 'Net Method' of valuation at the time of valuation of stock on hand. **[Indo Nippon Chemicals Co. Limited 261 ITR 275 (SC)]**
- 33. Provisions Independent of Method of Accounting:** Though the method of accounting followed by the Assessee is the basis for computation of income under Profits and Gains of Business or Profession, there are provisions, which apply, independent of the method of accounting followed by the Assessee, e.g. **Depreciation, Stock in Trade. [Krishnaswamy Mudaliar 53 ITR 122 (SC)]**.
- 34. Recognition of Revenue:** Whatever may be the method followed, recognition or revenue has to be in consonance with the method so followed *vis-à-vis* the nature and character of the amount accrued or received and the year of such accrual or receipt. **[State Bank of Travancore 158 ITR 102 (SC)]**.
- 35. Planter of Coffee – Recognition of Revenue:** In case of a Planter of Coffee, the entire sale consideration should be treated as accrued in the year of sale and no portion of the sale price can be recognized as income on receipt basis. **[Bison Field Estate 248 ITR 341 (SC)]**.

Depreciation u/s 32



- 36. Assets used by Sister Concerns – Depreciation Claim:** The Assessee purchased the machine for exclusive use for the purpose of the business. The Machine was made available to its Sister Concern. It was held that such act was a subsequent event, which might amount to a gratuitous act on the part of the Assessee. Hence, the Assessee is entitled to claim full depreciation and interest on Loan. **Indian Express (Madurai) Pvt. Limited 255 ITR 2002 (SC)**
- 37. Asset for Depreciation:** EPABX and Mobile Phones are not Computers, and therefore, not entitled to higher depreciation at 60% [**Federal bank Limited Vs. ACIT (2011) ITR 319 (ker.)**].
- 38. Computer Accessories and Peripherals:** They are part of the Computer System, eligible for depreciation at the higher rate of 60% applicable to Computers including Computer Software. [**CIT v. BSES Yamuna Powers Limited (2013) 358 ITR 47 (Delhi)**]. UPS is allowable @ 60% and not at General Rate of 15% as P & M [**CIT Vs. Orient Ceramics and Industries Limited [2013] 358 ITR 0049**].
- 39.** Higher rate of depreciation is also admissible when the Motor Lorry is used by the Assessee in his own business of transportation of goods on hire. [**CIT Vs. S.C. Thakur and Brothers (Mum.) 180 Taxman 348**].
- 40. Building owned by the Assessee,** used for the purpose of his business or profession, can claim depreciation u/s 32 on such building According to Explan. 1 to Sec. 32 **when BUILDING is leased by the Assessee**, and he incurs any expenditure on the construction of any structure or doing any work in relation to and by way of renovation, extension or improvement to the building for carrying on his business or profession the same can be capitalized (such expenditure) and depreciation u/s 32 can be claimed. **When LAND is leased by the Assessee** and any expenditure is incurred for construction of any structure or doing any work on building which is put up/constructed on such leased shall not attract Explan. 1 to Sec. 32 and so, not eligible for the purpose of claiming depreciation. **CIT Vs. TVS Lean Logistic Limited T.C. (A) No.'s 876 & 877 of 2007 (Mad.)**.
- 41. Cost of Construction – Reimbursed to Owner – Whether Depreciation allowable:** Assessee – Company **cannot** claim depreciation on the building used by it under an agreement with the Owner – Firm on the ground that it had reimbursed the construction cost of the building to the Firm, since it has **no enforceable right** to title over that building. **Mother Hospital P. Limited 275 ITR 563 (ker.)**.
- 42. C/Fwd of Unabsorbed Depreciation without filing of Return u/s 139:** Assessee is entitled to carry forward and set-off unabsorbed depreciation u/s 32(2), even though it was not determined in pursuance of a Return filed u/s 139, since Sec. 80 which stipulates filing return of loss as per Sec. 139 is not applicable to Unabsorbed Depreciation allowed to be carried forward u/s 32(2). **Brigadier Paramanand 152 Taxman 123 (All.)**
- 43. Depreciation on Govt. Securities:** Change in valuation of Government Securities from cost to Market Price, and claim of depreciation on difference is an allowable deduction. **Karur Vysya Bank Limited [2005] TIOL 29 (Mad.)**
- 44. Asset purchased by Firm in Partner's Name:** Vehicles were purchased by the Firm in the name of the Partner but was used by the Firm for its business firm is entitled for depreciation. **Mohd. Bux Shokat Ali 256 ITR 2002 (Raj.)**
- 45. Intangibles:** Assets which are included in definition "Intangible Assets" u/s 32(1)(ii) includes, along with other things, any other business of commercial rights of similar nature, goodwill, when appositely understood, does convey a positive reputation built by a person/Company/Business Concern over a period of time and hence it is a asset eligible for Depreciation. [**CIT Vs. Hindustan Coca Cola Beverage Pvt. Limited (2011) (Del.)**] [**B. Raveendran Pillai Vs. CIT (2011) 322 ITR 531 (Ker.)**].
- 46. Consideration of other circumstances for Depreciation:** The terms and conditions mentioned in the agreement may be relevant to allow depreciation, but the Court has to also take into account the



surrounding circumstances as well as the type and nature of asset to allow depreciation. **[CIT Vs. The Instalment Supply Limited (del.)]**

- 47. Depreciation on Goodwill and BSE Membership card;** BSE Membership Card is a licence as per Sec. 32(1)(ii) and therefore, depreciation is allowable on cost of BSE Membership Card. Also Goodwill is an asset under Explanation 3(b) to Sec. 32(1) and, thus, it is eligible for depreciation **[CIT Vs. Smifs Securities Limited 24 Taxmann.com 222 (SC)]**.
- 48. Plant:** Sanitary and Pipeline Fitting installed in a Hotel is Plant. **[Taj Mahal Hotel 82 ITR 44 (SC)]**, Expenditure incurred on acquisition of trademark, copyrights, and knowhow being Commercially necessary and essential. **[Mangalore Ganesh Beedi Works (2015)(SC)]**.
- 49. Roads laid by Municipality:** Roads laid by Municipality do not qualify as Building for depreciation purposes, as there is no other construction except roads, and the roads themselves do not constitute Buildings. **[Indore Municipal Corpn. 248 ITR 803 (SC)]**.
- 50. Road laid within the Factory Premises:** Road laid within the Factory Premises for providing approach to the building to carry on the business activities is eligible for depreciation. **[Gwalior Rayon 248 ITR (SC)]**.
- 51. BSE Membership Card:** BSE Membership Card is a licence within the meaning of Sec. 32(1)(ii) and therefore, depreciation is allowable on cost of BSE Membership Card. **[Techno Shares & Stocks Limited and Others Vs. CIT 327 ITR 323 (SC)]**.
- 52. Ownership Vs. Possession:** If the Assessee is possession of the Building on part payment, and is not registered in his name, he is entitled to claim depreciation as wide meaning of "Owner" u/s 32. **[Mysore Minerals Limited 239 ITR 775 (SC), Dalmia Cement Bharat Limited 247 ITR 267 (SC)]**.
- 53. Hiring Motor Vehicles – Higher Depreciation:** Higher Depreciation is allowed only if there is evidence that the Assessee was in business of hiring out Motor Vehicles. **[CIT Vs. Gupta Exim (P) Limited 305 ITR 132 (SC)]**.
- 54. Lessor Eligible for Higher Rate – If Lessee is in Hire Business:** Lessor of the Vehicle would be entitled to higher depreciation provided the Lessee had used the Vehicles in the business of **running them on hire**. This is applicable even if the Lessees are registered as Owners under the Motor Vehicles Act, 1988. **[Kotak Mahindra Finance Limited 130 Taxman 432 (Bom.), ICDS Limited 350 ITR 527 (2013) (SC), MGF India Limited 263 ITR 2 (SC)]**.
- 55. Land:** Cost of Land is **not** eligible for depreciation. **[Alps Theatre 65 ITR 377 (SC)]**.
- 56. Conversion Charges:** Commercialization Charges paid for conversion of a Residential Building into commercial usage shall form **part of actual cost** of the Building, and the Assessee is entitled for depreciation. **[Hindustan Times Limited 231 ITR 741 (SC)]**.
- 57. Interest on Loan:** Interest on Loan borrowed for acquiring the asset, payable up to date of commencement of production will be **capitalized**. **[Challappali Sugars Limited 98 ITR 167 (SC)]**.
- 58. Income relating to Assets:** Interest earned on deposits made to open **Letter of Credit** for purchase of any asset is **capital** in nature and would go to **reduce the cost** of acquisition. **[Kamal Co-Operative Sugar Mills Limited 243 ITR 2 (SC)]**
- 59. Income during Expansion Period:** Interest Receipts and Hire Charged from Contractors are treated as **Capital Receipts** and will **reduce the capital cost**. **[Karnataka Power Corporation 247 ITR 268 (SC)]**
Rent or Hire Charged received for Plant and Machinery, or Interest from Advances, or Royalty for excavation and use of stones received from Contractors, or income accrued on account of construction work shall **reduce the cost** of construction. **[Bokaro Steels Limited 236 ITR 315 (SC)]**.
 Receipts before business is set up could be **capitalized and will be reduced** from the **Capital Investment** and Asset. **[Bongaigon Refinery & Petrochemicals Limited 251 ITR 329 (SC)]**.



- 60. Interest on Surplus Funds: Interest on Temporary Deposits of Amount Borrowed:** For financing expansion plans, the Assessee Company raised capital. Interest earned on Temporary Deposits made from Surplus Funds and on deposits made with Banks by way of Margin or giving Advances for the purpose of expansion would be Capital Receipt and cannot be treated as Income from Other Sources. **[NTPC Sail Power Company Pvt. Limited 25 Taxmann 401 (Del.)], [Monnet Industries Limited 25 Taxmann 236 (SC)].**
- 61. Income from fully depreciated Bottles of Soft Drinks:** Assessee, being a Soft Drink Manufacturer, claimed 100% depreciation on Bottles & Crates used by them. Income from sale of such written off bottles shall be liable to Capital Gain Tax u/s 50. **[Nectar Beverages Private Limited Vs. DCIT (2009) 314 ITR 314 (SC)].**
- 62. Acquired Goodwill eligible for Deprn.:** Intangible Assets and Goodwill acquired under Slump Sale agreement by the Assessee and covered by "other business or commercial rights of similar nature" specified in Sec. 32(1)(ii) are eligible for depreciation. **[Areva T and D India Limited (2012) 345 ITR 421] [Goodwill held eligible for depreciation, in many other Case Decisions].**
- 63. Abkari Licence:** Abkari Licence is a Business Right given to the party to carry on Liquor Trade. The Abkari Licence squarely falls u/s 32(1)(ii) on which the Assessee is entitled to depreciation at 25% as provided u/s 32(1). **[S. Ambika (2011) 203 taxman 2 (Ker.)].**
- 64. Sale to Subsidiary – Succession:** If an Assessee sold an undertaking to its Subsidiary Company formed for the purpose, it is a case of succession and not an Outright Sale. The Transferor Company and the Transferee Company can claim depreciation in the ratio of the number of days. **[Sree Jayajyothi & Co Limited (2012) 28 Taxmann 141 (Mad)].**
- 65. Transfer of right to use name of the Business:** When Goodwill paid was for ensuring retention and continued Business, acquiring a Business and Commercial Right, and also comparable with Trade Mark, Franchise, Copyright, etc. referred in sec. 32(1)(ii), Goodwill is entitled for depreciation. **[B. Raveendran Pillai (2011) 332 ITR 531 (Kerala)].**
- Assessee paid separate amount to Transferor Company to get Commercial Right for Marketing, Customer Support Distribution and Associate setups. Depreciation can be claimed on the separate amount forming part of Good will. **[MIS Bharti Teletech Limited [2015] 60 Taxmann.com 166 (Del.)(HC)].**
- 66. Prawn Breeding Ponds = Plant: Ponds which were specially designed for rearing/breeding of the prawns have to be treated as tools of the business.** Depreciation was admissible on these at the rates applicable to Plant and Machinery. **[Victory Aqua Farm Limited. [2015] 61 Taxmann.com 166 (SC)].**
- 67. Shuttering Material;** The Shuttering Material in itself is a plant, yet every Individual Article/Unit/Component of the Shuttering Material cannot be treated as Plant, Thus Assessee, a contractor, was not entitled to claim 100% depreciation on Centering / Shuttering Material. **[S. Vijaya Kumar [2015] 60 Taxmann.com 53 (AP)(HC)].**
- 68. Printing/Printing and Publishing = Manufacture for claiming Additional Depreciation:** The business of Printing or Printing and Publishing amounts to manufacture or Production of an article or thing and is accordingly eligible for additional depreciation. **[CIRCULAR NO. 15/2015].**
- 69. Depreciation on Non-compete Fees:** Assessee had treated the payment made towards non-compete fee paid to the transferor as Capital Expenditure. ITAT referred to Delhi High Court ruling in Sharp Business wherein it was held that non-compete fee though is an intangible asset, however, it is not similar to know how, patent, copy right, or any other business or commercial right of similar nature; Unlike the rights mentioned in Section 32(1)(ii) which an owner can exercise against the world at large and can be traded or transferred in case of non-compete fee, the advantage is restricted only against the seller. **[Sagar Ratna Restaurants Pvt. Limited Vs. ACIT(Del.)(ITAT)(2022)].**



70. Depreciation on Plant and Machinery despite it not been put to use during the year: Assessee-PSU, incurred continuous losses and could not carry out its manufacturing activity, its plant and machinery remained idle. As per ITAT, linking the claim of depreciation to production in the midst of manufacture progression is against the legislative intent, ITAT noted that the depreciation was allowed to the Assessee in earlier in years and disallowing depreciation based on lull in the production activity was not correct. **[ACIT Vs. the Fertilizer Corporation of India Limited (2021)].**

Other Deductions Allowed u/s 30 to 35

- 71. If a Film is not released for exhibition on a commercial basis** at least **180 days before the end** of such previous year, the **cost of production** of the Film, to the extent it **does not exceed** the **amount realized** by the Film Producer by exhibiting the Film on a commercial basis, is to be **allowed as a deduction** in computing the profits and gains of such previous year. Balance, if any, is to be carried forward to next following previous year and allowed as a deduction in that year. **[CIT Vs. Joseph Valakuzhy 302 ITR 190 (SC)].**
- 72. Abandoned Feature Film:** As per **Venus Records and Tapes Pvt. Limited 66 Taxmann.com 89 (Bom.)**, Rule 9A does not apply to Abandoned Feature Films, and such expenditure incurred is **not** to be treated as a Capital Expenditure. The cost of production of an Abandoned Feature Film is to be treated as Revenue Expenditure, and allowed as deduction u/s 37. **(Circular No. 16/2015).**
- 73. Expenditure on Scientific Research related to consultancy services, preparation of Feasibility Report** and other connected activities is allowed u/s 35. **UP Electronic Corpn. Limited [2005] TIOL 96 (All).**
- 74. Assets used for Scientific Research:** Depreciation shall **not** be allowed on assets where deduction for expenditure on Scientific Research has been allowed. **[Escorts Limited and another 112 Tax 197 (SC)].**
- 75. Replacing Electric Panel ≠ Current Repair:** Expenditure incurred in **replacing electric panel is not** an expenditure contemplated by Sec. 31 as **‘Current Repairs’**. **[S.T.N Textile Ltd 279 ITR 209 (SC)]**
- 76. Machine Employed in a Textile Mill:** Machinery employed in a textile cannot be considered as part of the entire composite machinery of spinning mill but only an independent capital asset and hence it is neither revenue expenditure u/s 37 nor current repairs u/s 31. **[CIT Vs. Sri Mangayarkarasi Mills (P) Limited 2009 315 ITR 114 (SC)].**
- 77. Once the Assessee fulfils all conditions laid down u/s 35CCA for claiming deduction of amount donated,** there is no obligation on his part to see that the amount donated is actually utilized for purpose for which it was donated. The deduction is only for the certificate furnished. **[Chotatingrai TEA 126 Taxman 399 (SC)].**
- 78. Share Issue Expenses:** Share Issue Expenses cannot be claimed as general deduction, it is allowable only u/s 35D **[Brooke Bond India Limited 225 ITR 798 (SC)].**
- 79. Replacement of Parts of Machinery:** Moulds & Dies” are not independent of Plant and Machinery but are parts of Plant and Machinery. The expenditure incurred by the Assessee towards replacement of parts of machinery to ensure its performance without bringing any new asset or advantage, is eligible for deduction as Current Repairs u/s 31 **[TVS Motors Limited (2014) 364 ITR 1 (Mad.)], [Mahalakshmi Textile Mills Limited. (1967) 66 ITR 710 (SC)].**
- 80. An Assessee setting up a hotel can claim deduction u/s 35AD for the relevant previous year from which it had commenced its operations, delay in completion of inspection by the authority shall not affect claiming of deduction u/s 35AD. Section 35AD does not mandate that the date of the certificate has to be with effect from a particular date [Ceebros Hotels Private Limited [2018] 409 ITR 423 (Mad)].**

**Deduction u/s 36(1)(ii) for Interest**

81. Where payment of Bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, the same would be allowable u/s 36(1)(ii) while computing Business Income. **[Sahsum Chemicals & Drugs Limited Vs. CIT (2016) 388 ITR 1(SC)].**

Deduction u/s 36(1)(iii) for Interest

82. **Use of Capital:** Assessee is entitled to claim interest paid on **Borrowed Capital**, provided that Capital is used for business purpose irrespective of what may be the result of using the capital which the Assessee has borrowed. **DCIT Vs. Core Health Care Limited 298 ITR 194 (SC).**
83. **Purpose of Business:** For the purposes of claiming interest on capital borrowed as deduction, the Assessee should prove nexus between the expenditure and the purpose of the business, which need not necessarily be the business of the Assessee himself. The word for the 'purpose of business' is much wider in scope. The expenditure should be made on the basis of commercial expediency. **S.A Builders Limited Vs. CIT 288 ITR 1 (SC).**
84. **Allowability of Interest:** Once Finance Charges are equated to interest, the same is allowable. Interest paid in respect of borrowings on Capital Assets not put to use in the concerned financial year are deductible u/s 36(1)(iii). Interest on all moneys borrowed for the purpose of business is deductible irrespective of whether the moneys are used for a revenue purpose or a capital purpose. **Gujarat Alkalies & Chemicals (P) Limited 299 ITR 85 (SC).**
85. Premium prepaid in lump-sum to IDBI shall be allowed as deduction, as it is effectively interest on borrowings u/s 2(28A), subject to Sec. 43B. **[CIT Vs. Gujarat Guardian Limited (2009) (Del.) 177 Taxman 434].**
86. A Firm seeking to claim deduction of **interest paid on Capital** from its Partners has to first **satisfy** the requirements of **Sec. 36(1)(iii)** and thereafter the limits imposed by **Sec. 40(b)(iv)**. The fact that the said Capital is **not 'Loans' or 'Advances'** is **irrelevant** **Munjhal Sales Vs. CIT (SC) Appeal (Civil) 1378 of 2008 dt. 19.02.2008**
87. Interest will be deductible irrespective of the fact that it is borrowed for Working Capital or for acquiring Capital Asset. **[India Cements Limited 60 ITR 52 (SC)].**
88. There should be **nexus** between the expenditure and the purpose of the business, which need not necessarily be the business of the Assessee himself. **[S.A Builders Limited Vs. CIT 206 CTR 631 (SC)].**
89. Interest on Borrowings is deductible, if Capital is used for business purpose irrespective of what may be the result of using the Capital which assessee has borrowed. **[DCIT Vs. Core Health Care Limited 167 Taxman 206 (SC)].**
90. **Forex Premium paid to Banks ≠ Interest:** Loan taken in Foreign Exchange for the purchase of Plant & Machinery to be repaid in installments. Premium paid to Banks to ensure delivery of foreign exchange on stipulated dates at pre-determined rates is not admissible as interest on capital borrowed for purposes of business. It is to be added to capital cost. **[Elecon Engineering Company Limited Vs. CIT 322 ITR 20 (SC)].**
91. **Interest free advances to Sister Concern:** Where assessee-company and its Sister Concern were in Hotel Business and assessee advanced an amount to sister concern Free on Interest on account of commercial expediency and same was used by Sister Concern for purpose of Business. Interest paid by assessee on loans taken from banks are allowable expenditure **[Bright Enterprises (P) Limited. [2015] 61 Taxmann.com 73 (P & H) (HC)].**
92. **Interest** paid by the assessee on unsecured loans **cannot** be disallowed, as the assessee had advanced certain sum of money out of the said loan to third parties **without charging any interest**. Money taken



on loan was **not** diverted for non-business purpose. **[Reebok India Company [2018] 409 ITR 587 (Del.)]**.

- 93. Interest on loan availed for advancing to director:** ITAT upheld disallowance of interest on loan availed for advance made to a Director for purchase of property on Assessee's behalf, before identification of such property, ITAT held the advance to be for Director's personal benefit and rejected Assessee's contention of commercial expediency, since the borrowed funds were utilized to give advance to the Director without any interest. **[Rukmini Realtors Pvt. Limited ACIT (2021)]**.
- 94. Bad Debts Allowable:** Amount written off in P & L Account as Bad Debts is allowable as deduction u/s 36(1)(vii). **General Insurance Corp. of India 254 ITR 204 (Bom.)**.
- 95. Provision Vs. Writing Off:** In order to claim deduction u/s Sec. 36(1)(vii), the Debt should be written off in the books of account of the Assessee. A mere provision in the books of account is not sufficient for allowance of deduction. **Kerala State Ind. Development Corpn. Limited 281 413 (Ker.)**.
- 96. Bad Debts on loan Advanced to Sister Concern:** The Assessee promoted a Company and had advanced loans/credit facilities to that Company in the normal course of business. The said Company was declared sick by BIFR and the amount advanced by Assessee become irrevocable. Held that the conditions relating to bad Debts are satisfied and there was no reason to deny claim for deduction of Bad Debts, **[Kerala State Industrial Development Corporation Vs. CIT 25 Taxmann.com 564 (SC)]**.
- 97. Double Deduction not allowed:** Deduction u/s 36(1)(vii) is allowable independently and irrespective of Provision for Bad and Doubtful Debts created u/s 36(1)(viia), provided the amount should not be deducted twice u/s 36(1)(vii) and 36(1)(viia) simultaneously. **[DCIT Vs. Karnataka Bank Limited 25 Taxmann.com 235 (SC)]**.
- 98. Sec. 36(1)(vii) Vs. Sec. 36(1)(viia) – No Double Deduction:**
- Provisions of Sections 36(1)(vii) and 36(1)(viia) of the Act are distinct and independent items of deduction and operate in their respective fields.
 - The Bad Debts written off in Debts, other than those for which the provision is made under Clause (viia), will be covered under the main part of Sec. 36(1)(vii), while the Proviso will operate in cases under clause (viia) to limit deduction to the extent of difference between the debt or part thereof written off in the previous year and credit balance in the Provision for Bad and Doubtful Debts account made under Clause (viia).
 - The Proviso would not permit benefit of double deduction, operating with reference to Rural Loans while under Sec. 36(1)(vii), the Assessee would be entitled to general deduction upon Bad Debts written off as irrecoverable in his accounts. **[Catholic Syrian Bank Limited Vs. CIT 18 Taxmann 282 (SC)]**.
- 99. Non – Payment of Purchase Price:** Share Broker is entitled to deduction u/s 36(1)(vii) in respect of non-payment of Purchase Price of Shares by Client. **[CIT Vs. Shreyas S Morakhia (2012) 19 Taxmann 64 (Bom.)]**.
- 100. Successor of Business** is entitled to write off Predecessor's Debt. **[Veerabadra Rao K Koteswara Rao & Co. 155 ITR 152 (SC)]**.
- 101. Condition for Bad Debt Claim:** Assessee should only establish that Debt was written off. It is not necessary to establish that debt in fact had become irrecoverable. **[TRF Limited Vs. CIT 323 ITR 397 (SC)]**.
- 102. Writing off Individual Debtors – not necessary:** In case of Banking & Non-Banking Companies, it is not necessary that the account of each individual Debtor shall be written off separately. It is sufficient if there is reduction of Loans & Advances or Debtors on the Asset side of the Balance Sheet. **[CIT Vs. Vijaya Bank 323 ITR 166 SC]**.



- 103. Simultaneous Deduction not allowed:** Deduction u/s 36(1)(vii) is allowable independently and irrespective of Provision for Bad and Doubtful Debts created u/s 36(1)(viia), provided the amount should not be deducted twice u/s 36(1)(vii) and 36(1)(viia) simultaneously. **[DCIT Vs. Karnataka Bank Limited 25 Taxmann.com 235 (SC)].**
- 104. Provision for NPAs or Bad Debts for NBFCs:** Where Provision for Bad Debts shall not be allowed as deduction u/s 36(1)(viia), the same cannot be claimed as deduction u/s 37. What is not allowable specifically u/s 30 to 36, shall not be allowed u/s 37. **[Southern Technologies Limited Vs. JCIT 2010-TIOL-01-SC-IT].**

Other Sec. 36(1) Deductions

- 105.** The payment of employees contribution of PF/ESI beyond due date specified under Section 36(1)(va) would not be deductible. Popular Vehicles and Services Private Limited Vs. the Commissioner of Income Tax 2nd July, 2018 **[CA Journal September 2018].**
- 106.** The High Court held that the entire contributions paid by the assessee to the LIC as premium for the policy obtained for indemnification of the gratuity liability towards the employees even for the prior years, will be eligible for deduction under Section 36(1)(v). Nortrans Marine Services Pvt. Limited Vs. Asst. Commissioner of Income Tax 20th August, 2018 **[CA Journal October 2018].**

Section 37 – Capital Vs. Revenue

- 107. Capital Vs. Revenue:** Where Assessee entered into an agreement with a Foreign company for acquiring germplasm and technical know-how and paid certain amount to it in that regard, treatment of 25% of expenditure as capital expenditure is justified since the agreement benefits of research, development and improvements to assessee. **[Advanta India Limited. Vs. CIT [2017] 84 Taxmann 65 (SC)].**
- 108. Expenditure in the term of Royalty:** Where a new business was set up with technical knowhow provided by a Japanese Company and lump sum Royalty was paid therefore, expenditure in form of Royalty paid would be in nature of Capital Expenditure and not Revenue Expenditure **[Honda Sael Cars India Limited. Vs. CIT [2017] 82 Taxmann 212 (SC)].**
- 109. Capital Vs. Revenue:** Refund of Excise Duty and Grants of Interest Subsidy the Incentive Scheme formulated by CG for public interest namely to accelerate Industrial development, generate employment and create opportunity for self-employment in state of Jammu and Kashmir be treated as Capital Receipt **[Shree Balaji Alloys Vs. CIT (2011) 333 ITR 335 (J & K)].**
- 110. Capital Vs. Revenue:** Feasibility Studies were conducted for the existing business with a common administration and common fund and the studies were abandoned without creating a new asset, the expenses were of Revenue Nature. **[CIT Vs. Priya Village Roadshows Limited (2011) 322 ITR 594 (Del.)]**
- 111. Upgradation of Computers:** Upgradation of Computers by changing certain parts is revenue expenditure **[CIT Vs. Sundaran Clayton Limited 321 ITR 69 (Mad.)].**
- 112. Capital Exp. W/o Ownership:** Expenditure for alteration of dam to ensure sharing of water with State Government without having any right of ownership in the dam or water is a Revenue Expenditure. **[(Hindustan Zinc Limited 322 ITR 478 (Raj.)].**
- 113. Replacement of Old Sound System:** Replacement of old Mono Sound System in Cinema Theater with new Dolby Stereo System does not in any way increase the Total Income, and hence such expenditure is Revenue Expenditure. **[CIT Vs. Sagar Talkies 325 ITR 133 (Karn)].**
- 114. Payments made on Closure:** Payment of compensation to workers on closure of one Textile Mill Unit is treated as revenue Expenditure since after closure the remaining business is continued and



there was interconnection in the functioning of different units [CIT Vs. DCM Limited 320 ITR 307 (Del.)].

115. **Expenditure giving benefit of enduring nature – creation of asset not belonging to Assessee – allowable:** Any expenditure incurred by the Assessee, which brings out any asset but does not belong to the Assessee, is deductible bringing benefit of enduring nature in revenue field. **Associated Cements Co Limited 172 ITR 257 (SC).**
116. Expenditure incurred on Partly Convertible Debentures is revenue expenditure. [CIT Vs. South India Corporation (Agencies_ Limited (2007) 290 ITR 217 (Mad.)].
117. **Debenture Issue Expenses Allowable:** Expenses in relation to issue of debentures are allowable as revenue expenditure. [CIT Vs. Secure Meters Limited 175 Taxman 567 (Raj.)].
118. **Expenditure for acquiring a loan for purchasing a Capital Asset = Revenue Expenditure:** Expenses for obtaining loan cannot be treated as Capital Expenditure, because of their nexus with the acquiring of the loan, and not with the acquiring of any asset. **Patel Filters Limited 264 ITR 21 (Guj.).**
119. **Rent paid by Lessee,** for acquiring leasehold right to **extract minerals** as one **fixed amount** for entire lease is **Capital Expenditure, and proportionate amount of rent not allowable** as deduction. **Enterprising Enterprises Vs. DCIT 293 ITR 437 (SC).**
120. Machine in a Textile Mill cannot be considered as part of entire composite machinery of Spinning Mill, but only an independent capital asset, and so it is neither revenue expenditure u/s 37 nor current repairs u/s 31. **CIT Vs. Sri Mangayakarasi Mills (P) Limited 2009 – TIOL – 86 (SC).**
121. Compensation paid **on termination of agreement** with a Marketing Distributor is **Capital Expenditure.** **TI Diamond Chain Limited [2005] TIOL 70 (Mad.).**
122. **Share Issue Expenses, even if based on R.B.I. Instruction, Not Allowable:** Expenditure incurred by the Company for the public issue of shares to increase its Share Capital pursuant to a direction of the R.B.I., to do so reduce its Non-Residential holding, amounts to Capital Expenditure. **Kodak India Limited 253 ITR 445 (SC).**
123. **Guarantee Commission:**
 - Guarantee Commission paid to Bank for assuring due payment of installments is revenue expenditure. [Shivakami Mills Limited 227 ITR 465 (SC)].
 - Bank Guarantee was given by the Employee Directors for enabling credit facility to their Company and Guarantee Commission paid by a Company to its Employee Directors shall be an allowable business expenditure. [Controls & Switchgear Contractors Limited (2014) 365 ITR 312 (Del)].
124. **Referral Fee paid to Associated Enterprises:** Referral Fee Paid by Assessee to its AEs with respect to revenue earned by Assessee on property transaction referred to it by its AE, such expenditure was to be allowable expenditure u/s 37(1), if Assessee keeps all supporting evidences for its payments. [Cushman and Wakefield India (P) Limited [2015] 60 Taxmann.com 168 (Del.) (HC)].
 - **Capital Vs. Revenue Expenditure – capital Nature**
 - Expenses incurred in shifting of location of factory to a new place, which results in a **permanent advantage** over the present place of business shall be treated as capital Expenditure. [Sitalpur Sugar Works Limited 49 ITR 160 (SC)].
 - **Rent paid by Lessee for acquiring leasehold right to extract minerals** as one fixed amount for entire lease **Capital Expenditure, and proportionate amount of Rent not allowable** as deduction. [Enterprising Enterprises Vs. DCIT 293 ITR 437 (SC)].



- **Payment made to avoid competition** in business to a rival, will constitute Capital Expenditure. **[Coal Shipments (P) Limited 82 ITR 902 (SC)]**.
- Amount paid as **Land Development Charges** by an Assessee, to Lessor of land, for providing or improving the facilities in the existing land is capital in nature, as the benefit realized is of enduring nature. **[Manoj Dyeing Company 212 ITR 189 (SC)]**.
- **Amount paid** by the Assessee carrying on the business of mineral development, to the Electricity Board, for **laying cables** cannot be treated as revenue expenditure u/s 37 in the year in which the installation is completed. The amount invested in short-term deposits cannot be qualified as capital Employed in its new industrial undertaking for the purpose of relief. **[Gujarat Mineral Development Corpn. 249 ITR 787 (SC)]**.
- Payment made in consideration of **acquiring a monopoly right** manufacture a product is not deductible. However, Royalty payable on the basis of goods produced under the same arrangement is deductible. **[Mewar Sugar Mills Limited 87 ITR 400 (SC)]**.
- Repair and Reconditioning expenditure incurred on a machine which **broke down long back** is Capital Expenditure. Since there was a benefit of Enduring nature to the assessee even though technically no new asset came into existence. **[Bharat Gears Limited Vs. CIT (2011) 337 ITR 368 (Delhi)]**.
- Expenditure incurred for construction of Transmission Lines by Assessee for supply of power to State Power Corporation shall be allowed as Revenue Expenditure. **[Dharampur Sugar Mill (P) Limited (2015) 370 ITR 194 (All)]**.
- A new Assessee – Company came into existence on bifurcation of a Joint Venture Company (JVC). The assessee Co. paid an amount to the JVC for use of customer data base and obtaining trained and skilled employees. Such payment is treated as Revenue Expenditure though the benefit may be for enduring nature. **[IBM Global Services India (P) Limited (2014) 366 ITR 293 (Karn.)]**.
- Where for a period of 10 years, assessee paid Royalty to a Foreign Company for acquiring Technical Know-How in respect of Construction Management Services, and in terms of the agreement, Assessee did not become the owner of such Technical Know-How, the said payment shall be allowed as Revenue Expenditure. **[SMCC Construction India Limited Vs. [2015] 61 Taxmann.com 202 (Del.)]**.
- Expenditure incurred by Assessee in organizing tournaments to promote corporate image of Group Companies was an allowable deduction. **[Williamson Magor & Co. Limited [2015] 59 Taxmann.com 94 (Cal.)(HC)]**.
- **Income from sale of land Fact:** Assessee-Firm had transferred a land to three companies and claimed the amount as 'Capital Gains' whereas Revenue held the same as being under the head 'Business Income', on the grounds that various activities undertaken by the assessee beginning from acquisition of land to its conversion into nonagricultural land and division thereof was the result of systematic and concerted activity in the league of business actions.
- **Conclusion:** ITAT held that the assessee engaged in business as developer of land would not ipso facto vitiate the nature and character of land holdings declared in a particular manner, Income from sale of land has the trappings of investment activity of capital nature. **[ACIT Vs. M/s Shalibhadra Developers (2021)]**.

Section 37 – Allowable Deductions

- 125. Premium paid by Firm on Keyman Insurance Policy:** In case of a Firm, premium paid by the Firm on the Keyman Insurance Policy of a Partner, to safeguard the Firm against a disruption of the business, is an admissible expenditure u/s 37. **[Circular No. 38/2016, dated 22-11-2016]**.



- 126. Ransom paid to Kidnappers:** Ransom money paid to kidnappers for release of a Whole Time Director was allowable deduction u/s 37(1). No Provision is brought to notice that payment of ransom is prohibited by law. In the absence of it, the explanation of Sec. 37(1) would not be applicable. [**CIT Vs. Khemchand Motilal Jain (2011) (MP)**].
- 127. 2nd Hand M/c used as Spare Part:** Second hand Machinery purchased for use as Spare Parts is allowed as deduction u/s 37 [**Dr. Aswath N Rao Vs. ACIT 326 ITR 188 (Karn.)**].
- 128. Corporate Membership Fee:** Admission Fee paid towards Corporate Membership is an expenditure incurred wholly and exclusively for the purpose of business and not towards capital account and hence allowed as deduction u/s 37 [**CIT Vs. Samtel Color Limited 326 ITR 425 (Del.)**].
- 129. Loss due to Exchange Rate Fluctuations** in respect of Foreign Currency Liability taken for revenue purposes allowed as deduction u/s 37(1), if the Assessee follows mercantile system of accounting, even though it is not realized or paid in cash. [**CIT Vs. Woodward Governor India (P) Limited (SC) (2009) 312 ITR 254**].
- 130.** The claim for depreciation on account of enhanced cost of assets due to fluctuation in exchange rate is admissible u/s 37. [**CIT Vs. Maruti Udyog Limited (2009) TIOL – 116 – SC-IT**].
- 131. Sale Proceeds of Scrap** have been treated as **Business Income**, and therefore **Interest Payment**, a contractual obligation is to be treated as **revenue expenditure**. [**Kerala Road Lines Vs. CIT 299 ITR 343 (SC)**].
- 132. Provision for Warranty:** A provision is deductible if it is a present obligation resulting from past events which may require outflow of resources to settle, and a reliable estimate may be made. If Warranty is integral part of and is attached to the sale of the product, provision is deductible. Hence, Provision for Warranty provided along with sale of Value Actuators is allowed u/s 37. [**Rotork Controls India (P) Limited, Compaq Computer (I) (P) Limited, Hewlett Packard India (P) Limited (2009) (SC) 314 ITR 62**].
- 133.** Expenditure on Bonus Issue of shares is an allowable expenditure. [**General Insurance Corporation 286 ITR 232 (SC)**].
- 134. Discount on Issue of Debentures:** Discount allowed on issue of Redeemable Debentures is allowable proportionately over the years of redemption. **Madras Industrial Investment Corpn. 225 ITR 802 (SC)**.
- 135.** Expenditure on MS Office Software is allowable business expenditure. [**CIT Vs. GE Capital Services Limited (2007) 300 ITR 420**].
- 136. Diversion by Overriding Title:** Share in Profit of a Firm paid to a retired Partner pursuant to Sec. 37 of Partnership Act is a diversion of income by overriding title and is deductible. [**Students' Note:** u/s 37 of Partnership Act, an Outgoing Partner is entitled to share in the profits of the Firm, if he has not received his Capital in full, and the Firm uses his Capital for running the business]. **Varanasi Nagar Vikas 275 ITR 140 (AI)**.
- 137. Contribution to Trust created for welfare of Employees = Business Expenditure:** The decision of the Assessee to establish Welfare Trusts for the employees in the year in which it earned huge profits was a prudent commercial decision, and the expenditure incurred by way of contribution to these Welfare Trusts was rightly deductible u/s 37. **B.G. Shirke and Co. 264 ITR 83 (Bom.)**.
- 138. Interest on Arrears of Sales Tax – a Compensatory Levy – hence allowable:** Interest on Arrears of Sales Tax is compensatory in nature, and therefore it is allowable as deduction. **Laschimandas Mathuradas 174 CTR 579 (SC)**.
- 139. Expenditure during dislocation period:** There is no sale or purchase or any manufacturing activity carried on in the relevant previous year. Expenditure incurred to keep the Business alive is to be



allowed, since the business is not closed in the Relevant Previous Year, [**CIT Vs. Integrated Technologies Limited (Del.)**].

140. Revenue Expenditure: Expenditure incurred by Airport Authority towards removal of illegal encroachments in and around Security Area of Airports and towards rehabilitation of encroachers would be allowed as Revenue Expenditure. [**Airport Authority of India Vs. CIT (2012) 18 Taxmann 174 (Del.)**].

141. Business Expense: Keyman Insurance Policy Premium is allowable as business expenses. Merely because the policy was assigned after sometime would not mean that the expenditure in the first instance would lose the flavour of it being "Business Expenditure". [**Rajan Nanda Vs. CIT (2012) 18 Taxmann 98 (Del.)**].

142. Technical Know-how:

- Expenditure incurred as part of the price for the acquisition of Technical know-how and satisfaction of condition precedent to, may be allowed as a deduction. [**British Industrial Corporation 165 ITR 51 (SC)**].
- Assessee, engaged in production of Engineering related products, expenditure incurred towards procurement of right to use Technical know-how by paying a lump-sum consideration in course of business was a Revenue Expenditure falling u/s 37 and not Sec. 35AB [**Diffusion Engineers Limited [2015] 57 Taxmann.com 233 (Kar.) (HC)**].

143. Expense incurred in lock out/closure

- Where an Assessee has a number of units under a single business, the expenditure incurred in the lock out of any one of the units can be claimed as a deduction in the business. [**Ravindranathan Nair 247 ITR 178 (SC)**].
- **Retrenchment Compensation** paid by a Company to its workers **on closure** of one of its units/division running in loss is allowable as business expenditure. [**Sasson J David & Co. P Limited 118 ITR 261(SC), J K Cotton Spg. & Wvg. Co. Limited 145 Taxman 591 (All)**] [**KJS India (P) Limited. (2012) 340 ITR 380 (Delhi)**].

144. Provision for Warranty:

- Claim for deduction of Warranty Claims and Free Service Charges of Cars sold in earlier years is not an adhoc amount or wholly contingent in nature, and it is an allowable deduction. [**Investments Limited 77 ITR 533 (SC)**].
- If warranty is integral part of and is attached to the sale price of the product, provision is deductible. Hence, Provision for Warranty provided along with sale is allowed u/s 37. [**Rotork Controls India (P) Limited Vs. CIT Compaq Computer (I) P. Limited. Hewlett Packard India (P) Limited (2009) (SC) 314 ITR 62**].

145. Damages or losses on cancellation or contracts: Any damages incurred by the Assessee on account of **non-fulfilment of business contract** for reason beyond his control, is incidental to business, and it is an allowable deduction. [**Shantilal Pvt. Limited 144 ITR 57 (SC)**].

146. Legal/Litigation Expenses

- Litigation Expenses in **protecting Trade or Business** [**Dalmia Jain & Co. Limited 81 ITR 754 (SC)**].
- Expenditure which is incurred in **opposing coercive Governmental action**, with the object of saving taxation and safeguarding business [**Birla Cotton Spg. & Wvg. Limited. & Birla Bros P Limited 82 ITR 166 (SC)**].

147. Expenses for Availing Loan:



- Expenditure incurred to **secure Overdraft Facilities** for business purposes. [**Jeewanlal (1929) Limited 74 ITR 753 (SC)**].
- The Assessee had considerable Business Interest in the existence of the Subsidiary, and repaid loan installments to Financial Institutions. Such loans repayment were given for the **purpose of Business**. Deduction allowed. [**JK Synthetics Limited (2014) 369 ITR 310 (ALL)**].

148. Internet Expenses:

- Interest paid on **outstanding balance of purchase consideration** is allowable. [**Bombay Steam Navigation Co. (1953) P Limited 56 ITR 52 (SC)**].
- Whether interest on **loans borrowed for expansion or diversification** is allowable or not, depends upon new activity forms part of the existing business or not. [**Prithvi Insurance Co. Limited 63 ITR 632, Produce Exchange Corpn. Limited. 77 ITR 739 (SC)**].

149. Bonus Issue Expenses: Expenditure incurred in connection with the insurance of Bonus Shares constitutes revenue expenditure. [**General Insurance Corporation 205 CTR (SC) 280**].

150. Discount on Debentures: Discount Allowed on issue of Redeemable Debentures is allowable proportionately over the years of redemption. [**Madras Industrial Investment Corporation, 225 ITR 802 (SC)**].

151. Expense incurred in lock out/closure: Retrenchment Compensation paid by a Company to its workers **on closure** of one of its units/ divisions running in loss is allowable as business expenditure. [**Sasson J David & Co. P Limited 118 ITR 261 (SC), J K Cotton Spg. & Wvg. Co. Limited. 145 Taxman 591 (All.) [KJS India P. Limited. (2012) 340 ITR 380 (Delhi)]**].

152. Employee Welfare Expenses: Expenses incurred by the Assessee on the foreign travel and education of a regular employee outside India for gaining advanced knowledge of the latest printing technology, which was directly related to the business of the Assessee, is allowable u/s 37(1). The expenditure cannot be disallowed merely because it was incurred in respect of an employee, who was the son of an Ex-Director of Assessee Company. [**Naidunia News and Networking (P) Limited. (2012) 210 Taxman 73**].

153. Commission: Assessee paid Export Commission to an Agent, but the services were rendered to Assessee by a Party other than the Agent to whom the Commission was paid. It was wholly immaterial so far as deductibility or Commission in hands of the Assessee was concerned. [**Rajarani Exports Pvt. Limited 35 Taxmann 644 (Cal.)**].

154. Admission Fee paid towards Corporate Membership is an expenditure incurred wholly and exclusively for the purpose of business and not towards capital account, and hence allowed as deduction u/s 37, [(**CIT Vs. Samtel Color Limited 326 ITR 425 (Del.) [Groz Beckert Asia Limited (2013)]**].

155. Damages or losses on cancellation of contracts: Forfeited Bank Guarantee by Apparel Export Promotion Council for not utilizing Export Entitlement, is deductible. [**Regalia Apparels Pvt. Limited 260 CTR 416 (Bom.)**].

156. Contribution to Approved Gratuity Fund: Payment directly to LIC towards Group Gratuity Fund is deductible. [**Textool Co. Limited 122 Taxman 668 (Mad.)**].

157. Employee Welfare Expenses: ESOP to Employees is not a Contingent Liability: The Assessee had followed SEBI directions and the claim of deduction is towards an ascertainable liability. The difference between Market Price of Shares and Issue Price to Employees is eligible for deduction. [**PVP Ventures Limited [2013] 211 Taxmann 554 (Mad.)**].

158. Amount spent for obtaining ISO 9001 Certificate is deductible u/s 37. [**Infosys Tech. Limited 349 ITR 582**].



159. The Assessee is in the money lending business. He is entitled to receive interest from the loan advanced and is also entitled to take loan for running money lending business. So, the Assessee is lawfully entitled to deduct interest paid on the funds borrowed as business expenditure, subject to Sec. 14A. **[Rajendra Kumar Dabriwala (2012) 347 ITR 353].**
160. Advance given to Employees in the ordinary course of business becoming irrecoverable is a Business Loss. **[Triveni Engg. & Industries Limited. (2012) 343 ITR 245 (Delhi)].**

Section 37 – Principles for Determining Deduction u/s 37

161. In order to claim deduction, what should be **certain** is the **incurrence of the liability**. In the absence of any details, **accepting the claim of percentage** on the Turnover and **additional service charges** paid to Parent Company **without evidences** of additional services rendered could **not be sustained**. **CIT Vs. Rotork Control India Limited & Ord. 293 ITR 311 (Mad.).**
162. **Director's Expenses cannot be disallowed as Personal Expenses in Company's Assessment:** No part of car expenses or depreciation on car could be disallowed on account of personal and non-business use of Motor Car by the Directors, in the hands of the Assessee-Company. **Dinesh Mills Limited 173 CTR 478 (Guj.).**
163. **Harvesting and Transportation** expenses incurred by **Co – Operative Sugar Mills** for procuring sugarcane from farmers, who are Members of such Co-operative Sugar Mills, and who are bound under an agreement to supply the sugarcane exclusively to the concerned Sugar Mills, are allowed as deduction in computation of income of the Co-Operative Sugar Mills. **These expenditures are incurred for a commercial expediency** and are *prima facie* wholly and exclusively for the purpose of business. **C. No. 6/2007, dt. 11-10-2007.**
164. **Embezzlement Loss** can be **recognized only** during the year when the **exact amount of loss is crystallized** and not at any earlier point of time when the loss was discovered or estimated approximately. **Shiv Narain Kurmendra Narain 142 Taxman 167 (All.).**
165. **Allowability of Illegal Business Loss:** Expln. To Sec. 37 deals only with business expenditure which is an offence or prohibited by law and not with Business Loss. Heroin Seized by the Department is Stock-in-Trade and has to be treated as a Business Loss and hence it is an allowable deduction. **Dr. T. A. Qureshi Vs. CIT 287 ITR 547 (SC).**
166. **Loss due to embezzlement – when allowable:** Loss due to embezzlement by employee, is allowable in the year of discovery. **Dinesh Mills Limited 173 CTR 478 (Guj.).**
167. **Treatment in Books of Accounts Vs. Nature of Expense:** The treatment of particular expense or a provision in the Books of Accounts can never be conclusively determinative of the nature of expense. An Assessee cannot be denied claim for deduction which is otherwise tenable in law, on the found that the Assessee had treated it differently in the books. **[CIT Vs. Asahi India Safety Glass Limited (Del.).]**
168. **Sec. 37(1) is not applicable when Sec. 35AB is applicable:** The Assessee entered into Technical Assistance Agreement with an American Company for acquiring know-how claiming deduction u/s 35AB. On cancellation of the agreement, it is not proper to claim the deduction u/s 37(1) and the expenditure should only be amortized as mentioned u/s 35AB **[Drilcos India (P) Limited Vs. CIT 25 Taxmann.com 228 (SC)].**
169. Contribution made by the Assessee Company to State Housing Board for **construction of tenements for its workers**, ownership of which tenements remained with the Housing Board. **[Bombay Dyeing & Mfg. Co. Limited. 219 ITR 521 (SC)].**
170. **Book Entries** are **not decisive** or conclusive in determining the allowability or taxability of a particular item of expenditure or income. **[Bharat Carbon and Ribbon Mfg. Co. Pvt. Limited. 239 ITR 505 Kedarnath Jute Mfg. Co. Limited. 82 ITR 363 (SC)].**



- 171. Welfare related Expenses:** Contribution to Public Welfare Fund which is directly related to business or which will result in benefit to the business is allowable u/s 37(1). [**Sri Venkata Sathyanarayana Rice Mill Contractors Co. 223 ITR 101 (SC)**].
- 172. Business Advantage:** Any expenditure incurred to obtain a business advantage and not to acquire any Capital Asset, is a allowable Revenue Expenditure. [**Madras Auto Services (P) Limited 23 ITR 468 (SC)**].
- 173. Intension of Business Necessity or Commercial Expediency:** If the Assessee is carrying on business in letting out properties and 85% of the Income of the Assessee was by way of deriving Rent and Lease Rentals, the Income from Rent constitutes Business Income of Assessee. The compensation paid to the Landlord of the premises, to obtain possession from the Lessee/Tenant so as to earn a higher Rental Income having **intension of business necessity and commercial expediency**, is allowable as Business Expenditure. [**Shyam Burlap Company Limited (2015) 61 Taxmann 121 (Cal) (HC)**].
- 174. Enduring Rev. Benefit:** Any expenditure incurred by Assessee which brings out any asset but does not belong to the Assessee, is deductible bringing of enduring nature in revenue field. [**Associated Cements Co.'s. Limited. 172 ITR 257 (SC)**].
- 175. Revenue Benefit:** Even in case of expenditure, which fails to the test of benefit of enduring nature is deductible, if the benefit is in the revenue field. [**Empire Jute Co. Limited 124 ITR 1 (SC)**].
- 176. Custom Related:** Payments to **discharge obligation of another party** by a courtesy on Joint Borrowings, under well-recognised commercial practice. [**Jagannath Kissonlal 41 ITR 360(SC)**].
- 177. Sec. 37(1) is not applicable if Sec. 35AB is applicable:** The Assessee entered into technical assistance agreement with an American Company for acquiring know-how claiming deduction u/s 35AB. On cancellation of agreement, it is not proper to claim the deduction u/s 37(1). The Expenditure should only be amortized as per Sec. 35AB. [**Drilcos India (P) Limited 25 Taxmann.com 228 (SC)**].
- 178. Bad Debts Vs. Business Loss:** Sec. 28 imposes a charge on the Profits and Gains of Business or Profession which is to be understood in its ordinary commercial meaning. Only the Net Income is to be taxed after deducting expenses and losses incurred in carrying on business or profession. Though the claim cannot be allowed as Bad Debt, it is eligible for deduction as Business Loss, if it is incidental to carrying on of a business. [**Harshad J. Choksi (2012) 349 ITR 250 (Bom.)**].

Section 37 – Inadmissible Expenses

- 179. Illegal Expenditure:** Payment made (other than for security) to Police and Gundas as a precautionary measure so that he shall not get any disturbance in the business premises of the Assessee is illegal, and hence not allowable as deduction. [**CIT Vs. Neelavathi & Others 322 ITR 643 (Karn.)**].
- 180. Compounding of an Offence:** Amount paid to compound an offence is obviously a penalty and does not qualify for deduction u/s 37. The Character of payment is relevant and not its nomenclature. [**Millennia Developers (P) Limited Vs. DCIT 322 ITR 401 (Karn.)**].
- 181. Income Tax paid by the Assessee on its own Income and on the Income of its Predecessor, both are not deductible** **Himson Textiles Engg. Industries Pvt. Limited 137 Taxman 432 (Guj.)**.
- 182. Compensatory Levy Vs. Penalty:** In case of imposition of penalty is for contravention of provisions of CST Act, the levy is not compensatory and therefore not deductible, but not interest is compensatory nature and is allowable. **Swadeshi Cotton Mills Limited 233 ITR 199 (SC), Standard Batteries Limited 211 ITR 444 (SC)**.
- 183. Compounding Fee paid to Municipal Corporation for condoning violation of law relating to construction of property:** Assessee who incurs expenditure for any purpose that is an offence of which is prohibited by law is **not** entitled for deduction of such expenditure. **Mamta Enterprises 266 ITR 356 (Kar.)**.



- 184. Colourable Transactions:** Where Assessee Company paid C & F Fees to a Company for which there was no evidence of service and there was no increase in sale, funds were actually passed to the Chairman and his wife of Holding Company of Assessee as Interest Free Loans, transactions would be held to be colourable, and hence the C & F charges are liable to be disallowed. [**CIT Vs. Punjab Breweries Limited (P & H)**].
- 185. Contingent Liability Items**
- **Provision:** in respect of a Contingent Liability is not allowable. [**Indian Molasses Co. (P) Limited 37 ITR 66 (SC)**].
 - **Provision of Excise Duty liability** on the basis of **forecast notice** shall not be entitled to deduction. [**Indian Smelting & Refining Co. Limited 248 ITR 4 (SC)**].
- 186. Expenses for/in violation of Law:**
- Where expenditure to be incurred under some law requires prior approval of the Govt. or Statutory Authority, the liability to incur such expenditure does not accrue, unless such approval has been obtained. [**Nensuch Tea Estate Limited 98 ITR 189 (SC)**].
 - Expenditure incurred for **evading provisions of FERA** is not deductible. [**Maddi Venkataraman & Co. Pvt. Limited. 229 ITR 534 (SC)**].
- 187. Transfer to Reserves:** Amount transferred to **Contingency Reserve**. Development Reserve by **Electricity Company** is not deductible while computing Total Income. [**Vellore Electric Corporation 227 ITR 557 (SC)**].
- 188. Certain Legal Expenses:** Litigation expenditure incurred for **curing any defective title** of assets or completing that title is not allowable. [**V. Jaganmohan Rao 75 ITR 373 (SC)**].
- 189. Interest under IT Law:** Interest paid for **delayed payment of Advance Tax** is not allowable deduction. [**Bharat Commerce & Industries Limited. 98 Tax 151 (SC)**]. Tax paid by Assessee (who is a defaulter by not deducting TDS u/s 195) on behalf of Non-Resident not deductible. [**Indian Aluminum Co. Limited 79 ITR 514 (SC)**].
- 190. Cum-interest purchase of investment:** In case of **Cum-Interest Purchase** of Investments, though the Purchase Cost of Securities includes interest accrued on such securities also, **no portion** of the price paid can be **attributed to interest expenditure** to be claimed as deduction against income from the Securities. [**Vijaya Bank Limited 157 ITR 541 (SC)**].
- 191. Share Capital Related Expenses** – Fees paid to the Registrar of Companies for **enhancement of capital** is a capital expenditure, not deductible u/s 37(1) but **deductible u/s 35D**. [**Punjab State Industrial Development Corporation Limited 225 ITR 792 (SC)**]. Value of Shares allotted to **Foreign Collaborator** in consideration for **supply of technical know-how** [**Eimco K.C.P. Limited. 242 ITR 659 (SC)**]. The share issue expenses incurred by Company are to be treated as Capital in Nature, though the public issue could not ultimately materialize on account of non-clearance by SEBI. [**Mascon Technical Services Limited. Vs. CIT (2013) 358 ITR 545 (Mad.)**].
- 192. Incurrence of Liability:** Provision for Warranty any scientific basis and analysis of past experience is not deductible. [**Forbes Campbell Finance Limited (2013) 352 ITR 602 (Mad.)**].
- 193. Security Deposit with Landlord becoming irrecoverable** is not allowable deduction. [**Triveni Engg. & Industries Limited. (2012) 343 ITR 245 (Delhi)**].

Section 40(a)(i) & 40(a)(ia) & XV. Section 40(b)

- 194. Purchase and Resale is not a Royalty:** If Purchase of Software from Non-Resident is used for subsequent resale in Indian market, then such payment cannot be treated as Royalty, and provision



of 40(a)(i) for non-deduction of TDS shall not be attracted. **[CIT Vs. Dynamic Vertical Software India P Limited 332 ITR 0222 (Del.)]**.

- 195. Subsequent Change in Opinion by AO:** When both the parties (the Assessee and the Revenue) Proceeded for nearly a decade on the same footing that Sec. 194] is not attracted on a particular scenario, then no fault can be found on the Assessee for not deducting tax in the Previous Financial Year. The change in opinion has to be applied prospectively. **[CIT Vs. Kotak Securities Limited 340 ITR 333 (Bom.)]**.
- 196. Scope of Sec. 40(a)(ia):** Sec. 40(a)(ia) would not only cover the amounts which are payable as on 31st March, but also payable at any time during the year. **[Sikandarkha N. Tunvar 259 CTR 57 (Guj.)]**.
- 197. TDS Procedural Lapse:** Sub-Contractors provided Form 15 – I and thus TDS was not deducted. For failure of Assessee to furnish Form 15–I to Department as required under Rule 29D, no disallowance could be made u/s 40(a)(ia). **[Valibhai Khanbhai Mankand 216 Taxmann 18 (Guj.) (2013)]**.
- 198. Representative Capacity of Partners:** Though a person is a Partner in a Firm in his representative capacity, according to the Firm he is acting on his personal capacity only, so if any remuneration is paid, Sec. 40(b) shall apply **Rashiklal and Co. 229 DR 458 (SC)**.
- 199. Sec. 40(b) – For the purpose of Commission, Net Profit considered before deduction of IT Liability:** For the purpose of determining Commission to the Partner on the basis of Net Profit, the Net Profit shall be considered before deduction of Income Tax liability. **Kajah Co. 266 ITR 122 (Ker.)**.
- 200.** Where the assessee has made payment to a non-resident agent where such income is not chargeable to tax in India Section 40(a)(i) could not be invoked to disallow deduction of such payment for non-deduction of tax at source, while computing the business income of the assessee. **[Maruti Suzuki India Limited [2018] 407 ITR 165 (Del.)]**.

Section 43B

- 201.** Bank Guarantee furnished by the Assessee is not the same as the actual money paid. Hence, disallowance is attracted. **[CIT Vs. McDowell & Co. Limited. (SC) (2009) 314 ITR 174 Udaipur Distillery Limited (2009) 314 ITR 188 (SC)]**.
- 202. Sec. 43B–Deduction of Excise Duty, Customs Duty included in valuating Closing Stock:** The entire amount of Excise Duty / Customs Duty paid by the Assessee in a particular accounting year is allowable u/s 43B, as a deduction in respect of that year, irrespective of the Assessee's Closing Stock at the end of the accounting year as relating thereto. **Berger Paints India Limited 266 ITR 99 (SC)**.
- 203.** Bottling Fee paid and Interest chargeable for its late payment under the State Excise Act to the State Government is not a fee or tax, but only a consideration for grant of approval by the Government. Hence, Sec. 43B is **not attracted**. **[CIT Vs. McDowell & Co Limited (2009) 314 ITR 167 Udaipur Distillery Limited (2009) 314 ITR 188 (SC)]**.
- 204. Statutory Expenses:** Manufacturers are entitled to deduction of Excise Duty and Customs Duty paid in the year of accounting and debited to Profit and Loss Account. **[Berge Paint India Limited 266 ITR 99 (SC)]**.
- 205. Claim "Other than under Statute":** Where additional amount which was paid by the assessee under Excise Law, was levied on assessee **not** in terms of the **Statute**, but for not complying with a time-set by the Commissioner, amount paid by the Assessee is not covered u/s 43B. **[CIT Vs. Distillers Co. Limited 290 ITR 419 (SC)]**.
- 206. Royalty:** Royalty payable to Government for extraction of limestone is a tax, and hence Sec. 43B applies. **[Gorelal Dubey 248 ITR 1(SC)]**.



- 207. Bottling Fee to Govt. – not covered u/s 43B:** Bottling Fee paid and Interest chargeable for its late payment under the State Excise Act to the State Government is not a fee or tax but only a consideration for grant of approval by the Government. Sec. 43B is **not attracted**. [CIT Vs. McDowell & Co. Limited (2009) 314 ITR 167, Udaipur Distillery Limited. (2009) 314 ITR 188 (SC)].
- 208. Electricity Charges – not covered u/s 43B:** Non-Payment of Electricity Charges would not attract disallowance u/s 43B, since charges cannot be termed as “Fees”. [Andhra Ferro Alloys P. Limited (2012) 349 ITR 255 (A.P)].
- 209. Vend Fee:** Vend Fee collected by State Government from Manufacturer for giving special benefit to repair or replace old machinery would be a ‘fee’ by whatever name called’ to be allowed only on **actual payment** in previous year, relevant to assessment year. [Travancore Sugars & Chemicals (2015) 58 Taxmann.com 86 SC)].

Section 41

- 210. Interest Receipts:** Interest Receipt and Hire Charges from Contractors are treated as Capital Receipts and will reduce the Capital Cost. [Karnataka Power Corporation 247 ITR 268 (SC)].
- 211. Waiver of Loan:** Write off of unclaimed loan taken from a party, which was obtained as part of source of funds employed by the Assessee in its business, is to be treated as receipt of Capital Nature and could not be added in Assessee’s Total Income. [Logitronics Pvt Limited Vs. CIT (2011) (Del.)] [CIT Vs. Softworks Computers P. Limited (2013) 354 ITR 16 (Bom.)].
- 212. Waiver of a Principal of Non-Trading Liability:** Provision of Sec. 41(1) are attracted only in the case of remission of a Trading Liability. Waiver of Principal Amount on the Loan taken for Purchase of Capital Asset is not a remission of a Trading Liability. Hence, Provisions of Sec. 41(1) shall not apply. Further, such waiver cannot be treated as a benefit arising out of business and consequently, Sec. 28(iv) will not apply. [Iskraemeco Regent Limited Vs. CIT (2011) 331 ITR 317 (Mad.)].
- 213. Sales Tax Refund** given by Government shall be deemed as Business Income u/s 41(1), unless the same was refunded to the customers from whom it was collected. **Tiumalaiswamy Naidu & Sons 230 ITR 534 (SC).**
- 214. Sales Tax Refund received by Agent:** Amount collected as Sales Tax by Commission Agent and paid to Department. Sales Tax was found not payable and refunded, - Not Income of Assessee. **D. Shankaraiah 247 ITR 798 (SC).**
- 215. Substantial volume treated as Business Income:** Where a Non-Resident continuously trades in securities in India, and magnitude of such transactions is substantial, then profits arising to such person on transfer of Portfolio Investments in India are taxable as Business Income and not Capital Gains. **General Electric Pension Trust 280 ITR (AAR) 425.**
- 216. Unpaid Excise Credit:** Transfer of Unpaid Excise Credit to the Profit & Loss A/c of the Assessee is chargeable to tax. **CIT Vs. London Machinery Company 146 Taxman 326 (All.).**
- 217. Deemed Profit:** Excise Duty refunded to Assessee pursuant to decision of CEGAT is to be treated as Deemed Profit, as it is received in respect of expenditure and not remission or cessation of trading liability. **Polyflex (India) Pvt Limited 257 ITR 343.**
- 218. Treatment of Contingent Deposit:** Contingent Deposit collected by Assessee from customers so as to protect itself from deputed Sales Tax liability, was to be treated as income of Assessee, if same was not kept in separate interest – bearing bank account but made a part of Business Turnover. [Sundaram Finance Limited Vs. ACIT 25 Taxmann.com 247 (SC)].
- 219. Year of Taxability of Balancing Charge:** In case of acquisition of property under any law, the Balancing Charge u/s 41(2) is taxable as income of the previous year in which it becomes due and



not in the year in which it was settled. **[United Provinces Electric Supply Co. 110 Taxman 134 (SC)].**

- 220. Notional Income not taxable u/s 41:** In case of Business Exigencies, if the Assessee, an Asset Management Company collects lesser amount of fees than the ceiling prescribed. A.O. cannot make additions on notional basis and assess the Assessee at the maximum amount prescribed under the SEBI Regulation. The ceiling on expenses mentioned in the SEBI Regulation is the maximum amount that can be claimed from the Mutual Fund. The restrictions under SEBI Regulations are imposed with a view to ensure that the Mutual Funds are not overcharged and the said Regulations are not intended to mandatorily burden the Mutual Funds with the liability set out in the Regulations. **[Templeton Asset Management (India) P Limited (2012) 340 ITR 279 (Bom.)].**
- 221. Depreciation – Merged Entities:** Even where imported motor cars were originally acquired by the merged entities between 1st March, 1975 and 31st March, 2001 as scheme of arrangement and merger was sanctioned by the High Court after 1st April, 2001, transferee-company was entitled to claim depreciation for that year. **[CIT Vs. Mira Exim Limited 2014 (DEL.)].**
- 222. Cessation of Trading Liability:** Assessee had taken loan for purchase of Capital Assets. There was a cessation of Liability to repay said loan. Sec. 41(1) is not applicable in this case. **[V. S. Dempo & Co. Limited [2015] 60 Taxmann.com 443 (Bom.) (HC)].**
- 223.** Loan taken for purchase of Plant, Machinery and Tooling Equipment and was waived by AMC (who took over the lender company). Such waiver of loan amount **cannot** be considered as Business Income u/s 28(iv) as perquisite and the Assessee Company has not claimed an allowance or deduction in any assessment for any year since purchase amount had not been debited to the trading account or P & L account in any of the assessment years. Thus waiver of such loan would not tantamount to cessation of a trading liability u/s 41(1). Held that the amount of loan waived would not be taxable either u/s 41(1) or u/s 28(iv). **[Mahindra and Mahindra Limited [2018] 404 ITR 1(SC)].**

Section 42

- 224.** Expenses deductible u/s 42 had to be determined as per the **Production Sharing Contract (PSC)**. Foreign Exchange **Loss** an account of **currency translation** in PSC for exploration for mineral oil is **not a mere book entry** and is allowable as a **deduction**. **[CIT Vs. Enron Oil & Gas India Limited. 305 ITR 75 (SC)].**
- 225. No Clause in PSC referring to Sec. 42:** If the agreements entered into between assessee and Union of India through Ministry of Petroleum and Natural Gas (MOPNG) relating to exploration of certain oil fields did not include a clause pertaining to Sec. 42, deduction under this section could not be allowed to the Assessee. **[Joshi Technologies International Inc. [2015] 57 Taxmann.com 290 (SC)].**

Section 43A

- 226. Roll over charges:** Roll over charges represent the difference arising on account of change in Foreign Exchange Rates. Roll over charges paid/received in respect of liabilities relating to the acquisition of Fixed Assets should be debited/ credited to the asset in respect of which liability was incurred. However, roll over charges not relating to Fixed Assets should be charged to the Profit & Loss Account. **[ACIT Vs. Elecon Engineering Co. Limited (2010) 230 CTR 1 (SC)].**
- 227. Computation of Cost of Asset:** In computing the Cost of Asset, adjustment has to be made on account of fluctuation of Foreign Exchange as on the last date of accounting year, even if repayment of borrowing is pending. **[ONGC Vs. CIT 322 ITR 180 (SC)].**



- 228. Gain on Exchange:** Gain arising on exchange of Shares held as Stock in Trade in one Company with another Company's Shares shall be treated as Business Income. [**Orient Trading Company 224 ITR 371 (SC)**].

Section 43D

- 229. Principle of Uncertainty:** Interest on Non-Performing Assets of NBFC cannot be spared from tax, unless uncertainty in realization is established. [**Sakthi Finance Limited (2013) 352 ITR 102 (Mad.)**].

Insurance Business u/s 44

- 230.** Every provision made by an Insurer in the Balance Sheet need to be expenditure as the same may represent liability. Provision for Income Tax and Provision for Bad and Doubtful Debts not being expenditure, it is not relevant for computation of profits. The A.O. cannot exercise his jurisdiction in relation thereto. [**CIT Vs. Oriental Fire & General Insurance Co. Limited 291 ITR (SC) 370**].
- 231. Redemption of Preference shares – amount set apart not added to profits:** Amount set apart for Redemption of Preference Shares and treated as expenditure under Rule 2(2)(a) of General Insurance Business Rules, cannot be added back for computing Profits & Gains of business by reference to Rule 5(a) of First Schedule of Income Tax Act. [**General Insurance Corporation 240 ITR 139 (SC)**].

Presumptive Income

- 232. Estimation of Income:** Where the Assessing Officer has applied the Net Profit Rate on Contract receipts for estimating the Income from Contract Work, he cannot make separate on account of Unexplained Cash and Unexplained Payments for Purchases. **CIT Vs. Aggarwal Engg. Co. 156 Taxman 40 (P & H)**.
- 233.** Material supplied by the Contractee at a fixed cost to the Civil Construction Contractor shall **not** be included in the Gross Receipts or Turnover u/s 44AD. [**Brij Bhusan Lai Parduman Kumar 115 ITR 824 (SC)**].

Section 43(5)

- 234. Trading in Derivatives:** Income derived by a Foreign Company from trading in derivatives is **not taxable in India**. **Morgan Stanley & Co. International Limited [2005] TIOL 02 (ARA)**.
- 235. Onus of Proof:** When there is **no material** to show that the Assessee was **not covered** by the **exception u/s 43(5)**, the **onus to establish** that the **Assessee was not entitled** to exception is on the **Assessing Officer**. **CIT Vs. Sharwan Kumar Agarwal 292 ITR 3 (SC)**.
- 236. Business of buying and selling units of UTI is not speculation business:** Units of UTI cannot be deemed to be a Share, and therefore, the business of buying and selling units of UTI by the Assessee–Company did not amount to a speculation business for the purpose of allowing set off of loss. **Apollo Tyres Limited 174 CTR 521 (SC)**.
- 237. Breach of Contract:** A Transaction cannot be described as speculative transaction within the meaning of Sec. 43(5) where there is a breach of contract and on a dispute between the parties damages are awarded as compensation by an arbitration award. [**CIT Vs. Shantilal P. Limited (1983) 145 ITR 57 (SC)**].
- 238. Hedging Transactions for Exporter:** Loss on account of charges paid to banks by an Exporter on cancellation of Forward Contracts (entered into by Assessee with the Bankers to hedge against any



loss arising out of fluctuation in Foreign Currency) cannot be said to be Speculative Loss. [**Friends and Friends Shipping Private Limited (Guj.)**] [35 Taxmann 553 (2013)].

239. Fertilizer Subsidy given to an assessee to compensate the loss on sale of fertilizers should be treated as Business Income of the assessee. Loss on sale of fertilizer bonds issued is to be allowed as Business Loss. [**Gujarat State Fertilizers & Chemicals Limited [2018] 409 ITR 378 (GUJ)**].
240. **Not a Gross Receipts in Profession:** Remuneration from the partnership firm cannot be treated as part of gross receipt from profession from the perspective of applicability of tax audit u/s 44AB. [**Perizad Zorabian Irani Vs. PCIT (Bom.) HC (2021)**].
241. Pharmaceutical companies, providing gifts, freebies to doctors in violation of Law, is clearly prohibited and not allowed to be claimed as deduction u/s 37, reason being that claiming of such deduction would undermine the public policy. [**Apex Laboratories Pvt. Limited. Vs. DCIT (2022) ITR 1 (SC)**].

When a referral fee is paid to a doctor for advising his client in a particular way so as to benefit the person paying the referral fee, it is clearly unethical and is susceptible to being used to manoeuvre the advice given by the doctor in the performance of his fiduciary duties. Referral fees paid to doctors for recommending stem cell banking is disallowed. [**Stemade Biotech Pvt. Limited Vs. DCIT (2022)**].

242. **HC upheld disallowance of commission paid to Directors and their relatives, holding it to be unreasonable and excessive:** Assessee submitted that it has obtained an export order for supply of Iron Ore Fines (IOF) and since the supply was time bound and the materials could not be gathered by the Directors themselves, their relatives were engaged and commission was paid to them. As per HC, claiming that each of the seven persons to whom commission was paid actually had the expertise to help the appellant procuring the IOF from different sources appears to be the commission so paid was also not insubstantial. [**Oripol Industries Limited Vs. JCIT (2022)**].
243. **Issue:** Would the loss incurred in foreign currency fluctuation at the time of repayment of loan taken for financing acquisition of plant and machinery on lease/hire purchase by Indian enterprises with whom the assessee-company has lease/hire purchase agreement be treated as allowable revenue expenditure?

Decision: The assessee was engaged in leasing. The assessee also financed the enterprises with whom it had entered into a lease agreement to enable them to obtain the plant, machinery on lease. For such financing, the assessee had obtained Foreign Currency loan and incurred loss on account of exchange fluctuation while repaying. It was held that since the loan was borrowed for the financing activity, (an activity concerning the assessee's business), the loss was allowable u/s 37. It was not a loan borrowed for asset acquisition, where the loss would be adjusted against the actual cost of the asset.

If the entire claim has been allowed considering as revenue expenditure, suitable amendment will have to be effected in the final assessment order passed by the Assessing Officer for the concerned assessment year, thereby treating the consequential benefits such as depreciation availed of by the appellant assessee in relation to the stated amount towards exchange fluctuation related to leased assets capitalized as unavailable. [**Wipro Finance Limited Vs. CIT (2022) (SC)**].



8

CAPITAL GAINS

Capital Assets [Section 2(14)]: Includes Property of any kind and excludes certain Securities held by FII. Excludes Stock, Personal Effects, Rural Agricultural Land, Deposit Certificate issued under Gold Monetisation Scheme etc. Jewelry is a Capital Assets.

Infrastructure Capital Company [Section 2(26A)]: Company which makes investment by acquiring Shares or providing long-term finance to any prescribe Enterprise or Undertaking.

Infrastructure Capital Fund [Section 2(26B)]: A Fund operation under a Trust Deed established to raise monies by Trustee for investment by acquiring Shares or providing long-term finance to any prescribed Enterprise or Undertaking.

Long-term Capital Asset (LTCA) [Section 2(29AA)]: Not a Short-term Capital Assets.

Long-term Capital Gains (LTCG) [Section 2(29B)]: Capital gains arising from transfer of LTCA.

Short-term Capital Assets (STCA) [Section 2(42A)]: Effective up to 22-07-2024

- a) Any Capital Asset: Not more than 36 months.
- b) Listed Securities (Other than Units)/UTI Units / Equity Oriented Unit / ZCBs: not more than 12 Months
- c) Unlisted Shares / Immovable Properties (Land / Building / Both): Not more than 24 Months.

Short-term Capital Gains (STCG) [Section 2(42B)]:

- a) Any Capital Asset: not more than 24 months.
- b) Listed Securities / Units of UTI / Equity Oriented Units / ZCBs: Not more than 12 Months.

Short-term Capital Gains (STCG) [Section 2(42B)]: Capital Gains arising from transfer of STCA.

Transfer [Section 2(47)]: Sale, Exchange, Relinquishment, Extinguishment of Rights, Compulsory Acquisition, Conversion of Capital Assets into Stock in Trade, Maturity / Redemption of Zero Coupon Bond, Part Performance of Contract, Enjoyment of Immovable Property.

Transfer includes disposing off or parting with an asset or any interest therein, or creating any interest in any asset in any manner, notwithstanding that such transfer of rights has been characterized as being effected or dependent upon or flowing from the transfer of a Share or Shares of Company registered or incorporated outside India.

Zero Coupon Bond [Section 2(4B)]: Bonds issued by Infrastructure capital company or infrastructure capital fund or infrastructure Debt Fund or Public Sector company or Scheduled Banks with no benefit before maturity or redemption.

Forfeiture of Advance Money received in respect of unfructified transfer [Section 51]: Advance Received up to 31-03-2014 is reduced from Cost of Acquisition /WDV / FMV. Received from 01-04-2014 onwards: Taxable as Income from Other Sources. No reduction from Cost of Acquisition / WDV / FMV.

Conversion of Inventory into Capital Assets [w.e.f. 01-04-2019]

- 1) Capital gains is taxable in the previous year in which the Capital Asset is sold or otherwise transferred.
- 2) Holding Period shall be reckoned from the date of its conversion or treatment.
- 3) Cost of Acquisition = fair market value on the date of conversion / treatment as determined in the prescribed manner.

Cost of Acquisition – General

Situation	Cost of Acquisition
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a) Capital Asset became property of an Assessee before 01-04-2001	Cost of Acquisition to the Assessee or FMV as on 01-04-2001 at the option of the Assessee. (i.e. whether is higher).
b) Capital Asset became property of Previous Owner before 01-04-2001 and transferred to the Assessee by any mode u/s 49(1)	Cost to Previous Owner or FMV of the Asset as on 01-04-2001, at the option of the Assessee (i.e. whichever is higher)

Note: When Cost of Acquisition of the Previous Owner cannot be ascertained, FMV on the date on which Capital Asset became the Property of the Previous Owner shall be considered.

Cost of improvement – General

Situation	Cost of Improvement
Capital Asset became property of the Previous Owner or an Assessee before 01-04-2001	All expenditure of a capital nature, in making any addition or alteration to the Capital Asset on or after 01-04-2001 by the Previous Owner or the Assessee
Any other case	a) All expenditure of capital nature in making any addition or alteration to the capital asset by the Assessee, and
Points to Remember	
	b) All expenditure of capital nature in making any addition or alteration to the Capital Assets by the Previous Owner, in case the Assessee became the owner of Property by any mode u/s 49(1).

Note: Cost of Improvement does not include any expenditure which deductible under HP, PGBP or IOS.

Cost of Acquisition & Cost of Improvement [Section 55]:

Nature of Asset	Cost of Acquisition	Cost of Improvement
Financial Assets	Allotment / Purchase Price	Nil
Self-Generated Goodwill of Business	Nil	Nil
Right to manufacture / produce / any article / right to carry on business or profession	Purchase Price	Nil
Self-Generated Tenancy rights, Route permits, Loom Hours, Trade Marks, Brand name related to business or profession	Nil	Actual Cost incurred

1) Capital Assets:

- Goodwill of a business or profession, or
- Trade Mark or Brand Name associated with a business or profession, or
- Right to manufacture, produce or process any article or thing, or
- Right to carry on any business or profession, or
- Tenancy Rights, or Stage Carriage Permits, or Loom Hours

2) Cost of Acquisition:

Situation	Cost of Acquisition
a) Acquisition of such Assets by Assessee by purchase from a previous owner	Purchase Price Less Depreciation claimed u/s 32 before A.Y. 2021-22, if any



b) Case falling u/s 49(1)(i) to (iv) and such asset was acquired by previous owner (as defined in that Section) by purchase	Purchase Price for such Previous Owner Less depreciation claimed u/s 32 before A.Y. 2021-22, if any
c) In any other case	Nil

COMPUTATION OF CAPITAL GAINS

Computation of Short-Term Capital Gains				Computation of Long-Term Capital Gains			
	Consideration Received		Xxx		Consideration Received		Xxx
Less:	Expenses of Transfer		(xxx)	Less:	Expenses of Transfer		(xxx)
	Net Consideration		xxx		Net Consideration		xxx
Less:	Cost of Acquisition	xxx		Less:	Indexed Cost of Acquisition	xxx	
Less:	Cost of Improvement	xxx	(xxx)	Less:	Indexed Cost of Improvement	xxx	(xxx)
	Short-term capital gains		Xxx		Long-term capital gains		Xxx
Less:	Exemption u/s 54B, 54D, 54G, 54GA		(xxx)	Less:	Exemption u/s 54GB		(xxx)
	Taxable STCG		Xxx		Taxable LTCG		xxx

Note:

- a) W.e.f. 01-04-2021 in case of any money or capital assets received by a partner or member from firm or AOP / BOI, the amount chargeable u/s 45(4) as income of such firm or AOP / BOI which is attributable to the capital asset being transferred by the specified entity shall also be reduced from the consideration received in order to arrive at Net Consideration. [Refer Chapter 17].
- b) W.e.f. 23-07-2024, for transfers taking place on or after 23-07-2024, Indexation on Cost of Acquisition and Cost of Improvement shall be applicable only in the following cases at the option of the assessee: **(Refer capital gains Rate for information about the option applicable to the assessee).**

Assessee: Resident Individual or HUF.

Long-term capital Assets: Land or Building or Both

Date of Acquisition: Date of acquisition of such asset is prior to 23-07-2024

TRANSACTION NOT REGARDED AS TRANSFER U/S 47

Sec.	Nature of transaction not regarded as transfer	Conditions to be fulfilled for the transaction not to be regarded as transfer between transferor and Transferee (Section 47)	Holding Period in the hands of the Transferee, in case of subsequent transfer by him – Section 2(42A)	Cost in the hands of Transferee [Section 49]
47(i)	Distribution of capital assets in total or partial partition of HUF	---	Previous owner's holding period shall be included	Cost to previous owner



47(ii)	Transfer of capital assets under Gift / Will / Irrevocable Trust (w.e.f. 01-04-2025 by individual or HUF)	Capital assets others than shares, debentures or warrants, allotted directly or indirectly under ESOP (omitted w.e.f. 01-04-2025)	Previous owner's holding period shall be included	Cost to Previous Owner
47(iv)	Transfer of capital assets by Holding Company to its Subsidiary (withdrawal of exemption u/s 47A(1) applies)	<ul style="list-style-type: none"> Holding company or its Nominees hold 100% Shares in Subsidiary Company Subsidiary Company is Indian Co. 	Previous owner's holding period shall be included	Cost to previous owner
47(v)	Transfer of capital asset by Subsidiary Company to its Subsidiary (withdrawal of exemption u/s 47A(1) applies)	<ul style="list-style-type: none"> Holding company or its Nominees hold 100% shares in Subsidiary Company 	Previous owner's holding period shall be included	Cost to previous owner
47(vi)	Transfer of a capital assets, in a scheme of amalgamation, by the Amalgamating company to the Amalgamated Company;	Amalgamated Company is an Indian company	Previous owner's holding period shall be included	Cost to previous owner
47(via)	Transfer in a scheme of amalgamation: <ul style="list-style-type: none"> Asset Transferred: Shares held in Indian company Transfer from: Amalgamating Foreign Co. to Amalgamated Foreign Company 	<ul style="list-style-type: none"> At least 25% of the shareholders of Amalgamating Foreign Company remain Shareholders of Amalgamated Foreign Company. Such transfer does not attract Capital Gains Tax in country in which the Amalgamating Co. is incorporated 	Previous owner's holding period shall be included	Cost to previous owner
47(viaa)	Transfer of a capital asset, by a Banking Company to a Banking Institution in a scheme of Amalgamation	Scheme sanctioned and brought into force by Central Government	Previous Owner's holding period shall be included	Cost to previous owner
47(viab) (w.e.f. A.Y. 2016-17)	Transfer in a scheme of Amalgamation: Asset Transferred: Share of a Foreign Co. referred to in Expln. 5 to Section 9(1)(i), which derives, directly or indirectly, its value	<ul style="list-style-type: none"> At least 25% of the Shareholders of Amalgamation Foreign Co. remain Shareholders of Amalgamation Foreign Co. 	---	Cost to previous owner



	substantially from the Share(s) of an Indian Co. From: Amalgamation Foreign Co. To: Amalgamation Foreign Co.			
47(vib)	Transfer of Capital Asset, by a Demerged Company to the Resulting Company	Resulting company is an Indian Co.	---	Cost to previous owner
47(vicc) (w.e.f. A.Y. 2016-17)	Transfer in a scheme of Demerger: Asset Transferred: Share of a Foreign Co. referred to in Explan. 5 to Section 9(1)(i), which derives, directly or indirectly, its value substantially from the Share(s) of an Indian Co. From: Demerged Foreign Co. To: Resulting Foreign Co.	<ul style="list-style-type: none"> Shareholders holding not less than 3/4th in value of shares of Demerged Foreign Co. continue to remain Shareholders of Resulting Foreign Co. Such transfer does not attract Capital Gain Tax in the country in which the Demerger Co. is incorporated. Provisions of Section 391 to 394 Companies Act, 1956 shall not apply to this Demerger. 	---	Cost to previous owner
47(vic)	Transfer in a scheme of Demerger: <ul style="list-style-type: none"> Asset Transferred: Shares held in Indian company Transfer from: Demerged Foreign Company to the Resulting Foreign Company. 	<ul style="list-style-type: none"> Shareholders holding not less than 3/4th of value of Shares of Demerged Foreign Co. continue to remain Shareholders of Resulting Foreign Co. Such transfer does not attract capital gains tax in the country in which the demerged company is incorporated 	---	---
47(vica)	Transfer of a capital assets by a Predecessor Co-Operative Bank to the Successor Co-operative Bank or Converted Banking Company in a scheme of business re-organisation	<ul style="list-style-type: none"> The terms "Predecessor Co-operative Bank" "Business Reorganisation" and "Converted Banking Company" shall have the meanings as per Section 44DB. 	Previous Owners' holding period shall be included	Cost to previous owner [See Note 5 below]



47(vicb)	<p>Transfer by Shareholders in a scheme of business re-organisation:</p> <ul style="list-style-type: none"> Asset Transferred: Shares held in predecessor Co-Operative Bank. Consideration Received: Shares of Successor Co-operative Bank or Converted Banking Company 	---	Previous Owners' holding period shall be included	Cost to previous Asset
47(vid)	Transfer or Issue of Shares by a Resulting Company to the Shareholders of Demerged Company	The issue is made in consideration of demerger of the undertaking	Holding Period in Demerged Company shall be included	See Note 4 below
47(vii)	<p>Transfer by Shareholders in a scheme of Amalgamation:</p> <ul style="list-style-type: none"> Asset Transferred: Shares held in Amalgamating Company. Consideration Received: Shares of Amalgamated Company 	<p>The Amalgamation Company is an Indian Company.</p> <p>Note: If the Consideration consists of something more than the share / shares in the Amalgamated Company, then the Assessee is not entitled to exemption u/s 47.</p> <p>[Goutam Sarabai Trust 173 ITR 216 (Guj.)]</p>	Period of holding Amalgamation Company shares shall be included	Cost to previous Asset
47(viia)	Transfer of certain Bonds or GDRs referred in Section 115AC(1)	<ul style="list-style-type: none"> Transfer is made outside India. Transfer made by one Non-Resident to another Non-Resident 	Not Applicable	Not Applicable
47(viiaa)	Transfer of Rupee Denominated Bond	<ul style="list-style-type: none"> Any transfer made outside India, of a Capital asset being Rupee Denominated Bond an Indian Company. Issued outside India. By a Non-Resident to another Non-Resident shall not be regarded as Transfer 	Not Applicable	Not Applicable



47(viiab)	Transfer of Capital Assets by a Non-Resident on a Recognised Stock Exchange located in any IFSC	Consideration is paid or payable in foreign company. i) GDR, referred u/s 115AC(1); or ii) Rupee denominated bond of an Indian company; or iii) Such other securities as may be notified by the Central Government in this behalf.	Not Applicable	Not Applicable
47(viiac) & 47(viiad)	In Relocation, Transfer of a capital assets a) By the Original Fund to the Resultant Fund. b) By a holder of Shares / Unit / Interest held in the Original Fund in consideration for the Share / Unit / Interest in the Resultant Fund in relocation.	The terms "Original Fund", "Relocation" "Resultant Fund" shall have the meanings as per Section 44DB.	Not Applicable	Cost to Previous Owner
47(viiac)	Any Transfer of capital asset by Indian Infrastructure Finance Company Limited to an Institution established for financing the infrastructure and development set up under an Act of Parliament and notified by the Central Government		Not Applicable	Cost to Previous Owner
47(viiac)	Any transfer of Capital Assets under a plan approved by the Central Government by a Public Sector Company to another Public Sector Company notified by the Central Government or to the Central Government or to a State Government		Not Applicable	Cost to Previous Owner
47(viib)	Transfer of a capital asset, being a Government Security carrying a periodic payment of Interest. Note: Meaning of Government Security as per Section 2(b) of the SCRA, 1956	<ul style="list-style-type: none"> Transfer takes place through an Intermediary dealing in settlement of Securities Transfer is made outside India. Transfer is made by a Non-Resident to another 	Not Applicable	Not Applicable
47(viic)	Gold Bond Redemption	Any transfer of Sovereign Gold Bond issued by the R.B.I. under the Sovereign	Not Applicable	Not Applicable



		Gold Bond Scheme, 2015, by way of redemption, by an Assessee being an Individual.		
47(viid)	Gold into E-Gold Receipt	Any transfer of a capital asset being conversion of Gold into Electronic Gold Receipt (E-Gold Receipt) issued by a Vault Manager and <i>vice-versa</i> .	Not Applicable	Not Applicable
47(viii)	Transfer of Urban Agricultural Lands prior to 01-03-1970	---	Not Applicable	Not Applicable
47(ix)	Transfer of the following: Work of Art, Archaeological, Scientific or Art Collections, Book, Manuscripts, Drawings, Paintings, Photographs, Printings	The transfer is made to – Government, University, National Museum, National Art Gallery, National Archives, any institution notified by Central Government to be of national importance	Not Applicable	Not Applicable
47(x)	Transfer by way of conversion of Bonds, debentures, Debenture Stock and Deposit Certificates in any form into Shares or debentures of that company.	---	Holding Period of earlier asset to be taken into account	Cost of New Asset = That portion of cost of Old Asset that is converted
47(xa)	Transfer by way of conversion of Bonds u/s 115AC(1)(a) into shares or debentures of any company.	Foreign Currency Exchangeable Bonds Scheme, 2008 has been notified [Notification No. 28/2009]	---	
47(xb)	Transfer by way of Conversion of Preference Shares to Equity Shares	Capital Assets, being Equity shares of a company, became the property of the Assessee in consideration of a transfer u/s 47(xb)	The holding period of the converted equity shares include the period for which the preference share was held by the assessee prior to conversion	
47(xii)	Transfer of land under a scheme prepared and sanctioned u/s 18 of Sick	<ul style="list-style-type: none"> Transferor: Sick Industrial Company, 	Not Applicable	Not Applicable



	Industrial Companies (Special Provisions) Act, 1985	<p>managed by its Workers Co-operative.</p> <ul style="list-style-type: none"> • Period start from: Previous year in which the company has become sick. • Period Ending with: Previous year during which the entire Net Worth of the company equals to or exceeds its Accumulated Losses. 		
47(xiii) / (xiv)	<p>Business Re-organisation – Conversion of a Partnership Firm / Sole Proprietary Concern into company.</p> <p>[withdrawal of exemption u/s 47A(3) applies]</p>	<ol style="list-style-type: none"> 1) All the Assets and Liabilities of the Proprietary Concern / Firm shall become the Assets & Liabilities of the company. 2) The aggregate Shareholding of the Proprietor / Partners should not be less than 50% of the total voting power, for a period of 5 consecutive years from the date of the succession. 3) The Proprietor / Partner should not receive any consideration or benefit other than by way of allotment of Shares in the company. 4) All the Partner of the Firm immediately before the succession become the Shareholders of the company in the ratio of their Capital Balance in the Firm's books. 	Not Applicable	Not Applicable
47(xiiia)	Transfer of Membership Rights of a Recognised Stock Exchange	Consideration shall be acquisition of equity shares or shares in company and clearing or trading rights on demutualization or	Period for which the person was member of the Stock Exchange	Cost of Acquisition shall be NIL



		corporatization of Stock Exchange		
47(xiiib)	Transfer of capital asset or intangible asset in a conversion of private company / unlisted public company to LLP, as per LLP Act, 2008 or transfer of Shares held in the company by a shareholder [withdrawal of exemption u/s 47A applies]	<ol style="list-style-type: none"> 1. All assets & liabilities of company = assets and liabilities of LLP 2. All shareholders of company = partner of LLP. Capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company as on the date of conversion. 3. Consideration to shareholders only by way of share in profit and capital contribution in LLP. 4. Aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than 50%, at any time during 5 years from the date of conversion. 	Not Applicable	Cost of acquisition of the shares immediately before conversion.
47(xv)	Lending of any securities under an agreement or arrangement with the borrower of securities as per R.B.I. guidelines.	---	Not Applicable	Not Applicable
47(xvi)	Transfer of a capital assets in a transaction of a reverse mortgage	The scheme shall be notified by the Central Government	Not Applicable	Not Applicable
47(xvii)	Transfer of a capital asset, being share of a special purpose vehicle (SPV) to a business trust. Note: Meaning of SPV is as per Explan. To Section 10 (23FC)	Transfer is made in Exchange of Unit allotted by that Trust to the Transferor	Holding period of earlier share(s) by the assessee is also included	Cost of acquisition of the shares in the SPV
47(xviii)	Transfer by a Unit Holder, made in consideration of the allotment to him of a capital asset, being unit(s),	Consolidation is of two or more schemes of Equity Oriented Fund or of two or more schemes of a fund	Holding period of earlier share(s) by the	---



	in the consolidated scheme of a mutual fund. Assets transferred: Unit(s) held by him in the consolidating scheme of the mutual fund	other than equity-oriented fund	Assesses is also included	
47(xix)	Consolidating Plan of MF	Any transfer by a Unit Holder, of a capital asset, being unit(s) held by him in the consolidating plan of a Mutual fund scheme, made in consideration of the allotment to him of a capital asset, being unit(s), in the consolidated plan of that scheme of the mutual fund (MF)		

Note:

1) **Cost of Acquisition of Specific Securities or Sweat Equity Shares [Section 49(2AA)]** = FMV which has been taken into account for the purpose of valuation of perquisites on which tax were paid under the head Salaries, Holding Period, shall be reckoned from Date of Allotment or Transfer of such Shares.

2) **Cost of Acquisition of Gifts:** Cost of Acquisition of property received as gift shall be the Market Value of the Gifts on which Income-Tax was paid under the head Income from other sources.

3) **Cost of Acquisition of Resulting Company's Shares on Demerger [Section 49(2C)]**

$$= \frac{\text{Cost of Acquisition of Demerged Co.'s Shares} \times \text{Net Book Value of Assets transferred to Resulting Co.}}{\text{Net Worth of the Demerged Company before Demerger}}$$

Net Worth of Demerged Company = Paid-up Share capital and General Reserve as per books, before demerger.

4) **Cost of Acquisition of Demerged Company's Shares after Demerger [Section 49(2D)]**

Original Cost of Acquisition of Shares in Demerged Company

Less: Cost of acquisition of resulting company's shares as above

5) **Business R-organisation of Co-operative Bank [Section 49(2E)]:** Section 49(2), Section 49(2C) and Section 49(D) are applicable to business re-organisation of a Co-operative Bank as referred u/s 44DB.

EXEMPTION FROM CAPITAL GAINS

1	2	3	4	5	6	7	8	9	10
Sec.	Asset Transferred	Who is entitled	Use of Holding Period	Amount to be Invested	New Asset	Exemption	Prescribed Period for Investment	Treatment of unutilized amount	Sale of New Asset
54	Residential House	Individual or HUF	Exceeding 36 months	Capital gains	2 Residential	Capital gains or amount invested,	Within 1 year or 2 years after the	Deposited in CGAS before due	If sold within 3 yrs. from date of



					House in India [Note: investment in 2 RP is eligible for LTCG up to ₹ 2 Crores]	whichever is less (Maximum ₹ 10 Crores)	date of transfer in case of purchase or within 3 years after the date of transfer, in case of new construction	date of furnishing return u/s 139(1) if it is not utilized within time limit u/s 139	purchase / construction, for computing STCA on new asset, cost of new asset shall be reduced by amount of CG exempt
54B	Agricultural Land	Individual HUF	Used for agriculture by him or his parent or HUF for 2 yrs. immediately prior to the date of transfer	Capital gains	Agricultural Land	As above	Within 2 yrs. after transfer	As above	As above
54D	L & B for Industrial undertaking	Any Assessee	Used for 2 years	Capital gains	L & B for Industrial undertaking	As above	Within 3 yrs. after transfer	As above	As above
54 EC	Long-term Capital Assets being Land or Building or Both	Any Assessee	LTCA	Capital gains (Investment in the year of transfer & next financial year = Maximum	Specified bonds redeemable after 5 years in NHAI or RECI, Indian Railway	As above	Within 5 months of transfer of original asset	---	If sold within 5 yrs. exempted CG will be deemed to be LTCG of the



				m ₹ 50 Lakhs)	Finance Corp. Power Fin Corp. any other bond notified by the CG.				assessee in the year of sale of new asset.
54 EE	Long-term Capital Assets – Original Assets	All Assess ees	LTCA	Shall not exceed ₹ 50 Lakhs	Long-term Specified Assets	Capital gains or Proportion of amount invested relating to capital gains	Within 6 months after the date of transfer of Original Asset		Amount exempted shall be chargeable to LTCG in the year of transfer
54 F	Any Asset other than Residential House	Individual or HUF	Should be LTCA. Should not own more than 1 house on date of transfer	Net Consideration	One Residential House in India	(Amount Invested / Net Consideration) × Capital Gains (Maximum ₹ 10 Crores)	Within 1 year before or 2 years after then in case of purchase or 3 years after then in case of construction	Same as in Section 54	Same as for Section 54, 54B, 54D except that under Section 54F it will be taxed as LTCG
54 G	P & M or L & B for industrial undertaking in urban area	Any Assess ee	May be LTCA or STCA	Capital gains	New P & M or L & B used for industrial Undertaking in non-urban area or	Capital gains or amount invested whichever is less	Within 1 year before or within 3 years after the date of transfer	Same as in Section 54	Same as for Section 54, 54B and 54D



					meeting expense s of shifting				
54 GA	P & M or L & B or any right in L & B used in Industrial undertaking	Any Assessee	May be LTCA or STCA	Capital gains	Any P & M or L & B used for industrial undertaking in SEZ or meeting expense s of shifting	Capital gains or amount invested whichever is less	Within one year before or within 3 years after the date of transfer	Same as in Section 54	Same as for Section 54, 54B and 54D
54 GB	Residential Property being a House or a Plot of Land	Individual or HUF	LTCA	Net Consideration	Subscription in the Equity Shares of an Eligible Company	(Amount Invested + Net Consideration) × Capital gains	Within 1 year from the date of subscription in Equity Shares by the Assessee	Same as in Section 54	If sold within 5 years, exempt CG will be deemed to be LTCG of the assessee in the year of sale of new asset. 3 Years [w.e.f. 01-04-2020]. In case of computer or computer software acquired by an eligible



									Start-up.
48 (Provision) & 115A	Shares or Debenture in an Indian Company	Non-Resident	May be LTCA or STCA	Capital gains	Shares of an Indian Company or Debenture	(Amount Invested + Net Consideration) × Capital gains	Within 6 months after transfer	---	Amount exempted shall be chargeable to LTCG in the year of transfer

Rates of Taxes on Capital Gains

Particulars	LTCG on Listed Securities		Any Other LTCG	STCG	
	Suffered STT	Not Suffered STT		Listed Securities Suffered STT	No STT or STCG on any Other Assets
Section	112A	112	112	111A	Normal Rate
Rate of Tax (Applicable for Transfer up to 22-07-2024)	10% [LTCG - 1,00,000]	20% with ICA whichever is Lower	20%	15%	Normal Rate
Rate of Tax (Applicable for Transfer w.e.f. 23-07-2024) [Refer Note 1 & 2]	12.5% [LTCG - 1,25,000]	12.5%	12.5%	20%	Normal Rate
Residents, whose Total Income excluding LTCG is below Basic Exemption	10% [Total Income including LTCG - Basic Exemption] - 1,00,000	10% or 20% of [Total Income less un availed Basic Exemption]	20% of [Total Income less un availed Basic Exemption]	15% of [Total Income less un availed Basic Exemption]	Normal Rate of Tax
Non Resident Individual & HUF	Nil	LTCG Taxable (Basic Exemption not available)	LTCG Taxable	STCG Taxable (Basic Exemption not available)	Normal Rate
Chapter VI-A Deduction	Not Applicable				Available
Rebate u/s 87A	N.A.	Applicable	N.A.	Applicable	Applicable

Note:

- 1) For listed Securities covered u/s 112A, the Total Exemption for the FY shall be ₹ 1,25,000.



- 2) W.e.f. 23-07-2024, in case of resident Individual or HUF, where the capital assets (being land or building or both) has been acquired prior to 23-07-2024, the assessee can avail the option of (a) 20% with Indexation or (b) 12.5% without Indexation whichever is beneficial.

Computation of Capital Gains – Special Cases

Nature of Transaction	Year of Taxability	Computation of Capital gains
General computation of Short-term and Long-term capital gains [Section 45(1)]	Year of transfer	CG = Consideration for Transfer Less CA or ICA
Insurance Claim Received on Loss of Assets [Section (1A)]	Year of Receipt	CG = Insurance Claim received Less CA or ICA
Receipt of any amount under ULIP to which Section 10(10D) Exemption does not apply [Section 45(1B)]	Year of Receipt	Any profits or gains arising from receipt of such amount. Income taxable shall be calculated in prescribed manner.
Conversion of Capital Asset into Stock-in-trade [Section 45(2)]	Year of transfer of converted stock	CG = FMV of the Capital Asset on conversion Less CA or ICA BI = Sale Consideration Less FMV considered as above
Sale of Shares held as Depository [Section 45(2A)] (FIFO method shall be adopted)	Year of Transfer	CG = Consideration for transfer Less CA or ICA
Introduction of Capital Assets by a Partner into the Firm or by a Member into AOP, BOI [Section 45(3)]	Year of Introduction	CG = Amount credited in Partner's / Member's Capital Amount in the books of the Firm / AOP / BOI Less CA or ICA
Receipt of Capital asset or moneys from the Firm or AOP / BOI by its Partner or Members on account of Reconstitution of Business [Section 45(4)]	Year of Receipt	A = B + C + D A = Income chargeable to income tax under this Sub-Section as income of the specified entity under the head "Capital Gains", B = Value of any money received by the specified person from the specified entity on the date of such receipt, C = The amount of the FMV of the capital assets received by the specified person from the specified entity on the date of such receipt, and D = The amount of balance in the capital account (represented in any manner) of the specified person in the books of accounts of the specified entity at the time of reconstitution.
Compulsory Acquisition of Capital Asset by Government / Approved authority [Section 45(5)]	Year of first Receipt	CG = Whole of Normal Compensation Received or Receivable Less whole CA or ICA For Subsequent Receipts, CA shall be nil.



a) Normal compensation (Indexation based on year of compulsory acquisition)	Year of actual Receipt	CG = Enhanced Compensation Less Expenses incurred on receipt of Enhanced Compensation
b) Enhanced Compensation		
Specified Agreement for Development of a Project [Section 45(5A)]		
Redemption of 80CCB Units [Section 45(6)]	Year of Purchase	CG = Repurchase Price (-) Amount invested (No Indexation)
Receipts of Assets / Cash from Company on liquidation in the hands of Shareholders [Section 46]	Year of Receipt	CG = FMV of Assets received Add Amount received in Cash Less Deemed Dividend u/s 2(22)(c) Less CA / ICA of Shares
Repurchase / buy-back of Shares / Specified Securities [Section 46A]	Year of Repurchase	CG = Consideration for Transfer Less CA or ICA
Transfer of Depreciable Assets [Section 50]	Year of Transfer	CG = Consideration for transfer Less: Expenses on Transfer Opening WDV Additions during the year
Transfer of Depreciable Assets by Power Sector Units [Section 50A]	Year of Transfer	CG = Consideration for Transfer Less Original Cost of Asset
Transfer of Specified Assets		CG = Full Value of Consideration Less Cost of Acquisition & Expenses on Transfer Specified Assets: a) Debt Oriented Mutual Fund (Acquired on or after 01-04-2023) b) Market Linked Debenture c) Unlisted Bond or Debenture (transferred or redeemed or matured on or after 23-07-2024)
Sale or Undertaking as a Going Concern or Slump Sale [Section 50B]	Year of Transfer	CG = Lump sum Consideration (-) Net Worth (No Indexation for LTCG) In relation to Capital Assets being an Undertaking or Division transferred by way of such Slump Sale – a) Net Worth of the Undertaking or the Division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of Section 48 & 49 and no regard shall be given to the provisions contained in Section 48 second proviso. b) FMV of the capital assets as on the date of transfer, calculate in the prescribed manner, shall be deemed to be the full value of the



		consideration received or accruing as a result of the transfer of such Capital Assets. c) In the case of Capital Assets being Goodwill of a business or profession which has not been acquired by the Assessee by purchase from a previous owner, Nil.
Transfer of Land or Building or both at less than Stamp Duty Value [Section 50C]	Year of Transfer	CG = Value as per Stamp Duty Authority Less CA or ICA Situation: If Value adopted or assessed or assessable by the Stamp valuation authority does not exceed 110% of the consideration received or accruing as a result of the transfer. Full Value of Consideration: For computing Capital Gains from transfer of such asset u/s 48, the Actual Consideration so received or accruing as a result of the transfer shall, be deemed to be the full value of the consideration. Otherwise guideline value shall be taken as consideration
Capital Gains arising from the Transfer of an Asset declared under the Income Declaration Scheme, 2016 [Section 49(5)] Where Tax, Surcharge and Penalty have been paid on the FMV of the Asset as on the date of Commencement of the Scheme	Year of Transfer	Cost of Acquisition of the Asset = FMV of the Asset considered for the purposes of the said Scheme.

Note:

Section 50CA: Where the transfer of Share other than Quoted Share is less than FMV, then Full Value of Consideration shall be FMV determined in prescribed manner.

Exceptions: [w.e.f. 01-04-2020] Provisions of Section 50CA shall not apply to any consideration received or accruing as a result of transfer by prescribed persons subject to conditions.

Advance Received [Section 51]: Advance or other amount received and retained by Assessee is reduced from – (a) COA, or (b) WDV, or FMV, as the case may be.

Reference to Valuation Officer [Section 55A]: If A.O. opines estimated value by Registered Valuer is at variance with its FMV, FMV of asset exceeds declared value by ₹ 25,000 or 15%, when circumstances warrant.

Dividend Stripping [Section 94(7)]: If purchased 3 months prior to Record Date and sold within 9 months (for Units) and 3 Months (For Securities), then such loss on sale shall be ignored to the extent of Dividend Received or Receivable.

Bonus Stripping [Section 94(8)]: If purchased units 3 months prior to Record Date and sold within 9 months thereafter, then loss on such sale shall be ignored. Such loss shall be treated as COA of such additional unit on their subsequent sale.

Important Case Decisions

Cost of Acquisition / Cost of Improvement / Indexation



- 1) **Additional Cost Acquisition:** Payment made to acquire Additional Shares in the property by the Members of HUF at the time of Partition from other Members is an additional cost of acquisition of the property. [**Lalithaben Hariprasad Vs. CIT 320 ITR 698 (Guj.)**].
- 2) **Renovation Expenses:** Renovation Expenses after the business was stopped in order to get good price from sale as a Going Concern, is to be allowed as deduction in computing Capital gains. **CIT Vs. Lawrence D'Souza (Kar.)**.
- 3) **Liquidation Damages:** Liquidated damages paid by the assessee for cancelling earlier agreement to sell immovable property are allowed as deduction, as expenditure in connection with transfer u/s 48, Kaushalya Devi Vs. Commissioner of Income-Tax 20th April, 2018 [**CA Journal June, 2018**].
- 4) **Interest on Loan from Directors:** Payment of Interest on Loans borrowed from Directors to purchase an Immovable Property in order to put up a Business which did not materialize, can be added to Cost of Acquisition. It cannot be denied merely because resolution for payment of interest is passed after Sale of Asset. [**CIT Vs. Sri Hariram Hotels P Limited 325 ITR 136 (Kar.)**].
- 5) **Interest on Loan Funds:** Interest on Loan borrowed for any asset can be claimed as deduction from income of such asset. If the Assessee wants to capitalize such interest, it is possible only when the loan was sought exclusively for acquisition of such asset. [**Sharanpur Electric Supply Co. 194 ITR 294 (SC)**].
- 6) **Interest u/s 24(b):** Interest claimed as deduction from House Property can be included in the Cost of Asset for Cost of Acquisition. Claim of deduction u/s 24(b) of Interest on Housing Loan is no bar to its deduction u/s 48, while computing Capital gains on sale of said house. [**C. Ramabrahmam ITAT 27 Taxmann 104 (2012)**].
- 7) **CII for Transfer of Gifted Asset:** If an Assessee acquired a Capital Asset by way of Gift and transferred such Asset, then Indexed Cost of Acquisition would be with reference to the year in which Previous Owner held the asset and not the year in which Assessee became the owner. So, the CII should be based on the year in which the Previous Owner acquired the asset and not the year in which the Assessee became the Owner. [**CIT Vs. Manjula J. Shah 16 Taxmann 42 (Bom.)**].
- 8) **Takeover as Going Concern:** In case of take-over of an Undertaking as a Going Concern, the Purchaser has taken Gratuity Liability of existing employees, the **Gratuity Liability does not form part of consideration**, and the same **cannot be added** to the cost of acquisition. **Hooghly Mills Co. 287 ITR 333 (SC)**.
- 9) **Scheme under Companies Act:** Section 50B applies to all types of transfers that can be categorized as Slump Sale. Further, the term Slump Sale as contemplated u/s 2(42C) also covers transactions under a scheme of arrangement under the Companies Act, 1956. **SREI Infrastructure Finance Limited Vs. IT Settlement Commission (Del.)**.
- 10) **Mortgage**
Created by Previous Owner: Mortgage was created by Previous Owner during his life-time and was discharged on the date of his death. His Successor had discharged the Mortgage Debt. The Successor obtained only the Mortgagor's Interest in the property, and the amount paid to clear off the Mortgage Debt is Cost of Acquisition u/s 48, and **deductible**.
Created by Assessee: Mortgage created by Assessee himself does not form part of cost of acquisition / improvement and not deductible. [**VSMR Jagadishchandran 227 ITR 240 (SC)**].
- 11) **Estate Duty:** Estate Duty paid in respect of inherited property is neither Cost of Acquisition nor Cost of Improvement. Hence, **not allowable** as deduction in computation of Capital Gains. [**Rm. Arunachalam 227 ITR 222 (SC)**].



- 12) **Interest on delay in payment of consideration:** Transferee company paying interest to Shareholders of the Transferor company for the delay in paying the consideration, can treat such interest as cost of acquisition of such acquired Shares. **[Burmah Castrol Plc (ARR) 307 ITR 324].**
- 13) **Cost of Asset received from Holding Company:** The actual Cost of Capital Asset to the Subsidiary Company, for the purpose of claiming depreciation will be **WDV of the Asset of Holding Company** or where the Capital Asset is transferred by the Holding Company to its Subsidiary Company even subsequently, the Transferor Company ceases to be a Holding Company. **Dalmia Ceramic Industries Limited 144 Taxman 669 (Del.).**
- 14) **Compensation to Tenants:** Amount paid to the existing tenant of the property for vacating and handing over peaceful vacant possession will be treated as cost of transfer. **A. Venkatraman & Others 137 ITR 846.**
- 15) **Compensation to Tenants for Vacating Premises to be deducted from Sale Proceeds in Computing Capital Gain:** If any compensation is paid to Hutment Dwellers for vacating the land, the amount so paid is allowed as cost of improvement in the computation of capital gains, since the eviction of Hutment Dwellers increases the value of the land. **Ms. Piroja C. Patel 242 IT 582 (Bom.).**
- 16) **Cost to Previous Owner:** Where the Previous Owner acquired the asset himself by any of the modes set out in Sections 49(1)(i) to (iv), it is the cost incurred by the Owner who had owned the asset prior to the Previous Owner that is required to be taken into account and not the cost incurred by the Previous Owner at the time he received the asset in any of the modes set out in Sections 49(1)(i) to (iv). **Theatre Sri Rangaraja 135 Taxmann 269 (Mad.).**
- 17) Cost of House includes Cost of land also. **Circular No. 667/18-10-93.**
- 18) Cost of Acquisition of Goodwill of Profession **cannot be ascertained**, and hence it is not chargeable to Capital Gains Tax. **[B C Srinivasa Shetty 128 ITR 274 (SC)].**
- 19) Cost of Acquisition of Goodwill of Profession **cannot be ascertained**, and hence it is not chargeable to capital gains tax. **[B C Srinivas Shetty 128 ITR 274 (SC)].**
- 20) Merely because be-facto possession of land was made over to the developer for the purpose of construction thereon, it would not imply that the possession was made for enjoyment of the property, no transfer under Section 2(47) arises, Principal Commissioner of Income-Tax, Kolkata Vs. Infinity Infotech Parks Limited 18th July 2018 **[CA Journal September, 2018].**
- 21) **Amount Forfeited and Compensation Received:** Amount forfeited by the Vendor shall be reduced from the Cost of Acquisition. Any further amount received as compensation towards cancellation of agreement falls within the provision of 'any other sum received and retained', and the same shall also be reduced from the Cost of Acquisition. **[Travancore Rubber & Tea Company Limited 108 Tax 250 (SC)].**
- 22) **Non-Cumulative PSC - Indexation:** Non-Cumulative Preference Shares carrying a fixed rate of dividend with a fixed holding period cannot be equated with Bonds or Debenture. So, the Indexation Benefit on the transfer of long-term Capital Asset, being 4% Non-Cumulative Preference Shares cannot be denied applying the provisions of the Proviso to Section 48. **[Enam Securities P. Limited (2012) 345 ITR 64 (Bom.)].**
- 23) **Transfer of Listed Shares and Securities:** Income arising from transfer of Listed Shares and Securities, which are held for more than twelve months would be taxed under the head 'Capital gains' unless the taxpayer itself treats these as its stock-in-trade and transfer thereof as its business income. It was further stated that in other situations, the issue was to be decided on the basis of existing Circulars issued by the CBDT on this subject. **[Circular No. 6/2016 dt. 29.02.2016].**
- 24) **Transfer of Unlisted Shares:** To determine the tax-treatment of income arising from transfer of Unlisted Shares for which no formal market exist for trading, a need has been felt to have a consistent



view in assessments of such genuine transactions. Hence, it is decided that the income arising from transfer of unlisted shares would be considered under the head 'Capital gains', irrespective of period of holding, with a view to aoid disputes / litigation and to maintain uniform approach. **[Circular No. 6/2016]**.

- 25)** The assessee is entitled to deduction of amount incurred towards perfecting title of property acquired under will and amount incurred towards making payments to the trust and the third party in whose favour rights were created, as cost of acquisition u/s 55. **[Aditya Kumar Jajodia [2018] 407 ITR (Call)]**.
- 26) Property under sale excludes Demolished Floor:** Disallowance of cost of acquisition pertained to first floor of a property which was demolished by the Assessee before registration of the property, Asset which was not in existence on the date of transfer cannot be sold and thus the cost of construction of the first floor which in effect was not part of transfer of property shall not be considered for computing capital gains. **[ITO Vs. Vishal Varma Siruvuri (2021)]**.

Exemption u/s 54 to 54GA

- 27) Time Limit for Investment:** Exemption u/s 54 held to be allowable to assessee for investing capital gains in new residential, though the investment is done within the extended time limit of return u/s 139(4) and not before the due date 139(1). **Anita Ajay Shad Vs. Income-Tax Officer 18th September, 2017 [CA Journal Nov., 2017]**.
- 28)** The cost of new residential house would include the cost of construction as well as cost of land for the purpose of claiming exemption Under Section 54. **C. Aryama Sundaram Vs. Commissioner of Income-Tax, Chennai 06th August, 2018 [CA Journal September, 2018]**.
- 29) Two Flats merged as One:** In case the Assessee has the intention to purchase a simple flat and where he has made alterations to make two flats as one unit, investment in both the flats shall be eligible for exemption u/s 54. **[CIT Vs. D.Ananda Basappa (2009) 309 ITR 329 (Kar.)]**.
- 30) First Floor Construction:** Construction of First Floor in the existing building should be treated as **independent residential unit entitled for exemption u/s 54/54F. [PV Narasimhan 181 ITR 101 (SC)]**.
- 31) More than one Flat in a Residential Building:** If 4 Flats are situated in the same Residential Building, it will constitute a Residential House for the purpose of Section 54. Therefore, the Assessee would be entitled to deduction Under Section 54 in respect of all 4 Flats. **[CIT Vs. Smt. K.G. Rukminiamma (2011) 221 ITR (Kar.)]**. The Deduction Under Section 54 or 54F cannot be denied for the reason of having several independent units, provided it shall be used for residential purpose and not for commercial use. **[CIT Vs. Gita Duggal (2013) 357 ITR 153 (Delhi)]**. If the assessee made investment in adjacent flats having a common meeting point, he shall be eligible to claim deduction u/s 54 or 54F. **[CIT Vs. Syed Ali Adil (2013) 352 ITR 418 (A.P.)]**.
- 32) Full Investment need not be in Assessee's Name:** Exemption cannot be denied solely on the ground that part of the Investment is in Spouse's name. There is no express provision contained in Sections 54 & 54F that investment should be in the name of Assessee only. **[DIT Vs. Mrs. Jennifer Bhide (Kar.) Ravindra Kumar Arora (2012) 342 ITR 38 (Del.)]**.
- 33) Acquiring Rights from Other Co-Owners:** Where the Assessee is one of the Co-Owners and obtained the release of the right of ownership of other co-owners in his favour, is deemed to be an acquisition u/s 54 and entitled for exemption. **[T.N. Aravnida Reddy 120 ITR 46 (SC)]**.
- 34) Existence of Co-Owners of Agricultural Land:** The assessee claimed deduction Under Section 54B in respect of the land purchased by him along with son out of the sale proceeds of the agricultural land. However, the same was denied by the Assessing Officer on the ground that the land was registered in the name of the assessee's son. The High Court held that merely because the assessee's son was shown



in the sale deed as Co-owner, it did not make any difference. The Assessee was entitled for deduction. [CIT Vs. Gurnam Singh (2010) 327 ITR 278 (P & H)].

- 35) **Extension of Old Existing House** would not mean constructing a Residential House as contemplated Under Section 54F. **V. Pradeep Kumar 153 Taxman 138 (18)]**.
- 36) Construction of New House started before the date of transfer but completed after the date of transfer of the original house entitled for exemption u/s 54. **J.R. Subrmanya Bhatt 165 ITR 571 (Kar.)**.
- 37) A person shall be entitled to claim exemption u/s 54 even in respect of **Self-Occupied Residential House. C. No. 538 / 13-07-89**.
- 38) **Flat Allotment and Payment Vs. Sale Deed:** Where the Assessee having been allotted the flat and **paid a substantial amount towards its cost** within the stipulated time u/s 54, he shall be **entitled to exemption** through the sale deed is registered in his favour subsequently. **[R.L. Sood (2000) 245 ITR 727 (SC)]**.
- 39) **Property under Construction:** The condition precedent for claiming the benefit u/s 54F is that "Capital gains realized from sale of capital asset should have been invested either in purchasing a Residential House or in constructing a Residential House within the stipulated period". If he has invested the money in the construction of a Residential House, merely because the construction was not completed in all respects and possession could not be taken within the stipulated period, would not disentitle the Assessee from claiming exemption u/s 54F. [Sambandham Udaykumar (2012) 345 ITR 389 (Kar.)].
- 40) **Re-investment in excess of Sale Consideration:** When the Capital gains is assessed on notional basis u/s 50C, where the amount invested in new residential property is in excess of actual sale consideration, even in such a case assessee can claim exemption u/s 54F irrespective of source of funds for re-investment. **[Gouli Mahadevappa Vs. ITO (2013) 356 ITR 90 (Kar.)]**.
- 41) **54EC:** Capital Gains received by an Assessee on transfer of Depreciation Asset is eligible for exemption u/s 54EC provided the conditions mentioned under that Section are satisfied. **Ace Builders P Limited. 144 Taxman 855 (Bom.)**.
- 42) **Sale Consideration received in kind but later converted into cash is also eligible for 54EC:** Assessee transferred land and entered into a Joint Development Agreement with the Builder by which she became eligible for six flats to be constructed by the Builder. Out of six flats received, she sold three flats and deposited the sale proceeds in Eligible Investments to avail exemption from capital gains. Held that the Assessee having converted the non-cash consideration into cash and deposited the same within the specified time and has satisfied the conditions for capital gains exemption. **[Smt. Padmavathy (2013) 82 DTR (Kar.) 369] [25 Taxmann 548 (2012) (Kar.)]**
- 43) **Extension of Time Limit u/s 54EC:** To avail deduction u/s 54EC, 6 months provided for investing in bonds get automatically extended till the bonds are available in the market and the Assessee can purchase the same. **CIT Vs. Cello Plat (Bom.)**
- 44) Capital gains arising from **conversion of capital assets into Stock-in-trade** shall be invested in Specified Assets u/s 54EC within 6 months from the date such stock-in-trade is sold or otherwise transferred in terms of Section 45(2). **Cir. No. 791 / 02-06-00**.
- 45) **Conversion of Stock in Trade to Investments:** Assessee being a dealer in Shares and Securities has converted a portion of his Stock in trade in to his Investment. Subsequently, the gain arising on sale of those shares held as investment (difference between Sale Price and FMV on the date of conversion) were to be assessed under the head capital gains and not as Profit and Gains of Business or Profession. [CIT Vs. Yatish Trading Co. Private Limited (2013) 359 ITR 320 (Bom.)].
- 46) **Bond issued after expiry of 6 months:** If the capital gains invested within the period of 6 months from the date of transfer, exemption u/s 54EC cannot be denied merely because the Bond was issued after expiry of 6 months. **[Hindustan Unilever Limited Vs. DCIT 325 ITR 102 (Bom.)]**



- 47) Co-Owner:** Exemption u/s 54B cannot be denied solely on the grounds that the new Agricultural Land purchased is not wholly owned by the Assessee but also by the Assessee's Son as a Co-Owner as per Sale Deed. **[CIT Vs. Gurnam Singh (2010) 327 ITR 278 (P & H)].**
- 48) Sufficient to prove investment made within stipulated period:** Assessee sold a property and purchased another residential plot during the same year and commenced its construction, but it was not completed within three years. the Benefit u/s 54F can be claimed by establishing that the assessee had invested the entire Net Consideration as construction of Residential House within stipulated period, and satisfy requirement u/s 54F. **[Smt. B.S. Shanthakumari [2015] 60 Taxmann.com 74 (Kar.) (HC)].**
- 49) Purchase of Agricultural Land** in the name of wife will not be eligible for Section 54B Exemption. **[Dinesh Verma [2015] 60 Taxmann.com 461 (P & H) (HC)].**
- 50) The cost of Land** and cost of construction incurred thereon prior to transfer of residential house property also have to be considered for the purpose of capital gains exemptions u/s 54. **[C. Aryama Sundaram Vs. CIT [2018] 407 ITR 1 (Mad)].**
- 51) Date to be considered for claim u/s 54F-Facts:** Assessee had sold two flats and invested the capital gains in a new flat, but the last and final installment from sale of the second flat was received beyond the period of one year.
- Conclusion:** To claim exemption u/s 54F Date to be considered is the Date of Agreement to Sell and not the Date of Receipt of final Installment of the consideration. **[ACIT Vs. Shri Niranjan Bhadang (2021)].**

Enhanced Compensation

- 52) Taxation of Enhanced Compensation:** Enhanced Compensation shall be taxable even in case of appeal against such compensation, if such compensation is received by the Assessee during pendency of such appeal against the security provided by it. **[CIT Vs. Ghanshyam (HUF) 2009 (SC) 315 ITR 1].**
- 53) Taxation of Enhanced Compensation:** Enhanced Compensation received on the basis of lower Court decision and the matter is pending in appeal in the higher Court, is not taxable in the year of receipt, but taxable in the year in which the decision of the higher Court takes place. **Hindustan Housing and Land Development Trust 162 ITR 524 (SC).**

Chargeable to Capital Gains

- 54) Inclusion of Date:** An asset which is sold the very next day after the period of 2/36 months is over, be treated as Long-term capital asset, by including both the date on which the asset is acquired and the date on which the asset is transferred for computing period of holding. **[Bharti Gupta Ramota (2012) 207 Taxman 178 (Delhi)].**
- 55) Personal Effects Vs. Capital Assets:** Silver Utensils used for **entertaining guests** should also be treated as articles held for personal use. **[Himmatlal C. Valia (2000) 248 ITR 262 (Guj)]** Gold and Silver Coins and bars used for **Pooja** are **"Capital Assets"**. **[Maharaja Rana Hemanth Singhji 103 ITR 61 (SC)].**
- 56) Investment Vs. Trading:** Where total number of Shares is substantial but rans are only 7 in number and period of holding was significant, it may be treated as an Investment Portfolio and not Trading Portfolio. **CIT Vs. Vinay Mittal (Del.).**
- 57) 100% Depreciated Assets:** Assessee,. Being a Soft Drink Manufacturer, claimed 100% Depreciation on Bottles and Crates used by them. Income from Sale of such written off bottles is liable to capital gains tax u/s 50. **[Nectar Beverages Private Limited Vs. DCIT 2009 (SC) (2009) 314 ITR 314].**
- 58) Section 50C not for stock-in-trade:** Provisions of Section 50C are not applicable with respect to sale of land where plots of land were held by Assessee as stock-in-trade and not as capital asset. **CIT Vs. Kan Construction and Colonisers (P) Limited (All).**



- 59) Receipt of Net Consideration in Auction:** The Assessee had mortgaged his immovable property with the State. It was later auctioned by the State. The Net Amount after adjusting the amount due from the Assessee, was paid to the Assessee. It was held that Capital gains had to be computed on the full price. **Attili N. Rao 252 ITR 880 (SC).**
- 60) Redemption of PSC = Relinquishment:** Redemption of Preference Shares held by the Assessee as Capital Asset amounts to transfer u/s 2(47). **Anarmali Sarabhai 224 ITR 422 (SC).**
- 61) Shares issued pursuant to amalgamation is a transfer:** Allotment of Shares in Amalgamated Company to the shareholders of Amalgamating Company in lieu of amalgamation is an u/s 2(47). **Grace Collis 248 ITR 323 (SC).**
- 62) Sale of Unyielding Rubber Trees:** In the case of sale of old and unyielding rubber trees, no Capital gains is chargeable to tax. **Kalpetta Estates Limited 221 ITR 601 (SC).**
- 63) Sale of Spontaneous Growth:** Sale proceeds of trees of spontaneous growth will not result in capital gains, as they do not bring in any profit or gain. **Suman Tea & Plywood Industries (P) Limited 226 ITR 34 (SC).**
- 64) Section 2(14)(iii)(a) Section 45:** Gains on Sale of Agricultural Land situated in the Town Municipal Limits is taxable **M.L.Mahajan 255 ITR 272 (SC).**
- 65) Agricultural Land Sold for non-agricultural purposes** is assessable to capital gains tax. **[Sarifa Bibi Mohamed Ibrahim & Others 204 ITR 631 (SC)].**
- 66) Irrevocable Power of Attorney** in favour of Developer is a transaction for the purpose of **transfer for Capital Gains**. **Jasbir Singh Sarkaria 294 ITR 196 (AAR).**
- 67) Transfer of Leasehold Rights:** Transfer of Leasehold Interest in immovable property for long period of time amounts to transfer for the purposes of capital gains. **[A.R. Krishnamurthy @ A.R. Rajagopalan 176 ITR 155 (SC), R.K. Palshikar 172 IT 311 (SC)].**
- 68) Part Performance of Contract:** There was an agreement to sell land for ₹ 57 Lakhs. In pursuance thereof, part possession and receipt of part consideration was completed for ₹ 22 Lakhs. Held that capital gains on ₹ 22 Lakhs only should be taxed, provided the following conditions are fulfilled. (1) Such delivery should fall u/s 53A of Transfer of Property Act, (2) Such agreement shall be in writing, (3) Completed Contract has to be spelt from the agreement, and (4) Transfer of possession is in performance of the agreement. **K. Jeelani Basha 256 ITR 282 (Mad).**
- 69) Unutilized Money on CGAS:** Unlisted money in Capital Gains Account Scheme kept by an individual, who died before the prescribed period of investments in the said Sections 54, 54B, 54D, 54G, shall neither be taxed in the hands of the deceased nor in the hands of legal heirs. **Circular No. 743 / 6.5-96.**
- 70) Release of share of one partner in favour of other partner on dissolution** of firm, is a transfer liable for capital gains. **Commissioner of Income Tax Vs. Dr. P.N. Bhaskaran 12th June, 2018 [CA Journal August, 2018].**
- 71) Family Arrangement** to settle disputes amongst members will not attract capital gains. **[R. Nagaraja Rao (2013) 352 ITR 565 (Kar.)].**
- 72) Conversion of Lease hold property to Freehold Property:** Conversion of the rights of the lessee from leasehold to freehold is only by way of improvement of her rights over the property, which she enjoyed. It would not have any effect on the taxability of gain from such property, which is related to the period over which the property is held. Since the period of holding is more than 36 Months, the resultant capital gains would be long-term. **[CIT Vs. Smt. Rama Rani Kalia (2013) 358 ITR 0499 (All)].**
- 73) Development Agreement not registered:** If the Development Agreement entered into between Developer and Housing Society for Development of certain Land owned by the Society **has not been**



registered, then there is no **transfer** within the meaning of Section 2(47)(v) and u/s 53A of the Transfer of Property Act. **[C.S. Atwal [2015] 59 Taxmann.com 359 (Punjab & Haryana)]** **[(Anugraha Shelters P. Limited Vs. PCIT (2021))]**.

- 74) Intension of the Assessee in dealing with shares and securities:** If the intention is to earn profit then the income from purchase and sale of shares and securities will be Business Income or to earn dividend / interest from investment in shares and securities, such income will be chargeable under capital gains. **[PVS Raju (2012) 340 ITR 75 (AP)]**.

Section 45(a)

- 75) Section 45(4) not applicable to Death of a Partner:** Where a firm consists of two Partners, and one of the Partner dies and the remaining Partner continues the business of the Firm without transfer of assets, provisions of Section 45(4) will not apply, because Section 45(4) applies only in the previous year in which transfer of asset actually takes place. **Moped & Machines 281 ITR 52 (MP)**.
- 76) Dissolution of Trust:** Section 45(4) is not applicable to dissolution of Trust and the transfer of assets to beneficiaries. **LR Patel Family Trust 129 Taxman 720 (Bom.)**.

Capital Gains in case of Firm

- 77) Transfer of Firm property to Partner, without registration:** Transfer of an Immovable Property belonging to the Firm to its Partners not on dissolution requires registration. Transfer by mere book entries is not valid. Subsequent sale of immovable property resulting in capital gains shall be chargeable to tax in the hands of the Firm and not in the hands of the Partners. **[J.M. Mehtha & Bros. 214 ITR 716 (Bom.)]**.
- 78) Asset transferred to Retiring Partner:** Such transfer fails within the expression "otherwise" u/s 45(4). The Firm extinguishes its right in the asset so transferred and the firm is liable for Capital Gains Tax. **[An Naik Associates 136 Taxman 107 (Bom.)]**.
- 79) Transfer of Assets a must:** Mere dissolution of Firm does not attract capital gains u/s 45(4). Capital gains arises u/s 45(4) only on the transfer of asset by the Firm to the Partners on dissolution. **Vijayalakshmi Metal Industries 177 CTR 43 (Mad.)**.

Capital Gains in case of Companies and Related Transactions

- 80) Sale of Shares to Foreign Company:** Gains arising from transfer of equity shares held by a Non-Resident in India Company to a Foreign Company are chargeable to Capital Gains Tax. **[Anurag Jain [2005] TIOL 15 (ARA)]**.
- 81) Transfer of Assets on liquidation of Subsidiary Company:** Holding Company had received assets on voluntary liquidation of its Subsidiary Company, and hence it is liable to be taxed u/s 46(2) Section 47(v) is not applicable in this case. **[Brahmi Investments (P) Limited 153 Taxman 471 (Guj.)]**.
- 82) Receipt of Agricultural Land on Liquidation of Company:** A Shareholder of a company receiving assets where as capital or in any other form including Agricultural Land, from the company in liquidation, is liable to pay tax on capital gains on the Market Value of the assets on date of distribution as per Section 46(2). **[N. Bagavathi Ammal 259 ITR 679 (SC)]**.
- 83) Transfer of Shares** in the wholly owned Indian company by the **Foreign company** to its **Foreign Subsidiary abroad does not** result in capital gains in India. **Vanenburg Group B.V. 289 ITR 464 (AAR)]**.
- 84) Shares held as stock-in-trade:** In case Shares treated as stock-in-trade are Exchanged for Shares of other Companies, then, Business Profit = Market Value of Shares Exchanged Less Book Value of Original Shares. **[Orient Trading Co. Limited 224 ITR 371 (SC)]**.
- 85) Reduction of Capital:** When there is a reduction in the Free Value of the Shares and consequent payment by the company to the Shareholder towards such reduction, the reduction of share capital is charged to capital gains tax. **[Kartikeya Vs. Sarabhai 228 ITR 163 (163)]**.

**Tax Planning within the Framework of Law**

- 86) Not a Colourable Device:** The companies involved in the transaction were Existing Companies. Thus, neither of the companies came into existence as a part of the scheme for purchase of Immovable Property or Transfer of Shares for the **purpose of evading payment** of tax. the event of transfer of shares happened in ordinary course of Business and is Legal. The transaction is Real and Valuable Consideration is paid, all legal formalities are complied with and what is transferred is shared and not immovable property. Hence, it is a valid legal transaction and cannot be termed as a colorable device or sham transaction or an unreal transaction. [**Bhoruka Engineering Inds. Limited Vs. DCIT (2013) 356 ITR 25 (Kar.)**].
- 87) Brought Forward Capital Loss** cannot be adjusted against **exempted** short-term capital gains under Article 13 of India-Mauritius DTAA. With reference to Goldman Sachs Investments and held that Assessee is entitled to carry forward the brought forward capital loss to the subsequent assessment years without any adjustment. [**DCIT Vs. Bluebay Mauritius Investments Limited (2022)**].



9

INCOME FROM OTHER SOURCES

Computation of Income from Other Sources		(₹)
	Income from Other Sources u/s 56	Xxxx
Less:	Allowable expenses u/s 57	(xxxx)
Add:	Inadmissible expenses u/s 58	Xxxx
	Deemed Income u/s 59	Xxxx
Income from Other Sources		Xxxx

Points to Remember

Chargeability [Section 56(1)]: Income not related to any other head.

Specific Income Taxable [Section 56(2)]: Dividend, Betting Income, Interest on Securities, Composite Rent, Letting of Machinery or Furniture, PF Contribution from Employees under certain circumstances and Forfeiture of Advance received for failed negotiations in respect of transfer of Capital Assets.

Gifts [Section 56]: Gift is taxable – For all Assessee, if acquired for Nil or Inadequate Consideration as under –

Consideration	Particulars	Taxable Amount
Nil	Money and Aggregate Value > ₹ 50,000	Aggregate Value
Nil	Immovable property with Stamp Duty Value > ₹ 50,000	Stamp Duty Value
Inadequate	Consideration of Immovable Property < Stamp Duty Value by ₹ 50,000	Stamp Duty Value (-) Consideration [Only if difference is greater than ₹ 50,000 + 10% of the consideration]
Nil	Other property with FMV > ₹ 50,000	FMV
Inadequate	Consideration of Other Property < FMV by ₹ 50,000	FMV (-) Consideration

- Situation:** Receipt of immovable property for a consideration, and the Stamp Duty of the property exceed such consideration.
- Taxable Income:** Difference between Stamp Duty Value and the consideration shall be taxable.
- Condition:** Difference between SDV and the consideration shall be taxable only if, such difference is greater than ₹ 50,000 (or) 10% of the Consideration whichever is higher.

Exception to 56(2)(x): [w.r.e.f. 01-04-2020] Any sum or property received by the individuals / member of the family of a deceased person is related with COVID-19 are not taxable.

Deductions [Section 57]:

- General:** Commission of Brokerage for Interest or other Taxable Dividend. Deductions as allowable u/s 30, 31 & 32.
- For Family Pension [Section 57(iiia)]:** 33.33% of Family Pension or ₹ 15,000, whichever is less.

Note: [w.e.f. 01-04-2025] In case of the assessee paying u/s 115BAC(1A), the limit shall be 33.33% of the Family Pension or ₹ 25,000, whichever is less.

Points to Remember

- Any other expenditure** other than capital nature. [Section 57(iii)]



- **For Interest on Compensation or Enhanced Compensation [Section 57(vi)]:** 50% of the Interest Received will be allowed as deduction.

Amounts not deductible [Section 58]: Personal Expenses / Interest or Salary paid outside India without TDS / Expenses u/s 40A, Wealth Tax, Expenses relating to Betting and other expenses of similar nature.

TDS Default: Section 40(a)(ia) disallowing 30% of any sum payable to a Resident, on which tax is deductible, but –

(a) Tax has not been deducted; or

(b) After deduction, tax has not been paid before the due date of furnishing u/s 139(1)

Shall also be applicable to computation of Income u/h Income from Other Sources.

Deemed Income chargeable to Tax [Section 59]: Loss or expenditure already allowed as deduction subsequently recovered is taxable in the year of receipt.

Deemed Dividend [Section 2(22)]: Distribution or payment to the extent accumulated profits whether capitalized or not:

(a) Which entails the release of Company's Assets, (b) Debentures, Debenture Stock, Deposit Certificates, Bonus shares to Preference Shareholders, (c) On liquidation, (d) On reduction of Capital, (e) Any sum by way of Advance or loan to specified Shareholder or Concern, [w.e.f. 01-10-2024] (f) Any sum paid by a company on buy-back of its own shares.

New Section: 115BBF w.e.f. 01-04-2017 – Tax on Income from Patent:

- 1) **Eligible Assessee:** Person Resident in India and who is a Patentee.
- 2) **Nature of Income:** Income by way of Royalty in respect of a Patent developed and registered in India.
- 3) **Rate of Tax:** Tax = 10% on the Income by way of such Royalties. [Note: This is in addition to the Tax Payable on Other Total Income].

Important Case Decisions

1. **Interest Accrual should be postponed** even in the case of an Assessee following mercantile system of amounting **where suits for recovery of interest-bearing loans are pending against the Assessee**. As per AS-9, Revenue should be recognised only when there is no significant uncertainty as to it's (a) measurability, (b) collectability. **U.P. Financial Corp. 143 Taxman 47 (All)**.
2. Interest awarded to Arbitrator by Assessee Contractor following dispute regarding some work done by him is taxable as Interest Receipt. **B.N. Agarwala & Co. 180 CTR 311 (SC)**.
3. **Interest from Debtors:** The Assessee-company had received interest on loans / advances made by it to its Debtors. The amount of interest was not relatable to any late payment of the Invoices/ Bills or Compensation/Damages. It is not to be treated as Business Income, but is to be treated under the head 'Income from Other Sources'. **Radico Khaitan Limited**.
4. If the Assessee **transferred** part of his **share in profits** to the Trust for **benefit** of the **children** of the Assessee, Income from **Share** in the **Firm** received by the **Trust** is **not includible** in the Total Income of the Assessee. **CIT Vs. Jayantilal D. Patel 295 ITR 386 (Guj)**.
5. If the **Revenue** believes that the **Shareholders are Bogus**, AO is **free to open** the **Individual Assessment** of each shareholder. AO cannot treat the same as Undisclosed Income u/s 68, suspecting the credits of the Share Applicants. **CIT Vs. Divine Leasing & Finance Limited 2008 TIOL 118 (SC)**.
6. **Onus of Proof:** If the investigation establishes that the firm was fictitious and its Partners were also bogus and there was no bank account found in the name of the firm, the undisclosed sum cannot be linked to the account of a Non-Existent Firm. The onus of proving the sources of deposit primarily



rested on the persons in whose names the deposit appeared in various Banks. Individual assessments in the hands of respondent Assessee can be made. **CIT Vs. K. Chinnathamban 292 ITR 682 (SC)**.

7. **Entry in Seized Diary:** Excess of the value of property as per the noting in the seized diary, over the value as per books of account is deemed to be the Undisclosed Income of the Assessee. **[Ramaliabaen Ratilal Shah 152 Taxman 37 (Guj)]**.
8. **Responsibility to Prove Genuineness of Creditor:** To avoid the applicability of Section 68, the burden is on the Assessee to establish the identity of the Creditor, the genuineness of the transaction and the creditworthiness of the Creditor. **Rajendran 155 Taxman 364 (Mad)**.
9. **Deemed Dividend:** If advance is received for construction of building by Shareholder and subsequently adjusted from Rent Payable by the company, the advance is Deemed Dividend u/s 2(22)(e). This follows the Supreme Court decision in **M. P. Sarada ITR 44 (SC)**, where it was held that it is sufficient if the Assessee had received dividend from the company during the relevant previous year. Fact of later repayment or adjustment is irrelevant. **P. K. Abubucker 259 ITR 507 (Mad)**.
10. **Winnings from Motorcar Rally** are a return for skill and endurance. It is taxable as Income & not u/s 10(3). **[G.R. Karthikeyan 201 ITR 866]**.
11. **Jackpot Winnings:** Jackpot Winnings are credited in Business Accounts. However, nature of Jackpot Winnings as Income from Other Sources does not change. **[Lachman Das Veerabandhar 247 ITR 810]**.
12. **Loan for Investing in Shares:** Interest on loan borrowed for purpose of investing in Shares or Securities is **deductible** from the income derived from such investment. **[Rajendra Prasad Moody 115 ITR 519 (SC)]**.
13. **Loan against FD:** Interest on Bank FD is an income in the hands of the Assessee, and the interest on the loan taken from Bank on security of that deposit is not an allowable expenditure. **[Dr. V.P. Gopinathan 248 ITR 449 (SC)]**.
14. **Wholly and Exclusively:** Expenses should be **wholly and exclusively** expended for the purpose of earning income, to claim it as deduction u/s 57. **[Smt. Padmavathy Jaikrishna Vs. ACIT 166 ITR 176 (SC)]**.
15. **Routing Loan through Employees:** A loan given by a company to its low paid employee, who in turn gives it to the Managing Director of the company, shall be treated as Deemed Dividend u/s 2(22)(e), in the hands of the Managing Director. **[L. Alagusundaram Chettiar 252 ITR 893 (SC)]**.
16. **Routing Loan through Related Firms:** Where company in which Assessee was a Shareholder and Director had paid money to two firms in which Assessee was a Partner and such Firms had given such money to the Assessee for purchase of R.B.I. Relief Bonds, funds so received by Assessee by using the Firms as conduct were assessable as Deemed Dividend in his hands. **[Mukundray K. Sha 290 ITR 433 (SC)]**.
17. **Advances to a Shareholder to protect Co.'s Interest:** Advance given to the Assessee by the Company was not in the nature of a gratuitous advance, instead it was given to protect the interest of the company. So, the said Advance cannot be treated in the hands of the Shareholder u/s 2(22)(e). **[Pradip Kumar Malhotra (2011) 338 ITR 538 (Cal.)]**.
18. **Transactions garbed as Deemed Dividend:** A company had given its Shareholders perpetual occupancy rights of flats constructed by it, in lieu of which the Shareholder had to give Interest Free Refundable Deposit towards, proportionate land cost and development cost. Shareholder was entitled to transfer the occupancy rights by way of sale and transfer of Block of Assets and create Third Party Rights subject to Transferee depositing required amount of Interest Free Refundable Security Deposit. In such case, Cost of Flat would be Deemed Dividend. **[Shantikumar D. Majithia 22 ITR (T) 246]**.



- 19. Interest earned on grant kept as fixed deposit before utilization:** Sum granted by State Government to Assessee Government company Assessee can claim interest payment to bank as Expenditure against Income earned from loan advanced to Holding Co. provided (a) on lending to Holding company is based on commercial expediency. (B) Terms of Bank Loan permit with onward lending, and (c) Income and Expenditure do not pertain to the pre-operative period. **[Vodafone South Limited (2015) 61 Taxmann.com (Delhi) (HC)].**
- 20. Net Interest u/s 57(iii):** Assessee has borrowed money from a Bank for the purpose of lending to its Holding Company. Assessee can claim interest payment to bank as Expenditure against Income earned from loan advanced to Holding Co. provided – (a) On lending to Holding Company is based on commercial expediency, (b) Terms of Bank Loan Permit such onward lending, and (c) Income Expenditure do not pertain to the pre-operative period. **[Vodafone South Limited (2015) 61 Taxmann.com 415 (Delhi) (HC)].**
- 21. Repair Expenses of Shareholder's Premises:** Repairs and Renovation of shareholder's premises cannot be brought within the definition of Advance of loan given to the Shareholder having substantial interest in the company, though he is the owner of the premised. It cannot be treated as payment by the company on behalf of the Shareholder or for the individual benefit of such shareholder. Hence, it cannot be treated as Deemed Dividend in the hands of Shareholder. **[Vir Vikram Vaid (2014) 367 ITR 365 (Bom.)].**
- 22. HUF not a Registered Shareholder:** Even HUF is not a registered shareholder in lending company, advances / loans received by HUF is taxable as deemed u/s 2(22)(e) if Karta shareholder has substantial interest in HUF. **Gopal and Sons HUF Vs. CIT (2017) 77 Taxmann.com 71 (SC)].**
- 23. Amount lent in the course of money lending business:** Where money was lent to company having substantial interest in lending company out of reserve and surplus representing share premium, same would not be deemed dividend.
- Further, amount lent out in course of money lending business of lender would not be deemed dividend. **[Shree Balaji Glass Manufacturing (P) Limited (2016) 72 Taxmann.com 118 (Calcutta)].**
- 24. Interest accrued on deposit of share application money with bank is eligible for set off against the public issue expenses and such interest is not taxable as "Income from Other Sources". [Sree Rama Multi Tech Limited 403 ITR 426 (SC)].**



10

CLUBBING OF INCOME

Points to Remember

S. No.	Transaction / Income	Taxable in Hands of
60	Transfer of Income without transfer of assets	Transferor
61	Revocable Transfer of Assets. [Notes: Transfer is deemed revocable if Transferor has a right to re-assume power directly or indirectly over the whole or any part of the income or assets].	Transferor
64(1)(ii)	Remuneration of Spouse from a concern in which the Individual has Substantial Interest, other than for exercising professional knowledge.	Individual
64(1)(iv)	Income from Assets transferred to the Spouse for inadequate consideration (except Transfer before marriage / with an agreement to live apart / gifting co-parcenary property / property acquired out of Pin money or household savings).	Individual
64(1)(vi)	Income from Assets transferred to Son's Wife for inadequate consideration.	Individual
64(1)(vii)	Income from Assets transferred to any person for the benefit of the Spouse of the Transferor	Individual
64(1)(viii)	Income from Assets transferred to any person for the benefit of wife of the Transferor's Son	Individual
64(1A)	Income of a Minor Child	Parent whose Total Income is higher, or the person who maintained Minor
64 (2)	Income from self-acquired property converted to Joint Family Property for inadequate consideration	Individual

Note:

- **Liability of Transferee (Section 65):** Shall pay a portion of the tax levied on Transferor. In case of Joint Owner, Owners shall be jointly and severally liable to pay tax.
- **Sale & Buy-back of Securities for avoiding tax:** Section 94(1), 94(2) & 94(4) applicable.

Important Case Decisions

1. **Property in Spouse's Name:** Assessee is entitled to exemption u/s 54 even if the new House Property is acquired in the name of his spouse, which was assessed in the hands of the Assessee. **[V. Natarajan 287 ITR 271 (Mad.) Kamal Wahal (2013) 351 ITR 4 (Del.)]**.
2. **Income credited to Trust for benefit of Minor:** A Private Trust is created for the benefit of Minor. Income credited to the Trust is immediately not available to the Minor. Minor is entitled to receive the same only upon his attaining majority. Such income cannot be clubbed in the hands of the Parent. **K.J. Ramaswamy 286 ITR 77 (Mad.)**.
3. **Clubbing of Agricultural Income:** Agricultural Income of Minor Son of the Assessee has to be included in the income of the Assessee for the purpose of determining the rate of income tax applicable to the income of the Assessee. **Suresh Chand Talera Vs. Union of India 152 Taxman 348 (MP)**.



4. **Amount received by Wife from policy under MWP Act will be clubbed in Husband's hands:** Assessee pays premium on policy in spouse's name for her benefit under Married Women's Property Act, 1874. On maturity, interest on investment made out of proceeds of policy will be clubbed in husband's hands. [**Damodar K. Shah 252 ITR 235**].
5. **Income from Income not clubbed:** Income accruing or arising from transferred assets only will be clubbed. Any income earned out of such income should not be clubbed, e.g. Dividend from Bonus Shares. **M.S.S.Rajan 251 ITR 126 (Mad.)**.
6. **Revocable Transfer:** If there is provision to re-assume power, the transfer will be "Revocable", actual exercise of power is not necessary. [**S. Raghbir Singh 57 ITR 408 (SC)**].
7. **Revocable Transfer:** Where Assessee can at any time re-assume power over assets or income by just cancelling / altering the terms of the deed, trust is "Revocable". [**Senthilnathan Chettiar Vs. State of Madras 67 ITR 102 (SC)**],
8. **Revocable Transfer:** Where no absolute right is given to Transferee and asset can revert to Transfer in certain circumstances, transfer is revocable. [**V. Venugopala Varma Rajah 84 ITR 466 (SC)**].
9. **Exception to Clubbing:** If a property is transferred by a Karta of HUF, gifting coparcenary property to his wife, clubbing provisions are not applicable. [**L. Hiday Narain {1970} 78 ITR (SC)**].
10. **Cash gifted and invested in other forms:** Where Cash is gifted by an Assessee to his wife, and the latter invests the same in deposits, Interest Income is includible in the Assessee's Total Income. [**Mohini Thapar [1972] 83 ITR 208 (SC) 432**].
11. **CG on Sale of Transferred Assets:** If an individual transfers an asset without consideration to his wife who sells it at a profit, Capital gains arising to wife on sale of such asset is chargeable to tax in the individual's hands. [**Seventilal Maneklal Sheth [1968] 68 ITR 503 (SC)**].
12. **Income in Representative Capacity:** Share Income of husband of Assessee who was a Partner in a Firm in representative capacity as Karta of HUF, is not liable to be included in income of Assessee u/s 64. [**Smt. Ravaban B. Mistry 163 CTR 297 (SC)**].
13. **Spouse Relationship:** For clubbing u/s 64, relationship between individual and spouse subsist both at the time of transfer and at the time of accrual of income. [**Phillip John Plasket Thomas 49 ITR 97 (SC)**].
14. **Natural Love & Affection:** Natural Love and affection would not be adequate consideration for the purpose of Section 64(1). [**Thulsidas Kilachand 42 ITR 1 (SC)**].



11

SET-OFF & CARRY FORWARD OF LOSSES

Sec.	Nature of Loss	Details of set-off	Conditions / Exceptions
70	Current Year Loss within the same Source	Set-off within the same source	Exceptions: Loss from – 1. Activity of owning or maintaining of race horses.
71	Current Year Loss under any head	Set-off against income under any other head	Exceptions: 1. Loss from – a) Activity of owning or maintaining of racehorses b) Speculation business c) Capital gains 2. W.e.f. 01-04-2018 Set-off of loss u/h “Income from House Property” against any other Head of Income shall be restricted to ₹ 2,00,000 for any Assessment year. 3. Loss under the head PGBP cannot be set off against Income from Salaries 4. Loss from specified business u/s 35AD can be set off only against Income from any other specified business. [S.73A] .
71B	Brought forward Unabsorbed Loss from House Property	Set-off against income from House Property	Permissible for 8 Assessment Years immediately succeeding the Assessment Year in which the loss first arose.
72	Brought Forward Unabsorbed Business Loss other than Speculation Loss	Set-off only against income under the head Profit and Gains of Business or Profession	1. Carry forward and set-off is permissible for 8 assessment years immediately succeeding the assessment year in which the loss first arose. 2. Loss can be carried forward, only if the return is filed u/s 139(1) and determined and communicated u/s 157.
32(2)	Brought forward Unabsorbed Depreciation	Set-off against any head of Income	Unabsorbed Depreciation Loss can be carried forward for any number of years it is fully set-off
73	Brought forward Unabsorbed Speculation Business Loss	Set-off only against income under Speculation Business	1. Carry forward and set-off is permissible for 4 assessment years immediately succeeding the assessment year in which the loss first arose. 2. Loss can be carried forward, only if the return is filed u/s 139(1) and determined and communicated u/s 157



73A	Brought forward loss of Specified Business u/s 35AD	Set-off only against Income from any other Specified Business	Loss can be carried forward for any number of years until it is fully set-off. Return to be filed u/s 139(1) & communicated u/s 157.
74	Brought forward Unabsorbed Loss under the head Capital gains	Set-off only against Income under the head Capital gains	<ol style="list-style-type: none"> 1. Carry forward and set-off is permissible for 8 assessment years immediately succeeding the assessment year for which the loss was computed. 2. Loss can be carried forward, only if the return is filed u/s 139(1) and is determined and communicated u/s 157. 3. STCL can be set-off is permissible for 4 assessment years immediately succeeding the assessment year for which the loss was computed.
74A	Brought forward Unabsorbed Loss from activity of owning & maintaining Race Horses	Set-off only against Income from owning and maintaining Race Horses	<ol style="list-style-type: none"> 1. Carry forward and set-off is permissible for 4 assessment years immediately succeeding the assessment year for which the loss was computed. 2. Loss can be carried forward, only if the return is filed u/s 139(1) and determined and communicated u/s 157.
			3.

Other Points

OP	Nature of Transaction	Carry Forward in the hands of
72A	Carry Forward and set-off of Accumulated Loss and Unabsorbed Depreciation Allowance in cases of Amalgamation / Demerger / Business Re-organisation / Succession of Private Co. and Unlisted Public Co. by a LLP	<ul style="list-style-type: none"> • Amalgamation: Amalgamated / Successor Company for 8 years. • Demerger: Unexpired Period out of 8 years
72AA	Carry Forward & set-off of Accumulated Loss & Unabsorbed Depreciation of Predecessor Banking Company.	<ul style="list-style-type: none"> • Amalgamation: Amalgamated Banking Company for 8 years
72AB	Carry Forward and set-off of accumulated loss and unabsorbed depreciation in case of business re-organisation of Co-op Banks.	<ul style="list-style-type: none"> • Unexpired period of 8 years from the year in which Business Re-organisation takes place.
78	<ol style="list-style-type: none"> 1. Change in Constitution of Firm: Share of Retired or Deceased Partner Loss as exceeds his share of profits, shall not be allowed to be carried forward by the Reconstituted Firm. However no such Restriction for Unabsorbed Depreciation. 2. Succession: Only legal inheritance cases eligible for carry forward 	Legal Heirs (or) Firm of Legal Heirs.



79	3. Carry Forward and set-off of losses in the case of Closely Held Companies	Shall be allowed if 51% voting power continues on the last day of P.Y. of loss and last day of P.Y. of set-off
79	Eligible Start-up company referred u/s 80-IAC, in which Public are not substantially interested.	<p>Loss incurred in any year prior to the P.Y. shall be carried forward and set off against in income of the previous year.</p> <p>Note: Carry Forward and set off of Losses u/s 79(1) shall not apply to a company to the extent that a change in the shareholding has taken place during P.Y. on account of relocation referred to in the Explanation to 47(vilac) & (valid).</p> <p>[w.e.f. 01-04-2022] The restrictions specified u/s 79(1) relating to set off and carry forward of losses shall not apply to an erstwhile Public Sector Company.</p>

Note:

1. A company whose principle business is that of **trading in shares also be deemed to be carrying on Speculation Business u/s 73.**
2. [w.e.f. 01-04-2022] No set off of losses against undisclosed income identified consequent to search, requisition and survey (Section 79A).

SET OFF AND CARRY FORWARD OF LOSSES

Head of Income under which Loss is incurred	Set off in the year of loss		Carry Forward & Set-off in subsequent previous years		Time Limit for c/f and set off of losses	Return u/s 139(1) apply (Sec. 80)
	Under same head (S.70)	Under Other head (S.71)	Under same head	Under Other head		
Income from House Property	Yes	Yes	Yes	No	8 A.Y.	No
Profits and gains from business or profession:						
• Non-Speculation Business	Yes	Yes (Note)	Yes	No	8 A.Y.	Yes
• Speculation Business (Note)	Yes	No	Yes	No	4 A.Y.	Yes
• Specified Business (Note)	Yes	No	Yes	No	No Limit	No
• Unabsorbed Depreciation	Yes	Yes	Yes	Yes	No Limit	no
Capital gains:						
• Short-term	Yes	No	Yes	No	8 A.Y.	Yes



• Long-term (Note)	Yes	No	Yes	No	8 A.Y.	Yes
Income from Other Sources						
• Lotteries, Crossword Puzzles, Card Games, Gambling etc.	Profit from similar activities	No	No	No	N.A.	Yes
• Loss from activity of owning and maintaining Race Horses	Yes	No	Yes	No	4 A.Y.	Yes
• Other Income	Yes	Yes	No	No	N.A.	N.A.

Notes:

- LTCI of the Current Year can be set-off only against LTCG. Brought Forward LTCL Brought forward LTCL can be set off only against LTCG.
- Loss from Non-Speculate / Non-Specified Business can be set-off against any heads of income except under the head Salaries.
- Loss from Speculation Business and Specified Business can be set off only against Similar Businesses.

Important Case Decisions

1. **Firm of Legal Heirs, as Successor of Individual:** On death of the individual, the business of the individual is carried on by legal heirs by forming a Partnership Firm. The Firm is entitled to carry forward the loss of the individual. **Madhukant Metha 247 ITR 805 (SC).**
2. **Inheritance:** The **Successor** of a business can carry forward and set-off the loss of his Predecessor, if such succession is by way of inheritance u/s 78(2). **[Saroj Agarwal 156 ITR 497 (SC)].**
3. **Dissolution of Firm:** The Partnership Firm was dissolved and the takeover of the running Business of the Firm by the erstwhile Partner as a Sole Proprietor was not a case of Succession by Inheritance. Carry forward of losses of the firm by the Sole Proprietor was not allowed. **[Pramod Mittal Vs. CIT (2003) 356 ITR 456 (Delhi)].**
4. **Substantial Change in Shareholding:** Carry forward of Unabsorbed Depreciation and Development Rebate is **not prohibited** in case of a company in which **substantial change in Shareholding takes place**. **[Concord Industries Limited 247 ITR 800 (SC), Subbulakshmi Mills Limited 249 ITR 795 (SC)]**
5. **Receiver appointed for Firm:** Where suit of dissolution was made and the business was put under the **Receiver**, any Rent Received from the Receiver by the Assessee in whose favour the business is transferred **cannot be used to set-off Unabsorbed Loss** **[Seth Banarsi Dass Gupta 166 ITR 783 (SC)].**
6. **Order of set-off and carry forward:** The effect has to be first given to the provisions of Section 71. This position is however subject to exceptions provided in Chapter VI, which prohibits inter-head adjustments with regard to certain losses. **[Cir. No. 587/11-12-1990].**
7. **Beneficial set-off Taxpayer:** For Section 71, where there are more than one source for set-off, Assessee can adopt the most beneficial method for set-off. **[Cir. No. 26/07-07-1955] [Vegetable Products Limited 88 ITR 192 (SC)].**



8. An Amalgamation Co-Operative Society **cannot** carry forward and set-off its accumulated losses against Profits of Amalgamated Co-Operative Society. [**Rajasthan R.S.S. & Ginning Mills Fed. Limited Vs. DCIT (2014) 45 Taxmann.com 1 (SC)**]
9. **Order of Set-off:** Assessee has a right to disclaim depreciation in its entirety, both depreciation for current year and carried forward unabsorbed depreciation. Unabsorbed Depreciation is to be allowed before Unabsorbed Investment Allowance. [**Seshasayee Paper & Boards Limited [2015] 58 Taxmann.com 185 (SC)**].
10. **Loss incurred on Derivatives:** Loss incurred on account of derivatives would be deemed business loss under proviso to Section 43(5) and not speculation loss and hence, Explanation to Section 73 could not be applied. [**CIT Vs. Asian Financial Services Limited [2016] 75 Taxmann.com 68 (SC)**].